

# Striking a Balance

## *FTC-DOJ Hearings on Anti-Trust Enforcement*

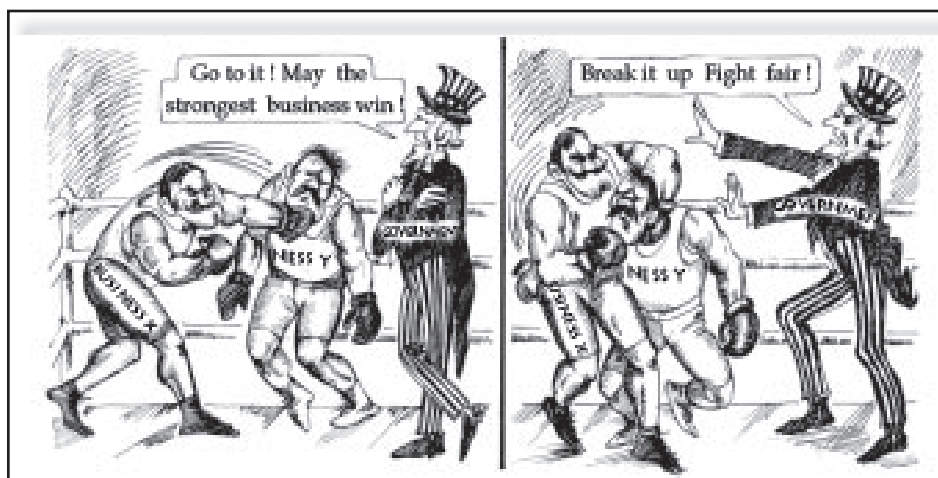
By Richard Gilbert

Chair, Competition Policy Center

On January 30-31, 2007, the Competition Policy Center and the Berkeley Center for Law and Technology hosted hearings by the U.S. Department of Justice and the Federal Trade Commission on the application of Section 2 of the Sherman Act.

The Sherman Act has two key provisions. Sec. 1 of the Act deals with conspiracies and contracts that restrain trade. Sec. 2 states that it is unlawful for any person "to monopolize, or attempt to monopolize" any part of trade or commerce. Some of the most famous anti-trust cases have been enforcement actions under Sec. 2, including the breakup of the Standard Oil trust and the Bell Telephone monopoly. Yet antitrust scholars have taken different views of the appropriate scope for Sec. 2 enforcement. Some argue that market forces are adequate to deal with monopolies. According to this view, firms cannot maintain a dominant position if they are less efficient than competitors, and aggressive enforcement of Sec. 2 protects inefficient firms at the expense of consumers. Others argue that monopolies sometimes erect strategic barriers to ensure that they will prevail despite the presence of more efficient competitors.

Striking the right balance between the opposing views has long been a challenge for antitrust enforcement and was the subject of the hearings co-hosted by the Competition Policy Center. CPC associates Aaron Edlin, Joe Farrell, Richard Gilbert, Carl Shapiro, Dan Rubinfeld and Howard Shelanski spoke at the hearings, as did Tim Bresna-



han from Stanford. They were joined by representatives from several major corporations, including Microsoft, Qualcomm, Broadcom, AMD, Ross-Simmons and Hewlett-Packard. Some speakers addressed the difficulties of defining markets to determine whether a firm has a monopoly share and whether market definition is a necessary or even desirable first step to analyze liability under Sec. 2. Others spoke of refusals to cooperate with competitors, barriers to competition from bundling, monopolization through product design or introduction of incompatible goods, and the effects of standards that can exclude competitors or entrench the value of patented technologies.

The hearings did not resolve the controversies over Sec. 2 of the Sherman Act; that was not their intent. They did identify key issues and explored how antitrust policy should react within the scope of Sec. 2. That the Department of Justice

and the Federal Trade Commission chose Berkeley as the site of these hearings and the Competition Policy Center as co-host is a powerful demonstration of Berkeley's reputation for forward thinking on these challenging issues of competition policy. Video recordings of the hearings are at <http://iber.berkeley.edu/cpc/News/Events.html>

### In This Issue:

- Paul Gertler brings evidence-based planning to World Bank 2
- Surprising results: research on cell-phones, driving and accidents 3
- Research conference on health and im/migration 4

## Banking on Development

*Paul Gertler is Li Ka Shing Distinguished Professor of Economics and Director of the Graduate Program in Health Management at the Haas School of Business and the School of Public Health. He recently spoke with IBER Deputy Director Bob Barde about his experience from 2004–06 as Chief Economist for Human Development at the World Bank.*

**IBER:** You've just come back from two years in Washington. Why did the World Bank recruit you, and why did you take the job?

**Paul Gertler:** The Bank said, "We work in the area of health, education, poverty alleviation, HIV/AIDS, and we give 120 countries advice about how to improve human development. We also give them money to implement that advice, and we'd like to make our advice more evidence-based."

I had been doing evaluation of public policy in these areas for the last twenty years, especially in Mexico. The Bank wanted someone to help implement a new agenda: how can we gather information about what works, get it embedded in the way we give advice, and get governments to understand the value of it? Organizational or management skills are not my strong point, but this new agenda interested me.

