

Antitrust and Pop Culture: The Sequel

BY SPENCER WEBER WALLER

EVERY POP CULTURE SUCCESS RECEIVES the inevitable sequel. In spring 2022, I published *A Pop Culture Guide to Antitrust* showing how antitrust is depicted in the movies, on stage, in pop music, fiction, true crime, and on television and streaming services.¹ Since 2022, the connection between antitrust and pop culture has only grown in importance.

Antitrust and the Music Industry

The most obvious example is the global controversy that erupted over LiveNation/Ticketmaster's handling of the on-sale for Taylor Swift's *Eras* tour.² Seemingly everyone in the United States became aware of the potential role of antitrust (and consumer protection) law in dealing with the conduct of a powerful firm controlling the ticketing and concerts for a cultural icon. At virtually the same time, rising country star Zach Bryan even released an album entitled *All My Homies Hate Ticketmaster*.³

Around the same time, the Federal Trade Commission proposed a preliminary rule that would ban noncompete clauses in most employment contracts except for those controlling the sale of a business or the formation/dissolution of a partnership.⁴ This proposal generated more than 26,000 comments and heated debate on television, radio, the press, and online. FTC officials appeared on the PBS NewsHour and published op-eds in the *New York Times*. Critics appeared on cable and in the pages of the *Wall Street Journal*. Publications that had never previously covered antitrust law, such as *Teen Vogue*, now featured articles on noncompete agreements because they affected the day-to-day lives of their readers.⁵ In different ways both Taylor Swift and the FTC noncompete rule show how antitrust has become both a kitchen table issue and a pop culture phenomenon because these issues are on the radar, and affect the lives, of Americans beyond legal and economic specialists.

So the time is ripe for another deep dive into how antitrust law is portrayed in pop culture and how pop culture affects antitrust. Numerous contacts in the antitrust

community shared with me their favorite antitrust pop culture moments, and I stumbled across additional examples both old and new. With the caveat that sequels are rarely as good as the original, and that there are still many examples around the world that I have missed, here is the second (and final?) installment of *Antitrust and Pop Culture*.

Antitrust on the Big Screen

In the original article, I "recommended" such antitrust classics as *Antitrust*, *The Informant!*, *Sweet Girl*, certain silent screen versions of Frank Norris novels, *Gilda*, *Star Wars*, *Grosse Pointe Blanche*, and *Demolition Man* for their antitrust themes.⁶ Ellen Meriweather and others reminded me that I had failed to include *Trading Places*.⁷ This 1984 comedy starred Dan Ackroyd, Eddie Murphy, and Jamie Lee Curtis. While the main plot involves the Duke Brothers forcing a switch in social position between Eddie Murphy's and Dan Ackroyd's characters, a major subplot involves the Duke Brothers' attempt to corner the orange juice market. While technically this probably involves the jurisdiction of the Commodities Futures Trading Commission, cornering a market is still a classic antitrust violation and the type of shady dealing exemplifying why we have antitrust laws in the first place.

The night before I finalized this article I also stumbled on the 2016 film *The Nice Guys*.⁸ This film stars Ryan Gosling and Russell Crowe as a mismatched pair of down-on-their-luck private detectives in 1970s Los Angeles. This raunchy, wildly funny, and often incomprehensible film noir homage (parody?) starts with the disappearance and possible murder of a young actress in the adult film business. It somehow ends up turning on the conspiracy of the big three auto makers to suppress the technology for catalytic converters. Be prepared for a very wild ride if you check this one out.

I am eagerly anticipating the December 2023 release of *Wonka*,⁹ a prequel to the familiar Roald Dahl classic *Charlie and the Chocolate Factory*. According to the trailer, the villainous chocolate cartel seeks to stamp out competition and innovation from nascent competitor Willie Wonka as played by Timothée Chalamet. Come for the antitrust, stay to learn how Willie Wonka met the beloved Oompa-Loompas.

Several readers also pointed out that the original article was heavily U.S.-centric. That is why I was pleased to receive a recommendation from Maciej Bernatt for a 2019 Icelandic drama called *The County*.¹⁰ This film focuses on the conflict between a country farmer and a predatory cooperative that seeks to exploit its suppliers and customers.

Thanks also to Christian Bergquist for pointing out the docudrama *A Song for Europe*,¹¹ which tells the story of Stanley Adams, the whistleblower who risked everything to disclose to the European Commission Hoffman LaRoche's involvement in the international vitamin cartel.

