Why Anti-Competitive Behavior by Businesses is not Morally Justifiable from a Business Ethics Perspective

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Summary

This thesis will argue anti-competitive behavior by businesses is not morally justifiable from a business ethics perspective. After I have shown the two dominant theories in business ethics, shareholder theory and stakeholder theory, come up short in providing a meaningful analysis of anti-competitive behavior, I argue the market failures approach by Heath is the right approach to evaluate the moral justifiability of anti-competitive behavior. Friedman's shareholder theory has the drawback of focusing too much on the fiduciary relationship between executive and stockholder. While Friedman believes in moral constraints based on freedom, the shareholder theory has little to say about anti-competitive business practices. Stakeholder theory has the drawback of having to compare all those who have a stake in a certain decision. This gives rise to problems of evaluation and weighing and is therefore unclear in its conclusions. The market failures approach is more useful, it draws its moral constrains from the moral justification of the market, efficiency. According to this approach businesses have a duty not to act in ways that decrease this efficiency, which means not to profit from market failures. As anti-competitive behavior aims to make the market less efficient for the benefit of the actor, it is not morally justifiable.

1. Introduction

The basic idea behind welfare economics is that a competitive market will always lead to a Pareto efficient distribution (Pigou, 1924). A Pareto efficient outcome is an outcome where all possible changes are made which improve the situation of at least one person without making anyone worse off. Prices in a competitive market are not set by a central agency, they are indications of demand revealed through competition between suppliers. When supply is low and demand high, this will be reflected in rising prices, which will then increase supply. When these suppliers compete, prices will fall and, ideally, come to an equilibrium, where maximum gains from trade are realized. This competition is costly for suppliers, but rewarding for society at large, as it incentivizes innovation, higher production, and lower prices. Through this mechanism, competitive markets should always reach a Pareto efficient outcome. Since in a free market people will only trade if it improves their situation, all possible trades that improve at least one person's situation should be made until there are none left. This is a Pareto optimal outcome which, according to welfare economics, should flow freely from a competitive market.

In reality, this Pareto optimum is often not reached, because this theory describes a perfect market, not a real market. Only when every buyer can perfectly assess all possible options with complete information, can they make the perfect decision leading to a Pareto optimal outcome. In reality, this is not the case. There are many reasons for this, for instance the simple fact that consumers are not perfect economic actors only looking to maximize utility, or the impossibility of perfect information. Cases where the market fails to lead to a Pareto optimal outcome, are called market failures.

An important source of these market failures is the competition structure between suppliers. As this competition benefits society and not the suppliers, the suppliers have an incentive to circumvent competition. In a perfect market there are two ways to gain an edge over a competitor: you can either provide a better product or service at the same price, or you can provide the same quality for a lower price. This is bad news for suppliers, as results in either lowering prices, leading to lower profit margins, or having to invest heavily into improving their product, also lowering profits. Many suppliers have found ways of circumventing this type of competition, leading to high profit margins. Most of this can be broadly classified as anti-competitive behavior. This can take many forms, like a creating barriers for entry into a

market, subsidizing one business with another, or making it harder for consumers to switch over to competitors. Many companies engage in this type of behavior, and governments try to combat this by outlawing many different types of anti-competitive behavior. This has long been a type of cat and mouse game, with companies becoming ever more creative in trying not to compete on terms of price or quality alone, with lawmakers seemingly always one step behind.

While economists and lawmakers should agree this behavior is unwanted because of its economic effects, this is not the leading view for many business schools. In business schools it has long been taught that a good manager should seek ways to compete outside of just price and quality, as exploiting market failures is the main way of making money in business (Applbaum, 1999). Although this is supposed to be done within the confines of the law, there is no objection to finding exactly where the law ends and exploiting market failures in a legal way.

While the economic argument is relatively straightforward, there is less clarity about the moral status of anti-competitive behavior. The simple fact that corporations, through adversarial markets, serve a societal role in promoting innovation and bringing down prices, is not enough to consider behavior in opposition to this goal unethical. A parallel can be drawn between the role of lawyers and that of corporations (Heath, 2006). Lawyers have a duty to defend their clients, even if they are murderers. In everyday moral discourse this would be an outrageous thing to do, but due to their role within the judicial process it is not. Lawyers exist to ensure a fair process, the process should provide justice, not the lawyer herself. In the same way, the market is what is supposed to ensure a Pareto optimal outcome, not businesses themselves.

In this thesis I will try to answer this question: Is anti-competitive behavior by corporations morally justifiable from a business ethics perspective? I will focus purely on the ethical side of this question, not the legal aspect of anti-competitive behavior. I will argue anti-competitive behavior by corporations is not morally justifiable. To achieve this goal, I will first explore how two of the dominant views in business ethics would answer my research question: the shareholder view, and the stakeholder view. I will argue that while they both shed some light on the issue, neither is adequate for assessing the moral status of anti-competitive behavior by corporations. Following this, I will apply a more novel approach, the Market Failures

Approach (MFA), to this question and show how this approach to business ethics is better suited to assess the moral status of anti-competitive behavior, and how it concludes anti-competitive behavior is not morally justified. In the last chapter I will assess the criticism on the MFA by Cohen and Peterson, who reject the MFA on the basis that is a consequentialist theory which unjustly excludes many normative considerations. If this succeeds, the MFA will become a competition between different values and useless in answering the present question.[1] I will argue their reasoning fails and mainly serves to highlight the strengths of the MFA.

The moral status of anti-competitive behavior is quite relevant, both for businesses and consumers. As many who are now in decision making positions in businesses have been taught to exploit market failures in business school, the conclusion that anti-competitive behavior is not morally justifiable, could mean a large part of their knowledge is immoral and many business practices would have to change. For consumers it is also impactful because many people do not want to do business with immoral companies. As many companies with large amounts of customers are accused of anti-competitive behavior (US House of Representatives, Subcommittee on Antitrust, Commercial and Administrative Law, 2020), this could have a large effect on how people view these companies and with which companies they wish to do business.

In this thesis I will use as an example a corporation that is often accused of engaging in anti-competitive behavior: Google.[2] I have chosen Google because it is a company that almost every person knows and uses is some form; it is so influential that the term "to Google something" has become synonymous to looking something up online. Important to know about Google is that while they offer many products and services, their main business is advertisement, making up 83% of the total revenue (US House of Representatives, Subcommittee on Antitrust, Commercial and Administrative Law, 2020). "For many years, Google has used anticompetitive tactics to maintain and extend its monopolies in the markets

[1] There are more criticisms, like that of Abraham Singer (2015) who argues businesses have a moral obligation to promote justice when welfare states fail to provide this, while the MFA just views this as the duty of the welfare state. While this is an interesting argument, it changes little for the present analysis of anti-competitive behavior, because it aims to add more responsibility to the MFA instead of changing existing ones.
[2] After a restructure in 2015 Google is now a subsidiary of parent company Alphabet Inc., but since the anti-competitive behavior described here is still happens within Google, I will just mention Google hereafter (Forbes, 2021).

