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Book review: Competition Overdose

Two top law professors argue that competition policy is no magical elixir.

by Simon Van Dorpe Apr 9, 2020, 5:22 PM

Beware the mantra that competition inevitably leads to lower prices and higher quality.

Some universities in the U.S. learned that lesson the hard way when rivalry among college sports programs led to a bidding war for prominent coaches, which had devastating effects on the schools' budgets. An attempt by the universities to de-escalate the coaching-salary arms race was considered an anti-competitive agreement.

That is just one example of what law professors Maurice Stucke of the University of Tennessee and Ariel Ezrachi of the University of Oxford call "toxic competition," which elevates the competitive process above other values, producing harmful and at times absurd outcomes.

In their new book, "Competition Overdose," published on March 30, the authors argue that competition is "over-prescribed" by society and has morphed into "unbridled rivalry," hurting consumers, curtailing entrepreneurship and increasing economic inequality. While competition worked from the late 1940s to the mid-1970s in an environment with regulatory protections, since then those protections have been gradually eroded as the competition ideology has taken over.

Stucke and Ezrachi set out instances in which companies resort to such toxic competition, detail who spreads the competition ideology and how, and in the final chapters offer proposals to get out of this race to the bottom. They show how it led to looser regulation, selective privatization — companies cherry-picking the more profitable activities while relying on loss-making state services — and tech platforms designing and regulating ecosystems in which toxic competition flourishes.

The early reactions to the coronavirus epidemic showed that "countries which are overly reliant on many distressed private-sector operators found it more difficult" to address the health crisis, Ezrachi said in an interview. "It did show the need sometimes for a centralized government approach even if that approach is to mobilize the private sector."

Stucke said the scramble for masks amid the epidemic demonstrated how a certain amount of cooperation is beneficial. "If everyone is looking out for their own naked self-interest, it would be the equivalent then of having everyone trying to run out of the same single door,'' he said in the interview. "Then you have the worst, the toxic competition."

The book doesn't come out of the blue. The praise in the cover blurbs is a useful reminder of the who's who in the broader push-back against the Chicago-school competition doctrine, including Facebook co-founder Chris Hughes; lawyer and author of *Amazon's Antitrust Paradox* Lina Khan; lawyer and opinion writer Tim Wu; and the EU's former chief competition economist, Tommaso Valletti. Many of these people agree that U.S. officials should not focus antitrust policy exclusively on consumer welfare and that in the EU — where that standard was always applied more broadly — competition enforcement should keep in mind other policy goals, including fair taxation and protection of privacy and the environment.

"Competition Overdose" gives a detailed overview of how the strict competition ideology got it wrong and combines the expertise of competition lawyers with a helicopter view too often absent in the competition bubble.

Competition overdoses: from horsemeat to Amazon's Buy Box

Horsemeat burgers: Many in Europe may remember the unpleasant revelation in

2013 that a lot of what they thought was beef was actually horsemeat. “Competition cannot magically produce high quality, nutritious, healthy food at ever lower prices even as costs are increasing,” Stucke and Ezrachi write in their analysis of what went wrong.

They compare competition to a steam engine, which when regulated and properly oiled, churns out products reliably and efficiently. But when more coal is added to an unmonitored machine, the resulting pressure on the boiler’s weaker bolts will cause them to loosen and ultimately to give way.

Quality is often the weakest link, the authors find. As consumers wanted cheap, ready-made beef meals, supermarkets had to pressure their suppliers to keep prices down, but with ranchers’ costs increasing, for many meat suppliers the option was to “cheat or die,” the authors say.

This mechanism can also be found in industrial farming, when cattle are pumped with hormones and antibiotics or chickens are fed arsenic. Labor is another weak bolt in the competition machine, causing suppliers of cocoa or textiles to resort to child or slave labor.

One piece missing in the book, which this reviewer would have been interested to see, is a discussion on how workers are being squeezed to maximize their output in ever more specialized jobs, which is one of the factors leading to burn-outs.

Drip pricing in Vegas: Whoever has booked a hotel in Las Vegas may have ended up paying much more than the price they originally saw advertised online. Drip pricing is a technique whereby users are lured with a low headline price, but fail to adjust their perception of the offer’s value as more costs are revealed along the booking process.

Stucke and Ezrachi describe how in 2011, Caesars made an attempt at advertising a more honest approach, sending 50 showgirls on the streets of Vegas with signs “Just Say No To Resort Fees.” The chain estimated it saved customers $37 million a year by not engaging in drip pricing. But by 2013, Caesars gave up on its stand against the practice because showing the true price led to a fall in sales.

Choice overload: Companies’ exploitation of the shortcomings of human rationality is taken to another level in the practice of “choice overload.” We can get overwhelmed when presented with too many selections for a particular product, to the point where it discourages us from actually buying the item.

Merchants are only too aware of this well-studied phenomenon and often create the overload themselves in order to more effectively guide the confused customer. The salesman coming to our aid when we're trying to choose the best from 30 TV sets? Check.

When confused online, we are often guided by ratings. Amazon's Buy Box, which is currently being investigated by EU antitrust regulators, gives such rated recommendations, but its guidance is "aimed at steering us to those options on which it earns greater profits," the authors note, referring to research by investigative news outlet ProPublica.

Noble competition

Stucke and Ezrachi offer insights from behavioral economics, which show that humans don't merely pursue narrow self-interest — as opposed to the Chicago-school assumption that "greed is good," that selfishness is the essential foundation for economic activity. They propose a concept of "noble competition," which involves "helping your rivals reach their full potential," much like how we would teach our children that values of friendship, honesty, fairness and responsibility should shape the way they compete.

When the authors say that the competition ideology "may even result in less frequent churchgoing and a decrease in the social goods that accrue to churchgoing" and refer to the words of "His Holiness the Dalai Lama," they risk losing their scientific focus. Fortunately, they get their act together a few pages later: "We want rivals to beat each other, not sing 'Kum ba yah, my Lord, Kum ba yah' around the campfire. Competition after all, is about slashing prices, improving service and quality, and innovating in order to gain market share." But the transatlantic duo does have a point that our legal order is based on some sort of morality — they refer to the universal right to an adequate standard of living — and that there is no reason the same values should not underpin our economic regulation.

They call on legislators to improve the social security net and add regulatory guardrails that would prevent another horsemeat scandal. More broadly, policy makers have to "remove their ideological blinders and recognize that competition is not some magical elixir."