

## **ANTITRUST II**

### **Spring 2026**

Law 162-002, Tues/Thurs, 6:05-7:30 pm  
Professor Mark Niefer ([mniefer@gmu.edu](mailto:mniefer@gmu.edu))  
Online office hours every Sunday, 6:15-7:15pm,  
Office hours also by appointment

### **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, which seeks to prevent individual and firm behavior that reduces competition. 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; and private plaintiffs have followed the agencies' lead, filing their own boundary-pushing cases that seek to rein in the actions of big tech platforms, such as Apple and Google. Courts have begun to issue decisions finding that some of the largest firms in the world have violated the antitrust laws. Although this class largely will focus on important precedential cases, one goal of the class is to help you understand antitrust law as it is applied by U.S. agencies and courts today, which, I hope, will give you some insight into recent cases and current policy debates.

In Antitrust I, we covered agreements and monopolization under the Sherman Act. In Antitrust II we will continue our study of the Sherman Act, but we will study how courts apply it in matters involving intellectual property, high tech, and platforms. In addition, we will study Section 7 of the Clayton Act and its application to mergers, one of the more active areas of antitrust enforcement. We also will cover immunities and exemptions to the antitrust laws, as well as the institutional framework governing private and public enforcement of the antitrust laws.

I hope to line up at least two guest speakers during the semester with special insight into some of these issues. Past speakers in my antitrust classes have included an FTC Deputy Director in charge of tech cases, a DOJ attorney in charge of its digital platform section, a DOJ criminal and international attorney, a well-known sports law professor, and a former general counsel for Major League Baseball.

## **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 anticompetitive agreements, monopolization, and mergers under the Sherman Act and Clayton Act. By the end of the semester, you should be able to analyze the potential liability of various business practices under those laws, which will equip you for practice in a law firm, in-house, or in the government.

## **C. Class Schedule**

We will follow the law school's academic calendar as reflected on the syllabus. If an in-person class is impossible because of weather or for other reasons, we will meet virtually via Zoom (I will circulate a link before the class).

## **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.

I will assign the cases identified on the syllabus to individual students who will be responsible for helping the class understand the case; i.e., I will use a modified Socratic method. Even if you have not been assigned a case for class, I expect you to have read the case and to participate actively in class discussions; I may call on you at random if our discussion is lagging.

Use of phones or of generative AI during class is forbidden unless I expressly authorize it. (Regarding the use of AI, see Section H below.) Recording the class also is forbidden absent the appropriate approvals from the law school.

## **E. Final Exam**

The date of the exam will be announced at a later date. You will not be permitted to access the internet during the exam; that is, it will be an "Internet Blocked Open" exam. You may access files on your computer as well as any hard copy materials you choose to bring to the exam. You are allowed one laptop computer. Additional laptops or any other electronic devices, including phones, are not allowed in the exam room. I will provide more details later in the semester.

## **F. Grade**

Your grade largely will be based on the final exam. Participation, attendance, and class preparation will factor into your grade, potentially raising or lowering it. Any raised or lowered grade will be based on the quality (rather than the quantity) of your contributions to classroom discussions.

## **G. 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.

## **H. AI Policy**

You may use generative AI tools outside of class for purposes such as brainstorming, outlining, studying, exploring, or preparing for class; however, you may not use generative AI during class or during the final exam. Misuse will be treated as a violation of academic standards. If you have any questions about the AI policy for this class, please ask me.

## **I. Course Materials**

The primary readings for class will come from the MELAMED, ET AL., casebook and its supplement. Other readings may be assigned during the semester. If you would like to more fully explore the cases and issues discussed in the casebook and in class, you may find the supplemental treatises identified below useful (but purchasing or reading them is optional). In addition, supplementary (and optional) readings may be added to the syllabus.

### **Casebook**

- **A. DOUGLAS MELAMED, ET AL., ANTITRUST LAW AND TRADE REGULATION (7TH ED. 2018).**

Class readings primarily will be from the casebook and the supplement to the casebook, which will be distributed later in the semester (you do not need to purchase the supplement, it will be distributed for free); however, other mandatory readings may be added to the syllabus during the semester. Please check TWEN regularly throughout the semester for updates to the syllabus.