for general search services, search advertising, and general search text advertising—the cornerstones of its empire.” (US House of Representatives, Subcommittee on Antitrust, Commercial and Administrative Law, 2020, p. 176). This quote, taken from a recent investigation of competition into digital markets by the US Department of Justice, sums up well how Google is engaged in anti-competitive behavior. It further explains Google has seven platforms with over a billion users each, and Google has often been accused, and even convicted, for using these platforms to artificially prop up their advertisement business. In this case, they do not provide the best or cheapest platform to advertise through. Instead, they use their colossal market share in other areas to force the use of their advertisement platform. This is a classic example of anti-competitive behavior, as their competition simply does not have the needed market share to compete with Google. Another example in the investigation of what can be seen as anti-competitive behavior by Google, is their tendency to buy out competitors: over the last twenty years Google is reported to have bought over 260 other companies, many more acquisitions might be unreported. While not illegal, it is anti-competitive behavior as Google has been directly avoiding competition by buying the competition out. At the end of every chapter, I will dedicate a section to the question what the discussed theory would say about these anti-competitive behaviors by Google.

2. Shareholder Approach

The first approach I will discuss in order to argue anti-competitive behavior is not justified from a business-ethics perspective, is the shareholder approach by Milton Friedman. Central to this approach in business ethics is the idea that executives have an ethical responsibility to further the interests of their employers, which is often to make a profit. Milton explains his view on business ethics in his classic article *The Social Responsibility of Business is to Increase its Profits* (1970). In this article he only touches upon the issue of free competition, it is mainly about the fiduciary responsibility an executive has to her stockholders. Some take this article to claim there is very little to Friedman's theory besides profit seeking, for instance Grant (1991) and McAleer (2003). There is, however, more to be found in the works of Friedman which will allow us to morally reject some types of anti-competitive behavior, based on considerations about freedom. In this chapter I will first summarize Friedman's view in his 1970 article, then I will look at his earlier works to show there is more to his theory, but nothing that is specifically applicable to the practice of anti-competitive behavior. I will finish by assessing what the theory would mean for the mentioned anti-competitive business practices by Google.

Friedman begins his article by arguing only people can have responsibility, not business in general (1970). Because most of the discussion of social responsibility is about corporations, he focusses on the moral duties of corporate executives. According to Friedman, the shareholders are owners of a corporation and they employ the executives. This gives the executives a responsibility to act in the best interests of the shareholders. This "generally will be to make as much money as possible while conforming to their basic rules of the society, both those embodied in law and those embodied in ethical custom." (Friedman, 1970, p. 33). The executive is the agent and the shareholder the principle.

If the executive were to have a further "social responsibility", this would mean they have to act in a way not in the best interests of their employer. For instance, if an executive chooses to spend money so the company pollutes less than is required by law and less than is in the interest of the company, they would be using their principles money for a cause outside of the interest of their principle. According to Friedman, it would be no problem if stockholders, customers, or employees decided they want to spend their own money on good causes (1970). If executives on the other hand were to spend the money of the

corporation on such causes, they would be effectively be taxing the stockholders and choosing how to spend the collected tax themselves according to Friedman.

Friedman has two issues with this, one of political principle and one of consequences (1970). The first problem is that the taxation and tax spending are activities which should remain governmental functions. In a democracy people are elected to carry out these functions with the support of the people. Entire systems of checks and balances are even in place to ensure this goes the right way, with the right accountability and oversight. The executive on the other hand is not an elected official and has no right to both levy taxes and spend them at the same time. Executives are appointed by their employers, not by the public. This is justified because the executive is hired to promote the interest of the stockholders, not those of the public. If executives do decide to promote social causes, they become in effect civil servants according to Friedman. This would only be justified if they are publicly elected. Because they are not, they should not become civil servants and not try to carry out the role of one.

The second issue Friedman has with executives promoting social causes is more practical; corporate executives likely are not very good at fulfilling these social responsibilities (1970). They are corporate executives for a reason, that is their area of expertise. They are not experts in areas of distributive justice, welfare or in many other considerations a politician would consider when making decisions about taxation. They also have no way of knowing how much the right amount of taxation would be, even if they knew what to spend it on. For this reason, it is simply unpractical to task executives with social responsibilities according to Friedman.

The last important consideration of Friedman is the question if maybe executives have a responsibility to promote some causes because of their ability to solve problems quickly and decisively. Governments are notoriously sluggish organizations, sometimes having a hard time taking drastic action when it is needed most. Companies are inherently more agile and are thus better in dealing with problems head on, this might give them a responsibility when governments fail. Friedman argues while this may be true, it must be rejected on principle:

> "What it amounts to is an assertion that those who favor the taxes and expenditures in question have failed to persuade a majority of their fellow citizens to be of like mind and

> that they are seeking to attain by undemocratic procedures what they cannot attain by democratic procedures. In a free society, it is hard for "evil" people to do "evil," especially since one man's good is another's evil.” (1970 p. 124)

He seems to claim there is no objective good worth of pursuing, democracy is what decides what social goals will be pursued. If goals are not achieved by democracy, there is no reason other actors, like executives, should levy their own tax in aim to achieve certain goals anyway. This argument even applies when appealing to stockholders to make corporations exercise social responsibility, as this also aims to make them support a cause they do not support themselves (Friedman, 1970).

2.1 Anti-competitive business practices

While Friedman so far has mainly discussed how executives do not have a moral obligation to be socially responsible, it does seem Friedman would have a problem with some types of anti-competitive behavior by executives. While the main job of executives is to make money for their stockholders, Friedman does say this should be constrained by the “basic rules of the society, both those embodied in law and those embodied in ethical custom” (1970, p. 33). This means two constraints, one legal and one of ethical custom. Many types of anti-competitive behavior are illegal, as can be seen by the fines Google has already received described in the introduction. For present purposes however, I am interested in the second constraint: the ethical custom.

Christopher Cosans (2008) believes Friedman’s second constraint, adherence to ethical custom, has the potential to be a legitimate constraint on what types of business should be conducted. While he admits Friedman does not specify in his article what he precisely means by “ethical custom”, he turns to other works of Friedman to find out what it entails. Here Cosans finds more about values Friedman saw as important, mainly liberty and freedom. From these values Friedman derives the idea that no one should be negatively affected by business they are not involved in (1962). This idea of freedom also leads him to the conclusion that executives are not morally justified in spending their stockholder’s money against their wishes, as it impedes on their freedom to spend their money however they see fit. One important quote, which Friedman also uses in his 1970 article, is the following:

> "There is one and only one social responsibility of business — to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud." (Friedman, 1962, p. 133)

According to James and Rakesh (2000) this means anti-competitive behavior in any form must be avoided, as it infringes on the freedom of others in a market to compete fairly.

