

ones. One of the very first antitrust cases, involving the railroads, made it clear that the structural approach would be *per se* and powerful.⁴⁶

When the U.S. Supreme Court ruled in 1911 that Standard Oil had violated the Sherman Act and must be broken into thirty-four separate companies, it became clear that Congress had created a powerful antimonopoly weapon. Subsequently, major structural breakups were ordered by the U.S. courts against American Tobacco (1911), du Pont (1912), the Pullman Company (1944), the five leading motion picture producers (1940s) and American Telephone and Telegraph (1982).

4.2 From efficiency to anti-structuralism

4.2.1 Judicial balancing

While the antitrust sheriff went on the warpath against the trusts, the U.S. courts sought to shift the U.S. government away from its focus on bigness to provide some consideration of the benefits of bigness, and also to limit the power of antitrust enforcers.

In 1911, at the height of the deconcentration programme, the U.S. Supreme Court in *American Tobacco* admitted that it was not concerned with "every" contract in restraint of trade, but only those contracts that restrained trade "unduly".⁴⁷ An examination of undueness necessarily involves an examination of the effects of a measure. Considering effects adds other factors to the mix than relying purely on whether an activity falls within the narrow confines of a prohibition.

The economics of the Chicago School of antitrust was founded on such an individualistic philosophy. Chicagoans argued that the goal of antitrust is not small business welfare and the control of power, but consumer welfare, as reflected in prices.

⁴⁶R. Bork, *op.cit.*, 1965, p. 6.

⁴⁷*U.S. v. American Tobacco*, 221 U.S. 106, 179, 1911.