

Antitrust III: Advanced Antitrust Seminar (Fall 2024)

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Syllabus**Welcome to Antitrust III**

This seminar comprises three elements: (1) Readings -- cases, agency documents, scholarly commentary, and other supplementary materials -- on selected topics in antitrust law, including antitrust and standard essential patents; issues in high tech markets; and various current FTC initiatives. (2) Visitors from practice or academe. (3) Your seminar paper on a topic approved by the instructor, the first draft of which you will present in class.

Economic concepts and thinking characteristic of modern antitrust analysis are integrated throughout the course. You should come to class having read and thought about the material, and ready to participate in the discussion

Antitrust I is a prerequisite for this course. L.L.M. students may seek a waiver of this requirement. Economic concepts and thinking characteristic of modern antitrust analysis are integrated throughout the course, but no background in economics beyond what you learned in Antitrust I is necessary or assumed.

Schedule: We will meet on Mondays from 4:00 to 5:50 pm, with one exception.

Office Hours: I am available by appointment on Mondays and some Tuesdays in person and on other days via Zoom.

Grading: Grades will be based upon your seminar paper and class participation. There is no final examination. .

Syllabus: We may deviate from the syllabus with assignments based upon current events or new cases, to accommodate guest speakers, or for other scheduling reasons, etc. Please make sure you are signed up to receive updates via **TWEN**.

Learning outcomes: By the end of the semester, students should:

Be able better to analyze antitrust issues from a legal and an economic perspective; understand some of the most prominent antitrust issues of the day;
And be fully conversant with the interplay between antitrust and intellectual property.

Antitrust III: Advanced Antitrust Seminar, Fall 2024 Syllabus as of 8/13/24
Readings as of 8/13/24

Antitrust and Intellectual Property:

Topic 1: Patents and Standard Setting (52 pages)

- a. Overview of the Patent System - Selected readings from CHISUM ON PATENTS, Readings at 2-11.
- b. Intellectual Property and Standard Setting, Note by U.S. to OECD Competition Committee (December 8, 2014), Readings at 12-19.
- c. Broadcom Corp. v. Qualcomm Inc. (September 4, 2007), Readings at 20-36.
- d. Rambus v. FTC (April 22, 2008), Readings at 37-41.
- e. FTC v. Qualcomm Inc. (August 11, 2020), Readings at 42-49.
- f. Covington Client Alert, European Court of Justice's Judgment in Huawei v. ZTE (July 21, 2015), Readings at 50-52.

Topic 2: Standard Essential Patents (112 pages)

• **The New Madison Approach (28)**

- g. Makan Delrahim, New Madison Approach speech (March 16, 2018), Readings at 53-70.
- h. Letter to USPTO from Ericsson, Nokia, Philips, and Qualcomm, RE: Promote R&D spending and long-term investments in innovation (March 18, 2019), Readings at 71-77.
- i. Apple, tech firms urge PTO to not change course of standards-essential patents, Reuters (April 24, 2019), Readings at 78-79.

• **2021 Draft Policy Statement (29)**

- j. DOJ-PTO-NIST Joint Statement: Draft Policy Statement on Licensing Negotiations and Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments (December 6, 2021), Readings at 80-90
- k. Comment of the Global Antitrust Institute, On DOJ-PTO-NIST Draft Policy Statement (February 2022), Readings at 91-108.

• **EU Proposed Regulation ((55)**

- l. Draft Regulation of the European Parliament and of The Council on Standard Essential Patents (April 27, 2023), Readings at 109-143.
- m. IP Rights Delayed are IP Rights Denied: The Global Antitrust Institute's Comment on the European Commission's 2023 Proposal to Regulate Standard-Essential Patents (August 2023), Readings at 144-163.

Topic 3: Current Issues in Big Tech

- **Self-Preferencing (12)**

- a. Matt Hunt, Safer Burak Darbaz, and Robert Scherf, Self-Preferencing in Digital Markets, Global Competition Review (November 22, 2022), Readings at 164-176.

- **Digital Markets Act (63)**

- a. Alberto Bacchiega, DG Competition, European Commission: Digital Markets Act
- b. US DoJ, Digital Markets Act Overview (March 2024)
- c. Thomas Kramler, DG Competition, European Commission, Compliance Obligations of App Stores under the DMA
- d. The Verge, How the EU's DMA is changing Big Tech: all of the news and updates

- **Google Search (TBD)**

United States v. Google and Alphabet __ F.Supp __, No. ...

The FTC (121)

Topic 6: Unfair Methods of Competition Rulemaking (72)

- a. TS Tree Servs. LLC v. FTC, No. 2:24-cv-01743 (E.D. Pa. 2024)
- b. Ryan, LLC v. FTC, No. 3:24-cv-00986 (N.D. Tex. 2024)

Topic 7: Prior Approval Provisions (19)

- c. Statement of the Commission on Use of Prior Approval Provisions in Merger Orders (October 29, 2021), Readings at 513-515.
- d. Dissenting Statement of Commissioners Wilson and Phillips Regarding the Use of Prior Approval Provisions in Merger Orders (October 29, 2021), Readings at 516-524.
- e. John M. Yun, *Going Backwards: The FTC's New Prior Approval Policy*, CPI (March 8, 2022), Readings at 525-531.

Topic 8: Amendments to the HSR Form (30)

- f. NPRM. Premerger Notification; Reporting and Waiting Period Requirements, 88 Fed. Reg. 42178 (June 29, 2023) Readings at
- g. Comments of the International Center for Law & Economics on Proposed Changes to the Premerger Notification Rules (September 27, 2023), Readings at 536-560. Readings at

Topic 9: International Antitrust: (Tentative)

- a. Foreign Trade Antitrust Improvements Act, 15 U.S.C. § 6a, Supplement at 310
- b. Hartford Fire, *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993)
- c. F. Hoffmann–La Roche Ltd. v. Empagran S.A., 542 U.S. 155 (1993)
- d. Minn-Chem, Inc. v. Agrium, Inc., 683 F.3d 7th Cir. (2012)
- f. In re Capacitors Antitrust, ___ F. Supp. ___ (N.D. CA)