

ANTITRUST LAW

Professor J. Shahar Dillbary Course Information and Syllabus, Fall 2023

Class Sessions: Monday & Wednesday 1– 2:25pm.
Office Hours: TBA in class; Office #440D.
Email: jdillbar@gmu.edu.
Assistant: Ms. Tammy Tran, Office #407, Email: ttran58@gmu.edu.

A. COURSE INFORMATION

I. Course Materials

No Casebook: You do *not* need to purchase a casebook. Instead, I will provide you with a packet (“Packet”). I will also assign readings from A.D. Melamed., R. Picker, P. Weiser and D. Wood, *Antitrust Law and Trade Regulation, Cases and Materials* (7th ed. 2018) (“TR”) (available on TWEN); and D. Francis & C. Sprigman, *Antitrust, Principles, Cases and Materials* (2023) (available for free at <https://antitrustcasebook.org/>) (F&S).

The Westlaw Educational Network [TWEN]: I will use TWEN to post the readings, assignments, handouts and supplemental materials. *Make a habit of logging onto the TWEN site before each class session.*

Suggested Readings & Websites: J. Shahar Dillbary & William Landes, *LAW AND ECONOMICS: THEORY, CASES AND OTHER MATERIALS* (Aspen, 2021) (Chapter 5 on supply and demand); Thomas Sullivan & Jeffery Harrison, *Understanding Antitrust and Its Economic Implications* (7th Ed., 2019); Herbert Hovenkamp, *Federal Antitrust Policy* (6th Ed., 2020); Important websites are: U.S. Department of Justice: www.usdoj.gov/atr/index.html; U.S. Federal Trade Commission: <http://www.ftc.gov/bc/index.shtml>; European Commission: https://competition-policy.ec.europa.eu/index_en.

II. Course Objectives & Learning Outcomes

Course Objective: The course explores the reasons and methods by which firms seek to eliminate competition. The practices considered include cartels, price-fixing conspiracies, “conscious parallelism,” trade association activities, resale price maintenance, and mergers and acquisitions. The course also looks at the practices by

which firms, either alone or in combination with others, exclude actual or potential competitors from their markets, by means such as boycotts, tying arrangements, bundling, predatory pricing, vertical integration, and price discrimination. Both price and non-price vertical restrictions are considered. *No background is required.* The relevant economic and legal concepts will be developed in class through an examination of particular legal regimes.

Learning Outcome: By the end of the course, students will be familiar with the federal competition law, analyze the economic effect and legality of horizontal and vertical activities and mergers and acquisitions.

III. Class Requirements & Presentations

Readings & Class Preparation: Keep up with the readings and the assignments and come to class each day prepared. Class participation is encouraged. If you are not prepared for a class (e.g., you have not read the materials or submitted your assignment) you should notify me at least 15 minutes *before* the start of that class, by email only. Failure to adequately prepare for class will count as an absence from class.

Presentations: The presentations will take place when we reach the subject of Predatory Bundling. The class will be divided to groups and each group will likely have approximately 15-25 minutes to present sections from an article that I will assign and additional time for a Q&A session. The groups, the groups' assignments and the times of the presentations will be posted on TWEN.

Class notes & Outlines: I strongly encourage you to share and discuss your class notes with your classmates. You may also work with your classmates in groups and discuss your outlines to enhance your understanding of the materials. However, you may *not* use, copy or incorporate any part of another person's outline into your outline. *The use or sharing of unauthorized materials, such as someone else's outline or class notes from students other than your classmates, is an honor code violation and may result in serious sanctions.* If you have any question, you should always feel free to ask them in class or speak with me.

Grade: Your grade is based on the final exam. Participation, attendance, and class preparation (including assignments) may be a factor in your grade, potentially raising or lowering your grade. Any raised grades will be based on extraordinary contributions to classroom discussions, accounting for both quantity and quality. The presentation may also be part of your grade.

Final Exam: Except as previously noted, your grade for the course will be based on the final examination. The final exam will require knowledge and understanding of the doctrinal and theoretical issues that will be covered in class and assigned in your readings. The final exam will be taken on a computer using the law school's software and will be limited open-book. During the exam, you may consult your Packet, hardcopies of materials I provided in class or posted on TWEN; and any class notes, case briefs, or outline that you prepared yourself. All materials must be printed. All other sources are strictly prohibited.

