

**SETON HALL UNIVERSITY SCHOOL OF LAW**  
**ANTITRUST LAW – FALL 2009**

Professor Marina Lao

Office: Room 415

Class: Mondays, Tuesdays 1:55—3:25 p.m. (Room 73)

Office Hours: Monday: 3:30—5:00 p.m.

Thursday: 11:45—1:00 p.m.

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**COURSE DESCRIPTION:** This course examines the laws that protect consumers by ensuring competition in the marketplace. Topics include agreements among competitors (horizontal agreements); agreements between firms and their suppliers and customers (vertical agreements); monopolization; mergers; and antitrust and the “new economy.” Although economic concepts and thinking characteristic of contemporary antitrust analysis are integrated into the course, the economic content of the course is accessible to students without background in the field.

**COURSE MATERIALS:** All page references are to the casebook, GAVIL, KOVACIC & BAKER, ANTITRUST LAW IN PERSPECTIVE: CASES, CONCEPTS AND PROBLEMS IN COMPETITION POLICY: SECOND EDITION (2008).

I am often asked to recommend a study guide for the course. In my view, the Nutshell is quite good.

**ATTENDANCE:** The law school’s mandatory attendance policy applies.

**CLASS PREPARATION AND PARTICIPATION:** Please read all assigned materials, including the sidebars and the textual notes between the assigned cases. Class participation is very important to the learning process. Please be prepared for class and for participation in classroom discourse.

**EXAMINATION:** There will be an **in-class, closed-book** exam.

## CLASS ASSIGNMENTS

### INTRODUCTION TO ANTITRUST LAW:

#### Chapter 1:

“Harvest King”- The Lysine Cartel

pp. 2-16— *Andreas* (7th Cir. 2000).

Identifying the Core Questions of Antitrust Law

pp. 16-42, 45-49—*Brown Univ.* (3rd Cir. 1993).

pp. 53-63

### AGREEMENTS AMONG RIVALRY (HORIZONTAL AGREEMENTS):

#### Chapter 2:

Evolution of “Unreasonableness” Under Section 1 of the Sherman Act

pp. 88-93

Evolution of the Per Se Ban on Price-Fixing by Competitors

pp. 93-103— *Trenton Potteries* (U.S. 1927); *Socony-Vacuum* (U.S. 1940).

pp. 107-22 — *BMI* (U.S. 1979); *Maricopa* (U.S. 1982).

Market Division by Competitors

pp. 128-38 — *Topco* (U.S. 1972); *BRG* (U.S. 1990).

Group Boycotts Having Collusive Effects

pp. 138-41, 144-53 — *Sup. Ct. Trial Lawyers Ass’n* (U.S. 1990).

Collusive Effects and the “Rule of Reason”

pp. 153-65 — *Chicago Bd of Trade* (U.S. 1918); *Nat’l Soc. Of Prof. Eng.* (U.S. 1978).

Collusive Effects and the “Rule of Reason”

pp. 165-71 — *Addyston Pipe* (6th Cir. 1898); *Brown Univ.* (3rd Cir. 1993)

The Search for a More Structured and Operation “Rule of Reason”: Modern Trends

pp. 175-201 — *NCAA* (U.S. 1984), *Cal. Dental* (U.S. 1999).

Antitrust & the Professions, pp. 201-02.

Joint Ventures, pp. 215-22—*Polygram* (DC Cir. 2005)

TACIT COLLUSION: SOLVING CARTEL PROBLEMS:

Chapter 3:

Introduction

pp. 227-30 — (top)

Modern Economics of Collusion

pp. 247-51 – Prescription Drugs (7<sup>th</sup> Cir. 1997)

pp. 251-253 (Sidebar 3-1: The Prisoners Dilemma)

Development of Traditional Conspiracy Law

pp. 253-68 (top) — *Interstate Circuit* (U.S. 1939); *American Tobacco* (U.S. 1946)

pp. 270-78—*Matsushita* (US 1986)

pp. 279 (bottom)-83

What is an Agreement? Pp. 335-37.