While Friedman does indeed seem to have a moral argument against some types of anti-competitive behavior, because it infringes on the freedom of others, it is not too clear from his work. Friedman himself argues against executives exercising social responsibility because executives do not know how much to tax and where to spend it. In the same way one could argue executives are not moral philosophers; it is hard to demand from executives to reach a conclusion which some business ethicists do not reach either. For instance, Grant (1991) and McAleer (2003) both conclude Friedman's business ethics comes down to little more than a focus on legal profit maximization. While there is an argument based on freedom against anti-competitive behavior, this only applies when the form of anti-competitive behavior infringes on the liberty of others. As this does not always apply, it says more about in what conditions anti-competitive behavior is immoral, than it says anything about anti-competitive behavior itself. I will illustrate this in the next section.

2.2 Google

If we take the argument of freedom as a serious part of Friedman's shareholder approach, this provides a constraint on one of the two types of anti-competitive behavior mentioned in the introduction. It does so for the first type of anti-competitive behavior, where Google uses its market share to force companies into using their ad services, this infringes on the liberty of their competition. Competitors who would also want to compete in the same market simply cannot because they have no way of competing with Google. By this reasoning, this type of anti-competitive behavior would not be morally justified according to Friedman, as it infringes on the liberty of their competitors.

For the second type of anti-competitive behavior Google is accused of, buying out their competition, this argument does not work as well. If Google pays a fair price to which the owners of a company agree, Google has not infringed on their liberty. Even in a hostile

takeover, where the management of a company does not agree to the takeover, but the shareholders do, it is the management that is wrong according to shareholder theory. As the management is employed by the shareholders, they have a responsibility to act in their interests according to Friedman. When shareholders benefit from the sale, management should allow this to happen. The act of buying out competition does not hurt the liberty of the shareholders, the relevant group for shareholder theory, making it ethically permissible.

There is an argument to be made that buying out competition is bad for the economy, because less competition means the market does not function as well as it could. According to Friedman, this would be a social goal, moving it into the public domain, making it something for the government to deal with. The shareholders of Google have an interest in making money, and buying out their competition is a way to ensure profit. This could even imply a moral obligation for the executives to do so.

This example illustrates that while some types of anti-competitive behavior would be immoral following the stakeholder theory, other types could even be morally compulsory. The rejection of some types of anti-competitive behavior is not a rejection of anti-competitive behavior itself; it is a rejection on activities which infringe on the freedom of others, which can only be found in some types of anti-competitive behavior.

3. Stakeholder Approach

As one of the leading theories in business ethics (Heath, 2006), the stakeholder approach cannot be omitted from the present analysis of the moral status of anti-competitive behavior by corporations. This chapter will be rather short, because although stakeholder theory may be dominant in business ethics, it is not the most useful theory to answer the present question. The stakeholder approach is not a single theory, but rather a framework on how to think about business conduct (Parmar et al., 2010). The point of stakeholder theory in business ethics is that for any action or decision, multiple stakeholders exist whose interests must be considered. A stakeholder is any person or group having an interest in a particular action or decision. All these stakeholders' interests should be considered and weighed, on the basis of this weighing decisions should be made. The problem for the present question is that stakeholder theory focuses on specific situations, not more general types of business conduct, like anti-competitive behavior. I will show this by a quick application of stakeholder theory on the practice of anti-competitive business. Following this argument, I will do the same for Google's anti-competitive behavior, in which I will highlight two important problems for the stakeholder approach: its difficulty in estimating effects and weighing stakeholders.

When we look at anti-competitive behavior in general, we can identify five stakeholders: the corporation, its shareholders, its competitors, its customers, and possibly society at large. The two stakeholders who benefit from anti-competitive behavior are the corporation and its shareholders. As described in the introduction, competition is detrimental to corporations. Avoiding competition is in their best interest as it allows them to charge higher prices to a larger market, and thus make more profit. The shareholders of the company benefit from this behavior as well, because it causes higher stock prices and possibly higher dividends. On the other hand, we have competitors who suffer because they struggle compete with their anti-competitive counterparts. Customers are worse-off as well, because a lack of competition will lead to higher prices and less motivation for corporations to improve on their product or service. The last stakeholder to suffer is society at large, because just like the customers, society benefits from competition driving down prices and increasing innovation.

While it may seem that more stakeholders lose from competition than there are stakeholders who stand to gain from it, this is not enough to draw the conclusion it is immoral. For stakeholder theory to be useful, it must be applied to a specific situation. For instance, a

specific type of anti-competitive behavior might do quite little damage, whilst the benefits to the shareholders are enormous, it would be a good thing according to stakeholder theory. Another possible situation, as I will show when discussing Google, is that stakeholders might be differently affected than expected, or that there might be additional stakeholders. While stakeholder theory might be a very beneficial framework to use when conducting business, it does little to answer the general question if anti-competitive behavior is ethically justifiable.

3.1 Google

Since many forms and implementations of stakeholder theory exist, the goal is not to provide a complete and exhaustive overview of what stakeholder theory states/implies about the moral status of anti-competitive behavior, and the specific anti-competitive behavior of Google. Instead, I will do a quick analysis of the two anti-competitive business strategies by Google mentioned in the introduction, to highlight two problematic shortcomings of stakeholder theory: a difficulty in assessing the benefits and harms of certain actions and a difficulty in weighing different stakeholders' interests.

When we look at Google behaving anti-competitively by using its large market share in multiple markets to achieve a larger market share in the online advertisement market, we can identify five stakeholders: Google's shareholders, Google's competitors in the advertisement market, Google's competitors in markets outside of the advertisement market, Google's customers in the advertisement market, and Google's end users on its multiple platforms.[3] First of all, the clear 'winners' are the shareholders because eliminating the competition is good for profits. Clear 'losers' are Google's competitors, both within and outside of the advertisement market. Within the advertisement market competitors lose because Google uses its size in other markets to force companies to advertise through Google's services, making their competitors unable to compete. Outside of the advertisement markets, competitors are negatively affected because Google does not require as much profit on their other services and products, because they can subsidize those with the advertisement revenue. Examples are Google Maps and Google Search.

[3] There may be more stakeholders, but these are the ones most directly affected and are enough to understand the shortcomings of Stakeholder Theory. More stakeholders would make the problem even larger.

Competitors do not have this luxury and will have a trouble competing as they would still need a way to profit from the service.

For the next two stakeholders it is not as clear how they may have been affected. The end users on Google's large platforms are affected both in a negative and a positive way. Most of Google's services are free, because Google makes its money advertising, and is thusable to subsidize these other platforms, offering its services for free. If these markets were competitive, unsubsidized markets, the end users would likely have to pay for services they now get for free. Services like Google Maps, Gmail and Google Search are used by many people who clearly enjoy some benefit from it. On the other hand, a lack of competition in these spaces could also result in have been better alternatives if there had been competition. There is no way to know this for certain, and even if it is true, we do not know how much better it would have been. Another way end-users of Google services are negatively impacted is by the data collection Google employs to sustain its advertisement service. Profiles are made and personal information is gathered, bought, and sold, often without people being aware to what extent. This can be seen as an invasion of privacy or an attack on personal autonomy. While there are billions of people benefitting from receiving free services, there are also clear downsides such as a lack of motivation to innovate and data collection.

