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. If you plan on taking the antitrust specialization, or are interested in greater exposure to the economic foundations of antitrust, I do HIGHLY recommend enrolling in Antitrust Economics in conjunction with this course.

Learning Outcomes: By the end of the course students should be able to:

- Understand the goals of antitrust, its basic institutions, and enforcement structures
- Understand the antitrust laws and enforcement policies governing horizontal mergers, including Section 7 of the Clayton Act, the 2010 Horizontal Merger Guidelines, and the 2020 Vertical Merger Guidelines
- Understand the antitrust laws and enforcement policies governing horizontal restraints of trade, including Section 1 of the Sherman Act
- Understand the antitrust laws and enforcement policies governing monopolization and vertical restraints of trade, including Section 1 and Section 2 of the Sherman Act

Class: This is an online course that meets via Zoom on Monday and Wednesday from 08:10 pm to 9:35 pm.

Virtual Classroom Rules:

- Your camera should be on during class. Your microphone should be muted until called upon or recognized to ask a question.
- If you need to step away for any reason during class, please feel free to turn your camera off until you return.
- Use the chat function to indicate that you have a question and I’ll call on you. I’ll
also stop from time to time to ask if there are any questions.

- Please have your settings such that your full name shows.
- Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by me.
- I will be recording class sessions. These recordings may be available for students who miss class for COVID-related or other reasons upon request from to me or the Assistant Dean of Student Academic Affairs.
- For classes with guest lecturers, the guests will be presenting during the day-time Antitrust I time slot (M/W 09:50-11:15am). Students are invited to join live if they are able, and recordings of these presentations will be made available to those who cannot.

**Office Hours:** All office hours will be via appointment and through Zoom meetings. I will always be available **Tuesday 6-7 pm.** I am also generally available via appointment and email.


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 optional material.

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

**Grading and Basis of Evaluation & Assessments:** 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. The final exam is comprised of essay questions and multiple choice questions.

You should come to class having read and thought about the material and prepared to participate in discussion. The purpose of the lecture is not to review the assigned readings but to use them as a starting point for our learning.

**Final Exam:** The final exam is scheduled for **TBD.** There is no make up exam.

**Final Exam Permissible Materials:** Open book, open note, and open materials.

**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.
READING ASSIGNMENTS

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

August 24  Introduction to Antitrust Law

Chapter 1: 1-6; 55-70; 85-92


Optional Reading:


Video Assignment:

Tad Lipsky, Global Antitrust Institute Online Lecture Series, “Economics and Antitrust,” available at: https://www.youtube.com/watch?v=_KeekNJ4HLQ&t=1875s

August 26  Antitrust Institutions and Objectives

Chapter 1: 41-47 (Brunswick Corp.)
Chapter 8: 1347 – 1361 (Illinois Brick)

Frank H. Easterbrook, The Limits of Antitrust (TWEN)

Video Assignment:

Judge Douglas Ginsburg, GAI Online Lecture Series, Antitrust Standing, available at: https://www.youtube.com/watch?v=BETLj2e70B8&t=4s
August 31  Antitrust Institutions and Objectives 2: Federalism

Guest Speaker: Michael Murray, Deputy Assistant Attorney General, Antitrust Division, Department of Justice

Chapter 8: 1291-1303

Richard A. Posner, Federalism and the Enforcement of the Antitrust Laws by State Attorneys General, available at:

https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2794&context=journal_articles


September 2  Economics Primer

Chapter 1: 70-85

Video Assignment:

Professor Bruce Kobayashi, GAI Online Lecture Series, “Demand,” available at:
https://www.youtube.com/watch?v=I3weMKj0cCQ&list=PLFE64ft811xz_iGX4GBwvOhHfWoKZ00DW

Professor John Yun, GAI Online Lecture Series, “Supply,” available at:
https://www.youtube.com/watch?v=1xatYGfjkcQ&list=PLFE64ft811xz_iGX4GBwvOhHfWoKZ00DW&index=2

Professor John Yun, GAI Online Lecture Series, “Equilibrium,” available at:
https://www.youtube.com/watch?v=1cypLVw_rJc&list=PLFE64ft811xz_iGX4GBwvOhHfWoKZ00DW&index=3
September 07   NO CLASS – LABOR DAY

