Antitrust I: Principles (Fall 2019)
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Welcome to Antitrust I: Principles
This course examines the laws that protect consumers by ensuring competition in the marketplace. Specific topics include agreements among competitors, joint ventures, mergers, and monopolization. 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. This course is a prerequisite for Antitrust II.

No background in economics is necessary or assumed. I HIGHLY recommend enrolling in Antitrust Economics in conjunction with Antitrust I if you plan on taking the antitrust sequence, or are interested in greater exposure to the economic foundations of antitrust.

Class: We will meet Monday and Wednesday from 09:50 am to 11:15 am. We will occasionally run until 11:25 am.

Office Hours: Tuesday 2-3 pm. I am also generally available via appointment and email. Please copy my assistant, Judy Jin, on appointment emails: jjin12@gmu.edu.


We will also read enforcement agency guidelines, scholarly commentary, and other supplementary materials I will post on TWEN or are otherwise available on the web. Optional Reading is truly optional. You will not be tested on the material.

Powerpoint slides will be posted on TWEN and made available AFTER class.

Grading: The final exam will account for 100% of your grade, subject to a discretionary class participation adjustment of 1/3rd of a grade in either direction. YOU SHOULD COME TO CLASS HAVING READ AND THOUGHT ABOUT THE MATERIAL AND PREPARED TO PARTICIPATE IN DISCUSSION.

Final Exam: The final exam is scheduled for December 07, 2019 at 12:00 pm. There is no make up 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. Please make sure you are signed up to receive updates via TWEN.
(TENTATIVE) READING ASSIGNMENTS

UNIT 1: Antitrust’s Goals, Enforcement Institutions, and Foundational Concepts

August 26

Introduction to Antitrust Law
Chapter 1: 1-6; 55-70; 85-92
Frank H. Easterbrook, The Limits of Antitrust (TWEN)

Optional Reading:

August 28

Antitrust Institutions and Objectives
Chapter 1: 41-47 (Brunswick Corp.)
Chapter 8: 1347 – 1361 (Illinois Brick)
Apple v. Pepper (TWEN)

Optional Reading:
Bruce H. Kobayashi & Joshua D. Wright, What’s Next in Apple v Pepper? The Indirect Purchaser Rule and Pass Through Analysis (TWEN)

September 2

NO CLASS LABOR DAY

September 4

Economics Primer
Chapter 1: 17-35; 70-85; 93-99
Video Assignment: Marginal Revolution University Chapter 11 Profit Maximization Under Monopoly, Monopoly Markup, and Costs and Benefits of Monopoly

UNIT 2: Horizontal and Vertical Mergers

September 09

NO CLASS

Optional Reading:
Carl Shapiro, The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox (TWEN)
September 11  NO CLASS

September 16  The Ever-Fading Structural Presumption
Clayton Act §§ 7-16
Chapter 5: 671-709, 717-719
Douglas H. Ginsburg & Joshua D. Wright, Philadelphia National Bank: Bad Law, Bad Economics, Good Riddance (TWEN)

Optional Reading:  Note on Corporate Concentration (OECD)

September 18  2010 Horizontal Merger Guidelines & Market Definition
Chapter 5: 719-738
Horizonal Merger Guidelines (all)

September 23  Coordinated Effects
Reread HMG § 7
Chapter 5: 738-764; 774-779; 778-794
Holcim-Lafarge  (Complaint; Wright Dissent)
Optional Reading: Janusz Ordover, Coordinated Effects

September 25  Unilateral Effects 1
Chapter 5: 799- 828; 853-858
Jonathan B. Baker, Econometric Analysis in FTC v. Staples In the Matter of Office Depot, Inc./OfficeMax, Inc. (Closing Statement)

September 30  Vertical Mergers
Guest Lecturer: Jan M. Rybnicek (Freshfields)
Chapter 5: 870-891

Optional Reading:

October 02  Unilateral Effects 2
Guest Lecture: Jeffrey Perry (Weil Gotshal)
FTC v. Sysco (Opinion)
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<tr>
<th>Date</th>
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<tr>
<td>October 07</td>
<td>Potential Competition, Nascent Competition &amp; Killer Acquisitions</td>
<td>Guest Panel: Michael Moiseyev (FTC), Scott Sher (Wilson Sonsini Goodrich &amp; Rosati)</td>
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<td>FTC v. Steris/Synergy (TWEN)</td>
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<td>FTC v. Genzyme / Novazyme (TWEN)</td>
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<td>In the Matter of Nielsen Holdings N.V., and Arbitron Inc. (TWEN) (Complaint; Wright Dissent)</td>
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<td>FTC v. Mallinckrodt (Complaint; Order)</td>
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<td>October 09</td>
<td>Horizontal Merger Review Problem and Wrap Up (TWEN)</td>
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<td>October 14</td>
<td>NO CLASS – COLUMBUS DAY</td>
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<td>UNIT 3: Horizontal Restraints</td>
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<td>October 15</td>
<td>Per Se Rule and the Rule of Reason I</td>
<td>Sherman Act §1</td>
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<td>Chapter 2: 101-123; 160-165; 181-184</td>
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<td>October 16</td>
<td>Per Se Rule &amp; Rule of Reason II</td>
<td>Chapter 2: 123-160; 184-199; 246-258</td>
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<td>October 21</td>
<td>Per Se Rule &amp; Rule of Reason III</td>
<td>Chapter 2: 217-224</td>
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<td>FTC v. Polygram (Opinion): 13-35 only</td>
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<td>American Needle, Inc. v. NFL (Opinion)</td>
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<td>October 23</td>
<td>Modern Applications 1: NCAA v. O’Bannon</td>
<td>Guest Lecturer: Michael Hausfeld</td>
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<td>NCAA v. O’Bannon (9th Circuit Opinion)</td>
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<td>October 28</td>
<td>Modern Applications 2: US v. Apple and Proving Agreement</td>
<td>Chapter 3: 311-335; 370-371 (Figure 3-3)</td>
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<td>Klein, Inferring Agreement in Hub and Spoke Conspiracies (TWEN)</td>
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<td>U.S. v. Apple (Opinion)</td>
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<td>October 30</td>
<td>Horizontal Restraint Review and Wrap-Up</td>
<td>Horizontal Restraint Problem (TWEN)</td>
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UNIT 4: Exclusionary Conduct & Monopolization

November 04  Monopoly Power, Exclusionary Effects & Raising Rivals' Costs
Chapter 1: 47-55
Chapter 4: 437-477; 482-504

November 06  Unilateral Refusal to Deal
Chapter 4: 504-522; 625-636

November 11  Exclusive and Exclusionary Contracts I: Tying
Chapter 6: 965-1011

November 13  Exclusive & Exclusionary Contracts II: Exclusive Dealing 1
Chapter 6: 991-994; 1040-1046
Keyte et al., The Economics of Foreclosure: A Lawyer’s Guide, 32 ANTITRUST 49 (2018) (TWEN)
Joshua D. Wright, Moving Beyond Naïve Foreclosure Analysis

November 18  Exclusive & Exclusionary Contracts III: Exclusive Dealing 2
Chapter 6: 1014-1040
FTC v. McWane (Wright Dissent)

November 20  Exclusive & Exclusionary Contracts IV: Predation & Discounting
Chapter 4: 566-584; 593-595
Chapter 6: 1051-1078
Bruce H. Kobayashi, The Economics of Loyalty Discounts and Antitrust Law in the United States, 1 COMPETITION POL’Y INT’L 115 (2005) (TWEN)
Optional Reading: Derek W. Moore & Joshua D. Wright, Conditional Discounts and the Law of Exclusive Dealing

November 25  FINAL EXAM REVIEW

FINAL EXAM: December 07, 2019 at 12:00 P.M.