

# ANTITRUST LAW

Antitrust deals with the area of law concerned with maintaining competition in private markets. Antitrust law courses study the law and economics of monopolies and cartels, including the potential benefits and harms of these market structures. Antitrust evaluates business conduct that may lead to monopoly and cartel outcomes, and the statutes, case law and other governmental policies that attempt to maintain competitive market structures and competitive conduct.

The study of antitrust law at the Law Center begins with the basic *Antitrust Law* course. Two variants of this course are offered, a three-credit *Antitrust Law* course and a four-credit *Antitrust Economics and Law* course. The four-credit course is expanded to permit additional analysis of the economic aspects of the business conduct and law, and it also places greater emphasis on economic materials and an economic approach to antitrust. (Students may only take one of the variants.) In addition to the basic course, a variety of advanced antitrust courses and seminars are offered. Some of these advanced courses delve more deeply into narrow areas such as global competition, selected antitrust issues such as mergers and acquisitions, or particular economic sectors such as telecommunications, sports and health care. The *Advanced Antitrust Economics and Law Seminar* analyzes cutting edge antitrust issues from an economics perspective, and students write potentially publishable papers on such topics.

Because of its focus on the mechanics and role of competition in a modern free market economy, the issues studied in antitrust law are useful for understanding a wide array of business conduct. In addition to antitrust, many other courses in this course cluster analyze the law and economics of economic regulation of free markets and competition. Pricing and other aspects of competition in certain markets, especially those with monopoly structures such as public utilities, are regulated more directly and intensively by administrative agencies rather than simply by general antitrust rules. In addition, there is an important nexus between antitrust and intellectual property. Intellectual property law awards limited monopolies to reward innovators and intellectual property law and antitrust law sometimes may be in apparent conflict. The analysis of economic incentives and contractual relations in *Economic Reasoning for Lawyers* and *Analytical Methods* also has important applications to antitrust.

Search Antitrust Law Courses ([http://curriculum.law.georgetown.edu/course-search/?cluster=cluster\\_5](http://curriculum.law.georgetown.edu/course-search/?cluster=cluster_5))

**LAW 1528 v00 Advanced Antitrust Seminar: Antitrust and Intellectual Property** (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 1528 v00>)

J.D. Seminar (cross-listed) | 2-3 credit hours

The intersection of antitrust and intellectual property underlies many key debates in contemporary competition law and presents topics of recurring importance. This advanced seminar introduces students to the antitrust/intellectual property interface, including the economics of innovation, the debate over the relationship between the two fields, and the impact of the evolution of that relationship on the antitrust analysis of specific practices. Topics include the economics of innovation, licensing practices, product design and tying, patent settlements, patent pools, standard setting, the acquisition of intellectual property rights, patent assertion entities, the assertion of IP rights, antitrust counterclaims in U.S. litigation, and select contemporary debates. Grades will be based on bi-weekly papers written in response to the assigned readings; class participation can increase, but not decrease, the course grade.

Learning Objectives:

Students taking this course will:

1. Develop an understanding of the basic economics of innovation and their application of those principles to antitrust law and its intersection with intellectual property law.
2. Acquire an overview of key aspects of the intersection of antitrust and intellectual property in U.S. law, both in litigation and agency settings.
3. Explore recurring tensions between antitrust and intellectual property through the lens of particular practices.
4. Debate competing positions on the antitrust laws' application to cutting-edge issues in IP-rich industries.

**Prerequisite:** For J.D. students, prior or concurrent enrollment in Antitrust Law or Antitrust Economics and Law. (Note that prior enrollment strongly recommended; concurrent enrollment accepted.) For LL.M. students: prior U.S. antitrust litigation experience or U.S. antitrust coursework is strongly recommended.

**Note:** A limited number of students may register for the 3 credit section of this seminar if they wish to write a paper fulfilling the Upperclass Legal Writing Requirement. Students who register for the 3 credit section will write fewer weekly response papers, in addition to the paper for the Upperclass Legal Writing Requirement.

