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<h1>General Principles of Antitrust Law</h1>						
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## Exposure

<ul style="list-style-type: none"><li>■ Civil liability<ul style="list-style-type: none"><li>■ Treble damages</li><li>■ Joint and several liability</li><li>■ Injunctions</li><li>■ Attorneys fees</li></ul></li></ul>							

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## Exposure

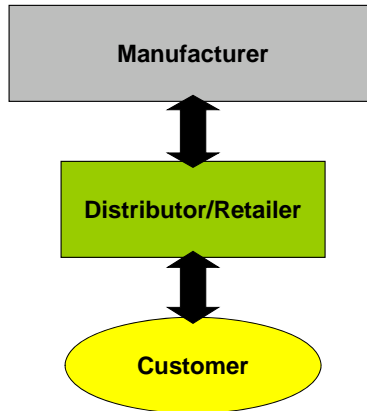
- Criminal liability
  - Jail time
    - Individuals
  - Large fines
    - Individuals
    - Corporations

## Basic Principles

- The antitrust laws are designed to preserve *competition*, not to protect individual *competitors*
- Preserve competition for the benefit of *consumers*
  - Lower prices
  - Better quality products and services
  - Increased choice, selection, convenience, and innovation

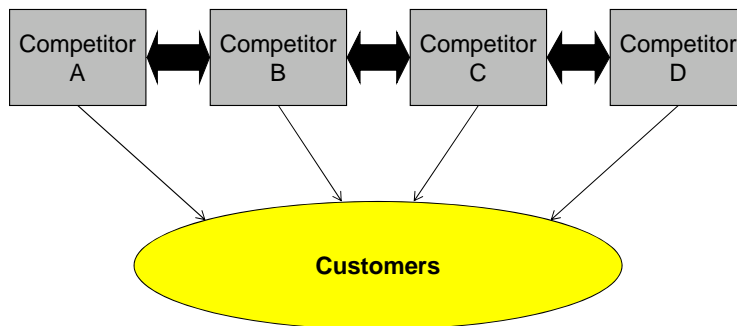
## Basic Principles

### Vertical Relationships



## Basic Principles

### Horizontal Relationships



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## Basic Principles

- Unilateral conduct
  - Monopolization
  - Attempted monopolization
  - Unfair practices
  - Abuse of dominance


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## Basic Principles

- Concerted action/conspiracy
  - Combination
  - Conspiracy
  - Cartel
  - Boycott


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## Basic Principles

### Relevant product market

- Specifies the line of commerce in which the competitive concern arises
- All goods or services that buyers view as reasonable substitutes
  - Used to analyze competitive effects in
    - merger analysis
    - anticompetitive conduct (e.g., unlawful tying)
  - Not required but courts and agencies still apply it

## Basic Principles

### Relevant geographic market

- Specifies the geographic location in which the competitive concern arises
- Area where customers would likely turn to buy the goods or services in the product market
- Competition may be limited to a small area because of the time or expense involved in buying a lower-cost product elsewhere
- Can be local, regional, national, worldwide
- Can be determined by
  - Location of suppliers
  - Location of customers

## Basic Principles

- *Per Se* violation
  - Category of conduct that is plainly anticompetitive
  - Court, agencies and parties need not waste time and resources to conduct a rule of reason analysis
  - Typically horizontal and usually cartel
    - Price fixing, market allocation, bid rigging

## Basic Principles

- Rule of Reason
  - Balance between anticompetitive effects and procompetitive justifications
  - Typically requires broad discovery, substantial data analysis and economic expert analysis

## Four Main Federal Antitrust Laws

- The Sherman Act (Sections 1 & 2)
- The Clayton Act (Section 7)
- The Robinson-Patman Act
- Federal Trade Commission Act

## State Antitrust Statutes

- In addition to federal laws, states typically have antitrust laws that are enforced by state attorneys general or private plaintiffs
- Many state statutes are based on the federal antitrust laws and interpreted under federal case law, but some vary in some important ways

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## The Sherman Act: Section 1

- “Concerted action”
  - Plurality of actors
- Agreement
  - Express or implied
  - Conscious parallelism not enough
- Unreasonable restraint of trade
  - Rule of Reason
  - Per se

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## The Sherman Act: Section 1

- Per se unreasonable restraints on trade
  - Price-fixing
  - Market allocation
  - Bid rigging
- Rule of Reason
  - Exclusive dealing
  - Vertical arrangements
  - Certain competitor collaborations

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## The Sherman Act: Section 2

- Relates to unilateral conduct
- Two elements
  1. the possession of monopoly power in the relevant market; and
  2. the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident
- Monopoly power: the power to control prices or exclude competition
  - Market share is typical indicator

## The Clayton Act: Section 7

- Prohibits acquisitions the effect of which “*may be* substantially to lessen competition, or *to tend* to create a monopoly.”
  - Applies to proposed mergers, acquisitions, joint ventures (Hart-Scott-Rodino)
  - Also applies to consummated mergers

## The Clayton Act: Section 7

- Section 7 bars mergers the effect of which “**may be** substantially to lessen competition, or **to tend** to create a monopoly”
- These words indicate that Congressional concern was with **probabilities**, not certainties

## Injunction Pursuant to Section 7

- Not required to establish that the proposed merger would **in fact** violate Section 7
- A certainty, even a high probability, need not be shown, and any doubts are likely resolved against the transaction

## Mergers

- Hart Scott Rodino
  - Proposed mergers of a certain threshold must be reported to both FTC and DOJ
  - 30 day waiting period
- Consummated Mergers
  - No statute of limitations for merger challenge
  - Even if cleared under HSR

## Robinson-Patman Act

- Unlawful price discrimination
  - Applies to sales of products of like grade and quality in commerce where such discrimination may substantially injure competition

## Robinson-Patman Act

- Unlawful promotions
  - Bars the discriminatory payment of promotional allowances
  - Bars the discriminatory provision of promotional services or other benefits
  - No adverse competitive impact required

## FTC Act: Section 5

- Exclusively enforced by the Federal Trade Commission
- Prohibits “unfair methods of competition”
- Violations of the Sherman Act and Clayton Act are covered under Section 5
- Used to prosecute conduct that may not be reached by other antitrust laws
  - e.g., invitation to collude

## Who enforces these laws?

- The Federal Trade Commission
- The U.S. Department of Justice
- Plaintiffs' attorneys
- State attorneys general

## Federal Trade Commission

- Limits on jurisdiction
  - No criminal jurisdiction
    - The FTC does not directly enforce the Sherman Act
- Mergers (Clayton Act Sect. 7)
  - HSR-reportable mergers
  - Consummated mergers
- Anticompetitive Conduct (FTC Act. Sect. 5)
  - Conduct that violates Sherman Act Sections 1 or 2
  - Exclusionary conduct
  - Tying
  - Price fixing/market allocation

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## U.S. Department of Justice

- Criminal jurisdiction
  - Sherman Act Sections 1 and 2
    - Fines
    - Jail
- Civil Jurisdiction (Clayton Act and Sherman Act)
  - Anticompetitive conduct
  - HSR-reportable mergers
  - Consummated mergers

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## Private Litigation

- Clayton Act Section 4 allows private parties to seek damages
  - Sherman Act Sections 1 and 2
  - Very rarely Clayton Act Section 7
  - Cannot pursue claims under FTC Act Section 5
- Treble damages
- Joint and several liability
- Attorneys' fees

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