IV. Attendance

You are expected to attend every class. Hats are not allowed in class. Eating in the classroom is strictly prohibited. If you have more than six absences during the course of the semester, you will have to withdraw from the class. There will be no exceptions. If the class is taught remotely or if you have an excuse to watch the class in-real time (synchronously) from a remote location, you must "attend" the class by logging in to the class session on time.

The American Bar Association (ABA) require taking attendance, and we may do so electronically or using an attendance sheet. If you arrive late do not sign the attendance form. Similarly, if you unexpectedly leave before the end of the class email, Ms. Tammy Tran and notify her of your early departure. You must do so at the first possible opportunity. If you are late more than 2 minutes or plan to leave early you *cannot* enter the class (if you are connecting remotely that means you cannot log in to the class).

V. Remote & Synchronous Attendance

If the class is taught remotely, or if you have an appropriate excuse to attend remotely, you must participate online in real time (i.e., synchronously). In case of remote learning, I will likely use Zoom. The attendance policy is the *same* for those attending in person. You must use live feed with your camera on. You cannot turn off your camera. If your camera is turned off you will be removed from the class session and marked as absent.

VI. Intellectual Property

I own all course content that I create (e.g., slides, handouts), regardless of form (electronic, print, audio, video etc.), including recordings, class sessions, office hours, and other meetings. You are forbidden to use them with, or distribute them to, anyone other than your classmates in this course. 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. Accordingly, it is strictly prohibited to stream, record, take photos or screen shots of class sessions, or portion thereof or share them with others. You may not directly or indirectly post on the Internet, copy or circulate (a) materials distributed in class or any compilation thereof; and (b) any summaries of class sessions, notes and/or outlines. Any exceptions to this policy must be expressly permitted in writing by me.

You may use a laptop for note-taking only. The use of a computer or any other devices to record a class or any part thereof is strictly prohibited. Cell phones and other noise-making apparatuses should be turned off.

Violations of this Section (Section VI) is an honor code violation and may result in disciplinary proceeding and severe sanctions.

VII. Academic Integrity

It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The use of Automated Writing Tools, including the use of generative AI tools (such as ChatGPT) is strictly prohibited even when properly attributed. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

VIII. Why the Policies in the Syllabus?

For an interesting game-theoretical explanation as to why professors include in their syllabi what seems to be harsh policies read the excerpt below titled “Why Are Professors So Mean?” [They are not!] from Avinash Dixit, Susan Skeath & David Reiley, *Games of Strategy*, pp. 10-11 (3rd Ed, 2009):

Many professors have inflexible rules... Students think the professors must be really hardhearted to behave in this way. The true strategic reason is often exactly the opposite. Most professors are kindhearted and would like to give their students every reasonable break and accept any reasonable excuse. The trouble lies in judging what is reasonable. It is hard to distinguish between similar excuses and almost impossible to verify their truth. The professor knows that on each occasion he will end up by giving the student the benefit of the doubt. But the professor also knows that this is a slippery slope. As the students come to know that the professor is a soft touch, they will procrastinate more and produce ever-flimsier excuses. Deadlines will cease to mean

anything, and examinations will become a chaotic mix of postponements and makeup tests.

Often the only way to avoid this slippery slope is to refuse to take even the first step down it. Refusal to accept any excuses at all is the only realistic alternative to accepting them all. By making an advance commitment to the “no excuses” strategy, the professor avoids the temptation to give in to all.

But how can a softhearted professor maintain such a hardhearted commitment? He must find some way to make a refusal firm and credible. The simplest way is to hide behind an administrative procedure or university-wide policy. “I wish I could accept your excuse, but the university won’t let me” not only puts the professor in a nicer light, but removes the temptation by genuinely leaving him no choice in the matter. Of course, the rules may be made by the same collectivity of professors as hides behind them but, once they are made, no individual professor can unmake the rules in any particular instance.

If the university does not provide such a general shield, then the professor can try to make up commitment devices of his own. For example, he can make a clear and firm announcement of the policy at the beginning of the course. Any time an individual student asks for an exception, he can invoke a fairness principle, saying, “If I do this for you, I would have to do it for everyone.” Or the professor can acquire a reputation for toughness by acting tough a few times. This may be an unpleasant thing for him to do and it may run against his true inclination, but it helps in the long run over his whole career. If a professor is believed to be tough, few students will try excuses on him, so he will actually suffer less pain in denying them.

B. SYLLABUS

Readings for the First Class: The readings for our first class are posted on TWEN. To be able to complete the first-class assignment you will need to pick up the complete syllabus and Packet from Ms. Tran and get access to TWEN. Please make sure to carefully read the assigned materials and come prepared to discuss.