**LAW 1107 v00 Analytical Methods (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 1107 v00>)**

J.D. Course (cross-listed) | 3 credit hours

Lawyers in every type of practice (corporate, litigation, government, public interest, etc.) routinely deal with problems that require a basic understanding of concepts and methods from economics and statistics. This course provides an introduction to these subjects and their application and relevance to law and legal practice. Topics covered include decision analysis, game theory, probability, and statistics. Grades will be based on a graded problem set and a take-home final examination. No prior background in economics or statistics is required; however, we will regularly use elementary algebra and geometry. Students with strong backgrounds in economics, mathematics, or statistics should consult with the professor before enrolling in the course.

*Course Objective and Learning Outcomes:* The objective of the course is to enhance students' ability to give sound legal advice and make effective legal arguments by introducing them to selected concepts and methods from economics and statistics that are relevant to numerous areas of law and legal practice. These concepts and methods include: decision trees, expected value, sensitivity analysis, risk aversion, present value; Nash equilibrium, game trees, backward induction, subgame perfection, moral hazard, adverse selection; probability, conditional probability, independence, Bayes' rule; descriptive statistics (including measures of central tendency and variability), hypothesis testing, confidence intervals, statistical significance, type I and type II errors, and regression analysis.

By the end of the course, I expect students to have a good understanding of these concepts and methods and to be able demonstrate a basic proficiency in applying them to: (i) unpack complex decisions of the kind that lawyers and their clients often encounter in litigation and transactions; (ii) analyze situations involving strategic interactions (i.e., situations where the outcome depends on the strategies and actions of multiple parties) of the kind that lawyers and their clients often encounter in litigation and transactions; and (iii) engage in probabilistic and statistical reasoning and evaluate probabilistic and statistical evidence of the kind that courts and lawyers often encounter in litigation.

**LAW 038 v02 Antitrust Economics and Law (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 038 v02>)**

J.D. Course (cross-listed) | 4 credit hours

This course covers the major federal legislation and doctrine in the field of antitrust law with a primary focus upon governmental efforts to promote competition. Emphasis is placed upon the growing role of economic analysis and trends in judicial interpretation relating to the coordination, monopolies, mergers and joint ventures, as well as evolving legal standards, including the role of decision theory in setting legal standards.

This version of basic antitrust places greater emphasis on the tools of economic analysis that have taken on growing importance in antitrust as well as controversies between Chicago School and post-Chicago economic approaches. There is no economics prerequisite. The necessary economic tools will be developed in the course. Students should be prepared to master economic as well as legal materials. There will be written assignments that must be submitted for each class.

**Recommended:** Some economics background is helpful, but not required.

**Mutually Excluded Courses:** Students may not receive credit for both this course and Antitrust Law or Antitrust Law: A Survey from the Sherman Act of 1890 to Today's Progressive Movement.

**LAW 1530 v00 Antitrust in Action: Evaluating the Deal and Advising the Board of Directors (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 1530 v00>)**

J.D. Seminar | 1 credit hour

This intensive one-credit course will take twelve students through a fast-paced, real-life M&A situation with potentially significant antitrust implications over the course of three days. Students will represent a hypothetical client who has received an unsolicited indication of interest from a competitor and have to weigh that offer against alternative transactions presenting less risk. With time of the essence, the students will have to analyze the antitrust implications of the various alternatives and make a recommendation regarding the risks to the client's Board of Directors. Once the Board makes its decision and the deal is negotiated (with the help of the students in respect of the provisions in the merger agreement with antitrust implications), it will then become their responsibility, as outside counsel for the company, to convince the antitrust authorities that the transaction is not anticompetitive.

Students will be informed of the scenario a few days in advance, and provided with the relevant background materials, in order to be ready for the course. The students will play the role of associates in a firm that is the outside counsel to the company that is the subject of the scenario. The goal of the course is to simulate through this hypothetical M&A scenario, the legal skills needed to guide a client's strategic and tactical business decisions in a real-life antitrust sensitive situation.

