Antitrust Economics – Law 237-001

Wednesday, 9:40-11:40am

Antonin Scalia Law School, George Mason University, Fall 2026

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Office Hours. Wednesdays 12pm – 1pm (in-person) & by appointment (virtual)

Welcome. The goal of the course is to teach the underlying economic foundations that drive antitrust analyses at the U.S. Federal Trade Commission and Department of Justice, Antitrust Division.

Learning Outcome: By the end of the course, students will have developed skills in the use of economic tools to be able to conduct sophisticated economic analysis of antitrust cases. Students will be able to perform complex problem solving and to critically identify and assess the central economic issues in antitrust matters.

Texts.

JOHN KWOKA AND LARRY WHITE (eds.), THE ANTITRUST REVOLUTION (7th edition) (KW).

ROGER BLAIR AND DAVID KASERMAN, Antitrust Economics, Second Edition (2009) (BK)

Course Requirements and Grading.

Written Assignments. There will be two homework assignments. Each assignment is worth **15 percent** of your overall grade—for a total of **30 percent**. *All assignments must be submitted via CANVAS ten minutes before the beginning of class (9:30am) on the due date.* Late submissions will receive zero credit.

- First Assignment: September 23; Due: September 30.
- Second Assignment: October 28; Due: November 4.

Final Exam. The final exam will be administered in person on December 3, 2026 at noon (there is no make-up exam) and will count for **70 percent** of your grade. The final exam is open book & notes (internet blocked). It will consist of short answer questions.

Grading. This course follows the grading policies outlined in Academic Regulations (AR) 4-5.7, which may be found at ACADEMIC REGULATIONS.

Class Participation & Attendance. *Students are expected to come to class prepared and ready to discuss the assigned readings.* Your grade is subject to a discretionary class participation adjustment of 1/3rd of a grade in either direction. The course adheres to the attendance policy as outlined in AR 4-1.

Honor Code. Students are expected to adhere to the Scalia Law HONOR CODE.

Tentative Syllabus, Last updated 7/18/26. We may deviate from the tentative syllabus for reasons including current events, new cases, scheduling, *et cetera*.

Intellectual Property. I own all course content that is created (*e.g.*, slides), regardless of format (electronic, print, audio, video). You are forbidden to use them with, or distribute them to, anyone other than your classmates in this course.

Class Schedule

1. **Basic Models of Competition and Structural Antitrust (August 19)**

   Required:

   - U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES (2010), Section 5.
   - U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES (2023), Section 2.1 (Guideline 1).
   - KW: Introduction (pp. xxi-xxvi).

   Recommended

   - BK Chapter 1-3
   - Kobayashi & Muris, Turning Back the Clock: Structural Presumptions in Merger Analysis and Revised Merger Guidelines, CEI Study (February 22, 2023).

2. **Horizontal Mergers – Overview (August 26)**

   Required:

- Kenneth Heyer, *Consumer Welfare and the Legacy of Robert Bork*, 57 J.L. & ECON. 19 (2014).
- KW: Case 9: Prices, Market Definition, and the Effects of a Merger, Staples, Office Depot and Office Max. (1997, 2015, and 2016).
- Ashenfelter, et. al, *Empirical Methods in Merger Analysis: Econometric Analysis of Pricing in FTC v. Staples*, 13 INT. J. OF THE ECON. OF BUS. (2006).

Recommended:

- BK Chapter 12.
- Ken Heyer, Predicting the Competitive Effects of Mergers by Listening to Customers, 74 ANTITRUST L.J. 87 (2007).

3. **Horizontal Mergers – Market Power & Market Definition (September 2)**

Required:

- BK, Chapter 6, Sections 6.1-6.6
- 2023 MG, Section 4.3
- Benjamin Klein, Market Power in Antitrust: Economic Analysis After Kodak, 3 SUP. CT. ECON. REV. 43 (1993) – focus on pp. 71-82.
- Herbert Hovenkamp, Antitrust Market Definition: the Hypothetical Monopolist and Brown Shoe, Network Law Review, (Spring 2024).
- Greg Werden, Demand Elasticities in Antitrust Analysis, 66 Antitrust L. J. 363 (1998).
- Daniel P. O'Brien & Abraham L. Wickelgren, A Critical Analysis of Critical Loss Analysis, 71 ANTITRUST L.J. 161 (2003).

Recommended:

- Thomas A. Lambert, Four Lessons from the Whole Foods Case, REGULATION 22 (2008).
- Gregory J. Werden, Why (Ever) Define Markets? An Answer to Professor Kaplow, 78 ANTITRUST L.J. 729 (2013).