**IBER:** How did you get the Bank to adopt evidence-based decision-making?

**Gertler:** I spent two years helping figure out how to imbed strategic prospective evaluation in World Bank operations so that they could harvest knowledge about what works on an ongoing basis, to shift from static knowledge generation to dynamic learning.

First of all, there were a huge number of institutional constraints. The World Bank accounting system had no product code for "knowledge generation" or "impact evaluation." Just getting a product code and getting Bank management to recognize that this was a useful and important activity of the Bank was a major battle. It took us a year just to do that!

Secondly, the Bank works on a tight administrative budget, in large part because countries like the United States, which have accused the Bank of corruption and wastefulness, have squeezed the administrative budgets. So there is no "excess" to do things like generating knowledge. In a typical consulting firm, consultants spend on average four days a week to generate income and one day a week improving their skills, figuring out new things they didn't know before or retraining or generating new knowledge. At the Bank, they don't spend 20 percent of their time on these types of things; they spend between two and three percent.

A third issue was where the money would come from to do evaluations. Most Bank money is in loans, which means we would have to get governments to take loans to pay for the evaluations. If we're serious about getting countries to do this, we have to show it's valuable to them. So we raised what are called "trust funds," which are basically large grants from European governments to co-finance scientific evaluations

We also built capacity by training large numbers of people to do scientific evaluations. Within five years, we should see a lot of knowledge coming out of the Bank about what works. I'm very proud of that.

**IBER:** "Scientific evaluation" seems to involve randomized trials of social intervention projects. How can you give a good intervention to some people and not to others?

**Gertler:** As we've learned from drug trials, the best way to measure the impact of a drug or an intervention is a controlled, randomized trial. Essentially you flip a coin, and this group gets the drug and that group doesn't. On average everybody has the same characteristics except for getting the intervention. Then we know the reason behind any difference in outcome is that one got the intervention, not because of some underlying characteristic. That's the science.

**IBER:** How do you do that in situations where you could be saving peoples' lives?

**Paul Gertler:** Governments are never

able to give program benefits to everyone it wants to in the first year of a program. Those who get it in the first year are "treatments" and those who get it later are "controls." We're always phasing in programs. For example, Oportunidades in Mexico, which is a conditional cash transfer program, took four years to scale out to find households who were all poor, all deserving. Then if everybody's equally deserving and you want to be equitable, the right thing to do is run a lottery for who goes first. That turns out to be a randomized trial.



**IBER:** Evaluation per se is not a new idea, but why have there been so few evaluations through randomized trials?

**Gertler:** There were a lot of technical reasons—especially before computers lowered the costs of data collection, but the real problems were political. You hear the expression, "aid accountability" or "aid effectiveness" from people in Congress who say that no one can tell us what the aid money is being used for. It turns out that the evaluations going on in Mexico and Brazil, and a few other countries, are head and shoulders above what we do in the U.S. There's very little of this type of evaluation in developed countries, let alone in developing countries. Health and Human Services and the Defense Department and the Ag Department in the U.S. do very few of these randomized trials of their own policies. The political implication is that because the

World Bank and these developing countries haven't been doing it, they're somehow more corrupt or ineffective than our government. Well, the World Bank and other places are doing more than the U.S. in this regard.

There are many trials in progress. In the last two years, the World Bank has seventy or eighty projects where we started off with prospective serious evaluations.

In Mexico, Congress passed laws saying all social programs have to be evaluated on a regular basis, and with budget allocations to match. Debate over what works politically now depends, fundamentally, on these types of evaluations. And it's starting to happen much faster in Latin American countries. The political currency changed, demanding more rigorous evaluations.

For instance, the Gates Foundation started asking, "Why is all the new technology that we're funding for developing countries, such as vaccines and drugs, not having a big effect on health?" First, we don't know that it's not, because we don't have many evaluations; things could have been worse without it. Second, just pumping in technology may not be enough. We may need to make health systems work. We may need to deliver those technologies in the right way, and that depends on human beings and incentives and knowledge. So now they've taken a different tack: before putting hundreds of millions of dollars into something, let's spend \$5 or \$10 million piloting the right way to introduce these things, and then we'll use what we learn to program the rest of our money.

**IBER:** What were the most inspiring projects?

**Gertler:** I've seen several instances of empowerment, something that economists usually don't think about. I saw this in Mexico, where the quality of education is just abysmal. There was a loan to improve infrastructure—school toilets and walls and lighting—and they decided to give a small amount of money to a parents association to decide how to spend it. We saw that in the schools that got this little fund that parents could control, test scores started going up, attendance started going up, dropout rates fell, repetition rates fell, and all the standard indicators of quality schooling improved. How can a little spending on infrastruc-

ture matter? Well, the school directors told us, "Those parents! Once they were in the school, they didn't care just about infrastructure. When teachers didn't show up, they were in my office telling me teachers didn't show up. When kids didn't do well in school, they wanted to know why and what we could do to improve their education." Giving them a seat at the table, empowering them, had a big effect on how the school performed. The evaluation demonstrated a large effect on school performance.

