Apple Inc., #1 on *Fortune* magazine’s list of the World’s Most Admired Companies, is currently on trial in Manhattan federal court, defending against antitrust charges. Question: How many other businesses in *Fortune’s* top ten have been recently subjected to some kind of antitrust enforcement? Answer: all of them.

Surely, some would say, if the nation’s top companies are getting caught in antitrust’s grip with clockwork regularity, they must be doing something wrong. But what if they’re not? What if America’s best companies are being targeted not for bad behavior but for good? What if they’re being punished not for their sins but for their virtues? It’s hard to imagine, but consider the evidence.

Here are key facts underlying the Department of Justice case against Apple:

In late 2009, Steve Jobs was ready to launch the new iPad and wanted to offer an e-bookstore, similar to Apple’s highly successful iTunes and App Stores. Jobs was confident that readers would value the iPad’s easy and colorful interface enough to pay $13-$15 per e-book, price levels that the nation’s largest publishers eagerly sought. Five of those publishers agreed to let Apple retail their products at those preferred prices.

Under the Sherman Act of 1890, government lawyers charged Apple with acting as the “ringmaster” in a “price-fixing conspiracy” that imposed “restraint of trade.” Sounds bad, right? The terms evoke images of criminality and physical coercion. But contrary to the law’s pejorative language, Apple was simply trying to make profits through voluntary, win/win transactions with publishers and readers.

Was the economic wisdom of this strategy foreordained? Not at all. If
antitrust authorities had not intervened (fining the publishers a total of $170 million and voiding their agreements), the market would have decided whether Apple’s e-book program succeeded or failed. As Jobs himself said in an email, “Heck, Amazon is selling these books at $9.99, and who knows maybe they are right and we will fail even at $12.99.”

Apple’s pursuit of growth and profits in the e-book industry deserved admiration, not legal persecution. Another “most admired” company, Google, is also known for offering products that people really like—and it, too, wears an antitrust target on its back these days.

Over the past fifteen years, Google’s legendary search engine has attracted users en masse, leaving competitors like Bing and Yahoo! in the dust. Leveraging that popularity, Google chose to display its own services (like Google Maps, Shopping, and Travel) more prominently than results for its competitors. So what? Every businessman in America understands that you paint your own company’s name on the side of your truck, not your rival’s name.

While Google’s ingenuity keeps birthing products that engage the 21st-century imagination, vague and elastic antitrust laws empower regulators, here and in Europe, to demonize Google’s business practices as “unfair” competition. By means of grinding, years-long investigations coupled with threats of massive fines, government agencies have recently forced Google to modify business practices that sought nothing but enhanced profits through voluntary transactions.

Antitrust has always worked this way. Go back to the late 1990s, when Microsoft was riding high on the phenomenal success of its Windows operating system. By adding a web browser (Internet Explorer) to every copy of Windows, Microsoft offered customers more value for the same price, leaving purchasers free to adopt competing browsers if they chose. By any rational business standard, Microsoft was pursuing a growth-oriented strategy whose success or failure should have been determined on a free market.

But under the Sherman Act, the Department of Justice had the power to charge Microsoft with “monopolization” and “tying” offenses. The very words evoke scary 19th-century images of a bug-eyed octopus gripping a far-flung economy in its tentacles. After years of litigation and unsuccessful appeals, culminating in a finding that Microsoft had violated the Sherman Act, the company lost whatever innovative edge it had and sank into doldrums from which it has yet to recover.

Precisely what are the bad acts for which America’s best companies—Apple, Google, Microsoft, and hundreds of others—are punished by antitrust laws? If you look closely, you’ll find they’re not bad acts at all. On the contrary, they belong in the same category as all the other growth-oriented, profit-driven strategies by which start-up firms survive, small firms become large, and large firms rise to new heights, flooding our economy with life-enhancing goods and services.
The scandalous truth is that antitrust laws penalize America’s best companies for their virtues, for business practices that generate growth and profit through voluntary trade. Such practices deserve legal protection, not prohibition. Antitrust stands exposed as something quite vicious: a legal regime that punishes good behavior.

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