There is also the unclassifiable *The Raid: An Antitrust Movie*, available only to subscribers to the Chillin' Competition YouTube channel. In the words of the website: "In our

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opinion, *The Raid* is the best and funniest antitrust movie of all times. It has everything: it is a comedy with action, romance, and an educational purpose (it was filmed—a few years ago—as part of a compliance program for Neste).¹² The cast apparently includes an actual judge of the General Court of the European Union and distinguished international competition counsel illustrating for their clients the perils of a dawn raid by the European Commission.

Antitrust on the Small Screen

We live in a golden age of television. It is befitting that some of the best of prestige television has included antitrust themes or mentions. Just after publication of the original article, I settled in to watch Seasons 4-5 of *The Marvelous Mrs. Maisel*.¹³ I was delighted to see that one of the subplots involved a cartel for matchmakers (bringing couples together, not match manufacturing) in New York City involving market division, boycotts, coercion, collusion, and Midge Maisel's mother.

Brett Wainscott, one of my antitrust students, brought to my attention an antitrust reference in *Better Call Saul* (currently streaming on Netflix).¹⁴ In Season 1, around minute 38 in Episode 8, there is a reference to *Addyston Pipe and Steel*¹⁵ and a lawyer saying, "You turned it all antitrust."¹⁶ If only the protagonist of that series and *Breaking Bad* had listened.

Those unfamiliar with Netflix's *BoJack Horseman* may be surprised that the wacky human-animal society of the series is actually being run from the shadows by a monopoly megacorporation. Early episodes introduce the Major Broadcast Network (MBN), a subsidiary of AOL-Time-Warner-Pepsico-Viacom-Halliburton-Skynet-Toyota-Trader Joe's.¹⁷ In a 2018 episode, the megacorporation then merged with Disney, Fox, and AT&T, tracking the real-world Disney/Fox merger.¹⁸ By Season 6, Philip-Morris-Disney-Fox-AT&T-AOL-Time-Warner-PepsiCo-Viacom-Halliburton-Skynet-Toyota-Trader Joe's has now been acquired by Whitewhale Consolidated Interests, prompting Guy, the bison cameraman, to ask, "Wow, how many companies are there now, four?"¹⁹ In her attempt to finally write a feel-good story, journalist Diane Nguyen stumbles upon Whitewhale's scheme to "gobble up" virtually every market through vertical integration. When Whitewhale acquires the Teen Vogue/Buzzfeed parody that Diane works for (by acquiring restaurant chain Fuddruckers and merging it with DOW Chemical to create a new media venture that would integrate her company, no less), Diane is prevented from criticizing any of her hundreds of sister companies, effectively functioning as a large-scale catch-and-kill operation in service of the monopoly's inhumane labor practices.

Even the great *Succession* series²⁰ couldn't finish its run without bringing in the antitrust adjacent Exon-Florio Amendment²¹ and the Committee on Foreign Investment in the United States (CFIUS),²² which prepares recommendations for the President on the foreign acquisition of U.S. firms. One of the final acts of desperation of the children of

Logan Roy to block the acquisition of their media empire by a Swedish tech bro was to lobby behind the bidder's back for CFIUS and the likely president elect to block the acquisition on national security grounds.

Competition Law for Kids

It's never too soon to educate your kids as to the virtues of economic competition and the legal consequences for collusion and monopolization. One of the options include *Freddy and the Bean Home News* by Walter R. Brooks.²³ This charming children's story from 1943 is the tenth in a series of 26 children's books about Freddy the Pig and the other talking animals on the Bean farm.

The series began long before Orwell's *Animal Farm*,²⁴ and this particular antitrust classic dates from the time that Thurman Arnold headed the Antitrust Division of the Justice Department. Freddy has had many adventures including being a detective, poet, and pilot. Here, a villainous owner of the local newspaper employs various exclusionary and abusive tactics to shut down the rival paper edited by Freddy.

