Regulation

Traditionally, antitrust regulation is reactive. It is done through litigation and involves interpreting broadly worded laws after the fact. But governments can also pursue competition policy through prospective economic regulation. Although the FTC can make prospective rules, many regulations that affect competition come from industry-specific bodies, like the Federal Communications Commission and Securities and Exchange Commission. These regulations may still be enforced through litigation, or the threat of litigation, but they offer more specific ex ante guidance to the industry that can be taken into account before companies act. Given current competitive conditions and the slow pace of antitrust enforcement, policy makers are showing increased interest in pro-competitive regulation in the technology sector.

In this module, you will learn how the antitrust laws interact with economic regulation. Consider the strengths and weaknesses of each method, when each is appropriate, and whether they are substitutes or complements. Consider how regulation can be designed to lower entry barriers and intensity competition; consider also how regulation might be used to thwart competition.

Reading

Required Reading


U.S. Futures Exchange v. Board of Trade of the City of Chicago, 953 F.3d 955 (7th Cir. 2020)


Recommended Reading


Andrea Coscelli, CEO of the CMA, “Regulation and competition enforcement – a combined approach” (Fordham Annual Conference, 2018)


Background Reading


Electric Trading Group, LLC v. Banc of America Secs., 588 F.3d 128 (2d Cir. 2009)