This course will be highly interactive. Working in teams and individually over three class sessions, the students will perform a "quick and dirty" antitrust analysis of the alternatives, evaluate/negotiate the antitrust risk shifting provisions in the merger agreement, present the analysis to the Board, and present a Day 1 presentation to the antitrust authorities. The students will be allocated tasks throughout the week as they would in a real life/real time private practice situation. The students will work with a practicing antitrust M&A lawyer from an international New York City firm as the "partner" on the matter who will give out assignments, review written material, and otherwise coordinate the team.

**Prerequisite:** Corporations.

**Recommended:** An antitrust or antitrust and economics course is recommended, but not mandatory.

**Note:** This seminar is open to J.D. students only.

ATTENDANCE IS MANDATORY AT ALL CLASS SESSIONS. Enrolled students must be in attendance at the start of the first class session in order to remain enrolled. Waitlisted students must be in attendance at the start of the first class session in order to remain eligible to be admitted off the waitlist. All enrolled students must attend each class session in its entirety. Failure to attend the first class session in its entirety will result in a drop; failure to attend any subsequent class session in its entirety may result in a withdrawal. Enrolled students will have until the beginning of the second class session to request a drop by contacting the Office of the Registrar; a student who no longer wishes to remain enrolled after the second class session begins will not be permitted to drop the class but may request a withdrawal from an academic advisor in the Office of Academic Affairs. Students may not withdraw from this class after the add/drop period ends without the permission of the professor. This course is offered on a mandatory pass/fail basis and will not count toward the 7 credit pass/fail limit for J.D. students. Note: Students should be prepared to dedicate a significant amount of time to this class over the course of the weekend outside of the scheduled class hours.

**LAW 038 v01 Antitrust Law** (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 038 v01>)

J.D. Course (cross-listed) | 3 credit hours

This course covers the major federal legislation in the field of antitrust law, with a primary focus upon governmental efforts to promote competition, including Sections 1 and 2 of the Sherman Act, and Section 7 of the Clayton Act. Emphasis is placed upon the growing role of economic analysis and other modern trends in judicial interpretation, with an emphasis on understanding the means by which courts determine whether unilateral and collaborative business conduct is pro-competitive or anticompetitive, regardless of the particular statutory provision at issue.

**Mutually Excluded Courses:** Students may not receive credit for both this course and Antitrust Economics and Law or Antitrust Law: A Survey from the Sherman Act of 1890 to Today's Progressive Movement.

**Note:** J.D. Students: Registration for this course will be open to Evening Division students only during the initial J.D. student registration windows. Full-time Day Division students will be able to add or waitlist this course at a later date. Date TBA.

**LAW 038 v05 Antitrust Law** (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 038 v05>)

J.D. Course (cross-listed) | 3 credit hours

This class will serve as a basic survey and introduction to U.S. antitrust law, including coverage of recent critiques and policy developments.

As such, the reading will include the traditional case law, but also some examples of proposed legislation and contemporary advocacy material from policy activists. Thus, we will learn the basics of antitrust doctrine but also seek to understand the merits (or lack thereof) of contemporary critiques and proposed policy responses.

**Mutually Excluded Courses:** Students may not receive credit for both this course and Antitrust Economics and Law or Antitrust Law: A Survey from the Sherman Act of 1890 to Today's Progressive Movement.

**LAW 038 v06 Antitrust Law** (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 038 v06>)

J.D. Course (cross-listed) | 3 credit hours

Description forthcoming.

**Mutually Excluded Courses:** Students may not receive credit for both this course and Antitrust Economics and Law or Antitrust Law: A Survey from the Sherman Act of 1890 to Today's Progressive Movement.

