Behavioral Economics and Consumer Protection

Neoclassical economic theory assumes that people perfectly optimize each decision as if they had perfect information, ideal incentives, and plenty of time. But countless studies have proven that assumption false. Consumers have systematic biases that lead them to act in different ways than this perfect economic model predicts. Firms can exploit these behavioral biases to gain more market power than what would be possible if consumers were not impatient, incompletely informed, and susceptible to defaults, among others. For example, technology companies often argue that they are constrained in raising prices, because customers can easily switch providers: "competition is only a click away." But this claim ignores a large empirical literature showing how customers really act. While reading this module, consider how behavioral economics should affect antitrust issues such as market definition, switching costs, and tying.

Reading

Required reading

Eastman Kodak Co. v. Image Technical Services, Inc., 504 U.S. 451 (1992)

Complaint, *United States v. Google LLC*, 20-cv-3010 (D.D.C. Oct. 20, 2020)

Google Paid Apple Billions to Dominate Search On iPhones, NPR, October 22, 2020

Office of Fair Trading, "What Does Behavioral Economics Mean for Competition Policy?" (March 2010)

Competition & Markets Authority, "Modernising the Energy Market," June 24, 2016.

James C. Cooper and William E. Kovacic, *Behavioral Economics and Its Meaning for Antitrust Agency Decision Making*, 8 J. LAW, ECONOMICS & POLICY (2012)

Recommended Reading

Commission Decision of 24 May 2004 relating to a proceeding pursuant to Article 82 of the EC Treaty and Article 54 of the EEA Agreement against Microsoft Corporation (Case COMP/C-3/37.792 — Microsoft)

Alan Devlin & Michael Jacobs, *The Empty Promise of Behavioral Antitrust*, HARVARD J. OF L. & PUB. POLICY 1009 (2013)

Niels J. Rosenquist, Fiona M. Scott Morton, and Samuel Weinstein, *Addictive Technology and Its Implications for Antitrust Enforcement* (February 22, 2021)

Background Reading

Maurice Stucke (2014). *How Can Competition Agencies Use Behavioral Economics?* 59 Antitrust Bulletin 695–742.

Max Huffman. Marrying Neo-Chicago with Behavioral Antitrust (June 6, 2012). Antitrust Law Journal, Vol. 78, 2012.

Avishalom Tor, Illustrating a Behaviorally Informed Approach to Antitrust Law: The Case of Predatory Pricing, 18 Antitrust 52 (2003–2004)

Roger Van den Bergh. Behavioral Antitrust: Not Ready for the Main Stage, Journal of Competition Law & Economics, 9(1), 203–229.

Joshua D. Wright, “The Antitrust/Consumer Protection Paradox: Two Policies at War with Each Other,” The Yale Law Journal, Vol. 121, p. 2217 (2012)

Competition & Markets Authority, “Market Studies and Market Investigations: Supplemental guidance on the CMA’s approach”, January 2014 (revised July 2017).