

**Antitrust III: Advanced Antitrust Seminar (Fall 2025)**

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**Course Description**

**Welcome to Antitrust III**

This seminar comprises three elements: (1) Readings -- cases, agency documents, scholarly commentary, and other secondary 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.

**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 in-person on Mondays from 4:00 to 5:50 pm, except for the organizational meeting on August 18, which will last less than an hour and will be via Zoom.

**Office Hours:** I am available by appointment on Mondays and some Tuesdays in person and on other days via Zoom. I encourage you to be close in touch while formulating your paper topic.

**Grading:** Grades will be based upon your seminar paper (2/3) and class participation (1/3). There is no final examination.

**Readings:** We may deviate from the reading list 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**. The readings will be posted on TWEN by August 6.

**Learning outcomes:** By the end of the semester, you should:  
Be better able to analyze antitrust issues from a legal and an economic perspective; fully understand some of the most prominent antitrust issues of the day; and be deeply schooled in the topic of their seminar papers.

**Antitrust III: Advanced Antitrust Seminar**  
**Fall 2025 Syllabus as of 8/5/2025**

**Antitrust and Intellectual Property:**

**Topic 1: Antitrust, Patents, and Standard Setting (49)**

- a. Overview of the Patent System - Selected readings from CHISUM ON PATENTS, Readings at 1-10.
- b. Intellectual Property and Standard Setting, Note by U.S. to OECD Competition Committee (December 8, 2014), Readings at 11-18.
- c. Broadcom Corp. v. Qualcomm Inc. (September 4, 2007), Readings at 19-35.
- d. Rambus v. FTC (April 22, 2008), Readings at 36-40.
- e. FTC v. Qualcomm Inc. (August 11, 2020), Readings at 41-48.

Discussion Questions

1. Should the antitrust analysis of FRAND violations depend upon whether representations are “deceptive” or made in “good faith”?
2. Do you agree with the distinction drawn by the *Qualcomm* court between the conduct at issue in that case and the conduct at issue in *Broadcom*?
3. To what extent should FRAND disputes be addressed by way of the antitrust laws?

**Topic 2: Antitrust, Standard Essential Patents, and Injunctions (97)**

• **Injunctions for SEP Infringement (32)**

- a. 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 49-59.
- b. Comment of the Global Antitrust Institute, On DOJ-PTO-NIST Draft Policy Statement (February 2022), Readings at 60-69.
- c. Nicholas Banasevic and Zuzanna Bobowiec, SEP-Based Injunctions: How Much Has the Huawei v ZTE Judgment Achieved in Practice? (Apr. 23, 2023), Readings at 70-80.

• **The New Madison Approach (67)**

- a. Makan Delrahim, New Madison Approach speech (March 16, 2018), Readings at 81-98.
- b. 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 99-105.
- c. Apple, tech firms urge PTO to not change course of standards-essential patents, Reuters (April 24, 2019), Readings at 106-107.

- d. Carl Shapiro and Mark Lemley, The Role of Antitrust in Preventing Patent Holdup (2022), Readings at 108-126
- e. Jonathan M. Barnett, Patent Groupthink Unravels, 34 Harvard J. L. & Tech. 419 (2021), Readings at 127-147

### Discussion Questions

1. Consider the obligations imposed upon SEP-holders in *Huawei* with those proposed in the Draft Policy Statement (by way of its definition of “good faith bargaining”).
  - a. To what extent do these approaches differ?
  - b. Which approach is more aligned with the purposes of intellectual property law?
2. *Huawei v. ZTE*
  - a. Do the obligations imposed on licensors and licensees in *Huawei* to determine whether an injunction is appropriate strike the right balance?
  - b. To what extent do you think an injunction should be used to remedy patent infringement of an SEP, rather than damages?
3. *Balancing Antitrust and IP*
  - a. IP rights are premised in part upon the belief that they promote innovation. Some antitrust proponents argue vigorous antitrust enforcement may also promote innovation.
    - i. To what extent are these concepts of innovation in tension?
    - ii. To the extent that IP and antitrust law have different effects on innovation, which should be preferred?
  - b. What role should antitrust law play in limiting patent holdup or patent holdout?

### **Topic 3: Current Issues in Big Tech – Self-Preferencing and EU Digital Markets Act (81)**

- **Self-Preferencing (17)**
  - a. Guillaume Duquense et al., What constitutes self-preferencing and its proliferation in digital markets (October 2, 2024), Readings at 148-164.
- **Digital Markets Act (88)**
  - a. Alberto Bacchiega, DG Competition, European Commission: Digital Markets Act (March 2024), Readings at 165-179.
  - b. US DoJ, Digital Markets Act Overview (March 2024), Readings at 180-195.
  - c. Thomas Kramler, DG Competition, European Commission, Compliance Obligations of App Stores under the DMA (2023), Readings at 196-214.
  - d. The Verge, How the EU’s DMA is changing Big Tech: all of the news and updates (July 1, 2025), Readings at 215-248.

