Summary

In recent years, there has been an increasing interest in high-tech markets. The existing body of research on the topic suggests that such markets lead to reinterpret antitrust law key concepts – which should be done. There is little published literature, however, on the subject of the new anti-competitive strategies nestle in these markets, which this paper addressed.

The process of competition generally encourages companies to lower their prices, which benefits the consumer. And yet, in certain specific cases, antitrust rules intend to sanction predatory prices because they eliminate the competitive process itself. A similar situation applies to innovation. Innovation is one of the main bases for competition between companies and it is beneficial to consumers who may enjoy new products which are also better suited to their needs. But certain “innovative” behaviors are considered as being predatory and are punished accordingly, despite the fact that no legal concept specifically addresses this issue.

This absence of a legal category specifically dedicated to anti-competitive practices disguised as “innovation” leads judges to create numerous type I and II errors. The jurisprudence didn’t yet generalize the etiquette of “predatory innovation,” which nevertheless answers some of the modern problems encountered by antitrust law with high-tech markets development.

This article seeks to substantiate the value of this notion. Because many practices in high-tech markets are simultaneously occurring on several continents at once – the new version of software is generally available at the same moment around the world – we chose to carry out a comparative analysis between the United States and Europe. We are doing so because these two bodies of antitrust law may learn from each other – they have homologous roots – and also because the concerned countries have the highest GDP in the world.

The main objective of this paper, in the first instance, is to portray the practices that can and should be condemned as predatory innovation. And in fact, most predatory innovation practices are currently addressed under the label of “technological tying.” The creation of some legal rules dedicated to predatory innovation would lead to removing this legal concept and to create – instead – a more coherent legal regime – in both continents – that could be understood by business leaders.
Read the entire piece here

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