The second stakeholder group, for whom it is hard to judge how they are affected, is the customers of Google's advertisement services. On the one hand, a lack of competition likely causes higher prices. On the other hand, it is an advantage to be able to advertise through a company that has extensive profiles of almost all potential customers. This enables highly targeted advertisement which might not have been possible with multiple competitors in the market. The problem is, we simply do not know how the price and the quality would have differed in a more competitive environment, therefore, we cannot know exactly how the customers of Google's advertisement businesses are affected.

Clearly, it is difficult to assess just how every stakeholder is affected by certain actions, but even if we knew the answers, how might we weigh them against each other? How much value do we give the interests of the shareholders? How important is it that the end users are the largest group of people? If the interests of any stakeholders are violated in a major

way the answer might be clearer, but in many cases, there is simply a conflict of interest which is hard to solve.

The same line of argumentation goes for Google buying out its competition; once again, multiple stakeholders with multiple conflicting and unclear interests exist. For instance, Google stockholders will benefit again, and so will the owners of the companies which get bought. On the other hand, it might increase prices and disincentivize innovation, which would hurt customers. How all stakeholders are influenced exactly and how to weigh these interests will always be a problem for stakeholder theory. It might be rather useful as a framework for businesses to operate in, enabling them to consider all those affected by a decision. For answering the specific question if Google's anti-competitive business practices and anti-competitive business practices in general are morally justified, it comes up short.

4. Market Failures Approach

To understand why the Market Failures Approach (MFA), formulated by Heath, gives more insight in the issue of anti-competitive business practices, I will first explain the approach and the reasoning behind it. The point of the MFA is to be a theory of professional ethics, it aims to give a description of what managers are ethically responsible to do.[4] It does so by first looking at the moral justification of markets, and from that point drawing conclusions about what moral responsibilities this puts upon the manager (Heath, 2006). The MFA states that businesses have an obligation not to make money by profiting from market failures. Market failures are instances where the market fails to be as efficient as it could be. This can have multiple causes, such as externalities (situations where a trade has an effect on a non-involved third party), information asymmetries or non-competitive markets. To see how this is not a case of practical reasoning, but an actual moral constraint on business practice, I will first explain Heath's reasoning behind the MFA. Finally, I will apply the theory to the anti-competitive business practices by Google to show how this gives a more complete picture of exactly what is morally problematic about them.

Heath himself calls the argument an "argument from elimination" (2014, p. 198); he starts by envisioning a simple but perfect system of corporation, and from there he revises it when it would not work in a real-world scenario until he is left with Pareto efficiency as the only guiding principle left for business ethics, in what he calls a third-best framework. Heath explains the Pareto principle as: "if some transformation of the status quo is able to make at least one person better off, by his or her own lights, and no one worse off, then from an impartial point of view (and ceteris paribus) the outcome of that transformation is normatively superior to the status quo." (2014, p. 174). This makes it a principle of justice rather that one of instrumental rationality, in the same way as Ralws's second principle of justice (1971). What Heath argues is that this Pareto principle is the only principle left standing when all other principles governing how to cooperate have been found too demanding or impractical.

4.1 Third-Best

To understand how Heath concludes that Pareto efficiency is the only principle, we first must understand how Heath generates a second-best framework from a first-best framework. His

[4] Heath writes about managers, while Friedman writes about executives. Both have the same idea: the people who make decisions in businesses.

reasoning stems from the theory of second-best of Richard Lipsey and Kelvin Lancaster in their article *The General Theory of Second Best* (1957). In this article Lipsey and Lancaster challenge the conventional assumption that when a first-best outcome is unobtainable, the best alternative is to approximate the conditions for this outcome as close as possible. They specifically challenge the first fundamental theorem of welfare economics which states that a perfectly competitive market will also be Pareto optimal, meaning that in a perfect market all possible Pareto improving trades will happen until there is no way to improve any position without making another worse. What Lipsey and Lancaster have shown that is that when one of the conditions needed to achieve a Pareto optimum fails to apply, the result does not necessarily approximate the Pareto optimum at all. This means that when one recognizes that not all these conditions apply in the real, imperfect, market, we should not try to approximate the perfect market itself, but we should try to approximate the *results* of the perfect market. At this point the first-best framework does not work and we should switch to a second-best framework. This second-best framework could be completely different from the first-best in order to approximate its outcome.

Heath does something very similar, but with moral theories (2014). He calls moral theories that do not consider any 'merely empirical' circumstances (often human shortcomings) which might hinder the workings of the theory: first-best moral theories. For these theories, we first identify the demands they make, and only then look at how to implement them. At this implementation state is where these human shortcomings may be taken into consideration. Heath uses act-utilitarianism as an example of a first-best moral theory. Pure act-utilitarianism requires everyone to be a perfectly altruistic moral saint; one must always be indifferent to who reaps the benefits of an action. In practice this is not a realistic view, people cannot be expected to act purely altruistic. This is no problem for the first-best theorist, as the ideal does not have to change. What the first-best theorist does at this point is move from *ideal theory*, assuming full compliance, to *non-ideal theory*, recognizing that moral subjects do not always act as they should. At this step Heath explains the need arises for non-moral incentives to make up for the lack of compliance. We could use social institutions to help achieve this goal. Furthermore, we now need normative principles guiding what to do about non-compliance, e.g. just punishment, restitution, and so on. All aimed at improving compliance with the moral norm laid out by the first-best principle.

While one could accept this non-ideal world, Heath argues that there is a very real possibility that, as was the case for Lipsey and Lancaster, the move from ideal to non-ideal changes the framework so drastically, that it is no longer is wise to adhere to the first-best principles (2014). In this case, the principles must be reworked to fit the contingencies that make them problematic, meaning a possible drastic departure from the first-best principles. Heath gives three reasons as to why this could happen. The first being implementation problems, for example, the realization there is no way to objectively compare utility between different people, meaning the utilitarian calculus needed for act-utilitarianism is simply not possible. The second reason is the worry too much force might be needed to enforce compliance. The harder it is for people to be motivated into always acting in compliance with the moral norm, the more external force might be needed. If too much force is needed to ensure compliance, it might be time to change to a less motivationally demanding principle. The last reason Heath gives is that a first-best principle might become self-defeating when applied in a non-ideal setting. Act-utilitarianism is a possible example of this. The point is to provide as much utility as possible, but when the implementation problems and enforcement become too problematic, it could reduce overall utility. At this point a shift in principles to change the first-best theory into a second-best theory is wise according to Heath.

Two examples Heath gives of moral theories which are second-best theories are rule-utilitarianism and Rawls's difference principle (2014). In rule-utilitarianism, the principles have changed because of the demandingness of act-utilitarianism. While it is very difficult to imagine someone always deciding what to do based on a utilitarian calculus, it is a lot less difficult to imagine someone who lives by certain rules aimed at promoting as much utility as possible. In this case full compliance is still assumed, making it also an ideal theory, but the principles have been adjusted to deal with real world contingencies found when implementing the first-best theory of act-utilitarianism. The same can be said for Rawls's difference principle, where equality may be given up when it is also in the interest of the person worst off (1971). Full compliance is still assumed but it is a reaction to incentive problems which would arise under stricter forms of egalitarianism, making it a second-best theory according to Heath.

