

## SYLLABUS: Advanced Microeconomics and Competition Law Spring 2014

This course serves as an introduction to the regulation of market power in the U.S. economy and the economic analysis that informs that regulation. The focus is on the U.S. Antitrust Laws, as embodied in the Sherman and Clayton Acts. These laws provide the basis for the civil and criminal litigation directed at price-fixing, market division agreements, bid-rigging, anticompetitive mergers, joint ventures, exclusive dealing provisions, refusals to deal, patent licenses, and many other forms of conduct that may diminish market competition. Recent newsworthy cases in this area include: The eBooks price-fixing case (*U.S. v. Apple*); The A.T.T. and T-Mobile merger challenge (*U.S. v. AT&T, T-Mobile, and Deutsche Telekom*); and the exclusive dealing practices alleged against Intel by the F.T.C. (*In the Matter of Intel Corporation*, F.T.C. Docket No. 9341).

The Antitrust Law primarily regulates three areas of conduct. These areas of conduct are: i) anticompetitive agreements (e.g. a cartel of firms engaged in price-fixing); ii) conduct directed at excluding a competitor from the market (e.g. a firm engaging at predatory pricing); and iii) the regulation of mergers that, if consummated, would lead to a significant reduction in competition. While other areas exist, this course will focus on these broad types of conduct.

The objective of the course is to provide an economics-focused introduction to the contemporary regulatory environment. This background is intended to be useful to students considering careers in economic and litigation consulting, the law (i.e. going to law school), or working in industries where the regulatory environment is a significant feature of the business environment.

This course differs from a standard introductory course in Antitrust offered at a law school. It assumes a higher level of familiarity with economics (and assumes you are happy to use calculus to analyze formal models), it has more economic content, it has less of a focus on appellate court judgments (particularly the Supreme Court) and a greater focus on how cases are actually argued and reasoned in the lower courts, and it places slightly less emphasis on the historical development of the law. This is a consequence of the course's focus on economic and legal analysis as relevant to understanding current practice. That said, it is designed to give a taste of what study at a top law school would involve, in a course with a very strong law and economics component.

Hence, the course is specifically designed with Juniors in mind. That said, Sophomores should be able to handle the material as well.

## Prerequisites and relationship to other courses

Students should feel confident with the material in freshman Microeconomics. A basic understanding of the legal system, the litigation process and how to read a case is useful, at a level consistent with having taken the Law, Business and Society course (LBS). That said, students who have not taken LBS are welcome to enroll in the course. The course will not assume that you know anything much about the legal system or legal analysis – the skills you need will be taught as we go. The course Competitive Analysis (ECON-UB.0015) is a strong complement to this course: it covers closely related material. A student that takes both courses will receive an excellent foundation in industrial economics and its applications.

## Course Materials

- The primary text for the course will be Pitofsky, Goldschmid and Wood (2010) *Trade Regulation: Cases and Materials* (6th Ed.). Unless indicated otherwise, readings are from this casebook.
- At times, recent case materials will be drawn from the court records. In the reading list, these will be indicated by (WS) and are available on the supplementary readings website (accessed via [www.johnasker.com](http://www.johnasker.com)).
- Some students find it useful to have a less detailed introduction to the legal framework before diving into the details. The Gilbert Law Summary on Antitrust by Mark Lemly and Chris Leslie is one of the better ones.
- Notes on formal economic models used in class will be provided via handout and also posted online. I will also direct you to read specific academic articles.

## Class Format

This class will involve significant class participation. Doing the reading is required. Each week 4 students will be nominated to lead the discussion. These students should be especially well prepared. That said, all students should be prepared to be cold-called on the assigned material. Ability to contribute in this regard will comprise a significant proportion of the participation grade.

## Deliverables

The various deliverables in the course are designed to develop specific skills:

- **Class Participation:** This will assess your contributions in class, based on your ability to prepare for, and contribute to, the class discussion. This grade will also incorporate a broader ‘good citizen’ criterion.  
Attendance will also be taken in every class. If you miss more than two classes, i.e. a week of class, you will receive a failing grade.
- **Memos:** Four memos will be assigned. These will be between two and four page writing assignments designed to ask you to integrate legal and economic analysis. Examples might include: written critique of expert testimony; advice on the legal and economic implications of a specific fact pattern; and describing options for structuring agreements so as to avoid legal culpability. Memos should be submitted via email.
- **Final Exam:** The final exam will be a mix of short and long answer questions, designed to assess your understanding of the material covered. Permitted materials will include the casebook and any notes – provided that they are printed out. Laptops or anything with an internet connection will not be permitted.

