

**ANTONIN SCALIA LAW SCHOOL AT GEORGE MASON UNIVERSITY
LAW 475 – ADVANCED ANTITRUST SEMINAR (Fall 2021)**

TUESDAYS, 8:10-10:10pm

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Course Description: This advanced antitrust seminar will cover topics related to the antitrust review of mergers and acquisitions in the United States. The course will provide you with a practical approach to identifying, defending, prosecuting, and resolving antitrust issues that arise in the M&A context. We will study the M&A review process from initial preliminary deal evaluation to Hart-Scott-Rodino notifications to litigation or settlement. We will examine key issues through studies of actual cases.

Learning Outcomes: The course will teach you how to present your merger analysis and arguments succinctly and persuasively as would be expected by a first-year associate or agency staff attorney. The course therefore will prepare you to better contribute to the antitrust group at the law firm, in-house legal team, or enforcement agency that you join after law school.

Format: The intent is for this course to be taught in person at the Law School.

Office Hours / Availability: I am available to answer questions via email. I generally will try to get back to you within 24 hours. I am happy to discuss the course materials, but also more generally to talk about practicing antitrust law and to answer career questions.

Text & Materials: There is no required text. Reading materials are listed in the syllabus below. Materials are available online. Materials that are not easily available will be circulated prior to class. If you have trouble locating an article, case, or other reading materials, please email me. The syllabus will be updated throughout the semester, particularly if a new merger case arises.

Grades: Grades will be based on (1) responses to weekly discussion assignment (15%), (2) “in-class” participation (15%), and (3) a final paper (70%). Weekly discussion assignments typically will be relatively short and are intended to help you engage with the materials before class. I will be grading the discussion assignments Pass/Fail. Not submitting a response to the assignments will negatively affect your grade. Class participation will include presenting once in class on a recent M&A topic (i.e., the announcement of a merger, why the parties reportedly have entered into the transaction, etc.). Final papers should be at least 20 pages (double spaced, 12-point font). Paper topics must relate to merger review and be approved by me in advance.

Paper Deadlines:

Paper topics submitted by **October 19**.

Final paper is due on **December 13**.

READING ASSIGNMENTS

| CLASS | READINGS |
|--------------|---|
| August 24 | No Class (to be rescheduled) |
| August 31 | Introduction to M&A and Antitrust Law <ul style="list-style-type: none"> • Clayton Act §4, § 7, §15, and §16 • Sherman Act §1 and §2 • FTC Act §5 and §13(b) • Horizontal Merger Guidelines • Vertical Merger Guidelines |
| September 7 | HSR Reportability Analysis and Filing <ul style="list-style-type: none"> • What is the Premerger Notification Program? • To File or Not to File? • HSR Form and Instructions • 16 CFR 801 – Coverage Rules (familiarize but do not read in entirety) • 16 CFR 802 – Exemption Rules (familiarize but do not read in entirety) |
| September 14 | FTC/DOJ Merger Review Process <ul style="list-style-type: none"> • DOJ Model Timing Agreement • FTC Model Timing Agreement • Hoffman, <i>Timing is Everything: The Model Timing Agreement</i> (2018) • FTC Guidance for Voluntary Submission of Documents During Initial Waiting Period • FTC Model Second Request (familiarize but do not read in entirety) |
| September 21 | Identifying Antitrust Risk and Negotiating M&A Agreements <ul style="list-style-type: none"> • FTC, Avoiding Antitrust Pitfalls During Pre-Merger Negotiations and Due Diligence (2018) |
| September 28 | Unilateral Effects <ul style="list-style-type: none"> • Evonik/PeroxyChem • T-Mobile/Sprint • Sabre/Farelogix |

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| October 5 | <p>Coordinated Effects</p> <ul style="list-style-type: none"> • William J. Kolasky, Coordinated Effects in Merger Review: From Dead Frenchmen to Beautiful Minds and Mavericks (2002) • Evonik/PeroxyChem • Tronox/Cristal |
| October 19 | <p>Merger Economic Analysis – GUEST LECTURE</p> <ul style="list-style-type: none"> • Joanna Tsai, The Role of Economics Analyses in Preparing for the First 30 Days of a Merger Review (Antitrust Source 2019) |
| October 26 | <p>Potential/Nascent Competition</p> <ul style="list-style-type: none"> • PacBio/Illumina • Nielsen/Arbitron • Steris/Synergy |
| November 2 | <p>Vertical Mergers</p> <ul style="list-style-type: none"> • AT&T/Time Warner • Comcast/NBCUniversal • GE/Avio |
| November 9 | <p>Negotiating Divestitures Agreements #1</p> <ul style="list-style-type: none"> • Negotiating Merger Remedies (FTC) • Antitrust Division Policy Guide to Merger Remedies • FTC Remedy Study |
| November 16 | <p>Negotiating Divestitures Agreements #2</p> <ul style="list-style-type: none"> • Linde/Praxair • Abbvie/Allergan • Hertz/Dollar Thrifty |
| November 23 | <p>Merger Litigation – GUEST LECTURE</p> <ul style="list-style-type: none"> • Reading TBD |
| December 13 | <p>FINAL PAPER DUE</p> |