What Heath adds to this story is the idea that this change from first-best to second-best is an iterative process which can go on indefinitely. If there is a second-best ideal theory which becomes unworkable under non-ideal conditions, the principle can be adjusted to create a third-best principle, which itself might have problems in the implementation stage creating the need for a fourth-best principle. Every next iteration is a lower level of idealization.

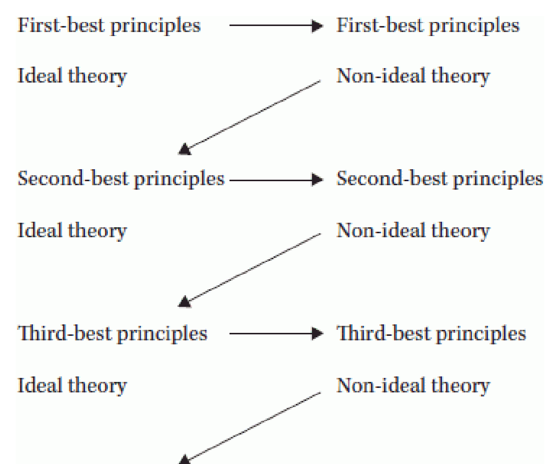

Figure 1 Iterative process for generating normative frameworks (Heath, 2014, p. 181)

4.2 Cooperation

The idea behind Heath's MFA is that the market is a reaction to insurmountable difficulties in institutionalizing second-best principles like Rawls's theory of justice, making it a third-best framework (Heath, 2014). To understand this third-best framework, we need to know where he starts out, the first-best framework, and then why and how he moves from there to a second- and third-best framework. For Heath, the starting point is cooperation: how should we cooperate? Heath's first suggestion is what he calls "minimally controversial contractualism" (2014, p. 182), with the central idea that in every system of cooperation there must be both a common interest and a conflict of interest. The common interest is the interest everyone has in maximizing the benefits of cooperation. The conflict of interest is everyone having an interest in maximizing their share of the benefits and minimizing their share of the burden. This means two principles will logically have to be accepted: a principle of efficiency, maximizing the social product, and a principle of distribution, dealing with the conflict of interest. Pareto-efficiency combined with a form of equality principle could together form a framework for cooperation.

The problem comes when implementing these two principles in the real world, Heath shows. Because of the conflict of interest, people will be motivated to acquire disproportionate amounts of wealth. To be able to achieve some form of equality, a trade-off will have to be made between efficiency and equality, for instance in the form of taxation. The first-best framework does not support such a trade-off and therefore needs to be revised to internalize

these challenges. According to Heath, most proposals to solve this trade-off problem can be categorized as forms of prioritarianism, like Nash's Bargaining Solution or Rawls's difference principle (Heath, 2014). They seek to maximize the social product at the cost of some equality. These are second-best principles as they account for the, in the real world necessary, trade-off between efficiency and equality.

Heath uses the scenario of Cohen's (2009) camping trip to explain his reasoning more clearly (2014). A group of campers with fishing rods is likely to share the fish they caught evenly, as friends do. But imagine that the people who fish get tired of fishing or the group grows, leaving less fish for the fishermen. In that case, the fishermen would need some sort of incentive to keep fishing, or the production slows down, meaning less fish get caught. This would likely be some sort of "incentive pay" system, for instance a system where the fishermen can keep certain amount of the fish they catch, leaving the rest of the fish to be distributed equally. This system is a second-best system, as it trades in some equality to improve efficiency.

While this solves some implementation problems, it also gives rise to new ones (Heath, 2014). To work out exactly how much fish the producers get to keep and what share is divided, we would need to know how producers respond to incentives. As this is about a trade-off between efficiency and equality, we would need to know exactly how much to let the fishermen keep so they will be motivated enough to keep fishing, while also keeping this amount small enough to achieve as much equality as possible. This means finding the labor supply curve of the fishermen. This is problematic, as the fishermen have an incentive to misrepresent their need for extra incentive to fish. What is needed at this point is a *revelation mechanism*, revealing exactly who needs how much incentive.

Because the fishermen cannot be expected to tell the truth about their needs, some external tool is needed to reveal these. This is where, according to Heath, the market comes in (2014). If the group is free to trade amongst themselves, other members can offer their services to the fishermen exchange for fish. This introduces competition in the system, the fishermen compete with each other and with the providers of other services and goods. This competition will reveal the relative scarcity of products and this will be reflected in their price. The price is this revelation mechanism needed to reveal the needs of all participants and in turn give rise to the right incentives to produce. The downside is that this means relinquishing control over the system; it will not be clear beforehand what the end-result of this exchange will be. The

upside, however, is the possibility for major efficiency gains by providing everyone with the right incentives to produce as much as possible. This is what Heath calls the third-best framework; instead of a constant trade-off between equality and efficiency, efficiency is privileged, leaving equality as a set of boundary constraints on what the acceptable outcomes of the market can be.

This can be generalized, Heath argues (2014). In a perfect world, everyone is equal, wants to contribute as much as possible, and cooperation is perfect. Wherever this is not the case, for instance, where incentives are lacking, there is a need to institutionalize cooperation. This means trading in some equality for more efficiency. This is already a second-best framework, requiring second-best normative principles governing exactly what compromise between equality and efficiency is permitted. Cases exist where a direct institutionalized system of cooperation also has significant implementation problems. Mainly, when there are many, anonymous, actors, there is a high risk of free rider problems. In this case, the institutionalized form of cooperation can be substituted for a competitive system. Competition deals with the free rider problem because it means contributing more is the only way of getting a large share of the social product. This means even when people act purely out of self-interest, they will still contribute to the social product. Increasing efficiency this way has the downside of relinquishing control over the outcomes of the system, making it harder for us to ensure it satisfices egalitarian concerns. Because of this, Heath calls competitively structured interaction a third-best framework, requiring third-best normative principles for its assessment. This is how he thinks we should see the market, and why some of the ordinary features of the market can seem immoral to people viewing it from a first-best normative perspective.

4.3 Market Failures approach

The conclusion that a competitively structured market is a third-best solution with Pareto efficiency as the leading principle is what leads Heath to the Market Failures Approach (MFA), stating that businesses have a moral obligation not to profit from market failures (2014). The point is that the market is not the preferred framework for cooperation; it is a, third-best, compromise from more egalitarian forms of cooperation. Heath has shown these do not function; large groups do not cooperate well without outside incentive, and large-scale institutionalized cooperation also fails in practice, as there are no prices to determine the

value of products and there is no workable solution for the free rider problem. Because of these efficiency problems, all that is left is a competitively structured market, with Pareto-efficiency as moral justification.