### **Supplemental Treatises**

- **E. THOMAS SULLIVAN & JEFFREY L. HARRISON, UNDERSTANDING ANTITRUST AND ITS ECONOMIC IMPLICATIONS (7TH ED. 2019).**

Discusses the basic economics underlying many of the cases we will read. Available via the library's Lexis Study Aids subscription.

- **HERBERT HOVENKAMP, PRINCIPLES OF ANTITRUST (3D ED. 2025).**

A relatively short hornbook that is good for understanding the law as developed and stated in many of the cases we will read. Available via the library's West Academic Study Aids subscription.

- **CHRISTOPHER L. SAGERS, ANTITRUST: EXAMPLES & EXPLANATIONS (3D ED. 2021).**

A clearly-written, brief introduction to many of the legal and economic issues we will discuss this semester. On permanent reserve at the library, available for use for two hours at a time.

Other supplemental or suggested readings may be added to the syllabus during the semester.

## SYLLABUS

Unless otherwise noted, all readings are from MELAMED, ET AL., and all page numbers refer to the hard copy version of the casebook.

The “focus” materials will be the primary source of our class discussions; they are drawn primarily from the casebook and from the academic literature. You are expected to read the entire assignment for each class. The “supplementary materials” are optional; they are intended to complement required readings if you wish to explore in greater details some of the issues raised in class.

This syllabus will be updated throughout the semester; please regularly check TWEN for updates.

CHAPTER 8: INTELLECTUAL PROPERTY, TECHNOLOGY, AND PLATFORMS		
Week/ Dates	Assignment	Focus/Supplementary Materials
1/ Jan. 15		<b>Focus</b> <ul style="list-style-type: none"> <li>Daniel F. Spulber, <i>Antitrust and Innovation Competition</i>, 11 J. ANTITRUST ENFORC. 5-50 (2022)</li> <li>Richard J. Gilbert &amp; A. Douglas Melamed, <i>Antitrust for Innovation: A Progress Report</i>, 86 ANTITRUST L. J. 825 (2025)</li> </ul>
2 / Jan. 20 & 22	887-951 Supp. 140-159	<b>Focus</b> <ul style="list-style-type: none"> <li><i>Image Technical Services</i>, 897</li> <li><i>FTC v. Actavis</i>, 912</li> <li><i>Broadcom v. Qualcomm</i>, 931</li> <li><i>FTC v. Qualcomm</i>, Supp. 141</li> <li><i>Rambus v. FTC</i>, 940</li> </ul>
3 / Jan. 27 & 29	951-995 Supp. 160-193	<b>Focus</b> <ul style="list-style-type: none"> <li>David Evans, <i>Basic Principles for the Design of Antitrust Analysis for Multisided Platforms</i>, 7 J. ANTITRUST ENFORC. 319-338 (2019)</li> <li><i>United States v. Visa</i>, 956</li> <li><i>United States v. American Express</i>, 968</li> <li><i>Ohio v. American Express</i>, Supp. 160</li> </ul>
4 / Feb. 3 & 5	996-1051 Supp. 194-208	<b>Focus</b> <ul style="list-style-type: none"> <li><i>United States v. Microsoft</i>, 998</li> <li><i>United States v. Google</i> (Search) [Excerpt to be posted to TWEN]</li> <li><i>United States v. Google</i> (Ad Tech) [Excerpt to be posted to TWEN]</li> <li>European Commission, <i>Antitrust: Commission Fines Google € 4.43 Billion</i>, Supp. 194</li> </ul>
5 / Feb. 10 & 12	Supp. 209-246	<b>Focus</b> <ul style="list-style-type: none"> <li><i>Epic Games v. Apple</i>, Supp. 209</li> <li>John M. Yun, <i>How Epic v. Apple Operationalizes Ohio v. Amex</i>, 42 YALE J. REG. BULL. 1 (2024)</li> <li><i>Meyer v. Kalanick</i>, Supp. 230</li> </ul>

