

BOSTON COLLEGE
Department of Economics

EC 355: Topics in Antitrust Law and Economics
Fall 2001

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Office Hours: Tuesdays and Thursdays 8:00-8:45;
10:30- 11:30; or by appointment

Description and Objectives: This course examines principal issues in antitrust economics and public policy through the study of the literature, case studies and a term paper. The course begins with an overview of the rationale for government policy toward competition, of the role of economic analysis in antitrust matters and of the participation by economists in antitrust litigation. Then we will address the key dimensions for antitrust matters, especially market power and definition of the relevant market. With this background, the class will examine the issue of market power in the regulation of the energy industry with particular attention to the recent crisis in California. The fourth part of the course will study abuses of market power in the context of collusion and monopolization. Finally, we will examine the financial impact on consumers and competitors from abuses of market power and the measurement of damages.

At the conclusion of the course the students should have improved their ability to apply economic analysis to practical problems related to the exercise and impact of market power. Students should leave with a better understanding of the reasons for antitrust policy, the role of economics in the enforcement of competition policy and the manner in which economists participate in antitrust enforcement. While such lessons contribute to understanding U.S. policy, they also can be applied to other countries.

Prerequisites: Students are expected to be well grounded in microeconomic theory. The course requirement is intermediate microeconomics, EC 201 or EC 203.

Assigned Readings: Required readings are compiled in the "Coursepack", on reserve in the library or in handouts to the class.

Method: This course requires active participation during class on a regular basis. Although I will use frequently the traditional lecture method, I also will call on students to discuss assignments in each class.

Grading: Two in-term exams, each weighted 25%, a final exam accounting for 20%, a term paper worth 20%, and class participation valued at 10%. There will be no rescheduling of exams. Only under extremely extenuating circumstances will an excused absence be considered. The university has scheduled your final exam in this course for December 17 at 9:00 AM.

Paper: Each student will submit a ten-page paper on a topic that has been approved by me. Students also have the option of submitting outlines and drafts of the paper to me for feedback. Students are to follow accepted rules for references, footnotes and bibliographies; original sources only will be accepted (internet source material must be backed up by the original source). Review the College's policy on plagiarism. Beware of non-professional sources, particularly on the internet. The grade depends not only on content but also on form and style.

You might consider one of two types of papers - an antitrust topic and an analytical book review. The project must be approved by me no later than October 23rd; drafts or detailed sentence outlines can be submitted for feedback before November 26th; and the final paper is due on December 6th. Whether students submit drafts will not affect directly the grade, but experience demonstrates that with the opportunity to re-write a paper following a first review students are likely to improve their grade.

When choosing an antitrust issue for analysis, the paper should address the following dimensions: (1) the major economic and antitrust issues in the case; (2) your opinion on the merits of the case and why; (3) a decision on the matter assuming consistency with sound economics and appropriate antitrust policy; and (4) how the case will be decided, assuming that it is still pending. Example cases for analysis include:

- DOJ v. Microsoft;
- DOJ v. IBM;
- DOJ v. AT7T;
- FTC and the Staples merger;
- Mobile-Exxon merger;
- Universities' collusion on financial aid to students; cartel behavior and economic efficiency;
- Collusion by Major League Baseball, injury and damages;
- Antitrust and the business of sports: the use of the merger guidelines;
- Predatory pricing - the matter of Standard Oil;
- Restructuring of electricity generation;
- FTC v. breakfast cereal companies; and
- Postal regulation and competition either with 4th class mail (parcel post) or with over night delivery.

When choosing the book review alternative, the review should be written from the perspective of economics and public policy and should tie into material in the readings and the lectures. The review should be as analytical as possible and should distinguish clearly between the summary of the book, analysis, policy recommendations and

opinions. Approximately one-third of the review should be devoted to summarizing the book, and the remainder should analyze the book and the issues raised. If requested, I will list some books as candidates for your consideration.

A variation of the book review alternative would be an analysis of some of the literature dealing with predatory pricing, focusing on differences among several writers. If interested, I can supply a list of articles for review.

Course Calendar and Syllabus: Your "Coursepack" contains most of the assigned readings. Additional material is on reserve in the library or will be handed out in class. I reserve the option to change some of the assignments during the semester.

READING ASSIGNMENTS

I. Introduction and

overview of antitrust

A. Introduction to the course

September 4

"Historical Perspective From The Ages" (handout).

"Antitrust Laws" (handout).

B. Review of key economic concepts underlying competition and antitrust policy

September 6

Review chapters on monopoly, competition and oligopoly in an intermediate microeconomics text; or Carlton & Perloff, Modern Industrial Organization, Ch.19, pp.601-610 (on reserve).

C. The role of economic analysis in antitrust cases

1. Structural paradigm vs. Chicago School

September 11

Waldman & Jensen, Industrial Organization, pp.3-10.

2. Anatomy of an antitrust matter

"Introduction to the Litigation Process" (handout).

Gavil, "An Analysis of Some Procedural Aspects of the Microsoft Trial", Antitrust, pp. 7-14.