UNIT 2: Horizontal and Vertical Mergers

September 9  Merger Process and Overview

Chapter 5: Sidebar 5-3; 722-728
Premerger Notification and the Merger Review Process


Joe Sims et al., Merger Process Reform: A Sisyphean Journey?, 23 (2) Antitrust 60 (2009), available at:

https://www.jonesday.com/files/Publication/2b1280d6-4240-404c-9b46-260a50ae4b4/Presentation/PublicationAttachment/14fb43c1-7cca-4095-874a-9551d8459a1b/Spring09-SimsC.pdf

September 14  The 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 16  2010 Horizontal Merger Guidelines & Market Definition

Chapter 5: 719-738
Horizontal Merger Guidelines (all)
Video Assignment:

Professor Wright, GAI Online Lecture Series, Market Definition, available at: https://www.youtube.com/watch?v=tzYaL6FOgp4&list=PLFE64ft81lxz_iGX4GBwvOhHfWoKZo0DW&index=7

September 21  Coordinated Effects 1

Reread HMG § 7
Chapter 5: 738-764; 774-779; 788-794
Holcim-Lafarge (Complaint; Wright Dissent)

September 23  Coordinated Effects 2

Guest Lecturer: Professor Jan M. Rybnicek (Freshfields)

FTC v. Rag-Stiftung (TWEN)

September 28  Unilateral Effects

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)

Video Assignment:

Professor Wright, GAI Online Lecture Series, Introduction to Unilateral Effects, available at: https://www.youtube.com/watch?v=mpOxSYj0_Z0&list=PLFE64ft81lxz_iGX4GBwvOhHfWoKZo0DW&index=8

September 30  Product Market Definition

Guest Speaker: Jeffrey Perry & Carrie Mahan (Weil Gotshal)
October 05  Potential Competition, Nascent Competition & Killer Acquisitions

Guest Speakers: Judge Ginsburg, Professor Yun, TBD

Optional Reading:

FTC v. Steris/Synergy (TWEN)
In the Matter of Nielsen Holdings N.V., and Arbitron Inc. (TWEN) (Complaint; Wright Dissent)
FTC v. Mallinckrodt (Complaint; Order)


October 07  New York, et al. v. Deutsche Telekom AG

Guest Speaker: George Cary (Cleary Gottlieb Steen & Hamilton)


October 12  NO CLASS – COLUMBUS DAY

October 13  Vertical Mergers

Chapter 5: 870-880

United States v. AT&T, Inc., D.C. Circuit Court of Appeals


Video Assignment:

Professor Bruce Kobayashi, GAI Online Lecture Series, “Successive Monopoly,” available at: https://www.youtube.com/watch?v=0p-1555aXo4&list=PLFE64ft81lxz_iGX4GBwvOhHfWoKZo0DW&index=9

Optional Reading:


UNIT 3: Horizontal Restraints

October 14 Per Se Rule and the Rule of Reason I
Sherman Act §1
Chapter 2: 101-123; 160-165; 181-184

October 19 Per Se Rule & Rule of Reason II
Chapter 2: 123-160; 184-199; 246-258
October 21  NO CLASS - Make-up TBD

October 26  Per Se Rule & Rule of Reason III
Chapter 2: 217-224
FTC v. Polygram (Opinion): 13-35 only
American Needle, Inc. v. NFL (Opinion)

October 28  Modern Applications 1: FTC v. 1800 Contacts

[Second Circuit Opinion Pending]
Commission Opinion Part I and Part V only:
Commissioner Phillips Dissenting Opinion Part I & Part II:

Optional Reading:
Wright, Singer, & Manne, Antitrust Out of Focus, available at:

November 02  Modern Applications 2: US v. Apple and Proving Agreement
Chapter 3: 311-335; 370-371 (Figure 3-3)
U.S. v. Apple (Opinion)

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 09  Unilateral Refusal to Deal
Chapter 4: 504-522; 625-636
FTC v. Qualcomm (Ninth Circuit Opinion; TWEN)

Optional Materials:

Case example: FTC v. Qualcomm. District court opinion; Ninth Circuit’s collection of case materials, including the oral argument, party and amicus briefs, and relevant orders [opinion pending].

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

November 16  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 23  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

TBD  FINAL EXAM REVIEW

FINAL EXAM:  TBD