		<ul style="list-style-type: none"> <li>• <i>Philadelphia Taxi Ass'n v. Uber</i>, Supp. 239</li> <li>• [Possible guest speaker]</li> </ul>
<b>CHAPTER 6: MERGERS</b>		
<b>Week/ Dates</b>	<b>Assignment</b>	<b>Focus/Supplementary Materials</b>
6 / Feb. 17 & 19	635-647 692-718	<b>Focus</b> <ul style="list-style-type: none"> <li>• DOJ &amp; FTC, 2023 Merger Guidelines, §§ 1, 2.1, 2.2, 2.3, 2.4</li> <li>• <i>United States v. Philadelphia Nat'l Bank</i>, 693</li> <li>• <i>Hospital Corp. of Am. V. FTC</i>, 704</li> </ul>
7 / Feb. 24 & 26	718-761	<b>Focus</b> <ul style="list-style-type: none"> <li>• Approval of the Royal Caribbean and P&amp;O Cruise Line Mergers, 718-730</li> <li>• <i>United States &amp; State of Colorado v. Vail Resorts</i>, 735-</li> <li>• <i>FTC v. Staples and Office Depot</i>, 746</li> </ul>
8 / Mar. 3 & 5	761-791 Supp. 100-118	<b>Focus</b> <ul style="list-style-type: none"> <li>• The Beef Packing Case, 761</li> <li>• <i>United States v. Bertelsmann</i>, Supp. 103</li> <li>• Note About the Merger of Sirius and XM, 767</li> <li>• <i>FTC v. Heinz</i>, 773</li> </ul>
9 / Mar. 17 & 19	792-843 Supp. 118-131	<b>Focus</b> <ul style="list-style-type: none"> <li>• <i>United States v. Comcast</i>, 800</li> <li>• <i>United States v. AT&amp;T</i>, Supp.118</li> <li>• [Recent merger cases TBD]</li> </ul>
10 / Mar. 24 & 26	Supp. 132-138	<b>Focus</b> <ul style="list-style-type: none"> <li>• [Recent merger cases TBD]</li> <li>• [Possible guest speaker]</li> </ul>
<b>CHAPTER 9: THE LIMITS OF ANTITRUST LAW</b>		
<b>Week/ Dates</b>	<b>Assignment</b>	<b>Focus/Supplementary Materials</b>
11 / Mar. 31 & Apr. 2	1053-1131 Supp. 259-260	<b>Focus</b> <ul style="list-style-type: none"> <li>• <i>Nynex v. Discon</i>, 1054</li> <li>• <i>Noerr</i>, 1060</li> <li>• <i>Nat'l Soc'y Prof. Eng.</i>, 1071</li> <li>• <i>Credit Suisse</i>, 1087</li> <li>• <i>Cal. Retail Liquor</i>, 1105</li> <li>• <i>N.C. State Board of Dental Examiners</i>, 1110</li> </ul>
<b>CHAPTER 7: COMPETITION IN THE GLOBAL ECONOMY</b>		
<b>Week/ Dates</b>	<b>Assignment</b>	<b>Focus/Supplementary Materials</b>
12 / Apr. 7 & 9	845-885	<b>Focus</b> <ul style="list-style-type: none"> <li>• <i>Motorola Mobility v. AU Optronics</i>, 855</li> <li>• <i>Minn-Chem v. Agrium</i>, 867</li> </ul>
<b>CHAPTER 10: INSTITUTIONAL FRAMEWORK</b>		
<b>Week/ Dates</b>	<b>Assignment</b>	<b>Focus/Supplementary Materials</b>
13 / Apr. 14 & 16	1133-1221 Supp. 260-277	<b>Focus</b> <ul style="list-style-type: none"> <li>• <i>Brunswick v. Pueblo Bowl-O-Mat</i>, 1167</li> <li>• <i>Apple v. Pepper</i>, Supp. 263</li> </ul>

		<ul style="list-style-type: none"> <li>• <i>American Express v. Italian Colors</i>, 1193</li> <li>• <i>Comcast v. Behrend</i>, 1206</li> </ul>
<b>REVIEW</b>		
<b>Week/ Dates</b>		
14 / Tues Apr. 20	In-class review	

\*Class will not meet on Tues. March 10 or Thurs March 12 due to Spring Break.