AGREEMENTS BETWEEN FIRMS AND THEIR SUPPLIERS OR CUSTOMERS (VERTICAL INTRABRAND AGREEMENTS):

Chapter 4:

Introduction

pp. 352-58

Price vs. Non-Price Vertical Restraints

pp. 359-68 — *Sylvania* (U.S. 1977)

pp. 375-92 — *Leegin Creative Leather* (U.S. 2007)

#### Exclusive Distributors and Suppliers

pp. 411-12

### MERGERS AMONG RIVALS:

#### Chapter 5:

##### Introduction

pp. 431-33

##### Emergence and Erosion of the Structural Paradigm

pp. 437-46, pp. 449-68 — *Brown Shoe* (U.S. 1962); *Philadelphia Nat'l Bank* (U.S. 1963);

*Gen. Dynamics* (U.S. 1974); *Baker Hughes* (D.C Cir. 1990), *Heinz* (DC Cir. 2001).

##### Merger Analysis Under the DOJ/FTC Merger Guidelines

Overview: pp. 472-76,

Market Definition, Market Participants, and Concentration: 479-81, 481-91 (*Cellophane*), 491-96, 499-501, 502-04, 506-07.

Competitive Effects—Collusive Effects: pp. 517-19 (top); pp. 522-27 — *Hosp. Corp of Am.* (7th Cir. 1986).

Competitive Effects—Unilateral Effects: pp. 535-38; pp. 542-550 (*Staples*); pp. 553-54 (Note on Oracle and Whole Foods).

Entry Analysis: pp. 559-62 – *Waste Management*, (2d Cir. 1984).

Efficiencies Defense: pp. 568-70.

Failing Firm Defense: pp. 573-74.

### MONOPOLIZATION:

#### Chapter 6: Dominant Behavior Having Exclusionary Effects

##### Introduction

pp. 582-87

##### Economics of Exclusion

pp. 588-92 — *Lorain Journal* (U.S. 1951).

##### Traditional Analysis of Exclusionary Conduct

pp. 598-607 — *AICOA* (2nd Cir. 1945); pp. 482- — duPont (*Cellophane*)

#### Contemporary Law and Economics of Monopolization

Non-Price Exclusionary Conduct:

pp. 622-37 — *Aspen* (U.S. 1985)

pp. 640-59 — *Microsoft* (D.C. Cir. 2001).

#### Predatory Pricing

pp. 659-74—*Brooke Group* (US 1993).

#### Unilateral Refusals to Deal

pp. 706-14—*Trinko* (US 2004)

#### Unilateral Refusals to License IP Rights

pp. 722-29 – *Xerox* (Fed Cir. 2001)

#### Product Design and Development Decisions

pp. 736-38, 741-45

Attempt to Monopolize, pp. 747-48.

#### EXCLUSIONARY GROUP BOYCOTTS AND EXCLUSIVE DEALING:

##### Chapter 7:

#### Introduction

pp. 765-70

#### Exclusionary Group Boycotts

pp. 771-85 — *Northwest Wholesale Stationers* (U.S. 1985); *Visa* (2nd Cir. 2003)

#### Interbrand Vertical Restrictions

Tying: pp.788-808 — *Jefferson Parish* (U.S. 1984); pp. 815-22 — *Microsoft* and Tying (D.C. Cir. 2001)

Exclusive Dealing: pp.823-29 (skip Sidebar 7-4)

IF TIME PERMITS:  
INNOVATION, INTELLECTUAL PROPERTY, AND THE 'NEW ECONOMY'

Chapter 10:

Introduction

pp. 1153-54

Antitrust & Innovation

pp. 1162-66

Suppression of Rival Innovation (Microsoft)

pp. 1168-72

Antitrust & Intellectual Property

pp. 1192-94, 1203-10, 1220-26