

ANTITRUST I

Law 156-002, Tues/Thurs, 6:05-7:30 pm
Professor Mark J. Niefer (mniefer@gmu.edu)
Office Hours: TBD

COURSE INFORMATION & SYLLABUS

[July 22, 2024]

I. COURSE INFORMATION

A. Introduction

This is an exciting time to study antitrust. Antitrust agencies, scholars, practitioners, and courts are engaged in a great debate about many of the core elements of antitrust law. The U.S. antitrust agencies (the Department of Justice and the Federal Trade Commission) recently have filed cases and adopted policies that push the boundaries of traditional antitrust law. Although this class largely will focus on important precedential cases, one goal of the class is to help you understand the law as it is applied by agencies and courts today, which, I hope, will give you some insight into current debates and recent cases.

B. Course Objectives & Learning Outcomes

In this course, we will explore the development and application of the U.S. antitrust laws to anticompetitive practices by individuals and firms, including price fixing and other types of anticompetitive agreements, anticompetitive mergers, and monopolization. By the end of the course, you should be familiar with U.S. antitrust law, and you should be able to analyze the potential antitrust liability of various business practices.

C. Class Schedule

I will not be able to teach class on September 17th or 19th. We will need to figure out a way to make up the classes. Apart from that, we will follow the law school's academic calendar as reflected on the syllabus.

D. Attendance, Participation, & Conduct in Class

You are expected to attend every class. I will take attendance. If you cannot attend a class, please let me know as soon as possible. You also are expected to participate actively in class discussions. I do not plan to use a strict Socratic method; rather, I hope to encourage an open discussion. Use of phones or the internet (especially of any AI capabilities) during class is forbidden unless I expressly authorize it. Recording the class also is forbidden.

E. Grade

Your grade is based on the final exam. Participation, attendance, and class preparation may be a factor into your grade, potentially raising or lowering it. Any raised grade will be based on the quantity and quality of your contributions to classroom discussions.

F. Final Exam

The final exam is scheduled for December 12 at 6:00 pm. It will be a traditional written exam. I will provide details later in the semester.

G. Course Materials

Casebook: E. THOMAS SULLIVAN, ET AL., ANTITRUST LAW, POLICY, AND PROCEDURE: CASES, MATERIALS, PROBLEMS (9TH ED. 2024). Class readings will primarily be from the casebook; however, other readings may be assigned during the semester and made available via TWEN; please check TWEN regularly for updates to the syllabus.

Suggested Readings: E. THOMAS SULLIVAN & JEFFREY L. HARRISON, UNDERSTANDING ANTITRUST AND ITS ECONOMIC IMPLICATIONS (7TH ED. 2019); CHRISTOPHER L. SAGERS, ANTITRUST: EXAMPLES & EXPLANATIONS (3D ED. 2021); HERBERT HOVENKAMP, FEDERAL ANTITRUST POLICY: THE LAW OF COMPETITION AND ITS PRACTICE (6TH ED. 2020). All three treatises are on permanent reserve at the library, available for use for two hours at a time. You also should have online access to SULLIVAN & HARRISON and HOVENKAMP via the library's Lexis study aids subscription (check with the library for details). Other suggested readings may be posted on TWEN during the semester.

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H. Note on Economics

The use of economics in an antitrust law class is unavoidable. The basic intuitions of economics are very useful for analyzing individual and firm behavior as they relate to competition and antitrust. However, no background in economics is required for this class beyond Law 108, Economics for Lawyers. During Antitrust I, we will discuss economic concepts—but at a relatively simple level that does not presume any specialized knowledge of economics beyond what you picked up in Law 108.

II. SYLLABUS

Unless otherwise noted, all readings are from E. THOMAS SULLIVAN, ET AL., ANTITRUST LAW, POLICY, AND PROCEDURE: CASES, MATERIALS, PROBLEMS (9TH ED.), and all page numbers refer to the hard copy version of the casebook. This reading list will be updated throughout the semester; please regularly check TWEN for updates.

INTRODUCTION Chapter 1: Introduction to the Competition Model		
Week/ Dates	Assignment	Focus
1/ Aug. 22	Ch.1, 3-37; App., Sherman Act, § 1, 1229; Sherman Act, § 2, 1229; Clayton Act, § 7, 1234 Complaint , <i>United States, et al., v. Google (Search)</i>	<i>Addyston Pipe & Steel</i> , 29-31 Notes 1-6, 31-37 <i>Google</i> complaint, ¶¶ 111-165
MONOPOLIZATION Chapter 2: Framework for Analysis Chapter 6: Monopoly Structure, Power, and Conduct		
Week/ Dates	Assignment	Focus
2/ Aug. 27 & 29	Ch.2, 39-60 Ch.6, 671-717	II. Market in Movement, 48-60 <i>American Can Co.</i> 671-679 Note 1, 679-680 Note 3, 680-681 Note: The Economics of Monopolization, 682-685 <i>Alcoa</i> , 685-696 Note 2, 697 Note 5, 698 Note 6, 698-699 II.A. Market Power, Barriers to Entry, and the Relevant Market, 709-717 Problem 6.1, 717
3/ Sept. 3 & 5	Ch.6, 717-781	<i>DuPont</i> , 717-722 Note: Cross Elasticity of Demand, 722-725 <i>Rebel Oil</i> , 725-726 Note 1, 727 Note 3, 727-728 Problem 6.2, 730 Note: Barriers to Entry in Monopolization Cases, 731-735 <i>Grinnell</i> , 735-739 Note 2, 740 Note 5, 741 III. The Modern Monopolization Offense: Conduct, 742-743 <i>Berkey Photo</i> , 743-753 <i>Cal. Comp. Prod.</i> , 753-754 Note 5, 755-756

