

**Antitrust Policy and Enforcement in the Clinton Administration**  
**By Larry Bumgardner**

When the Clinton Administration took office, most observers anticipated a renewed interest in antitrust policy, featuring far more vigorous use and enforcement of the nation's antitrust laws. The differences were expected to be most noticeable compared to the predominantly Chicago School view of antitrust embraced by the Reagan Administration of the prior decade (as the first Bush Administration in the interim had followed a more moderate antitrust policy).

In the area of anticompetitive conduct cases brought under the Sherman Act, these expectations arguably were met. In the most striking example, the Clinton Justice Department brought a potentially landmark antitrust suit against Microsoft -- a case that at one point yielded a trial court order to break the global powerhouse into two separate companies. The fact that the same case ultimately was settled, on much more favorable terms to Microsoft, by the Justice Department of the second Bush Administration lends further support to the view that the Clinton years yielded the most forceful antitrust policy in the United States over the past quarter century. In addition, Clinton antitrust officials placed much greater focus on international cartels and imposed record-breaking fines.

However, in the area of merger cases under the Clayton Act, the Clinton record is more debatable. The 1990s have been described as a time of "merger mania." The Clinton Administration did not seek to block most of these proposed mergers, including some of unprecedented size. Exactly what this merger record proves is unclear, and the issue is worthy of further study. Was it an indication of a more relaxed approach to antitrust law on the issue of mergers? Or was it merely an acknowledgement that large businesses worldwide were combining, meaning that U.S. companies needed to merge to keep pace and remain competitive? Or might it have been primarily a reflection of the soaring stock market of the era?

This paper will examine the antitrust record of the Clinton Administration in both anticompetitive conduct and merger cases by looking at the most significant and highest profile antitrust decisions of the Clinton years. It will ask questions such as whether there was a consistent record -- or a divergence in policy -- between antitrust officials in the Justice Department and the Federal Trade Commission. Similarly, was there uniformity in approach for Sherman Act and Clayton Act cases? Finally, will the Clinton antitrust policy ultimately prove to be merely a brief interlude, surrounded by twenty years of Republican administrations? Or is there a lasting antitrust legacy of the Clinton Administration?