

Law 156: Antitrust Law (Spring 2009)

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Welcome to Antitrust Law!

This course examines the laws that protect consumers by ensuring competition in the marketplace. Specific topics include agreements involving competitors, joint ventures, mergers, monopolization, distribution practices, and immunities. We will examine Supreme Court doctrine, influential modern lower court decisions, and government enforcement guidelines. Economic concepts and thinking characteristic of modern antitrust analysis are integrated throughout the course. However, no background in economics is necessary or assumed.

Office Hours: I am available to answer questions via work email or telephone (I prefer email).

Coursebook: Andrew I. Gavil, William E. Kovacic & Jonathan B. Baker, *Antitrust Law in Perspective: Cases, Concepts and Problems in Competition Policy* (2008) (3rd Edition). We will also read some scholarly articles, enforcement agency guidelines, and other supplementary materials available on the web. Key supplementary materials (Merger Guidelines and Commentaries, Collaboration Guidelines, Economics of Agreement article, Wright *Singing Along* article, Abbott & Wright article, AMC excerpts) are included in a package available from the copy center. (I urge that you buy the package for ease of reference.)

Grading/ Final Exam: The final exam is 100% of your grade. At the end of each class, I will ask three students to be “especially well prepared” to respond to questions raised by the materials assigned for the next class, although I expect all students to have studied the materials. It is not feasible to master the different topics covered in this course without adequate preparation throughout the semester. The final exam will consist of some combination of short answer and longer essay questions and will be an open book and note examination. You will have full access to your textbook and any notes that you produced. Commercial materials are prohibited during the exam.

Tentative Syllabus: We may deviate from the tentative syllabus with assignments taken from current events, new cases, to accommodate guest speakers, scheduling reasons, etc.

Tentative Spring 2009 Antitrust Course Reading List

I. Introduction to Antitrust Law, Goals and Enforcement

Class 1: Antitrust Objectives and Enforcement Institutions

Assignment: 2-4; Sidebar 1-1; 14-33; Sidebar 1-2; 53-63

II. Antitrust Economics Primer

Class 2: Demand & Welfare Concepts

Assignment: re-read 17-32; 63-80)

Class 3: Supply, Cost and Other Concepts

Assignment: 80-86; Economics of Agreement article (in package for sale)

III. Horizontal Agreements, Competitor Collaborations, and Joint Ventures

Class 4: The Per Se Rule and the Rule of Reason

Assignment: 88-107; 129-138; 153-159; Sherman Act §1

Class 5: The Per Se Rule and the Rule of Reason II

Assignment: 107-128; 159-165; 175-201

Class 6: Joint Ventures and Competitor Collaborations

Assignment: 165-175; [Competitor Collaboration Guidelines](#); 211-224;
Wright, [Singing Along](#).

Class 7: The Limits of Agreement 1 (*Copperweld*)

Assignment: 227-247; *Sports League Problem* (in class)

Class 8: The Limits of Agreement II (Inferring Conspiracy)

Assignment: 253-283; 309-337

IV. Concerted Refusals to Deal/ Boycotts

Class 9: Concerted Refusals to Deal/ Boycotts

Assignment: 49-52; 138-153; 765-788

V. Vertical Restraints

Class 10: Antitrust Analysis of Vertical Restraints

Assignment: 352-406; Nine West FTC Order

<http://www.ftc.gov/os/caselist/9810386/080506order.pdf>

VI. Monopolization and Single Firm Exclusionary Conduct

Class 11: Economics of Exclusion, Monopoly Power & General Principles

Assignment: 582-621; 905-907; AMC Report & Recommendations 81-84
Sherman Act § 2, Clayton Act § 3.

Class 12: Monopolization and the Duty to Deal

Assignment: 622-637; 706-722; Sidebar 6-6 (729-736); AMC Report & Recommendations 101-104

Class 13: Exclusive Dealing and Exclusionary Contracts

Assignment: 822-851; [Abbott and Wright](#) (Part III only)

Class 14: Predatory Pricing and Bundled Discounts

Assignment: 659-706; AMC Report and Recommendations 94-100

Class 15: Tying Arrangements

Assignment: 788-822; [Abbott & Wright](#) (Part II only)

VII. Horizontal Mergers

Class 16: Structural Presumption

Assignment: Clayton Act §§ 7-16; 431-472

Class 17: Merger Guidelines Analysis & Market Definition

Assignment: 472-507; [FTC/DOJ Horizontal Merger Guidelines](#) (1997) (“MG”), §§ 0 and 1, FTC/DOJ Commentary on the Horizontal Merger Guidelines (“CHMG”), pp. 1-16, available at

<http://www.ftc.gov/os/2006/03/CommentaryontheHorizontalMergerGuidelinesMarch2006.pdf>

Class 18: Coordinated Effects

Assignment: 517-535, 495-514; MG § 2.1; CHMG pp. 17-25; *FTC v. Arch Coal*, 329 F. Supp. 2d 109 (D.D.C. 2004)

Class 19: Unilateral Effects

Assignment: 535-554; MG § 2.2; CHMG pp. 25-36

Class 20: Efficiencies and “Defenses”

Assignment: 559-577; 992-996; MG § 3-5; CHMG pp. 35-59

VIII. Special Topics

Class 21: Remedies

Assignment: 42-44; 61-62; 1086-1105; 1106-1118

Class 22: A Primer on Intellectual Property, Patent Antitrust

Assignment: 1192-1229; [IP Report 2](#) (Chapter 2 only); [Masoudi Speech](#), [Rambus](#) (D.C. Circuit opinion); [Broadcom](#) (Third Cir. opinion)

Class 23: Patent Settlements

Assignment: 1246-1248; *Schering Plough v. FTC*, 402 F.3d 1056 (11th Cir. 2005); *In re: Tamoxifen Citrate Antitrust Litigation*, 2006 WL 2401244 (2d Cir. 2006); *In Re: Cardizem CD Antitrust Litigation*, 332 F.3d 896 (6th Cir. 2003).

Class 24: *Noerr-Pennington* & State Action Immunity

Assignment: 1061-1086

Final Review (TBA)