**LAW 1396 v00 Antitrust Law Seminar: Case Development and Litigation Strategy** (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 1396 v00>)

J.D. Seminar (cross-listed) | 2-3 credit hours

This course explores the process of raising and defending against antitrust challenges. Through a series of contemporary case studies, we will examine the resolution of antitrust disputes, focusing on the substantive strategies and procedural tools available to the litigants. In the context of these case studies, we will discuss criminal indictments, plea agreements and the DOJ's leniency policy, sufficiency of pleading, presumptions and burdens of proof, rules of evidence (including the use of expert evidence), dispositive pretrial motions, class actions and class action settlement strategies, temporary restraining orders and preliminary injunctions, treble damage judgments, interlocutory and final appeals, and Supreme Court review. There will be no exam but a paper will be required.

**Recommended:** Antitrust Law, Antitrust Economics and Law, or Antitrust Law: A Survey from the Sherman Act of 1890 to Today's Progressive Movement.

**Note:** This seminar requires a paper. Students must register for the 3-credit section of the seminar if they wish to write a paper fulfilling the Upperclass Legal Writing Requirement. The paper requirements of the 2-credit section will not fulfill the Upperclass Legal Writing Requirement.

**LAW 038 v03 Antitrust Law: A Survey from the Sherman Act of 1890 to Today's Progressive Movement** (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 038 v03>)

J.D. Course (cross-listed) | 3 credit hours

This class will serve as a basic survey and introduction to U.S. antitrust law, but with as much focus on the historical evolution of antitrust policy objectives as on antitrust case law. The course readings will therefore include historical analyses, scholarly commentaries, proposed legislation, and contemporary advocacy material from policy activists in addition to a narrowed selection of traditional case law. The objective of this course will be not just to learn the basics of antitrust doctrine but to understand and assess contemporary critiques and proposed policy responses to the current state of that doctrine.

**Mutually Excluded Courses:** Students may not receive credit for both this course and Antitrust Law or Antitrust Economics and Law.

**LAW 1796 v00 Antitrust Seminar: From the Chicago School to the New Progressives: Regulating Technology Platforms, Durable Monopolies, and Mega-Firms (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 1796 v00>)**

J.D. Seminar (cross-listed) | 2-3 credit hours

In recent years, progressive groups, Congress, and government antitrust agencies have taken an increasingly aggressive approach to enforcement against “big tech” and monopoly power more generally. In this seminar, we will examine current legislative and enforcement initiatives toward particular kinds of firms and economic conduct. We will examine how these enforcement initiatives differ in their presumptions, analysis, and objectives from antitrust enforcement principles and doctrine that rose to prominence over the second half of the twentieth century. We will trace the evolution of those principles from the “Chicago School” revolution in antitrust of the 1970’s and 1980’s to the current “New Progressive” era, and critically assess both the new progressive policies and the shortcomings of the doctrine and theory to which those policies respond.

**Strongly Recommended:** This seminar assumes basic familiarity with antitrust precedent and concepts. Prior completion of an antitrust survey course is thus strongly recommended.

**Note:** This seminar requires a paper. J.D. students must register for the 3 credit section of the seminar if they wish to write a paper fulfilling the Upperclass Legal Writing Requirement. The paper requirements of the 2 credit section will not fulfill the J.D. Upperclass Legal Writing Requirement.

**LAW 458 v00 Contract Law Seminar: Franchising (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 458 v00>)**

J.D. Seminar (cross-listed) | 2 credit hours

Franchised businesses account for approximately 40 percent of retail sales in the U.S., more than a trillion dollars a year, and have about 10 million employees. Franchising is growing: a new franchise opens in the U.S. roughly every eight minutes of every working day. Although most people may associate franchising with “fast food restaurants,” franchising is prevalent in many areas of the economy, including automotive, hotel, various retail establishments, and numerous business services, among others. With the explosive growth of franchising, which really began in the 1950s, has come the development of franchise law as a separate discipline during the past 60 or so years and significant growth in the number of lawyers who practice in this field. Thus, franchising and the evolving practice of franchise law have a great practical impact on the U.S. and global economy.