Freddy's lawyer, an owl named Whibley, correctly argues to the judge that the defendant and would-be monopolist engaged in "kidnapping, theft, and conspiracy in restraint of trade."²⁵ Somehow, he fails to include either monopolization or attempted monopolization (Arnold probably would have included both civil and criminal charges under both Sherman Act Sections 1 and 2).²⁶

The next and more recent offering is *The War of the Wizards* by Stephen Wylie.²⁷ Although intended for a kindergarten to fourth grade audience, I love this book. It has virtually every potential antitrust violation you can think of . . . and holograms! Andros is the incumbent wizard for a village who does a competent, but unexceptional, job of serving the magical needs of the villagers. Karazool, the disruptor, offers lower prices, some innovation, and plenty of dirty tricks. Karazool commands the genie in his crystal ball to turn Andros temporarily into a bat. Andros retaliates by having the goblin in his magic mirror change Karazool into a hairy spider for a while. The battle escalates until the two wizards simultaneously send each other to "inner earth" where, at the instigation of the genie and goblin, they form a partnership and "cast[ing] spells the likes of which had never been seen before."²⁸ But was it a merger to monopoly?

I loved this book so much I made it the basis for my antitrust final one year. The students loved it as well, but more than one indicated that they were slightly freaked out by having to use the phrase "the relevant market for wizarding services" so many times.

Podcasts and Board Games

NPR's *Planet Money* podcast continues to do great work in the antitrust space. Its February 2023 episode *The Ice Cream Conspiracy* is a wonderful exploration of how and why Häagen-Dazs specializes in creamy ice cream flavors and Ben &

Jerry's specializes in chunky flavors and whether this is likely the result of competition or collusion.²⁹ Their January 2023 episode on the story of *Monopoly* (the game) and American capitalism not only tells the story of the origin of the game, but how the original version reflects a profound distrust of corporate power rather than the current version of the game, which celebrates the accumulation of wealth.³⁰

The long running Wondery *Business Wars* podcast³¹ also has numerous stories of antitrust conflicts between rivals both famous and obscure. A typical "season" is a four to six part story of narration and commentary combined with some docudrama style reconstructions of dialogue and events of such rivalries with major antitrust themes as Browser Wars—Netscape vs. Microsoft,³² United States Football League v. National Football League,³³ The Raisin Cartels,³⁴ Sotheby's vs. Christie's,³⁵ and Diamond Wars—De Beers.³⁶

For those who want to play, rather than listen to, their antitrust interest, but are uncomfortable with Hasbro's *Monopoly* classic quest for total domination of the board, let me recommend the *Anti-Monopoly* game. According to a gaming website:

There are 3 kinds of company combinations on the board: Oligopolies, Trusts and Monopolies, marked by one, two and three "accusation circles" respectively. "Accusing" is done by placing a small, round chip of the same color as your token on such a circle. When all accusation circles of a combination are covered, the monopolistic practices of that combination have been ended. An accusation chip can be bought from the "Budget-Commissioner"; when lending money, he provides a Social-Credit card as an IOU.³⁷

Apparently there is also an *Anti-Monopoly II*. According to the same website:

In this game the players follow either the rules for Monopolists or those for Competitors. Competitors charge fair rents, build as soon as they own a property, place four houses (green) at the most, after which they build a hotel (red) and occasionally go to Price War. On the other hand, Monopolists extort monopoly-high rents from their poor tenants, build only after they have at least two streets of one color, restrict supply by putting only three houses on their properties, after which they also are allowed to build a hotel (red) and occasionally go to prison!³⁸

Just to make this more confusing, *Anti-Monopoly II* was originally marketed as *Anti-Monopoly* (the version I own), but apparently changed its name around 1987 due to litigation between these two newer entrants and between them and Hasbro, the owner of the original *Monopoly* game.

Antitrust and Pop Culture III: Direct to Video?

Is there more antitrust and pop culture yet to come? Stay tuned for my eventual book on the history of antitrust and the American theater industry and as many new references to antitrust in the cultural conversation as I can find, and you can suggest. ■

¹ Spencer Weber Waller, *A Pop Culture Guide to Antitrust*, 36 ANTITRUST 60 (Spring 2022).

² See Marc Jarsulic, *3 Antitrust Lessons From the Taylor Swift Ticketmaster Debacle*, Center for American Progress (Nov. 22, 2022), <https://www.americanprogress.org/article/3-antitrust-lessons-from-the-taylor-swift-ticketmaster-debacle/>.

³ Zach Bryan, *All My Homies Hate Ticketmaster (Live at Red Rocks)* (Warner Records Dec. 25, 2022). The release of the album coincided with the launch of a new tour by Bryan using a different ticketing service other than Ticketmaster.