With the conclusion that efficiency is the moral justification of the competitive market, Heath constructs the MFA (2014). Businesses exist to ensure a high level of Pareto efficiency, at the cost of equality. It would therefore be unethical for them to act in ways that decrease inefficiency, as this is their moral justification for existing in the first place. This obligation is well described as not profiting from market failures, because market failures are defined as instances where the market fails to reach Pareto efficient outcomes. This also explains why Heath calls attributing moral responsibilities outside of efficiency anti-capitalistic, they are exactly what is given up when moving to the third-best framework of the capitalistic market. They could still take the form of outside constraints, but they have no place in the MFA.

This does not mean a manager has to base every decision on the question if that decision is Pareto efficient or not (Heath, 2014). That would be very demanding, especially since decisions made in large corporations have the potential to affect many people. It is unlikely for such a decision not to negatively impact at least one person. The point is that managers must refrain from engaging in the types of business practices that lead to Pareto inefficient outcomes. In other words, do not profit from market failures.

4.4 Anti-competitive behavior

When applying the MFA to anti-competitive behavior by corporations, it is clear why this would be immoral. Anti-competitive behavior is directly causing a market failure, as competition is the mechanism by which the market is supposed to achieve Pareto efficiency, as stated in the introduction. Since Pareto efficiency is the moral justification for the market according to the MFA, decreasing this as a company by behaving anti-competitively, and thereby profiting from a market failure, clearly is immoral from the perspective from the MFA.

4.5 Google

As anti-competitive behavior in general is profiting from market failures, it does not really matter in what way this is done. Both Google buying out their competitors and Google using their market share in other areas to promote their advertisement business are both

examples of making money off a market failure. In contrast with stakeholder theory, we do not have to analyze exactly how it affects every party involved, to see if there is really a decrease in Pareto efficiency is. It is enough to know that this type of behavior is directly aimed at reducing the competition that makes the market work. This reduces its efficiency and therefore leads to market failure, making it unethical according to the MFA.

5. Criticism on the Market Failures Approach

Now that I have shown the MFA is well equipped to show anti-competitive behavior is not morally justifiable, it is useful to consider an important critique on the MFA to see how strong this argument is. Cohen and Peterson reject Heat's MFA because they believe it is too narrow (2019). According to them, the MFA is "thoroughly consequentialist" (2019, p. 76), which gives rise to two critical problems. First, it does not make sense to limit a consequentialist theory to only one type of consequence, efficiency, while excluding others. Second, it being consequentialist wrongly excludes other deontological constraints from business ethics. If they are right, this would be a serious problem for Heath and the present analysis of anti-competitive behavior. In this case, the theory would no longer be clear about its rejection of anti-competitive behavior, as multiple moral considerations would have to compete with the consideration about efficiency. This could lead the MFA to having the same problems as stakeholder theory: multiple competing and possibly conflicting moral considerations leading to unclear conclusions. In this section I will explain the argument and argue this rejection of the MFA is wrong for three reasons: the MFA is not consequentialist, it is not as narrow as it might seem, and a misunderstanding about what business ethics should be about by Cohen and Peterson.

5.1 Consequentialism

Cohen and Peterson are right in asserting that consequences play an important role in Heath's MFA, but that alone is not enough to brand the theory as thoroughly consequentialist. They argue that market competition creating Pareto efficient outcomes means the same as optimizing consumer preference satisfaction (2019). If this is seen as a good, which they do not disagree with, this would reduce Pareto efficiency to merely a good outcome, which is indeed consequentialist. There are two, interrelated, problems with their reasoning why: a misunderstanding of the Pareto condition, and a failure to acknowledge Heath's explanation of the market as a third-best framework.

Cohen and Peterson concede that the Pareto condition seems to introduce "a non-consequentialist normative preference for a certain kind of distribution" (2019, p. 79), but, according to them, this is only true in case the *not-worse-off* part of a Pareto efficient outcome is misunderstood. They think this is nothing more than an assumption about consumer rationality: the assumption no one would engage in a trade leaving them worse off. While this

may be true according to economic theory in an ideal world, this is not the world in which we live, and not the world Heath is trying to capture in the MFA. In a non-ideal world, it is quite the opposite: people often are irrational, influenced by outside factors, or simply do not have enough information to decide which would indeed improve their situation. In any of these situations, people could, and do, willingly engage in trades leaving them worse off. This becomes very clear when looking at the example Cohen and Peterson provide here (2019). They imagine a very simplified market: beginning in situation A(5,6) with only one buyer, with a welfare of 5, and one seller with a welfare of 6. The buyer wants to buy a car from the seller. There are two possible prices, a low and a high one. The high price would greatly benefit the seller, but hurt the buyer leading to outcome B(4,16), the low price would improve both situations by a bit, leading to outcome C(7,8), where the welfare of both the buyer and the seller have improved by 2. Cohen and Peterson state here that people will only trade if it improves their situation, so situation B would never be possible, even if that might be what a consequentialist, concerned with maximizing aggregate welfare, would want. The difference between that form of consequentialism and one involving Pareto efficiency is just this assumption about consumer reality, according to Cohen and Peterson. In a non-ideal world this is not true, as it is very possible to imagine the seller is able to convince the buyer the car is way better than it really is, making her pay the higher price leading to situation B(4,16). This would not be a Pareto improvement, as one person is worse off. Instead of the Pareto condition being an assumption about consumer rationality, it is a condition on what types of trade should and should not happen.

Externalities are another way in which the Pareto condition adds a normative constraint to efficiency. When two people trade, this can have an effect on a third party, an externality. This effect can be positive or negative, but in this case negative externalities are relevant. For an example of a negative externality we can look back at the hypothetical car that was sold in the last paragraph. The sale was between two parties, but when in use, the car produces pollution. Pollution causes climate change, affecting many people not involved in the trade. If all these tiny burdens would be reflected in the price, for instance, through some sort of pollution tax, there might not be a price left at which the buyer and the seller would benefit and agree to the trade. There is also the possibility there might be a price point at which there is a trade is possible, even when factoring in the externalities. This is called a Kaldor–Hicks improvement,

a change in status quo where those whose situations have improved are theoretically able to compensate those whose situation have worsened. Only when this compensation has actually happened and every situation improves, we see a Pareto improvement. Because of both externalities and possible voluntary bad trades, the Pareto criterion does add a real normative constraint to what types of trade are allowed, it is not an assumption about consumer rationality.

Related to this is the failure of Cohen and Peterson to appreciate Heath's MFA as a third-best option. As seen in their explanation of the Pareto condition as an assumption about consumer rationality, Cohen and Peterson seem to be working in a first-best framework. In a first-best framework this reasoning would indeed make sense, as it would be illogical to engage in a trade which leaves you worse off. Only when real world constraints are considered, as explained in the last paragraph, this assumption about consumer rationality fails. Like the Pareto constraint, they seem to take Heath's MFA at face value, without mentioning all the compromises that have led to the MFA. If you would simply see efficiency as consumer satisfaction and call this a good, it makes sense to call it a consequentialist consideration. This is not what Heath has done, he has started at a much more basic place, at minimally controversial contractualism. When this becomes untenable due to real world contingencies, he compromises into a second-best and third-best theory. When Cohen and Peterson state efficiency should only be one of the considerations for business ethics, they do not take this into account. Heath would probably not disagree it would be preferable to take all these considerations into account, that is why he calls it a compromise and not an improvement. The problem for Heath is that this would mean becoming too inefficient and anti-capitalist. Cohen and Peterson do not consider this argument, they take the conclusions of the MFA at face value and argue the conclusions are consequentialist.

