

Antitrust Basics #3 — Monopolization

Even though a monopoly lowers consumer welfare compared to competition, in the United States being a monopolist is not illegal. What is illegal under the antitrust laws is for a firm to monopolize. Monopolization involves engaging in conduct that is not “competition on the merits” in order to obtain market power and reduce competition even further. Section 2 of the Sherman Act therefore bans certain types of unilateral conduct by firms with a large enough share of the market to be successful. Monopoly maintenance is also covered by the Sherman Act. But the conceptual line between legal competition and illegal monopolization can be hard to define. As a result, unilateral-conduct antitrust cases can be challenging for enforcement agencies.

Along with this reading, you may want to view the economics module on predatory pricing.

Reading

Required reading

Monopoly basics

Sherman Act §2, 15 U.S.C. §2

United States v. Aluminum Co. of America, 148 F. 2d 416 (2d Cir. 1945)

Exclusion

United States v. United Shoe Machinery Corp., 110 F. Supp. 295 (D. Mass. 1953)

United States v. Dentsply Int’l, Inc., 399 F.3d 181, 187 (3d Cir. 2005)

Predatory pricing

Matsushita Electric Industrial Co. v. Zenith Radio, 475 U.S. 574 (1986)

Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209 (1993)

Tying

Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2 (1984)

United States v. Microsoft Corp., 253 F.3d 34 (D.C. Cir. 2001)

(Note: There is an entire module on this essential case! This is just a preview.)

Refusing to deal

Otter Tail Power v. United States, 410 U.S. 366 (1973)

Aspen Highlands Skiing Corp. v. Aspen Skiing Co., 472 U.S. 585 (1985)

Verizon Commc’ns Inc. v. L. Offs. of Curtis V. Trinko, LLP, 540 U.S. 398, 411 (2004)

Price Squeezes

Pacific Bell Telephone Co. v. LinkLine Communications, Inc., 555 U.S. 438 (2009)

Loyalty Rebates

Le Page's Inc. v. 3M Co., 324 F.3d 141 (3rd Cir. 2003)

Recommended reading

Deutsche Telekom AG v. Commission, Case T-271/03 (2008)

United States v. American Telephone and Telegraph Co., 524 F. Supp. 1336 (D.D.C. 1981)

United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 1982 (D.D.C. 1982)

Background reading

Robinson-Patman Act, 15 U.S.C. §13(a)

United States v. Grinnell Corp., 384 U.S. 563 (1966)

Utah Pie Co. v. Continental Baking Co., 386 U.S. 685 (1967)

Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc., 549 U.S. 312 (2007)

Illinois Toolworks Inc. v. Independent Ink, Inc., 547 U.S. 28 (2006)

United States v. Colgate & Co., 250 U.S. 300 (1919)

Cascade Health Solutions v. Peacehealth, 515 F.3d 883 (9th Cir. 2008)

[Intel litigation saga on loyalty rebates in the EU: Cleary Gottlieb Summary \(2017\)](#)

Fiona M. Scott Morton & Zachary Abrahamson, Zachary, *A Unifying Analytical Framework for Loyalty Rebates*, Antitrust L.J. 777–836. (2017)