September 9 – No Class (Monday Schedule)

4. **Horizontal Mergers – Unilateral Effects (September 16)**

Required:

- 2023 MG Guideline 2
- Carl Shapiro, Mergers with Differentiated Products, ANTITRUST 23 (1996).
- Carl Shapiro, The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox in 40 Years, 77 ANTITRUST L.J. 701 (2010).
- Charles River Associates, Scoring Unilateral Effects with the GUPPI: The Approach of the New Horizontal Merger Guidelines, CRA COMPETITION MEMO (2010).

Suggested:

- Gregory J. Werden, Unilateral Competitive Effects of Horizontal Mergers I: Basic Concepts and Models, 2 ISSUES IN COMPETITION L. & POL'Y 1319 (2008).

5. **Retrospectives and Merger Policy (September 23)**

Required:

- KW, Case 1, Aetna-Humana
- Ashenfelter, et al., Retrospective Analysis of Hospital Mergers, 18 Int'l J. Econ. & Bus. 5 (2011)
- Christopher Garmon, The Accuracy of Hospital Merger Screening Methods, 48 RAND J. Econ. 1068 (2015).
- Carlton, How to Make Sensible Merger Policies? Network Law Review, (2022).
- Vita & Osinski, John Kwoka's Mergers, Merger Control and Remedies: A Critical Review, 82 Antitrust L. J. 361 (2018).
- Bhattacharya, et al., Merger Effects and Antitrust Enforcement: Evidence from U.S. Retail, NBER Working Paper 31123.

6. **Oligopolies, Coordinated Effects, and Efficiencies (September 30 – FIRST ASSIGNMENT DUE)**

Required:

- KW: pp. 212-228.
- BK, Chapter 10, 11

- Nathan Miller & Matthew Weinberg, How the MillerCoors Joint Venture Changed Competition in U.S. Brewing, Microeconomic Insights (2017).
- Nathan H. Miller, Gloria Sheu, and Matthew C. Weinberg, Oligopolistic Price Leadership and Mergers: The United States Beer Industry, 111 American Economic Review, 3123 (2021).
- George Stigler, *Theory of Oligopoly*, 72 J. POL. ECON. 44 (1964).
- Janusz Ordover, *Coordinated Effects*, 2 ISSUES IN COMPETITION L. & POL'Y 1359 (2008).
- Miller, Industrial Organization and the Rise of Market Power.

Suggested:

- Nathan Miller & Matthew Weinberg, Understanding the Price Effects of the Miller Coors Joint Venture, 85 Econometrica 1763 (2017).
- Randal C. Picker, An Introduction to Game Theory and the Law, Coase-Sandor Institute for Law & Economics Working Paper No. 22 (1994).
- Joseph Harrington, Evaluating Mergers for Coordinated Effects and the Role of "Parallel Accommodating Conduct," 78 ANTITRUST L.J. 651 (2013).
- Opening Presentation, Department of Justice, United States v. Apple Inc. (2013); Direct Testimony of Orley C. Ashenfelter, United States v. Apple Inc. (2013).
- KW Case 20 – The eBooks case Against Apple

7. **Entry, Competition for the Market, and Monopsony (October 7)**

   - BK Chapter 6.7
   - Harold Demsetz, Barriers to Entry, 72 Am. Econ. Rev 47 (1982).
   - Peter Caradonna, Nathan Miller & Gloria Sheu, Mergers, Entry and Consumer Welfare, available on ssrn.
   - Harold Demsetz, Why Regulate Utilities? 11 J. L. & Econ. 55 (1968).
   - Roger D. Blair & Jeffrey L. Harrison, Antitrust Policy and Monopsony, 76 CORNELL L. REV. 297 (1990-1991).

8. **Theory of the Firm and Vertical Mergers (October 14)**

   Required:

   - Ronald Coase, *The Nature of the Firm*, 4 ECONOMICA 386 (1937).
   - BK Chapter 15
   - 2023 MG Section 2.5 (Guideline 5).

- 2020 DOJ & FTC Vertical Merger Guidelines
- Judge Richard J. Leon's AT&T-Time Warner Decision, June 12, 2018.
- Shapiro's expert report in AT&T-Time Warner
- Jonathan B. Baker, Comcast/NBCU: The FCC Provides a Roadmap for Vertical Merger Analysis, 25 ANTITRUST 36 (2011).

Suggested:

- KW, Case 18: Comcast/TWC.
- Abhinay Muthoo, A Non-Technical Introduction to Bargaining Theory, 1 WORLD ECON. 145 (2000).
- Enghin Atalay et al., Vertical Integration and Input Flows, 104 AM. ECON. REV. 1120 (2014).