5.2 Narrowness

From the claim the MFA is consequentialist, Cohen and Peterson derive the limitation of the MFA of it being too narrow by only considering efficiency and no other constraints on doing business (2019). These other constraints can be divided into two types, consequentialist constraints, and deontological constraints. Deontological constraints, for instance, about markets for certain goods which should not exist, are indeed something Heath does not include in his theory of business ethics. That is not necessarily a shortcoming of the MFA, but

rather a question of scope. Heath simply has a different answer to the question what a theory of business ethics should be about. I will return to this point in the next section.

The second way the MFA is too narrow according to Cohen and Peterson is because it excludes consequentialist considerations like considerations of harm (2019). The easiest answer to this argument would be to point to my previous section about consequentialism and state the MFA is not consequentialist. A non-consequentialist theory does not suffer from not including consequentialist considerations. This does however not completely satisfy the problem, as Cohen and Peterson have some interesting examples where it does seem that harm considerations may outweigh efficiency imperatives and it is also a moral obligation of a corporation to do something about this. Cohen and Peterson mention markets for methamphetamines, junk food, and sugar. They rightly claim that if these markets are efficient, it would even be unethical for managers not to sell these products, as not doing so decreases efficiency. They also rightly point out that in cases where these markets are not efficient, there would be a moral obligation to intervene in the market. What they wrongly assume, is the condition of the market being efficient is easily met, or even possible to meet. Some markets may beinherently inefficient. Addictive substances like methamphetamines, and possibly even junk food and sugar, are often not bought out of free will. Many people do not keep buying it because they like it and want more, on the contrary, they buy it because they are addicted and need it. They often know it is bad for them but see no other way out. In this case, the market is not Pareto efficient; while consumers might not be directly coerced by the sellers, it is not a voluntary mutually beneficial trade. If it would be possible to sell drugs only to the occasional recreational user that does really benefit from it, the MFA would have no objection to this. The problem is that excluding addicts from a methamphetamine market is likely not possible. On these grounds the MFA can denounce these types of markets on efficiency considerations only.

There is still a problematic concept in this argument: Heaths definition of the Pareto condition. Heath explains the Pareto condition as making "at least one person better off, by his or her own lights" (2014, p.174), he also writes "The customer is always right." (2015). Cohen and Peterson seem to treat this as another assumption about consumer rationality; people only buy what will satisfy their preferences. A free market will therefore always lead to consumer satisfaction and efficiency promotion, even if it is at odds with other consequentialist

considerations like harm. That is not what I believe Heath means when he writes the customer is always right. What Heath means is that is does not matter what preferences people have; if person one likes apples while person two likes pears, that is fine, there is no measurable difference between the two. This is again not an assumption about consumer rationality, like Cohen and Peterson treat it. It does not exclude people from being irrational. A person can perfectly well buy something, and later regret it. Fast food, for instance, is something many people buy which fits well into this category. We can make use of Frankfurt's distinction between first and second order desires to illustrate this (1971). People may have a first order desire to go to McDonald's and buy a hamburger, but they may also have a second order desire to lose weight. The transaction will happen, because at first it will seem like a good deal, but in the end the consumer will not be happy with their choice. Because of this, this market would still be inefficient and not permissible (in this way) under the MFA.

Concluding, the efficiency constraint of the MFA is much broader than it might seem. It can exclude many types of markets which would be excluded when using other types of consequentialist considerations. For instance, because addiction force people to engage in trades they do not want, or similarly but less extreme because people have conflicting desires leading to irrational choices which do not increase consumer satisfaction, or because of negative externalities. If there are still some consequentialist considerations left which the MFA does not capture, this is not a problem as it was never a consequentialist theory.

5.3 What should a theory of business ethics be about?

The last point where Cohen and Peterson disagree with Heath is their vision on what a theory in business ethics should be about. Heath believes it should be considered as professional ethics; it should answer questions about the professional role of managers (2006). Cohen and Peterson on the other hand think it should be broader; it should answer all questions about markets, regulations, actions, and actors related to business (2019). There is an important difference between these two views on business ethics. Heath would argue there are some issues, like distributive justice, which are just not issues for managers to worry about. Heath's comparison to a lawyer is useful here (2006). A lawyer's job is not to provide justice, it is to defend their client. Justice is provided by the whole judiciary system, in which lawyers play a specific part. In the same way Heath would argue corporations have a specific role, and this role gives rise to specific moral obligations for managers. If managers would have moral

obligations that go beyond efficiency considerations, it would compromise the Pareto efficiency at the core of the market system, making it anti-capitalistic.

This does not mean deontological constraints are simply to be disregarded. Heath calls this type of constraints ‘outside boundaries’ or ‘outside constraints’ (2014). According to him, these constraints have no place in a capitalist system. They could work in first-best or second-best systems, but the third-best system of capitalism means relinquishing control over the outcomes of the system to promote efficiency. However, they do have a place in society, as society is more than just the capitalistic system. If a society decides some things are too important not to have, like minimum wages or worker safety standards, these are to be provided and enforced by the welfare state. The point is that Heath’s business ethics asks what obligations managers get from their role as managers, which is not to employ strategies benefitting from market failures, as these counter the Pareto efficiency that is the ethical justification for markets. Any outside constraints, which there may be, are simply not for the manager to decide and better left to the welfare state.

This seems like a harsh statement, but I believe this does not absolve the manager of as much moral responsibility as it may seem. To achieve this, I will make use of Mark Sagoff’s argument about benzene exposure (1981), which Cohen and Peterson use to argue the MFA is too limited (2017). The argument is about a law in the United States, the OSHA Act of 1970, which set the maximum exposure to benzene to one part per billion. According to Sagoff, this OSHA act implies worker safety should not be just another commodity on which we can put a monetary value. When the petroleum industry argued this law is inefficient, because this extremely low maximum put a much heavier burden on them than benzene exposure does on workers, the supreme court sided with them and required legislators to draft new regulations. This is exactly what Sagoff argues is against the spirit of the law, the law it is not an efficiency consideration, but rather a deontological constraint. Cohen and Peterson argue the MFA is unable to make sense of a constraint like this.

In a sense they are right, the MFA is indeed not capable of providing such constraints. The difference is that for Heath, this simply is not a problem. He could argue it is perfectly fine for a government to institute such policies, as these are outside of the scope of what his business ethics is about. Just like a government can decide its people should receive welfare benefits to combat inequalities caused by the competitive market or criminalize hate speech, a

government can decide workers should not be exposed to harmful chemicals. It is just outside the scope of business ethics, as there is no moral obligation stemming from the position of a manger to go beyond efficiency promotion.