- e. The Verge, Apple and Meta hit with the EU's first DMA antitrust fines (Apr. 23, 2025), Readings at 249-252.

### Discussion Questions

1. Under what circumstances should a digital platform's self-preferencing or refusal to interoperate with a competitor violate the antitrust laws? Do you agree with the EU and Member State courts that self-preferencing should not be analyzed under the refusal to deal doctrine?
2. What procompetitive effects may result from self-preferencing?
3. What are the benefits and drawbacks to the EU's ex ante enforcement regime? Are they specific to the DMA or generalizable?
4. Note that the DMA does not displace the EU's antitrust laws. Is this two-tiered competition policy warranted?

### **Topic 4: Current Issues in Big Tech — Google, Algorithmic Pricing, Apple (103)**

- **Google Search (60)**

- a. Jeffrey May, Summary of *United States v. Google* (D.D.C.) (August 6, 2024), Readings at 253-255.
- b. *United States v. Google and Alphabet*, 747 F.Supp. 3d 1 (D.D.C. Aug. 5, 2024), Readings at 256-277.
- c. Geoffrey A. Manne, A Critical Analysis of the *Google Search* Antitrust Decision, (Aug. 14, 2024), Readings at 278-309..
- d. A. Douglas Melamed, Causation Confusion – A Response to Judge Ginsburg & Wong-Ervin (December 2024), Readings at 310-312.

- **Algorithmic Pricing (17)**

- a. Michale Kheyfets and David Kully, Antitrust Injury and Damages in Algorithmic Collusion Cases: Another “New Frontier”?, *The Antitrust Source* (February 2025), Readings at 313-326.
- b. Bruce Sokler et al., DOJ and FTC Weigh in on Alleged Algorithmic Price Fixing — AI (March 7, 2024), Readings at 327-329.

- **Apple (42)**

- a. *United States v. Apple*, Memorandum Opinion Denying Motion to Dismiss, No. 24-cv-4055 (D.N.J. June 30, 2025), Readings at 330-362.
- b. Phoenix Center, Critique of *United States v. Apple* (October 2024), Readings at 363-371.

### Discussion Questions

1. Google Search
  - a. What do you make of the court's analysis of the effect of default agreements?
  - b. Do you think the causation standard articulated in the Google decision is correct as a recitation of *Microsoft*?

- c. Assuming you agree that *Microsoft* articulates a stricter causation standard, which standard do you think more faithfully preserves and promotes the competitive process?
2. Algorithmic Pricing
  - a. To what extent should a company's retention of pricing discretion doom a price-fixing claim? That is, how much pricing discretion must a company retain?
  - b. Assume that algorithmic pricing makes tacit collusion more common and effective, resulting in higher prices. If so, should the assumption that the antitrust laws do not prohibit parallel conduct (also known as tacit collusion) be reevaluated?
3. Apple
  - a. Do you agree that the refusal to deal doctrine does not apply to the allegedly anticompetitive conduct?
  - b. The district court's memorandum opinion denying Apple's motion to dismiss sidesteps any question of whether Apple is deliberately degrading quality or is imposing restrictions that consumers value. Ultimately, which narrative do you think is more accurate?
  - c. In footnote 10, the district court stated that it "will look at the anticompetitive nature of Apple's alleged conduct in total in its analysis." Relying on first principles, do you agree that this is the correct approach to take?

## **The FTC (101):**

### **Topic 5: FTC Unfair Methods of Competition Rulemaking (57)**

- a. *ATS Tree Servs. LLC v. FTC*, No. 2:24-cv-01743 (E.D. Pa. July 23, 2024), Readings at 372-410.
- b. *Ryan, LLC v. FTC*, 746 F.Supp. 3d 369 (N.D. Tex. 2024), Readings at 411-428.

### Discussion Questions

1. Do you think the FTC has the statutory authority to promulgate a substantive competition rule under the FTC Act?
2. Do you think the noncompete rule violates the major questions doctrine?
3. Do you think the evidentiary record supports the noncompete rule?
4. Compare and contrast the ex-ante approach to antitrust enforcement endorsed by this rule and the DMA.

### **Topic 6: FTC, Prior Approval Provisions in Merger Approvals (31)**

- a. Statement of the Commission on Use of Prior Approval Provisions in Merger Orders (October 29, 2021), Readings at 429-431.
- b. Dissenting Statement of Commissioners Wilson and Phillips Regarding the Use of Prior Approval Provisions in Merger Orders (Oct. 2021), Readings at 432-440.

