

**ANTITRUST SYLLABUS**  
**Adjunct Prof. Susan Stephan**

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**Spring 2012**

**Text:**

*U.S. Antitrust in Global Context*, 2nd ed., with 2011 Supplement; Eleanor M. Fox, Lawrence A. Sullivan, Rudolph J.R. Peritz; ISBN 13: 9780314231550; ISBN-10: 0314231552; West Group Publishing.

The majority of assignments for class are from the casebook and its most recent Supplement. Supplemental readings will be distributed on occasion, but students will not need to purchase additional texts.

**Class Goals & Objectives:**

The primary objectives of this course are to familiarize students with the history of antitrust case law and enforcement, discuss the ongoing debate on competition policy, and review the ways in which courts and agencies have analyzed markets, interpreted competition policy and applied antitrust laws in general.

**Attendance and Laptop Policy:**

Please make every effort to attend class and to arrive at class on time. The Registrar's attendance sheet will be circulated for initialing during each class. Missing two classes in this course is regarded as excessive absence. Laptops may be used in the classroom for any and all purposes related to the class.

**Testing & Grading:**

There will be a take-home midterm exam (to be down-loaded from and uploaded to TWEN) that will constitute 20% of the final grade and a final exam that will constitute 80% of the final grade. The final exam will be a self-scheduled three-hour exam during the designated finals weeks.

**Class Schedule:**

Fridays, 1:00 p.m.- 3:50 p.m., Room 4

- January 20 through April 27, 2012 PLUD Tuesday, May 1, 2012
- No Antitrust class will be held on March 9 (Spring Break) or April 6 (Easter Break)

**Assignments:**

**The following assignments are guidelines at this point; readings are subject to change and will be updated on TWEN as necessary.**

**Class 1, January 20**

**Casebook: preface, pp. v-viii, pp. 1-56, Supplement p. 3**

**Chapter 1: The Antecedents of Modern Antitrust: History, Politics, Law, Economics**

For discussion:

What are the appropriate policy goals of antitrust law?  
How have those goals changed over time?  
What role should non-economic considerations play?  
What does the Sherman Act regulate?  
What is the Sherman Act's legislative history?  
Does history favor freedom of trade or trade regulation?  
What is the rule of reason?

Cases:

Trans-Missouri Freight Association (U.S. 1897) (p. 12)  
Addyston Pipe & Steel Co. (6<sup>th</sup> Cir. 1898) (p. 18)  
Northern Securities Co. (U.S. 1904) (p. 29)  
Standard Oil Co. (U.S. 1911) (p. 41)  
US v. US Steel (US 1920) (p. 51)

**Class 2, January 27**

**Casebook: pp. 56D-103 (before Catalano)**

**Antitrust Economics and Chapter 2: Cartels and Conduct Akin to Cartels**

For discussion:

What is market power, and how is it determined?  
What is a cartel, and how does it conduct itself?  
What economic conditions favor cartel growth?  
Why might cartel cases and mergers require different analytical frameworks?  
How do “distress” conditions in an industry figure in?

Cases:

Chicago Board of Trade (U.S. 1918) (p. 81)  
Trenton Potteries (U.S. 1927) (p. 82)  
Appalachian Coals, Inc. (U.S. 1933) (p. 82)  
Socony-Vacuum Oil Co. (U.S. 1940) (p. 85)  
National Society of Professional Engineers (U.S. 1978) (p. 93)  
Broadcast Music, Inc. (US 1979) (p. 98)

**Class 3, February 3**

**pp. 103-150, Supplement**

**Chapter 2, cont'd: Market Structure & Monopoly Power**

For discussion:

What should comprise the analytical framework for a traditional *per se* antitrust offense?  
How do we analyze horizontal arrangements in terms of price fixing?  
How do we reconcile the Supreme Court's decisions in BMI (from last time), NCAA and California Dental in terms of rule of reason vs. *per se* analyses?