The final grade will be comprised as follows:

Class Participation – 10%  
Memos – 15% each (best three count)  
Final Exam – 45%

## **Exams, re-grading and due dates**

The real world is a tough place. Timely performance is required. The same standard will apply in this course. Late submission of any memo will result in a zero grade on that memo. Late submission occurs when the time stamp on the email containing the submitted material is later than 5pm New York Time. on the day the memo is due. Similarly, you are responsible for checking the exam date and avoid any conflict with other commitments. The final exam date is not flexible.

Questions about grading must be made in writing and no more than a week after the exams are returned

## **Honor Code**

The Stern community believes that honesty and integrity are necessary for rewarding academic and professional experiences. These qualities form the basis for the strong trust among members of the academic community (students, faculty, and administrators) that is essential for excellence in education. The Honor Code requires that each student act with integrity in all academic activities and endeavor to hold his or her peers to the same standard.

In this course, any written work submitted for a grade should be your own. On exams, you may bring in any non-electronic materials you like (subject to it fitting on appropriate desk space), but your answers should be entirely your own work. Additional information is available online or from the Undergraduate College at Stern.

Failure to comply with the honor code will result in an automatic fail grade.

## **Students with disabilities**

If you have a qualified disability and will require academic accommodation during this course, please contact the Moses Center for Students with Disabilities (CSD, 998-4980) and provide me with a letter from them verifying your registration and outlining the accommodations they recommend. If you will need to take an exam at the CSD, you must submit a completed Exam Accommodations Form to them at least three weeks prior to the scheduled exam time to be guaranteed accommodation.

## **Help**

There are times when a little help can get you past an obstacle. If you're stuck, send me an email (jasker@stern.nyu.edu) or stop by my office (KMC 7th floor, room 79). I try to respond quickly to email.

# Course Outline

## **Week 1:** No deliverables

- i) Introduction. The aims of Antitrust. Structure of the legal system and legal analysis. Litigation process and precedent.
- ii) How to read a case. How to read a statute.
  - 15 U.S.C. 1 and 15 U.S.C. 2
  - F.T.C. v Watson*
  - Judgement (WS)

## **Week 2:** No deliverables

- i) Introduction. The basic monopoly model. The aims of Antitrust. The structure of Antitrust enforcement.
  - Casebook pp.1-6, 54-69, 83-91
  - Class notes on monopoly
- ii) 15 U.S.C. 1: Naked Collaborative Agreements. Price Fixing, Market Division and Bid-Rigging. The *per se* rule. Questions of characterization.
  - U.S. v Addyston Pipe*
  - Chicago Board of Trade v U.S.*
  - U.S. v Socony-Vacuum*
  - Casebook pp. 177-209 (particularly from 188 onward)
  - Class notes on game theory and collusion

## **Week 3:** No deliverables

- i) 15 U.S.C. 1: Naked Collaborative Agreements. Price Fixing, Market Division and Bid-Rigging. The *per se* rule. Questions of characterization.
  - Broadcast Music Inc. v Columbia Broadcasting System*
  - NCAA v Board of Regents of University of Oklahoma*
  - Casebook pp. 215-230, 230-246
- ii) 15 U.S.C. 1: Naked Collaborative Agreements. Market Division specifically.
  - U.S. v Topco*
  - General Leaseways v National Truck*
  - Palmer v BRG*
  - Casebook pp. 283-303

## **Week 4:** Memo 1 due on Friday of this week at 5pm

- i) 15 U.S.C. 1: Naked Collaborative Agreements. Recent Actions
  - F.T.C. v Watson*
  - Judgement (WS)
  - C. Scott Hemphill, Testimony to Congress (WS and here)
- ii) 15 U.S.C. 1: Naked Collaborative Agreements. Rule of Reason. Recent Actions.
  - U.S. v Apple*
  - Judgement (WS)
  - Testimony of Richard Gilbert (WS)
  - Testimony of Orley Ashenfelter (WS)
  - Testimony of Kevin Murphy (WS)

