

## **Law 162-002 | Anti-Trust II | Spring 2025 | 3 credits**

**Professor(s):** Mark J. Niefer

Tues. & Thurs. 6:05 – 7:30 pm EST | **Final Exam:** Friday, May 2, 6:00 pm EST

**Reading(s): [REQUIRED]** Unless otherwise noted, all readings are from one of the two casebooks we will use this semester:

1. E. THOMAS SULLIVAN, ET AL., ANTITRUST LAW, POLICY, AND PROCEDURE: CASES, MATERIALS, PROBLEMS (9TH ED. 2024)
2. DANIEL FRANCIS AND CHRISTOPHER JON SPRIGMAN, ANTITRUST: PRINCIPLES, CASES, AND MATERIALS (2D ED. 2024) (“F”), available for free download at <https://antitrustcasebook.org/>

Classroom discussions will be based on readings from both casebooks. Other mandatory readings may be assigned during the semester and made available via TWEN. Please check TWEN regularly for updates to the syllabus.

**Reading(s): [SUGGESTED]**

1. E. THOMAS SULLIVAN & JEFFREY L. HARRISON, UNDERSTANDING ANTITRUST AND ITS ECONOMIC IMPLICATIONS (7TH ED. 2019)
2. CHRISTOPHER L. SAGERS, ANTITRUST: EXAMPLES & EXPLANATIONS (3D ED. 2021);
3. 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). All three treatises cover many of the cases we will discuss in class; consulting the treatises (particularly SULLIVAN & HARRISON and SAGERS) throughout the semester may enhance your understanding of our classroom discussions. Other suggested readings may be posted on TWEN during the semester.

**Prerequisite(s):** Antitrust I

**Communication(s):** [mniefer@gmu.edu](mailto:mniefer@gmu.edu)

**Office Hours:** By appointment (in person or virtual)

**Schedule Announcement(s):** March 10-14, Spring Break. Law school will observe a Monday schedule on Thursday, April 24.

### **COURSE DESCRIPTION**

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.

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***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 II, 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, and no knowledge of math beyond basic algebra.

**COURSE OBJECTIVES**

In this course, we will build on issues explored Antitrust I, studying in greater detail the development and application of the U.S. antitrust laws to anticompetitive practices by individuals and firms. In particular, we will take a deeper dive into monopolization under Section 2 of the Sherman Act, agreements under Section 1 of the Sherman Act, and mergers under Section 7 of the Clayton Act. While Antitrust I focused on agreements and mergers between and among horizontal competitors, Antitrust II will focus on vertical agreements and mergers, including the practices of digital platforms, as well as those of more traditional firms. In addition, we will consider selected topics in antitrust, including criminal enforcement of the antitrust laws, exemptions to the antitrust laws, the intersection of intellectual property and antitrust, and the intersection of regulation and antitrust. By the end of the course, you should be very familiar with process and substance of U.S. antitrust law, and you should be able to analyze the potential antitrust liability of various business practices.

**GRADING & PARTICIPATION**

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, and I may assign cases to individual students who will be on call during class discussions. 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.

***Grading***

Your grade will be based on the final exam; attendance, class participation, and preparation for class also will factor into your grade, potentially raising or lowering it.

***Final Exam***

The final exam is scheduled for May 2 at 6:00 p.m. It will be a traditional, issue-spotting, written exam. I will provide details later in the semester.

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All page numbers refer to the hard copy versions of the casebook. We also will read a few recent cases that should be available in Westlaw or Lexis. This reading list will be updated throughout the semester. Please check TWEN regularly for updates to the syllabus.

