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. The Advanced Antitrust Seminar: A Comparative Look at EU and US Competition Law introduces students to the most significant current differences in approach and analysis between EU and US enforcement.

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)
LAW 1528 v00 Advanced Antitrust Seminar: Antitrust and Intellectual Property (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201528%20v00)
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 contemporary debate over "Big Tech," 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, and antitrust counterclaims in U.S. litigation. Grades will be based on 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 038 v02 Antitrust Economics and Law (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%20038%20v02)
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. Attendance is also required.

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

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

Note: Laptops may not be used during class sessions.
LAW 1530 v00 Antitrust in Action: Evaluating the Deal and Advising the Board of Directors (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201530%20v00)
J.D. Seminar | 1 credit hour
This intensive one-credit course will take eight 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 offers 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: 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 will 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. Withdrawals are permitted up until the last class for this specific course. 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%20038%20v01)
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.

LAW 038 v50 Antitrust Law (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%20038%20v50)
J.D. Course (cross-listed) | 3 credit hours
This course covers the major federal antitrust statutes and related federal agency guidelines, with a primary focus on government efforts to protect and promote competition through the Sherman Act, the Clayton Act, and Section 5 of the Federal Trade Commission Act. Emphasis is placed on the growing use of economic analysis and other modern trends in judicial interpretation of these statutes, and on recent case law addressing vertical and horizontal restraints, monopolization, and mergers.

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

LAW 1396 v00 Antitrust Law Seminar: Case Development and Litigation Strategy (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201396%20v00)
J.D. Seminar (cross-listed) | 2 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.

Prerequisite: Antitrust Law or Antitrust Economics and Law.
LAW 726 v00 Global Competition Law and Policy (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%20726%20v00)
LL.M Seminar (cross-listed) | 2 credit hours
This seminar will examine the development of antitrust law around the world, starting with a basic understanding of U.S. and EC competition principles, and then reviewing the application of those principles in developing and transition economies including China, India, Africa and Latin America. Particular emphasis will be on merger control and regulation of dominant firm conduct (monopolization/abuse of dominant position). We will also consider the role of competition policy in economic and political development generally. Grading will be based on a paper and an assessment of class participation.

**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 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%20726%20v01)
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 possible consequences of those differences, and the means to address them. We will start with a basic understanding of U.S. and EC competition principles, and then compare and contrast these with the principles applied in developing and transition economies, such as China, India, and South Africa. Particular emphasis will be on current issues and trends, 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%201403%20v00)
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 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%202079%20v00)

LL.M Seminar (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 new 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%201469%20v00)

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 scare, 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 three-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 adjustments, etc.).
This practicum course is open to LL.M. students, space permitting. Interested LL.M. students should email Louis Fine (fine@law.georgetown.edu) to request admission. This practicum course is suitable for evening students who can commit to attending the weekly seminars and participating in 15 hours of project work each week.

Prerequisite: J.D. students must complete the required first-year program prior to enrolling in this course (part-time and interdivisional transfer students may enroll prior to completing Criminal Justice, Property, or their first-year elective).

Mutually Excluded Courses: Students may not concurrently enroll in this practicum course and a clinic or another practicum course. Students may concurrently enroll in this practicum course and an externship.

Note: This practicum course is open to LL.M. students, space permitting. Interested LL.M. students should email Louis Fine (fine@law.georgetown.edu) to request admission. This practicum course is suitable for evening students who can commit to attending the weekly seminars and participating in 15 hours of project work each week.
LAW 1312 v00 Writing for Practice: Antitrust Economics and Law
(http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201312%20v00)
J.D. Seminar | 1 credit hour
The ability to write effective professional documents is one of a lawyer's most important skills. This one-credit, writing-intensive seminar is designed to help students develop this skill while focusing on a particular substantive area of law. The seminar will build upon the principles learned in the first-year Legal Research and Writing course by providing instruction in drafting legal documents typical to antitrust law. In addition to the practical legal writing skills, students will also learn more about antitrust practice and litigation strategy.

The seminar will draw on substantive antitrust principles covered in Professor Salop's Antitrust Economics and Law course. Discussion topics and writing assignments will focus on the application of those principles in different contexts, including client counseling, dealing with government enforcers, and litigating antitrust cases.

Written work product will be a particular focus of the seminar, and students should expect to draft a number of documents common to antitrust practice, such as e-mail correspondence, client memoranda, analyses of litigation issues, and motion papers. At least one document will require both an initial and final draft. The professor will provide individualized comments and grades on each major writing assignment, and many writing assignments will be discussed in class. Class participation will count toward the final grade.

Prerequisite: Legal Practice: Writing and Analysis; concurrent enrollment in Antitrust Economics and Law in Fall 2017.

Note: Note: THIS COURSE REQUIRES PROFESSOR PERMISSION TO ENROLL. Students should email a short statement of their interest in the seminar to Professor Holt at benjamin.holt@hoganlovells.com by 5:00 p.m. on June 6, 2017. After the June 6 application deadline, students will be admitted into open seats on a rolling basis.

Limit: 10 students.

ATTENDANCE IS MANDATORY AT ALL CLASS SESSIONS. All enrolled and waitlisted students must be in attendance at the start of the first class session in order to be eligible for a seat in the class and must attend each class session in its entirety.

Note: A student will be permitted to drop a course that meets for the first time after the add/drop period, without a transcript notation, if a student submits a written request to the Office of the Registrar prior to the start of the second class meeting. Withdrawals are permitted up until the last class for this specific course.

Full-time Faculty
Steven C. Salop
Howard Shelanski