⁴ Federal Trade Commission, *Non-Compete Clause Rulemaking* (Jan. 5, 2023), <https://www.ftc.gov/legal-library/browse/federal-register-notices/non-competes-act-rulemaking>.

⁵ Terri Gerstein, *Noncompete Clauses: What Are They and How Is the FTC Trying to Ban Them?*, Teen Vogue (Jan. 18, 2023), <https://www.teenvogue.com/story/noncompete-clauses-what-are>.

⁶ Waller, *supra* note 1, at 60–61.

⁷ TRADING PLACES (Paramount Pictures 1983).

⁸ THE NICE GUYS (Warner Brothers Pictures 2016).

⁹ WONKA (Warner Bros. Pictures forthcoming 2023).

¹⁰ THE COUNTY (Netop Films 2019).

¹¹ A SONG FOR EUROPE (Protagonist Pictures 1985), <https://protagonistpictures.com/film/a-song-for-europe/>.

¹² Alfonso Lamadrid and Pablo Ibáñez Colomo, *The Raid: An Antitrust Movie*, CHILLIN'COMPETITION (July 2011), <https://chillingcompetition.com/2011/07/22/the-raid-an-antitrust-movie/>

¹³ *The Marvelous Mrs. Maisel* (Amazon Prime broadcast 2022–23).

¹⁴ *Better Call Saul* (AMC 2015).

¹⁵ *United States v. Addyston Pipe and Steel Co.*, 175 U.S. 211 (1899).

¹⁶ *Better Call Saul: RICO* (AMC television broadcast March 23, 2015).

¹⁷ *BoJack Horseman: Hank After Dark* (Netflix online broadcast July 17, 2015). Thanks to Brady Sweet for this suggestion.

¹⁸ *BoJack Horseman: The Stopped Show* (Netflix online broadcast Sept. 14, 2018).

¹⁹ *BoJack Horseman: Feel-Good Story* (Netflix online broadcast Oct. 25, 2019).

²⁰ *Succession: With Open Eyes* (HBO television broadcast May 28, 2023).

²¹ 50 U.S.C. § 4565.

²² U.S. Dep't Treasury, The Committee on Foreign Investment in the United States (CFIUS), <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

²³ Thanks to Jonathan Baker for this suggestion.

²⁴ GEORGE ORWELL, *ANIMAL FARM* (1945).

²⁵ WALTER R. BROOKS, *FREDDY AND THE BEAN HOME NEWS* (1943).

²⁶ See generally SPENCER WEBER WALLER, THURMAN ARNOLD (2005).

²⁷ STEPHEN WYLIE, *THE WAR OF THE WIZARDS: A MAGICAL HOLOGRAM BOOK* (1994).

²⁸ *Id.* (final page of unnumbered page book).

²⁹ Amanda Aronczyk, NPR Planet Money, *The Ice Cream Conspiracy* (Feb. 23, 2023), <https://www.npr.org/2023/02/06/1154775118/ice-cream-ben-jerrys-haagen-daz>.

³⁰ Rund Abdelfatah, NPR Planet Money, *The Story of "Monopoly" and American Capitalism* (Jan. 25, 2023) <https://www.npr.org/2023/01/25/1151367036/story-monopoly-american-capitalism>.

³¹ David Brown, *Business Wars*, <https://wondery.com/shows/business-wars/?seasonPageNum=7>.

³² *Id.* at Season 12: Browser Wars, <https://wondery.com/shows/business-wars/season/12/>.

³³ *Id.* at Season 15: USFL vs NFL, <https://wondery.com/shows/business-wars/season/15/>.

³⁴ *Id.* at Season 26: The Raisin Cartels, <https://wondery.com/shows/business-wars/season/26/>.

³⁵ *Id.* at Season 77: Sotheby's vs. Christie's, <https://wondery.com/shows/business-wars/season/77/>.

³⁶ *Id.* at Season 38: Diamond Wars, <https://wondery.com/shows/business-wars/season/38/>.

³⁷ *Anti-Monopoly*, BOARDGAMEGEEK, <https://boardgamegeek.com/board-game/1931/anti-monopoly>.

³⁸ *Anti-Monopoly II*, BOARDGAMEGEEK, <https://boardgamegeek.com/board-game/1932/anti-monopoly-ii>.