Franchise law is a combination of contract and statutory law and is heavily influenced by trademark, antitrust and other areas of business law. Franchise agreements tend to be lengthy multi-year trademark licensing agreements. Because franchising involves distribution of goods and services, antitrust and other competition law considerations must be taken into account. Franchising is also regulated at both the federal and state level. Many franchise sales are regulated by state and federal disclosure requirements, analogous to SEC requirements. Automotive, petroleum and certain other franchise relationships are regulated by specific statutes, while various states generally regulate aspects of the franchise relationship, such as termination or renewal of the relationship. There is a substantial amount of litigation in franchising, involving not only disputes between franchisors and franchisees, but also franchise employees, consumers and others. Many common law contract concepts, such as the “implied covenant of good faith and fair dealing,” have evolved and continue to evolve in the context of franchise law. Franchising is also growing rapidly outside the U.S.; accordingly, a variety of laws and regulations of other countries are relevant.

This course will cover the legal and practical business basics of franchising, including, structuring of the franchise relationship and the analysis of franchise agreements; the sales process and disclosure requirements; the relationship of franchising, employment, trademark, antitrust and other generally applicable statutes; contract and other common law concepts that affect the franchise relationship; statutes regulating the franchise relationship at the state and federal levels; automobile, petroleum and international franchising; and franchise-related dispute resolution. Students will be evaluated on the basis of a paper and class participation, including mock negotiations at the end of the semester.

**Learning Objectives:**

My principal goal is for you to gain a general understanding of franchise law. In addition, I want you to become comfortable reading complex contracts, specifically franchise agreements, and to be able to analyze and negotiate a franchise dispute.

**Prerequisite:** Contracts (or Bargain, Exchange, and Liability) or, for foreign-educated LL.M. students, Foundations of American Law, Introduction to U.S. Legal Systems or a Contracts equivalent course from the home country.

**Note:** NOTE FOR THE SUMMER 2021 SECTION: The professor will teach this course virtually via Zoom. Students may choose to participate from the classroom or via Zoom while the professor is participating remotely. Students who want to participate in person must be in the University’s COVID testing protocol and follow all other safety measures.

**LAW 1815 v00 Decentralization, Finance, and the Law (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 1815 v00>)**

J.D. Seminar (cross-listed) | 2-3 credit hours

This seminar will examine the concept of decentralization and finance as it is applied across various issue areas: securities law, antitrust law, intellectual property, and financial stability.

Decentralization has attracted enormous attention with the rise of cryptocurrencies and decentralized finance. However, the term “decentralization” is a term of art rather than a legal concept—although the norms and general understanding of particular uses of the term can have decisive legal consequences. In this seminar, students will compare and contrast the contexts and settings in which the decentralization conversation has had particular salience, particularly when applied to Web 3 and blockchain technologies. Guest speakers will additionally visit the class to provide real world applications and perspective. A basic understanding of what a cryptocurrency is will be useful to students taking the course.

**Note:** This seminar requires a paper. J.D. students must register for the 3 credit section of the seminar if they wish to write a paper fulfilling the Upperclass Legal Writing Requirement. The paper requirements of the 2 credit section will not fulfill the J.D. Upperclass Legal Writing Requirement.

**LAW 1690 v02 Economic Analysis of Law (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 1690 v02>)**

J.D. Course (cross-listed) | 3 credit hours

This course introduces students to the field of law and economics. Law and economics is the application of tools from microeconomics to perform positive and normative analysis of the law and the legal system. We will focus on five core legal subjects: torts, contracts, property, criminal law, and legal procedure. No prior background in economics is required.

**LAW 726 v00 Global Competition Law and Policy (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 726 v00>)**

LL.M Seminar (cross-listed) | 2-3 credit hours

This course examines the current state of competition (or “antitrust”) policies and enforcement mechanisms around the world, using case studies from the US, EU, Asia and elsewhere. The international competition community is in the throes of a vigorous re-examination of the goals and tools of competition regulation and policy: has inadequate or ineffective competition regulation contributed to excessive industry concentration, income inequality, stagnant wage growth, and related harm to consumers and society? Or are existing competition enforcement tools sufficient to address actual competition problems, leaving other economic and social issues to be better addressed by other public policies and tools? Do digital markets and “platforms” require special rules? These issues present the challenges of accommodating competition policy to evolving political, economic and social demands.

