Antitrust

Spring 2019

Mark Anderson

Required Materials

Antitrust Analysis: Problems, Text, and Cases, Seventh Edition

by Phillip E. Areeda, Louis Kaplow, Aaron S. Edlin (2013)

Exam

The exam will be closed book.

Attendance and Class Participation

Attendance and class participation can affect your grade in either direction. It is your responsibility to record the dates of your absences, if any. If you are going to miss more than three (3) class sessions, you must contact me so that we can discuss the reasons for each of your absences and the effect the absences will have on your grade.

If for some reason you will not be able to adequately prepare for a class session, please contact me before class by leaving me a note on my office door asking not to be called on that day, or if you are in Boise, sending an email to the same effect.

Learning Objectives

The course addresses three sections of the antitrust laws. They are Sections One and Two of the Sherman Act and Section Seven of the Clayton Act. Most of our time will be spent on the Sherman Act. Each of the Sherman Act sections contains offenses with two elements.

Section One prohibits agreements that unreasonably restrain trade. The first element of a Section One offense is an agreement between two parties. The second element is that the agreement unreasonably restrain trade. The unreasonableness element may be satisfied if the agreement falls in certain per se illegal categories. Alternatively, the unreasonableness element may be satisfied if the agreement fails the Rule of Reason. The Rule of Reason can be applied on a quick look basis or may
require a full assessment of the agreement’s competitive effects. By the end of the course the student should be able to determine:

1. When two or more persons exist who are capable of illegally agreeing.
2. How we tell whether people are in an agreement.
3. What agreements are per se illegal.
4. When an agreement is subject to quick look analysis under the Rule of Reason.
5. How to assess an agreement under the full blown version of the Rule of Reason.

Section Two of the Sherman Act prohibits monopolization and attempted monopolization. The first element of the monopolization offense is that the defendant possess monopoly power. Monopoly power is usually inferred from the possession of a relatively high share of an appropriately defined market. The second element of the monopolization offense is that the defendant obtain or maintain its power by conduct that violates Section Two. The attempted monopolization offense requires that the defendant be dangerously close to monopoly power, that the defendant engage in conduct condemned by Section Two and that the defendant have the specific intent to monopolize. By the end of the course the student should be able to determine:

1. How to define a relevant market.
2. Whether it is appropriate to infer monopoly power from market share.
3. Whether the defendant has engaged in conduct condemned by Section Two.
4. Whether the defendant is dangerously close to monopoly power.
5. Whether the defendant has the specific intent to monopolize.

Section Seven of the Clayton Act prohibits mergers and other acquisitions that impermissibly reduce competition. Most, but not all, such mergers are between competitors. By the end of the course the student should be able to determine:

1. Whether an acquisition is between competitors.
2. Whether the acquisition impermissibly reduces competition.

L1, L2

University Policies:

Center for Disability Access and Resources (CDAR) Reasonable Accommodations Statement:

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Ideally, students in Moscow and Boise should meet with CDAR by the end of the first week of class to assess if any accommodations are needed for courses and/or examinations. All accommodation requests are then submitted by CDAR to Dean Dodge for final approval. CDAR serves as the sole evaluator of medical documentation and determines
reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate or grant disability accommodations without CDAR first submitting a recommendation. You may contact CDAR by:

- Calling 208-885-6307
- Emailing cdar@uidaho.edu

It is ultimately the student’s responsibility to seek a disability accommodation, and until an accommodation is approved by CDAR and Dean Dodge, no student will be entitled to receive any accommodations. To learn more about CDAR, visit its website at http://www.uidaho.edu/current-students/cdar. Moscow students may also visit CDAR in suite 127 of the Pitman Center. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

Recording Class Sessions:
Students may not electronically record classes unless they have the express consent of the instructor, except where the Dean of Students has allowed recording as a disability accommodation pursuant to a recommendation by CDAR. Recording classes without the instructor’s express consent violates the Honor Code. Students recording classes as a disability accommodation must follow procedures set down by CDAR. Students who are unable to attend class for reasons of illness or other exigencies must receive permission from the instructor before classes are recorded on their behalf. Contact the Law Library for recording equipment and information on recording procedures.

Civility

In any environment in which people gather to learn, it is essential that all members feel as free and safe as possible in their participation. To this end, it is expected that everyone in this course will be treated with mutual respect and civility, with an understanding that all of us (students, instructors, professors, guests, and teaching assistants) will be respectful and civil to one another in discussion, in action, in teaching, and in learning.

Should you feel our classroom interactions do not reflect an environment of civility and respect, you are encouraged to meet with your instructor during office hours to discuss your concern. Additional resources for expression of concern or requesting support include the College of Law Dean of Students (jdodge@uidaho.edu), the University Dean of Students office and staff (885-6757), the UI Counseling & Testing Center’s confidential services (885-6716), or the UI Office of Civil Rights & Investigations (885-4285).
**Credit Hours for Coursework**

In accordance with ABA Standard 310, the College of Law awards one credit hour for experiences that are reasonably designed to involve 50 minutes of classroom or direct faculty instruction and two hours of out-of-class student work per week, or at least the equivalent amount of work for academic activities including simulation, field placement, clinical, and other academic work leading to the award of credit hours.

The Course requirements outlined above with respect to materials and assignments, in my professional judgement, are complex enough in nature that it is expected that the amount of out-of-class time it will take students to complete the assignments will meet the rule.

**First List of Assignments**

Set forth below are assignments for the first part of the course. Assignments for the later part of the course will be distributed later. The pages indicated below are in the course casebook.

Class 1: No assigned reading
Class 2: 395-414
Class 3: 414-426
Class 4: 426-446
Class 5: 450-465
Class 6: 465-474, 481-490
Class 7: 490-506, 514-520
Class 8: 474-481, 526-543
Class 9: 543-558
Class 10: 558-574
Class 11: 574-582, 113-124
Class 12: 124-143
Class 13: 144-166
Class 14: 166-181