Experiences like that led me to believe that empowering people with money, knowledge and the ability to participate is a key to economic development. It's not enough just to get money or to improve the supply of services. You have to empower poor people and minorities to take advantage of these things so they pull themselves out of poverty.

**IBER:** How does all this translate into your teaching?

**Gertler:** The questions that I now think are interesting are ones I never thought of before. Empowerment is a line of research that Ph.D. students could get involved in. I also have access to funding from governments and agencies and banks for field experiments that I never would have had before. My students benefit from that.

**IBER:** If you had a spare billion dollars, how would you use it?

**Gertler:** A billion dollars is actually trivial. That money should be used on high priority areas in actual situations, rigorously experimenting with alternative solutions to generate the knowledge about how to spend the other trillion dollars that's being spent annually on poverty, health and education, and on HIV/AIDS.

The World Bank, the Millennium Challenge Corporation, the British Department for International Development, USAID—all of them now want high-quality research; they want randomized prospective trials, things that we're good at that the "Beltway Bandit" consultants are not. This sort of funding not only allows us to do really good science, but it gets us at the table to have that science influence policy and decisions in peoples' lives.

## Driving While Talking on Cell Phone

*Saurabh Bhargava & Vikram Pathania, Ph.D. Students in the Department of Economics, recently received an IBER mini-grant.*

What is the link between cell phone usage and driving safety? Most studies have concluded that cell phone usage impairs driving safety. The most widely cited research suggests that cell phone usage while driving results in a four-fold increase in crash risk. Policy makers have responded by regulating cell-phone use among drivers. By 2006, every state in the U.S. had passed legislation regulating the use of cell phones while driving.

Using four strategies, we investigated the effect on crashes of cell phone usage while driving. Our main strategy exploits the sharp change in the effective price of a call at 9 p.m. on weekdays when most cell phone plans switch from peak to off-peak pricing. As expected, we find that call volume spikes by 20-30 percent at 9 p.m. weekdays while there is no weekend spike. Based on current estimates of cell phone use while driving and the consensus estimate of a four-fold increase in crash risk, we would expect to see a 3-4 percent spike in crash rates after 9 p.m. weekdays. However, we find no evidence of any such spike in crashes, fatal or not. Because we use the census of fatal crashes for the entire U.S. and the census of all crashes for seven large states, our estimates are fairly precise. In fact, we can reject, with 95 percent confidence, any positive rise in crash rates after 9 p.m. on weekdays.

While cell phone penetration has increased since 1990, it has done so at different rates in different geographical areas. We find no evidence of a positive correlation between change in crash rates and the changes in cell phone penetration across geographical areas. Rural counties lagged urban areas in the take-up of cell phones, but urban and rural differences in crash rates do not mirror this differential pattern. We find no effect on crash rates of legislative bans on cell phone usage. In summary, we find no evidence that cell phone use while driving increases crash risk.

# Conference Tackles Research on Health and Im/migration

The April 18 conference on “TransNational Health” featured Dr. Jaime Sepúlveda Amor, former national director of Mexico’s National Institute of Health, as keynote speaker. Now a visiting faculty member at UC San Francisco, he discussed the historical shift in U.S. concerns toward Mexican migration and praised the research of the California-Mexico Health Initiative led by Xóchitl Castañeda at the UC Office of the President.

Sepúlveda noted that 10.2 million Mexican immigrants are heavily represented in U.S. manufacturing, transportation, service and construction industries. Two thirds of immigrant children lack health insurance, and over half of adult immigrants are uninsured. Making migration a crime is short-sight-

ed, Sepúlveda said, pointing to the prevalence of bi-national families, and the 7 million Americans expected to retire soon to Mexico.

The health of transnational migrants is highest on arrival in the U.S. and worsens the longer they stay here due to fast food, scarcity of health care and onset of such chronic diseases as diabetes and hypertension.

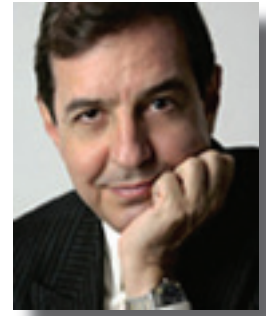
Sepúlveda spoke of dangers at the border for undocumented migrants, “with 23 deaths in 1994 rising to 500 deaths in 2005.” Heavier border enforcement cannot slow the growth of undocumented migration, which is a function of supply and labor market demand.

Richard Figueroa, health care advisor to Gov. Schwarzenegger, stressed the Governor’s commit-

ment to making sure that everyone living in California has access to health insurance.

The burden of providing it for the uninsured, whether undocumented immigrants, legal residents or citizens, should be shared by the counties and the state. This would not be a single-payer system, Figueroa noted, but would presume that whether or not people are legal immigrants, they need access to health care, and right now that care is heavily subsidized by people who have health care insurance. Immigrants are not going away, and neither is this problem.

The conference was sponsored by IBER’s Center for Health Research. Audio and written presentations are available at: [immigration.berkeley.edu](http://immigration.berkeley.edu)



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