		Note 8, 757-760 <i>Microsoft</i> , 760-778 Note 1, p. 778 Note 4, p. 778
4/ Sept. 10 & 12	Ch.6, 794-851	III.C. Predatory pricing and related practices, 794-796 <i>Brooke Group</i> , 796-806 Note 5, 808-809 Note: When is predatory pricing rational?, 811-814 Problem 6.8, 815 III.C.2. Identifying the predatory price, 818-821 Note 2, 822-823 Note 3, 823-824 Problem 6.10, 825 <i>Cascade Health</i> , 831-842 Note 4, 849-850
5/ Sept. 17 & 19*	Ch.6, 851-901	III.D. Vertical Integration, Refusals to Deal and Exclusionary Contracting, 851-853 <i>Aspen Skiing</i> , 853-860 Note 1, 860-862 Note 2, 862-863 Problem 6.11, 866 Note: The Essential Facility Doctrine, 867, 868 <i>Trinko</i> , 869-876 Note 1, 876 <i>Dentsply</i> , 878-889
AGREEMENTS Chapter 4: Cartels and Other Joint Conduct by Competitors		
Week/ Dates	Assignment	Focus
6/ Sept. 24 & 26	Ch.4, 181-225	<i>Chicago Board of Trade</i> , 184 -187 Note 3, 188 <i>Trenton Potteries</i> , 188-190 Note 2, 191 Note 3,191 <i>Appalachian Coals</i> , 192-195 Note 3, 196 <i>Socony-Vacuum</i> , 196-203 Note 3, 203-204 <i>Maple Flooring</i> , 206-210 <i>Container Corp.</i> , 213-217 <i>U.S. Gypsum</i> , 218-222 Problem 4.1, 225
7/ Oct. 1 & 3	Ch.4, 225-312	<i>Nat. Soc'y Prof. Eng.</i> , 225-231 <i>BMI</i> , 232-240 <i>Catalano</i> , 242-244 <i>Maricopa Cty. Med. Soc'y</i> , 245-252 <i>NCAA</i> , 254-263 <i>Cal. Dental</i> , 267-270 <i>Dagher</i> , 275-278 <i>Alston</i> , 279-292 <i>Apple</i> , 296-307
8/ Oct. 8 & 10	Ch.4, 317-367	<i>Paramount</i> , 317-319 <i>Twombly</i> , 321-331

		<i>In re Text Messaging, 332-334</i> <i>Matsushita, 338-351</i> <i>In re High Fructose Corn Syrup, 359-367</i>
9/ Oct. 15 & 17	Ch.4, 368-418	<i>Williamson Oil</i> <i>In re Text Messaging</i> <i>Copperweld</i> <i>Am. Needle</i> <i>Topco</i>
10/ Oct. 22 & 24	Ch.4, 418-465	<i>Polk Bros.</i> <i>In re Railway Industry No Poach</i> <i>Eastern States</i> <i>Klor's</i> <i>Northwest Wholesale Stationers</i> <i>Indiana Federation of Dentists</i> <i>Associated Press</i> <i>Nat'l Org. for Women</i>
11/ Oct. 29	Ch.4, 465-483	<i>Actavis</i>
MERGERS Chapter 7: Mergers and Acquisitions		
Week/ Dates	Assignment	Focus
11/ Oct. 31	Ch.7, 917-959	<i>Columbia Steel</i> <i>DuPont</i> <i>Silicon Graphics</i> <i>AT&T</i> <i>Columbia Steel</i>
12 / Nov. 7**	Ch.7, 959-1002	<i>Brown Shoe</i> <i>Philadelphia Nat'l Bank</i> <i>General Dynamics</i>
13/ Nov. 12 & 14	Ch.7, 1002-1065	<i>FTC v. Staples</i> <i>FTC v. Staples and Office Depot</i> <i>Hospital Corp. of Am.</i> <i>Heinz</i> <i>Lundbeck</i> <i>H&R Block</i>
14/ Nov. 19	Ch.7, 1065-1103	<i>St. Alphonsus</i> <i>Winslow</i> <i>Procter & Gamble</i> <i>Citizen Publishing</i> <i>Cargill</i>
ENFORCEMENT IN REGULATED INDUSTRIES Chapter 9: Antitrust, Other Forms of Regulation, and Exemptions		
Week/ Dates	Assignment	Focus
14/ Nov. 22***	Ch.9, 1107-1133	<i>Credit Suisse</i> <i>Trinko</i>

*Classes to be rescheduled.

**No class on Nov. 5 (Election Day).

***Law school observes a Monday schedule on Nov. 21 and a Thursday schedule on Nov. 22.