**Prerequisite:** For J.D. students: Antitrust Law or Antitrust Economics and Law. LL.M. students should have some previous work experience or coursework in U.S. antitrust law or competition regulation in other jurisdictions; otherwise professor’s approval required before enrolling.

**Note:** This course is part of the following graduate programs: International Business and Economic Law LL.M. International Business and Economic Law LL.M. - List A International Legal Studies LL.M.

This seminar requires a paper. J.D. students must register for the 3 credit section of the seminar if they wish to write a paper fulfilling the Upperclass Legal Writing Requirement for JD students. The paper requirements of the 2 credit section will not fulfill the Upperclass Legal Writing Requirement for JD students.

**LAW 726 v01 Global Competition Law and Policy (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 726 v01>)**

LL.M Seminar (cross-listed) | 2 credit hours

This seminar will examine the development of competition laws around the world, differences in substantive standards among the major enforcement jurisdictions; the role of historical, political, and economic forces that affect those differences; and the possible consequences of those differences. We will start with a basic understanding of competition principles common to key jurisdictions including the U.S., Canada, the EC, the UK, and Japan, and will compare and contrast these with the principles applied in developing and transition economies, such as China, Mexico, India, and South Africa. Particular emphasis will be on current issues and trends including the role of antitrust in a digital economy, multi-jurisdictional merger control, and regulation of dominant firm conduct. We will also consider the role of competition policy in economic and political development generally.

**Prerequisite:** For J.D. students: Antitrust Law or Antitrust Economics and Law. LL.M. students should have some previous work experience or coursework U.S. antitrust law or competition regulation in other jurisdictions; otherwise professor’s approval required before enrolling.



**LAW 1403 v00 Hot Topics in Antitrust ([http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 1403 v00](http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201403))**

J.D. Seminar (cross-listed) | 2 credit hours

Antitrust is dynamic. In regulating business strategy, competition law is only as effective as its understanding of each industry's idiosyncrasies. Novel business practices reflect changing technologies, market conditions, and strategies. Antitrust lawyers do not simply master doctrine. Fluent in the basic principles of antitrust law and economics, they understand industry conditions and the enforcement agencies' agendas. Above all, they stay abreast of cutting-edge developments in the law.

This seminar bestows that understanding. We will discuss today's most hotly debated antitrust questions, explore how foreign jurisdictions' competition laws and enforcement ideals deviate from U.S. practice, and delve into the industry-specific issues that arise in fields ranging from healthcare to wireless technology.

Major points of focus include the evolving relationship between antitrust law and intellectual-property rights. We shall discuss post-Actavis issues in the pay-for-delay space, including no-authorized-generic promises by pioneer-drug manufacturers and whether the continuation of infringement litigation immunizes a reverse payment. Outside of the life sciences, urgent questions involve antitrust limits on IP aggregation by patent-assertion entities and practicing firms. Further, when does a "privateering" agreement between a practicing entity and a PAE implicate competition law? Does the owner of a standard-essential patent violate antitrust law in seeking to enjoin a technology user despite its prior assurance to license on reasonable and nondiscriminatory terms? We shall also address antitrust limits on patent licensing and refusals to deal. Agency guidelines overseas, such as in China, and enforcement actions in Asia more broadly hint at the direction of international antitrust in this area.