Cohen and Peterson are also right in saying if there are no efficiency problems with the transactions between worker and employer, there would be no objection to benzene exposure for the MFA. The issue with this statement is that, just like in the example about markets in addictive substances, these efficiency problems are very difficult to get rid of. The MFA is very demanding in cases like these; there would need to be no information asymmetries and no difference in bargaining power. Information asymmetries are very difficult to get rid of when small chances are involved. When a company has many workers and they know the chance someone will suffer from benzene poisoning, they can calculate the expected number of employees who will suffer. Workers on the other hand only have a small chance of developing symptoms from benzene poisoning, and even if they do, they may not for years. People are generally not strong in evaluating small chances and delayed effects (Ungemach, Chater, & Stewart, 2009). Because of this, even if employers disclose the risks, they would still be hard for workers to fully understand them. This information asymmetry is hard to overcome and will likely lead workers to accept conditions they would not have if they were in full understanding of the facts. There is also a problem with uneven bargaining power, workers often fail to get together, for instance due to a lack of well-performing unions. If this is the case, it is again difficult for workers to demand a fair compensation for risks taken. If managers were able to completely get rid of all asymmetries and differences in bargaining power, there might not be a problem. However, because the MFA is very demanding in what it would take for this market to be Pareto improving, this might be hard to do, or not possible at all, in which case exposure to benzene should be limited to very low levels according to the MFA. There are many jobs that have risks we gladly accept as a society i.e.: policemen, firefighters, underwater welders, and soldiers all get higher pay for the associated risks. The problem is not that some jobs are risky, the problem is that for some jobs it is hard to accurately estimate and compensate for the risks. The OSHA act takes care of this problem, but the MFA would too.

The two important conclusions to draw from this are that the MFA does indeed exclude some considerations from its business ethics, but also it is a lot more demanding than it might

initially seem on the issues it does consider. It is quite strict in what types of business it does not allow, and what managers would have to do to avoid this. When all of these restrictions are met, what is left can still be subject to outside constraints, like governmental constraints, but managers will have done their part. Important to note is the MFA excluding some, deontological or consequentialist, concerns is only a flaw if you require any theory in business ethics to be a theory able to answer all questions related to business in any way. If you do not have this high standard, it is an important strength. The MFA, contrary to the stakeholder approach, has very clear and useful guidelines for managers on how to act, based on their role in a capitalistic system. Instead of having to weigh different stakeholders, deontological, or consequentialist considerations, there is a clear answer to the question what managers should do.

Cohen and Peterson do not disagree with Heath about efficiency being the moral justification for the market, they just disagree that it should be the only consideration in business ethics. If had been right in their objections, the MFA would have become useless, as it would become an unclear competition between different moral considerations. I have shown their criticism of the MFA does not hold up, because the MFA is not consequentialist, is more demanding than it seems, and there is good reason for excluding moral considerations not following from the role of the manager.

5.4 Google

For our analysis on anti-competitive behavior by Google, the rejection of the argument of Cohen and Peterson is important. If they were right and other considerations would have to be included in the MFA, there would be much less clarity if the behavior would indeed not be morally justifiable. We would, for instance, have much of the problems stakeholder theory does, because it would be needed to understand the consequences for everyone involved. By only allowing efficiency considerations to be the moral guide for managers and leaving other considerations to the welfare state, the MFA can give a very clear and decisive reasoning as to why Google's anti-competitive behavior is not morally justified: it is directly contrary to the moral justification Google has for existing.

6. Conclusion

In this thesis, I have argued that anti-competitive behavior by businesses is not morally justified. I have tried to do so by first applying the two dominant theories in business ethics, the shareholder approach, and the stakeholder approach, which have both come up short in answering the question if anti-competitive behavior is morally justifiable. The shareholder approach can, in a generous reading, denounce some types of anti-competitive behavior as immoral when they infringe on the freedom of others, but it has little to say about anti-competitive behavior itself. The stakeholder approach is even more problematic for present purposes, as it is unable to deal with this type of general question. In an applied setting it is better equipped to answer moral questions on specific anti-competitive behaviors, but it is still limited by a difficulty in determining consequences and weighing the interests of different stakeholders. It might work well as a framework for a manager to think about the effects of their decisions, but it fails to say much about anti-competitive behavior in general. As both theories have multiple interpretations, there might be some who do a better job at dealing with anti-competitive behavior than the interpretations I have explained. I have tried to show these theories fundamentally do not have the right kind of approach to answer the question at hand.

The MFA does a better job of answering the question if anti-competitive behavior is morally justified. Heath bases his theory on the moral justification of markets, Pareto efficiency. From there he concludes that because the market and businesses find their moral justification for existence in Pareto efficiency, they have a moral duty to promote this efficiency. The downside of a market justified by efficiency, is that it means having relinquished control over the outcomes of the system, meaning other moral values can have no place in it. While this excludes some normative considerations, it gives a very clear and demanding moral guide to managers. To not profit from market failures means to not profit from instances where the market fails to be as Pareto efficient as it could be. Anti-competitive behavior by companies is exactly such a thing, as it is done to circumvent the competition that leads to Pareto efficient outcomes. Because of this, anti-competitive behavior is not morally justifiable according to the MFA.

The MFA was also able to stand up to the Criticism of Cohen and Peterson, who have argued it is consequentialist and therefore too narrow in what moral considerations in includes. I

have shown the Pareto constraint is a real moral constraint, not an assumption about consumer rationality. It is therefore not consequentialist. It also means it is not too narrow, as it has good reason for excluding some moral considerations. The MFA aims to give a normative account of how managers are morally obliged to act, it does not aim to give an answer to any and all moral question related to markets and business, as Cohen and Peterson seem to require. This could be seen as a weakness, as it leaves some questions open. I have argued it should be seen as a strength, because it is very well equipped to prescribe moral obligations for managers, in contrary to theories who try to be all-encompassing.

This has quite far-reaching consequences, as can be seen in the example of Google. Google's core business, advertisement, is not industry leading because it is the best or the cheapest, it is, partly, this large because they behave anti-competitively. Apart from some of this behavior being illegal, it is also not morally justifiable. Instead of having a legal team to ensure they are not crossing the boundaries of the law, Google should refrain from anti-competitive behavior voluntarily. This means to stop using their market share in other markets to force their advertisement on customers and stop competition by directly buying them out. For Google and for many other companies, this can require a drastic shift in how business is done.

One problematic aspect, and an interesting area for further research, is what to do after accepting the MFA and the conclusion that anti-competitive behavior is not morally justifiable. A company still operates in a competitive context. When they decide to change their business practices to stop profiting from market failures, but their competition does not, they are likely to lose market share as it could be a considerable change. For a company to change this behavior without simply losing market share to companies that do not, there would need to be some strategy to avoid this. Options could be to lobby for regulation change to force their competitors to do the same (Heath, 2014), to make agreements with competitors to simultaneously better competitive behavior, or to try to market their moral improvement and turning it to a competitive advantage. It would be an interesting research topic to find out what the best strategy is and how much can be morally demanded of companies to change their anti-competitive behavior. For now, we know something has got to change.

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