Sherman Antitrust Act - (1890)

The Sherman Antitrust Act (Sherman Act, July 2, 1890, ch. 647, 26 Stat. 209, 15 U.S.C. 1–7) was the first United States Federal statute to limit cartels and monopolies. It falls under antitrust law.

The Act provides: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal".The Act also provides: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony. The Act put responsibility upon government attorneys and district courts to pursue and investigate trusts, companies and organizations suspected of violating the Act. The Clayton Act (1914) extended the right to sue under the antitrust laws to "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws.". Under the Clayton Act, private parties may sue in U.S. district court and should they prevail, they may be awarded treble damages and the cost of suit, including reasonable attorney's fees.

John Sherman (1823-1900) was the younger brother of the American Civil War general William Tecumseh Sherman. He became a U.S. senator from Ohio and served as a chairman of the Senate finance committee. He also served as a member of the U.S. Cabinet, including Secretary of State under President William McKinley and Secretary of the Treasury under President Hayes. Sherman was an expert on the regulation of commerce and was the chief author of the Sherman Antitrust Act.

This ground breaking piece of legislation was the result of intense public opposition to the concentration of economic power in large corporations and in combinations of business concerns (i,e., trusts) that had been taking place in the U.S. in the decades following the Civil War. Opposition to the trusts was particularly strong among farmers, who protested the high charges for transporting their products to the cities by railroad.

The Sherman Antitrust Act was the first measure enacted by the U.S. Congress to prohibit trusts (or monopolies of any type). Although several states had previously enacted similar laws, they were limited to intrastate commerce. The Sherman Antitrust Act, in contrast, was based on the constitutional power of Congress to regulate interstate commerce. It was passed by an overwhelming vote of 51 to 1 in the Senate and a unanimous vote of 242 to 0 in the House, and it was signed into law by President Benjamin Harrison.

The first part of Section 8 of the U.S. Constitution (with the interstate commerce clause underlined) states:

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

- To borrow Money on the credit of the United States;

- To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
- To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;
- To coin Money, regulate the value thereof, and of foreign Coin, and fix the Standard of Weights and Measures; ...

The Sherman Antitrust Act (the full text of which can be found here) authorized the Federal Government to dissolve the trusts. It began with the statement: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." And it established penalties for persons convicted of establishing such combinations: ". . . shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court."

Enforcement

For more than a decade after its passage, the Sherman Antitrust Act was invoked only rarely against industrial monopolies, and then not successfully. Ironically, its only effective use for a number of years was against labor unions, which were held by the courts to be *illegal combinations*.

This was the result of intense political pressure from the trusts together with the loose wording of the Act. Its critics pointed out that it failed to define such key terms as *combination*, *conspiracy*, *monopoly* and *trust*. Also working against it were narrow judicial interpretations as to what constituted trade or commerce among states.

Five years after its passage, the Supreme Court in effect dismantled the Sherman Antitrust Act in United States v. E. C. Knight Company (1895). The Court ruled that the American Sugar Refining Company, one of the other defendants in the case, had not violated the Act despite the fact that it controlled approximately 98 percent of all sugar refining in the U.S. The Court's explanation was that the company's control of manufacturing did not constitute control of trade.

President William McKinley launched the *trust-busting* era in 1898 when he appointed several senators to the U.S. Industrial Commission. The Commission's subsequent report to President Theodore Roosevelt then laid the groundwork for Roosevelt's attacks on trusts and finally resulted in the successful employment of the Act.

In a seminal 1904 decision, the Supreme Court upheld the Federal Government's suit under the Sherman Antitrust Act to dissolve the Northern Securities Company (a railroad holding company) in State of Minnesota v. Northern Securities Company. Then, in 1911, after years of litigation, the Court found Standard Oil Company of New Jersey in violation of the Sherman Antitrust Act because of its excessive restrictions on trade, particularly its practices of eliminating competitors by buying them out directly and by driving them out of business by temporarily slashing prices in a given region.

In this historic decision, the Supreme Court established an important legal standard termed *the rule of reason*. It stated that large size and monopoly in themselves are not necessarily bad and do not violate the Sherman Antitrust Act. Rather, it is the use of certain tactics to attain or preserve such position that is illegal.

The Court ordered Standard Oil to dismantle 33 of its most important affiliates and to distribute the stock to its own shareholders and not to a new trust. The result was the creation of a number of completely independent and vertically integrated oil companies, each of which ranked among the most powerful in the world. The consequent vigorous competition gave a big impetus to innovation and expansion of the oil industry as a whole.

Source: US Department of Justice