Cases:

Catalano, Inc. V. Target Sales, Inc. (U.S. 1980) (p. 103)  
Arizona v. Maricopa County Medical Society (U.S. 1982) (p.105)  
National Collegiate Athletic Assoc. (US 1984) (p. 111)  
Superior Court Trial Lawyers Assoc. (US 1990) (p. 115 and 139)  
California Dental Ass'n v. FTC (U.S. 1999) (p. 117)  
Polygram Holding, Inc. (FTC 2003 + D.C. Cir. 2005) (p. 123 + Supp)  
Texaco v. Dagher (U.S. 2006) (Supp)  
Parker v. Brown (U.S. 1943) (p. 126)  
Noerr Motor Freight Co. (US 1961) (p. 130)  
Allied Tube (US 1988) (p. 132)  
Interstate Circuit, Inc. (US 1939) (p. 144)  
Theatre Enterprises (US 1954) (p. 148)

#### **Class 4, February 10**

**pp. 151-169; 178-206D, Supplement**

#### **More on Cartels and Chapter 3: Monopoly and Dominance**

For discussion:

Do you agree with the Supreme Court's rationale in Empagran?

Where did ALCOA go wrong?

What is DuPont's relevant market?

How does Microsoft define relevant market?

Cases:

Matsushita (U.S. 1986)  
Ahlstrom Osakeyhtio (ECJ 1993) (p. 158)  
Bell Atlantic v. Twombly (U.S. 2007) (Supp)  
F. Hoffmann-LaRoche v. Empagran (U.S. 2004) (Supp)  
ALCOA (2<sup>nd</sup> Cir. 1945) (p. 179)  
DuPont (U.S. 1956) (p. 189)  
Eastman Kodak (US 1992) (p. 196)  
United States v. Microsoft (D.C. Cir. 2001) (relevant market portion on p. 198)

#### **Class 5, February 17**

**pp. 206D-254, Supplement; review the Trinko problem on p. 228**

#### **Chapter 3 (cont'd): The Conduct Offense**

For discussion:

What is wrong with the concept of "no-fault" monopoly?

Compare the Grinnell monopoly offense standard to that in ALCOA

Cases:

Lorain Journal (U.S. 1951) (p. 207)  
Griffith (U.S. 1948) (p. 211)

United Shoe (U.S. 1954) (p.212)  
Grinnell (U.S. 1966) (snippet on p. 213)  
Official Airline Guides (2d Cir. 1980) (p. 215)  
Aspen Skiing (U.S. 1985) (p. 218)  
Olympia Equipment (7th Cir. 1986) (p. 224)  
Utah Pie (U.S. 685 1967) (p. 230)  
Transamerica Computer (9th Cir. 1983) (p. 232)  
Brooke Group (U.S. 1993) (p. 236)  
Image Technical v. Kodak (9th Cir. 1997) (p. 245)  
XEROX (Fed. Cir. 2000)

### **Class 6, February 24**

**pp. 254E-302, Supplement; also we will listen to a podcast in class.**

### **More Monopoly and Dominance, starring Microsoft, and Chapter 4: Mergers**

For discussion:

Class will determine

Cases:

United States v. Microsoft (D.C. Cir. 2001) (p. 256)  
Microsoft v. Commission (CFI 2007) (Supp)  
Brown Shoe (U.S. 1962) (p. 285)  
Philadelphia National Bank (U.S. 1963) (p. 289)  
Citizen Publishing (U.S. 1969) (p. 295)  
General Dynamics (U.S. 174) (p. 297)  
Marine Bankcorp. (U.S. 1974) (p. 300)

**Also, a 50-minute (timed) take-home mid-term exam will be available for download on TWEN immediately after class and will be due to be turned in by upload to the TWEN assignment drop box by 5:00 p.m. on Thursday, March 1.**

**REMINDER: The following assignments are still guidelines at this point; readings are subject to change and will be updated on TWEN as necessary.**

### **Class 7, March2**

**pp. 302B-346, Supplement**

### **Chapter 4 (cont'd): Contemporary Law and Enforcement**

For discussion:

Class will determine

Cases:

Arch Coal (D.D.C. 2004) (Supp)  
Oracle (N.D. Cal. 2004) (Supp)  
Hospital Corp. (7<sup>th</sup> Cir. 1986) (p. 309)

Baker Hughes (D.C. Cir 1990) (p. 314)  
FTC v. H.J. Heinz (D.D.C. 2000, *rev'd*) and (D.C. Cir 2001) (p. 318 + 322)  
Airtours (CFI 2002)  
DOJ's XM/Sirius Statement (2008) (Supp)  
FTC's Boeing/McDonnell Douglas Statement (1997) (p. 336)  
Boeing/McDonnell Douglas (E.C. 1997) (p. 338)

**Class 8, March 16**  
**pp. 346-407, Supplement**

**More on Mergers and Chapter 5: Collaboration Among Competitors**

For discussion:

Class will determine

Cases:

Synopsys/Avant! (FTC 2002) (p. 347)  
Cargill v. Monfort of Colorado (U.S. 1986) (p. 358)  
FTC v. Indiana Federation of Dentists (U.S. 1986) (p. 369)  
California Dental Ass'n v. FTC (U.S. 1999) (p. 377, revisited from p. 117)  
Atlas Van Lines (DC Cir. 1986) (p. 378)  
Broadcast Music, Inc. (US 1979) (p. 385, revisited, from p. 98)  
Credit Suisse (U.S. 2007) (Supp)  
Northwest Wholesale Stationers, Inc. (US 1985) (p. 388)  
American Column & Lumber Co. (US 1921) (p. 393)  
Maple Flooring (U.S. 1925) (p. 399)  
Container Corp. (US 1969) (p. 402)

**Class 9, March 23**  
**pp. 416B-460 (yes, we skipped 407-416 and we'll skip 460-491 as well)**

**Chapter 5 (cont'd): B2B Electronic Marketplaces, Self-Regulation, JVs and Other Alliances**

For discussion:

Class will determine

Cases:

The EC's Covisint excerpt (2001) (p. 417)  
Brown University (3d Cir. 1993) (p. 427)  
Med South (FTC Advisory Opinion, 2002) (p. 439)  
GM/Toyota consent decrees (p. 448)  
Visa USA (10<sup>th</sup> Cir. 1994) (p. 453)

**Class 10, March 30**  
**Supplemental Reading to be posted on TWEN.**

## **E-Commerce, the Internet and Antitrust 2012**

For discussion:

TBD

Cases:

TBD

### **Class 11, April 13**

**pp. 492-532, Supplement**

#### **Chapter 6: Vertical Restraints in the Course of Buying and Selling**

For discussion:

Class will determine

Cases:

Dr. Miles Medical Co. (US 1911 - overruled) (p. 493)

Leegin Creative Leather Products (U.S. 2007) (Supp)

California Retail Liquor Dealers (U.S. 1980) (p. 498)

Colgate & Co. (US 1919) (p. 500)

Parke, Davis & Co. (US 1960) (p. 501)

Monsanto Co. (US 1984) (p. 503)

Arnold, Schwinn (U.S. 1967 - overruled) (p. 509)

Albrecht v. Herald (U.S. 1968 - overruled) (p. 510)

Business Electronics Corp. (US 1988) (p. 518)

State Oil v. Kahn (U.S. 1997) (p. 526)

NYNEX (U.S. 1998) (p.530)

### **Class 12, April 20**

**pp. 532(4)-560; Supplemental handout**

#### **Chapter 6 (cont'd): Tying; Plus discussion re supplemental handout**

For discussion:

Class will determine

Cases:

Motion Picture Patents Co. (U.S. 1917) (p. 538)

United Shoe Machinery Corp. (U.S. 1922) (p. 542)

Northern Pacific Railway Co. (U.S. 1958) (p. 549)

Jefferson Parish (U.S. 1984) (p. 552)

### **Class 13 April 27**

**pp. 560-606, p. 641; Supplement**

## **Chapter 6 (cont'd): Tying, Exclusive Dealing, Franchising**

### For discussion:

Class will determine

### Cases:

Eastman Kodak (US 1992) (re tying, p. 560)

United States v. Microsoft (D.C. Cir. 2001) (re tying, p. 569 + exclusive dealing, p. 581)

Standard Stations case (U.S. 1949) (p. 572)

Tampa Electric (U.S. 1961) (p. 575)

Barry Wright Corp. (1<sup>st</sup> Cir. 1983) (p. 577)

Stergios Delimits (ECJ 1991) (p. 583)

Scholler Lebensmittel (ECJ 1995) (p. 585)

Principe v. McDonald's (4<sup>th</sup> Cir. 1980) (p. 590)

Queen City Pizza v. Domino's (3d Cir. 1997) (p. 596)

## **Class 14, LAST CLASS, May 1**

**pp. 606-640; Supplement**

## **Chapter 6 (cont'd): Internal Vertical Integration**

### For discussion:

Class will determine

### Cases:

AT&T (D.D.C. 1981) (p. 608)

Morton Salt (U.S. 1948) (p. 615)

Boise Cascade (D.C. Cir. 1988) (626)

Volvo Truck v. Reeder-Simco (U.S. 2006) (Supp)

*We will also preview the Final Exam, and a "focus" sheet will be handed out.*