

Module 3

Antitrust Basics #1 — Agreements Among Competitors

The easiest way to eliminate competition is to simply agree not to compete. It is also the most illegal. If the antitrust laws ban anything, they ban companies from price fixing, bid rigging, dividing up the market, agreeing not to compete on quality, and the like—in other words, from forming cartels. In fact, these violations are so clearly anticompetitive, and require so little economic analysis, that they are often “per se” illegal. And in the United States they can result in criminal liability. This module addresses key elements of cartel enforcement actions under § 1 of the Sherman Act.

Reading

Required Reading

Sherman Act § 1, 15 U.S.C. § 1

Pleading an antitrust violation

Interstate Circuit v. United States, 306 U.S. 208 (1939)

Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)

Theatre Enterprises, Inc. v. Paramount Film Distributing Corp., 346 U.S. 537 (1954)

What counts as a single firm?

Copperweld Corp. v. Independence Tube Corp., 467 US 752 (1984)

American Needle v. National Football League, 560 U.S. 183 (2010)

Restraints of trade

United States v. Addyston Pipe & Steel Co., 85 F. 271 (6th Cir. 1898), *aff'd*, 175 U.S. 211 (1899)

Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911)

Chicago Board of Trade v. United States, 246 U.S. 231 (1918)

United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940)

National Society of Professional Engineers v. United States, 435 U.S. 679 (1978)

California Dental Assn. v. FTC, 526 U.S. 756 (1999)

Polygram Holding, Inc. v. Federal Trade Commission, 416 F.3d 29 (D.C. Cir. 2005)

Christopher Leonard, Bloomberg, *Is the Chicken Industry Rigged?* (2017)

Recommended Reading

United States v. U.S. Gypsum Co., 438 U.S. 422 (1978)

Procedure

Hart-Scott-Rodino Antitrust Improvements Act of 1976

Recommended reading

FTC v. H.J. Heinz Co., 246 F.3d 708 (D.C. Cir. 2001)

United States v. Philadelphia National Bank, 374 U.S. 321 (1963)

Vertical Merger Guidelines, U.S. Department of Justice and Federal Trade Commission

Background reading

Rupprecht Podszun, *The Arbitrariness of Market Definition and an Evolutionary Concept of Markets*, *Antitrust Bulletin* (2016), 61(1), 121–32.

United States v. Columbia Steel Co., 334 U.S. 495 (1948)

United States v. General Dynamics Corp., 415 U.S. 486 (1974)

United States v. H&R Block, Inc., 833 F. Supp. 2d 36 (D.D.C. 2011)

Steves & Sons Inc. v. Jeld-Wen Inc., 988 F.3d 690 (4th Cir. 2021)

United States v. E.I. Du Pont de Nemours & Co. 353 U.S. 586 (1957)