**Week 5:** No Deliverables

- i) 15 U.S.C. 1: Naked Collaborative Agreements. Rule of Reason. Recent Actions.
  - U.S. v Apple*
  - Judgement (WS)
  - Testimony of Richard Gilbert (WS)
  - Testimony of Orley Ashenfelter (WS)
  - Testimony of Kevin Murphy (WS)
- ii) 15 U.S.C. 1: Joint Venture Agreements and Group Refusals to Deal.
  - Associated Press v. U.S.*
  - U.S. v Visa*
  - Texaco v Dagher*
  - Casebook pp. 361-390

**Week 6:** No Deliverables

- i) 15 U.S.C. 1: Finding existence of an agreement.
  - Interstate Circuit v. U.S.*
  - Casebook 469-479, 496-501
  - Bell Atlantic v. Twombly* (WS)
  - Course notes on multi-market contact and other facilitating practices
- ii) 15 U.S.C. 1: Recap and revision. Comments on damages and interaction between criminal and civil litigation. Leniency Program.
  - Nathan Miller, Strategic Leniency and Cartel Enforcement, A.E.R., Vol 99, No. 3 (2009), 750-68.
  - DoJ Leniency Policy

**Week 7:** Memo 2 due on Friday of this week at 5pm

- i) 15 U.S.C. 18: Mergers. Market definition. 2010 HMG. HSR filing process.
  - U.S. v Philadelphia National Bank*
  - F.T.C. v Whole Foods Market*
  - Casebook pp. 979-987, 1076-1088
  - 2010 Horizontal Merger Guidelines
  - Kaplow, Luis, Market Definition and the Merger Guidelines, *Review of Industrial Organization*, vol. 39, 107-125 (2011)
- ii) 15 U.S.C. 18: Mergers. Continuing
  - U.S. v Philadelphia National Bank*
  - F.T.C. v Whole Foods Market*
  - Casebook pp. 979-987, 1076-1088
  - 2010 Horizontal Merger Guidelines
  - Kaplow, Luis, Why (Ever) Define Markets?, 124 Harv. L. Rev. 437 (2010)

**Week 8:** No deliverables

- i) 15 U.S.C. 18: Mergers. Recent action.
  - U.S. v H&R Block*
  - Final Order
  - Expert Report of Ravi Dhar
  - Complaint
- ii) 15 U.S.C. 18: Mergers. Recent Action
  - U.S. v v. Ticketmaster Entertainment and Live Nation*
  - Final Judgement
  - Competitive Impact Statement
  - Complaint

**Week 9:** Memo 3 due on Friday of this week at 5pm

i) 15 U.S.C. 18: Recap. Look at current actions. Possible guest lecture from enforcement side or defence bar.

ii) 15 U.S.C. 2: Monopolization. Refusals to Deal and Essential Facilities

*U.S. v Grinnell*

*Aspen Ski v Aspen Highlands*

*Verizon v Trinko*

Casebook pages 722-788 with emphasis on those three cases.

**Week 10:** No deliverables

i) 15 U.S.C. 2: Monopolization. Refusals to Deal and Essential Facilities

*U.S. v Microsoft*

Casebook 767-791

ii) 15 U.S.C. 2: Monopolization. Predatory Pricing

Course notes on the economics of predatory pricing

**Week 11:** i) 15 U.S.C. 2: Monopolization. Predatory Pricing

*Brooke Group v Brown and Williamson Tobacco*

*U.S. v AMR, American Airlines*

*Weyerhaeuser v Ross-Simmons Hardwood*

Casebook pages 823-857.

ii) 15 U.S.C. 2: Monopolization. Exclusive dealing

Course notes on the economics of exclusive dealing

DoJ overview

**Week 12:** i) 15 U.S.C. 2: Monopolization. Exclusive dealing

*LePage v 3M*

*U.S. v Dentsply International*

Casebook pages 949-963.

ii) 15 U.S.C. 2: Monopolization. Exclusive dealing

*ZF Meritor v Eaton*

District court judgement (WS)

Expert Testimony of David deRamus (WS)

Appellate court judgement (WS)

**Week 13:** Memo 4 due on Friday of this week at 5pm

i) 15 U.S.C. 1: Antitrust and IP

*Rambus v F.T.C.*

Casebook pages 328-336.

Mark A. Lemley, Industry-Specific Antitrust Policy for Innovation, 2011 Columbia Business Law Review 637 (2011).

ii) Guest speaker. Most likely In-House counsel at a tech firm.

**Week 14:** i) Overflow time.

ii) Overflow time. Recap and revision.