9. **The Antitrust Duty to Deal, Predatory Pricing (October 21)**

Required:

- Verizon Communications, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 US 398 (2003).
- Meese, *Property, Aspen, and Refusals to Deal*, 73 Antitrust L. J. 81 (2005).
- Kobayashi and Wright, *Antitrust and Ex-Ante Sector Regulation* (with J Wright) GAI REPORT ON THE DIGITAL ECONOMY (2021).
- BK, Chapter 8
- KW Case 16 – Spirit Airlines v. Northwest Airlines

Suggested:

- Kobayashi, *The Law and Economics of Predatory Pricing*, in ANTITRUST LAW AND ECONOMICS, K. Hylton, ed. Edward Elgar Publishing, Ltd. (2009), pp. 116- 156.

10. **Price Discrimination, Robinson-Patman & Tying/Bundling (October 28)**

Required:

- BK, Chapter 13, 18.
- Hal Varian, *Differential Pricing and Efficiency*, 1 FIRST MONDAY 1 (1996).
- International Competition Network (ICN), *Chapter 6: Tying and Bundling, in* UNILATERAL CONDUCT WORKBOOK (2015).

- Kobayashi & Wright, *A Transactions Cost Analysis of the Welfare and Output Effects of Rebates and Non-Linear Pricing*, 66 REV. INDUS. ORG. 185 (2025).
- Dawson Chemical Co. v. Rohm & Haas Co., 448 U.S. 176 (1980).
- Kobayashi & Muris, *Stop Making Sense: Reviving the Robinson-Patman Act and the Economics of Intermediate Price Discrimination*, CEI Study (2026).

Suggested:

- James C. Cooper *et al.*, *Does Price Discrimination Intensify Competition? Implications for Antitrust*, 72 ANTITRUST L.J. 327 (2005).
- Bruce H. Kobayashi, Does Economics Provide a Reliable Guide to Regulate Commodity Bundling by Firms? A Survey of the Economic Literature, 1 J. COMP. L. & ECON. 707 (2005).

11. **Vertical Contracting and Exclusionary Conduct (November 4 - SECOND ASSIGNMENT DUE)**

Required:

- BK, Chapter 14, 16, 17
- Russell Pittman, Three Economist's Tools for Antitrust Analysis, EAG Discussion Paper 17-1 (2017).
- BK, Chapter 20, 21
- Dennis W. Carlton & Ken Heyer, Extraction vs. Extension: The Basis for Formulating Antitrust Policy Towards Single-Firm Conduct, 4 COMPETITION POL'Y INT'L 285 (2008).
- James C. Cooper et al., *Vertical Antitrust Policy as a Problem of Inference*, 23 INT'L J. INDUS. ORG. 639 (2005).
- J. Mark Ramseyer & Eric B. Rasmusen, Exclusive Dealing: Before, Bork, and Beyond, 57 J. L. & ECON. S145 (2014).
- KW: Case 22: U.S. v. Microsoft (2001).

Suggested:

- Michael D. Whinston, Exclusivity and Tying in US v. Microsoft: What We Know, and Don't Know, 15 J. ECON. PERSP. 63 (2001).
- Ralph Winter, Vertical Control and Price Versus Nonprice Competition, 108 Q.J. ECON. 61 (1993).

12. **Antitrust Remedies, Standing, and the Economics of Pass Through (November 11)**

Required:

- BK, Chapter 7.8, Chapter 9
- Michelle M. Burtis & Bruce H. Kobayashi, *Regarding the Optimality Of Cartel Fines*, 2 CARTEL & CRIM. PRAC. COMMITTEE NEWSL., ABA Antitrust Section (2017).
- Brunswick v. Pueblo Bowl-O-Mat, 429 U.S. 477 (1977).
- Kobayashi and Wright, *What's Next in Apple, Inc. v. Pepper: The Indirect-Purchaser Rule and the Economics of Pass-Through*, CATO Sup. Ct. Rev. 249 (2019).

13. **Antitrust & Intellectual Property (November 18)**

Required:

- KW Case 15 – Actavis
- B. H. Kobayashi, J. Wright, D. Ginsburg & J. Tsai, *Actavis and Multiple ANDA Entrants: Beyond the Temporary Duopoly*, (with ANTITRUST MAGAZINE, VOL. 29 pp. 89-97 (Spring 2015).
- U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, ANTITRUST GUIDELINES FOR THE LICENSING OF INTELLECTUAL PROPERTY (2017).
- Joshua D. Wright & Douglas H. Ginsburg, *Whither Symmetry? Antitrust Analysis of Intellectual Property Rights at the FTC and DOJ*, 9 COMPETITION POL'Y INT'L 41 (2013).

In Person Final Exam (December 3, 2026, at noon).