In the larger field of antitrust and technology, some commentators argue that big data and privacy may implicate competition policy. In 2016, Germany's Federal Cartel Office accused Facebook of abusing its dominance based on privacy and big-data theories. Do those allegations hold water? A recurring problem in antitrust, which has emerged anew in the pharmaceutical industry, is predatory innovation. A separate development goes to the nature of actionable conspiracies where the lines between vertical and horizontal agreements become blurred. The Apple e-Books saga, which came to an end in March 2016 when the Supreme Court denied cert., has important repercussions for the law in this space. We shall also address the ongoing debate about the reach of Section 5 of the FTC Act, which allows the FTC to reach beyond the Sherman Act to condemn unfair methods of competition. The FTC's controversial 2015 statement of enforcement principles on Section 5 features here, and we shall ask whether it makes sense that the Justice Department and FTC can subject firms to distinct liability standards. We shall touch on pending legislation, the SMARTER Act, which touches upon those issues. A critical antitrust issue that remains unresolved is the scope of Noerr-Pennington immunity. Finally, we will discuss contemporary issues in healthcare-merger oversight.

**Recommended:** Prior or concurrent enrollment in a basic antitrust course.

**LAW 2079 v00 International and Comparative Antitrust Law ([http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 2079 v00](http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%202079))**

LL.M Course (cross-listed) | 2 credit hours

More than a hundred countries have enacted competition laws and modeled their laws either on the U.S. or on the EU system. This course will focus on the U.S. and the EU antitrust regimes by comparing and contrasting their principles and procedures. Some other jurisdictions at the center of the international antitrust arena, such as China and Brazil, will also be discussed. This course will start with an overview of the institutional design and of the substantive standards applied by the FTC/DOJ in the U.S. and by the European Commission in the EU, and will then delve into various areas of antitrust law, with particular emphasis on cartels, horizontal and vertical restraints, abuse of dominance, and mergers. This course will also examine process and procedures in the U.S. and the EU, and consider practices that facilitate international cooperation in antitrust investigations.

Learning objectives:

Students attending this course (i) will receive an overview of the international dimension of the various areas of antitrust law (horizontal agreements; monopolization/abuse of dominance; mergers); (ii) will learn to compare and contrast antitrust principles and procedures of the two systems (EU and U.S.) that most have influenced antitrust laws and institutions around the world; (iii) will familiarize with new actors and current challenges of the international antitrust arena. As a result, students will learn how to navigate multi-jurisdictional antitrust matters.

**Prerequisite:** For J.D. students: Antitrust Law or Antitrust Economics and Law. Prerequisite for LL.M students: None, although it is recommended that LL.M students have some previous coursework or work experience in competition law in the U.S. or another jurisdiction.

**LAW 1469 v00 Merger Antitrust Law (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 1469 v00>)**

J.D. Course (cross-listed) | 4 credit hours

This is a course on identifying and resolving antitrust problems that arise in mergers and acquisitions. Using case studies of contemporary transactions ranging from simple negotiated acquisitions to hard-fought contested takeovers, we will examine anticipating antitrust problems and identifying possible defenses and solutions at the early stage of a deal when information is typically scarce, performing more detailed analyses when more information becomes available, organizing the prosecution/defense of a transaction, navigating the DOJ/FTC merger review process, anticipating and structuring consent decree settlements, litigating merger antitrust cases, and negotiating provisions in merger agreements to allocate antitrust risk between the parties. The case studies will include such recent high-profile transactions as Hertz/Avis Budget/Dollar Thrifty, Halliburton/Baker Hughes, Staples/Office Depot, American Airlines/USAir, Comcast/NBCUniversal, Anheuser-Busch InBev/Grupo Modelo, Anthem/Cigna, and Nielsen/Arbitron. The course will be sufficiently self-contained for students interested in business combinations who have not taken an antitrust course. There will be several short, graded assignments throughout the course and a five-hour, open book, take-home examination at the end of the course.