3. Role of Economists in antitrust litigation

September 13

Mandel, "Going for the Gold: Economists as Expert Witnesses", Jr. of Economic Perspectives, pp. 113-120.

Thornton & Ward, "The Economist in Tort Litigation", Jr. of Economic Perspectives, pp.101-112.

"Impact of Revised Federal Rules of Civil Procedure on the Use of Experts", PHB Insights (handout).

II. Market Power

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| A. Definition of market Power | September 18 | Carlton & Perloff, <u>Modern Industrial Organization</u> , Ch. 19, pp. 610-628 (on reserve). "A Framework for an Analysis of Mergers and Monopolization" (handout). DOJ/FTC, "Horizontal Merger Guidelines". |
| B. Definition of the Relevant market | | |
| 1. Concept of substitutability: demand and supply | September 20 | "Summary Notes on Market Definition" (handout). Fisher & McGowan, <u>Folded, Spindled, and Mutilated</u> , Ch. 3, pp.43-62. |
| 2. Product and geographic markets | | |
| 3. Relevance of market definition for antitrust cases | September 25 | Fisher, "Diagnosing Monopoly", <u>Industrial Organization, Economics and the Law</u> , pp. 3-32. |
| 4. Measurement of substitutability | September 27 | |
| (a) Cross elasticity & Econometrics | | |

(b) "Art" vs.
"Science"

(c) Case studies

- Cellophane Singer, Antitrust Economics, pp. 54-62.
- Alcoa Singer, Antitrust Economics, pp.42-47.
- IBM (computer systems) Fisher, & McGowan, Folded, Spindled, Mutilated, pp. 5-16.
- Digital Equipment (operating systems)
- Microsoft (operating systems)

III. Mergers and
Restructuring in the
Energy Industry

October 2 and
4

"Market Power in the Supply of
Electricity" (handout).

"Market Power in California"
(handout).

TERM PAPER TOPICS

October 9

FIRST EXAMINATION

October 11

IV. Abuse of Market Power

A. Collusion/price fixing October 16 McGahan & Porter, "The Persistence of Shocks to Profitability", Review of Economics and Statistics, Summer 1999.

1. Overt vs. covert collusion

Waldman & Jensen, Industrial Organization, pp.482-503.

Carlton & Perloff, Ch. 19, pp. 616-628 (on reserve).

2. "Serving the consumer" October 18

"Alleged Conspiracy in the Lysine Industry" (handout).

FINAL DATE FOR SELECTION OF PAPER TOPIC October 23

3. Illustrative recent cases October 23

- Aluminum: ingot and coil
- Universities: financial aid
- Industrial gases: oxygen, hydrogen, argon

• Tobacco October 25

• Transport of iron ore

"Unloading Iron Ore: Was it price fixing? You decide as the expert" (handout)

C. Monopolization:
Predatory Pricing

1. What is it? October 30 American Bar Assoc., "The Seriousness of the Danger Posed by Predatory Pricing", Monograph 22, Predatory Pricing, pp.41-71.

November 1 ABA, Predatory Pricing Law, Ch. 1, pp.1-20.

2. How does it work? November 6 Granitz & Klein, "Raising Rivals Costs: Standard Oil Case", Jr. Law & Economics, April 1996, pp. 1-45.

Handouts.

Morton, "Entry and Predation: British Shipping Cartels", Jr. of Economics & Management Strategy (1997), pp. 679-721.

Einhorn & Smith, Economic Aspects of Antitrust, pp.287-296.

5. Bundling: Allegations in Microsoft case November 8 Gilbert & Latz, "An Economist's Guide to U.S. v Microsoft", Jr. of Economic Perspectives (Spring 2001), pp. 25-44.

Optional reading: Klein, "The Microsoft Case: What can a Dominant Firm DO to Defend Its Market Position", Jr. of Economic Perspectives (Spring 2001), pp. 45-62.

**SECOND IN-TERM
EXAMINATION**

November 13

IV. Damages in Antitrust Cases

A. Types of Damages November 15
1. Compensatory

2. Doubling/Trebling:
Opportunity costs:
punitive

B. Measurement

1. The concept of property

Commons, Legal Foundations of Capitalism, pp. 11-46.

2. Lost profits: November 20

Measures across types of antitrust cases;

"Comparables " vs. direct estimates;

Calculation of net cash flows

O'Brien & Meyer, "A Guide to Calculating Lost Profits", National Law Journal.

Ross, Westerfield & Jaffe, Corporate Finance, pp. 22-43, 68-95.

3. A complex issue for defining damages

November 27

Fisher & Romaine, "Janis Joplin's Yearbook and the Theory of Damages", Industrial Organization, Economics and Law, pp. 392-405.

Optional reading: Patel, Weil & Wolfson, "Accumulating Damages in Litigation: The Roles of Uncertainty and Taxes", The Jr. Of Legal Studies.

C. Establishing causal links and a reasonable basis for opinions November 29 & December 4 Illustrations of expert report by economist and expert testimony (handouts)

D. Admissibility of Expert Testimony by Economists: The Daubert and Kumho Gateways December 6 Handout)

TERM PAPER DUE December 6

FINAL EXAMINATION December 17