- c. John M. Yun, Going Backwards: The FTC’s New Prior Approval Policy, CPI (March 8, 2022), Readings at 441-447.
- d. Kara Kuritz and Ryan Will, Prior Approval Remedies in M&A: Agency Policy and Practice, The Antitrust Source (June 2025), Readings at 448-459.

### Discussion Questions

1. After nearly four years of experience since the FTC’s policy statement, do you agree with the dissenting commissioners that the majority overstated the benefits and undersold the harm of the new policy?
2. Do you think a prior approval requirement for a divestiture buyer is appropriate?
3. To what extent should enforcement agencies seek to shift antitrust risk to a prospective acquirer, if at all?

### **Topic 7: The Consumer Welfare Standard (68)**

- a. Tim Wu, After Consumer Welfare, Now What? The “Protection of Competition” Standard in Practice (April 2018), Readings at 460-468.
- b. Jonathan Kanter, Milton Handler Lecture (May 18, 2022), Readings at 469-479.
- c. Hon. Douglas H. Ginsburg, Wither Consumer Welfare? Antitrust in the Biden Years (July 2025), Readings at 480-502.
- d. Commissioner Mark Meador, Antitrust Policy for the Conservative (May 1, 2025), Readings at 503-526.

### Discussion Questions

1. Do you believe the consumer welfare standard is the analytical approach that best preserves the competitive process?
2. What are the guiding principles of Professor Wu’s “competitive process standard?”
  - a. What do you identify as the limiting principles?
  - b. To what extent does this standard seek to vindicate different goals than the consumer welfare standard does?
3. Do you agree with Commissioner Meador’s conservative interpretation of the Sherman Act?
  - a. How does Commissioner Meador reconcile his understanding of the Sherman Act with the consumer welfare standard?
  - b. To what extent does Commissioner Meador’s framing of the consumer welfare standard differ from that of the Biden administration’s or of the consumer welfare standard as it has been understood in the 21st century?

### **Topic 8: International Antitrust: (Tentative) (58)**

- a. Foreign Trade Antitrust Improvements Act, 15 U.S.C. § 6a, Readings at 527.
- b. Hartford Fire Ins. Co. v. California, 509 U.S. 764 (1993), Readings at 528-547.
- c. F. Hoffmann–La Roche Ltd. v. Empagran S.A., 542 U.S. 155 (1993), Readings at 548-558.

- d. Stephen McIntyre, The FTAIA's "Domestic Effects" Exception: Why The Ninth Circuit Got It Right (2020), Readings at 559-572.
- e. Abbott B. Lipsky, Jr. and Cory Wilmot, The Foreign Trade Antitrust Improvements Act: Did *Arbaugh* Erase Decades of Consensus Building?, The Antitrust Source (2013), Readings at 573-582.

#### Discussion Questions

1. Do you read the FTAIA to limit a court's subject-matter jurisdiction (as Prof. Lipsky does) or to be a substantive element of the Sherman Act (as *Minn-Chem* and *Animal Science* do)?
2. What do you think is the best understanding of the "direct effects" test under the FTAIA, as a matter of law and as a matter of policy?

## Antitrust III: Advanced Antitrust Seminar, Fall 2025

### Schedule (as of Aug. 5, 2025)

**August 18: Organizational Meeting**

**August 25:**

- A. Discussion of seminar paper topics
- B. Begin Topic 1, Antitrust, Patents, and Standard Setting, readings pp. 1-48

**September 3 (Wednesday):**

- A. Discussion of seminar paper topics
- B. Begin Topic 2, Antitrust, Standard Essential Patents, and Injunctions 49-80

**September 8:**

- A. Discussion of seminar paper topics
- B. Complete Topic 2, readings pp. 81-147

**September 15: Seminar paper topics due; submit by email.**

- A. Topic 3, Current Issues in Big Tech – Self-Preferencing and EU Digital Markets Act, readings pp. 148-214
- B. **Visitor: TBD**

**September 22:**

- A. Complete Topic 3, readings 215-252 (skim)
- B. Begin Topic 4; Google, Algorithmic Pricing, Apple, readings pp. 255-314

**September 29:**

- A. Continue Topic 4, readings pp. 313-371.

**October 6**

- A. Complete Topic 4.

**October 13: Fall break.**

**October 20: Draft seminar papers due; submit by email.**

- B. Topic 5, FTC Unfair Methods of Competition Rulemaking, readings pp. 372-428
- C. **Visitor: TBD**

**October 27:**

- A. Topic 6, FTC, Prior Approval Provisions in Merger Approvals, readings pp. 429-459

**November 3:**

- A. Student presentations
- B. Topic 7, The Consumer Welfare Standard, readings pp. 460-526



**November 10:**

**A. Student presentations**

**B. Topic 8, International Antitrust, readings 527-582.**

**November 17:**

**A. Student presentations**

**December 1: Final seminar papers due**