**Learning Objectives:**

By the end of the course, a diligent student should be able to do the following:

1. Perform a preliminary merger analysis, spotting at a high-level both potential substantive issues and possible remedies, in common transaction scenarios involving public companies given only publicly available facts.
2. Describe the merger review process from the filing of an HSR premerger notification report through a preliminary investigation, second request investigation, and final arguments to the heads of the investigating agency. If the agency concludes that the deal has antitrust problems, be able to describe the process for negotiating consent decree relief.
3. Understand the major theories of antitrust harm that apply to mergers and acquisitions and the major types of defenses available to the merging parties and be able to apply them to an arbitrary transaction.
4. Structure a merger antitrust challenge (as the investigating staff) and a merger antitrust defense (as defense counsel) before the decision-making officials at the DOJ and FTC.
5. Anticipate and structure a consent decree remedy minimally satisfactory to the DOJ and FTC in light of their expressed concerns about a transaction.
6. Describe the basic considerations and timing implications of litigating a merger antitrust case, the standards for granting preliminary and permanent injunctive relief, what the government and the merging parties each must show to prevail, and the allocation of the burden of proof (both persuasion and going forward) between the two sides, and the strategic and tactical implications of these factors to the prosecution and defense of a merger antitrust case in court.
7. Describe the legal and strategic significance of the antitrust-relation provisions in an Agreement and Plan of Merger (e.g., reps and warranties on antitrust-related consents and approvals, merger control and litigation conditions precedents, general efforts covenants, conduct of business covenants, merger control filing covenants, investigation and litigation cooperation covenants, shift-shifting covenants (including covenants to divest businesses or assets if necessary to avoid an agency challenge or settle a litigation), antitrust reverse termination fees, purchase price

**LAW 1019 v00 The Law of Public Utilities: Bringing Competition to Historically Monopolistic Industries (<http://curriculum.law.georgetown.edu/course-search/?keyword=LAW 1019 v00>)**

J.D. Seminar | 2-3 credit hours

Our major infrastructural industries—electricity, gas, telecommunications, transportation and water—were historically controlled by monopolies. Since the 1980s, efforts to introduce competition into these industries have met obstacles. Battles before legislative bodies, regulatory agencies and courts, at the state and federal levels, have produced a distinct body of law. That body of law—the law of introducing competition into historically monopolistic industries—is the subject of this course.

From the principles learned in the course, students have written papers on such diverse topics as renewable energy, internet, movie production, chicken slaughtering, student loans, pharmaceutical research, Uber, Flint's water crisis, utility corporate form, law school admissions, farms seeds and insecticide, Youtube, private space travel, rare minerals used in solar and wind facilities, Facebook, cloud storage, electric storage, and telemedicine at the VA. Some of these papers have made their way into professional journals or law journals.

Regardless of the industry or era, the regulation of infrastructural monopolies and their competitors has five common elements: its **mission** (to align business performance with the public interest); its **legal principles** (ranging from the state law on exclusive monopoly franchise to federal constitutional protection of shareholder investment); **policy flexibility** (accommodating multiple public purposes, from service reliability to environmental accountability to protection of vulnerable citizens); reliance on multiple **professional disciplines** (law, economics, finance, accounting, management, engineering and politics); and **formal administrative procedures**, such as adjudication and rulemaking.

Today, political challenges are causing policymakers to stretch regulation's core legal principles. Four examples of these challenges are: **climate change** (e.g., To what extent should we make utilities and their customers responsible for "greening" energy production and consumption?); **universal service** (e.g., Should we bring broadband to every home, and at whose cost?); **privacy** (How do regulators induce personal changes in energy consumption while protecting the related data from public exposure?); and **protection of our infrastructure from hackers, terrorists and natural catastrophes**.

Complicating these political challenges are two sources of constant tension: **ideology** (e.g., private vs. public ownership, government intervention vs. "free market"); and **state-federal relations** (e.g., Which aspects of utility service are "national," requiring uniformity; and which are "local," warranting state experimentation?).

This field has many jobs, as new issues emerge and as baby boomers retire. Lawyers play varied roles. They advise clients who are suppliers or customers of regulated services, represent parties before regulatory tribunals, advise those tribunals or their legislative overseers, and challenge or defend those tribunals on judicial review.

**Note:** The 3-credit Writing Requirement section of this course is restricted to J.D. students only. The 2-credit Paper section of this course is restricted to LL.M. students only.

## Full-time Faculty

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