<b>INTRODUCTION: THE ANTITRUST PROJECT</b>		
<b>Week/ Dates</b>	<b>Assignment</b>	<b>Focus</b>
1 / Jan 16	F, Ch. I, 1-34 F, Ch. II, 35-66 (Review) S, Ch. 2, 39-60 (Review)	Von's, F 29 Utah Pie, F 30 Cargill, F 33 Olympia Equipment, F 34
<b>HORIZONTAL &amp; VERTICAL MERGERS</b>		
<b>Week/ Dates</b>	<b>Assignment</b>	<b>Focus</b>
2 / Jan 21 & 23	2023 DOJ/FTC Merger Guidelines, <a href="https://www.justice.gov/atr/merger-guidelines">https://www.justice.gov/atr/merger-guidelines</a>	Merger Guidelines, §§ 1, 2 FTC v. Tapestry, Inc., 2024 WL 4S647809
3 / Jan 28 & 30	2023 DOJ/FTC Merger Guidelines, <a href="https://www.justice.gov/atr/merger-guidelines">https://www.justice.gov/atr/merger-guidelines</a> S, Ch.7, 925-953	Merger Guidelines, §§ 3, 4 Silicon Graphics, 930 AT&T, 939 United States v. UnitedHealth Group, Inc., 630 F. Supp. 3d 118 (D.D.C. 2022)
<b>POTENTIAL COMPETITION MERGERS &amp; MERGER DEFENSES</b>		
<b>Week/ Dates</b>	<b>Assignment</b>	<b>Focus</b>
4 / Feb 4 & 6	S. Ch. 7, 1076-1103	Procter & Gamble, 1079 FTC v. Meta Platforms, Inc., 654 F. Supp. 3d 892 (N.D. Cal. 2023) Citizen Publishing, 1089
<b>PRACTICAL MERGER EXERCISE</b>		
<b>Week/ Dates</b>	<b>Assignment</b>	<b>Focus</b>
5 / Feb 11	Materials to be distributed before class on Feb 11	
<b>CRIMINAL PROSECUTIONS OF PER SE ILLEGAL AGREEMENTS</b>		
<b>Week/ Dates</b>	<b>Assignment</b>	<b>Focus</b>
5 / Feb 13	F, Ch. V.B.1, 207-214 S, Ch. 3.I.A.1.b (Criminal Prosecutions) 62-66	Jindal, F 212-214 United States v. Brewbaker, 87 F. 4th 563 (4th Cir. 2023)
<b>VERTICAL RESTRAINTS</b>		

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Week/ Dates	Assignment	Focus
6 / Feb 18 & 20	S, Ch. 5, 485-533	Leegin, 487 Colgate, 516 Khan, 519 Monsanto, 524
7 / Feb 25 & 27	S, Ch. 5, 533-584	Sylvania, 535 Tampa Electric, 554 American Express, 563 Times-Picayune, 590
8/ Mar 4 & 6	S, Ch. 5, 584-641	Northern Pac. Ry., 593 Jefferson Parish, 600 Kodak, 614 Microsoft, 636 United States v. Google LLC, 2024 WL 3647498
<b>ANTITRUST &amp; IP</b>		
Week/ Dates	Assignment	Focus
9 / Mar 18 & 20	F, Ch. X, 582-602 S, Ch. 4, 465-483 S, Ch. 5, 641-657 S, Ch. 6, 781-794	In the Matter of Bristol-Meyers-Squibb, F 596 Actavis, S 465 (Agreements and IP) Illinois Tool Works, S 642 (Tying and IP) In re Ind. Service Org., S 787 (Refusal to license IP)
<b>REGULATION &amp; EXEMPTIONS</b>		
Week/ Dates	Assignment	Focus
10 / Mar 25 & 27	S, Ch. 9, 1107-1171	Credit Suisse, 1119 Trinko, 1130 Allied Tube, 1157 Superior Court Trial Lawyers, 1163
11 / Apr 1 & 3	S, Ch. 9, 1172-1205	Columbia Pictures, 1172 Fisher, 1183 Cal. Retail Liquor, 1188 Hallie, 1193 Phoeby Putney, 1197
12 / Apr 8 & 10	S, Ch. 9, 1205-1227	Columbia Outdoor Advertising, 1205 N.C. State Board of Dental Examiners, 1214
<b>SPECIAL PROBLEMS OF ANTITRUST ENFORCEMENT</b>		
Week/ Dates	Assignment	Focus
13 / Apr 15	S, Ch. 3, 61-109	Illinois Brick, 93 Pepper, 102