

Antitrust Reformers Should Consider the Consequences of Mandatory Treble Damages

The debate over antitrust reform is reaching a crescendo. Several proposals have been introduced in Congress and state legislatures to expand the scope of substantive antitrust rules governing marketplace behavior. Missing from the current discussion, however, is careful consideration of whether these new rules should incorporate a process for calculating antitrust damages that has remained essentially unchanged for over a century. As legislators grapple with antitrust reform, it is important to examine the implications of importing the existing mandatory treble damages framework to new causes of action. Failure to appreciate these effects creates a serious risk of undermining reformers' core objectives.

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