

TABLE OF CONTENTS

	Page
 CHAPTER 1. ANTITRUST POLICY: AN INTRODUCTION	
§ 1.01 The Focus of Antitrust	1
§ 1.02 Legislative History and Antitrust Goals	2
§ 1.03 Early Interpretation	5
 CHAPTER 2. ANTITRUST ECONOMICS	
§ 2.01 Introduction	9
§ 2.02 Perfect Competition	10
[A] Demand and Supply	10
[B] Elasticity	14
[C] Market Equilibrium	17
[D] The Individual Firm Under Perfect Competition: The Marginal Revenue = Marginal Cost Rule	19
[E] Equilibrium Under Perfect Competition	22
§ 2.03 Monopoly	26
§ 2.04 Monopoly v. Competition: A Synthesis	26
§ 2.05 Oligopoly	32
§ 2.06 Conclusion	33
 CHAPTER 3. ANTITRUST COVERAGE: JURISDICTION, ENFORCEMENT AND EXCEPTIONS	
§ 3.01 Introduction	35
§ 3.02 Private Enforcement	36
[A] Standing	38
[B] Antitrust Injury	40
[C] Direct Purchaser Requirement	42
§ 3.03 First Amendment Defenses	46
[A] <i>Noerr-Pennington</i> Doctrine	46
[B] Overbroad Remedial Orders	50
§ 3.04 Common Law Defenses	51
§ 3.05 Antitrust Enforcement in Regulated Industries	53
[A] Introduction	53
[B] Regulation of Natural Monopoly	54
[C] Antitrust or Regulation?	55

	Page
[D] Expressed Federal Exceptions	56
[1] Exemptions Furthering National Policy	57
[a] Labor Organizations	57
[b] Export Associations	58
[2] Exemptions For Specific Industries: Insurance	59
§ 3.06 Federalism	61
[A] The State Action Doctrine	61
[1] Introduction	61
[2] Local Government Antitrust Act	68
[B] The Doctrine of Preemption	69

CHAPTER 4. HORIZONTAL RESTRAINTS AND CARTEL BEHAVIOR

§ 4.01 Introduction	75
§ 4.02 Policy Introduction	75
[A] Populism	76
[B] Structuralism and the Warren Court	76
[C] Economic Efficiency and the Burger Court	77
§ 4.03 Economic Analysis, Market Power and Horizontal Re- straints	78
[A] Price-Fixing Effectiveness	78
[B] Output Analysis	79
[C] Market Power Analysis	79
§ 4.04 Ancillary Restraint Doctrine	81
§ 4.05 Rule of Reason Development	85
§ 4.06 <i>Per Se</i> Rule of Illegality and Price-Fixing	87
§ 4.07 Modern Treatment of the <i>Per Se</i> Rule	89
§ 4.08 Trend Toward a Structured Rule of Reason for Price- Fixing	92
§ 4.09 The Rule of Reason and Anticompetitive Conduct by Professionals	97
§ 4.10 Trade Association and Data Dissemination Activity	100
§ 4.11 Joint Ventures	103
§ 4.12 Maximum Price-Fixing Schemes	107
§ 4.13 Concerted Refusals to Deal	110
§ 4.14 Horizontal Market Divisions	116
[A] Dividing Territories and Fixing Price	117
[1] Introductory Cases	117
[2] Exclusive License for an Assigned Area	119

	Page
[3] Externalities and the Free-Rider Defense	121
[4] <i>Polk Brothers</i> and the Trend Toward a Rule of Reason	123
§ 4.15 The Conspiracy Doctrine	125
[A] Proof of an Agreement	126
[1] Express Agreements	126
[2] Implied Agreements	127
[3] Procedural Matters	127
[4] Conscious Parallelism	128
[a] Interpretation	131
[b] Base Point Delivered Pricing	131
[B] Oligopoly Pricing and Facilitating Devices	134
[C] The Plurality Requirement and Intra-Enterprise Conspiracy	136
[1] Corporate Parent and Wholly Owned Incorporated Subsidiary	137
[2] Corporate Parent and Partially Owned Incorporated Subsidiary	138
[3] Corporation and its Unincorporated Division	140
[4] Corporation and its Agents or Independent Consultants	140
[5] Sports League Teams	142
[6] Trade Associations	143
[7] Members of Non-Profit Foundations	144
[8] Local Governmental Units	144
[9] Single Entities Created as Instrumentalities for Unlawful Purposes	146
§ 4.16 Criminal Liability	147

CHAPTER 5. VERTICAL RESTRAINTS

§ 5.01 Intrabrand Distributional Restraints	149
[A] Intrabrand Restraints and the Free Rider Problem	150
[B] Resale Price Maintenance (RPM)	151
[1] Minimum Prices	151
[2] Consignment and the Use of Sales Agents	152
[3] Vertical Agreements: The <i>Colgate</i> Doctrine and Dealer Termination	153
[a] The " <i>Colgate</i> Doctrine"	154
[b] The Parties Who Can Combine Under § 1	155

	Page
[c] Dealer Termination after <i>Monsanto</i>	156
[d] Price-Fixing and Protecting Dealers	158
[e] RPM and Antitrust Injury	159
[4] The Economics of Resale Price Maintenance	159
[5] Maximum Price "Maintenance"	165
[C] Territorial and Customer Restraints	166
[1] <i>White Motor Co. v. United States</i>	167
[2] <i>United States v. Arnold, Schwinn & Co.</i>	168
[3] <i>Continental T.V., Inc. v. GTE Sylvania</i>	168
[4] The Aftermath of <i>Sylvania</i>	171
[D] Dual Distribution	172
[E] Exclusive Dealerships	174
§ 5.02 Interbrand Vertical Foreclosure	175
[A] Exclusive Dealing	176
[1] Economic Issues	176
[2] Exclusive Dealing and the Supreme Court	178
[3] Exclusive Dealing as an Unfair Method of Competition	179
[4] Exclusive Dealing in the Post- <i>Tampa Electric</i> and <i>Sylvania</i> Era	181
[B] Tying Arrangements	182
[1] The Economics of Tying	183
[2] Tying and the Supreme Court	186
[a] Early Interpretations	186
[b] <i>Fortner I and II</i>	188
[c] <i>Jefferson Parish Hospital v. Hyde</i>	190
[d] <i>Eastman Kodak Co. v. Image Technical Services</i>	192
[e] Modern Tying Doctrine	194
[3] Package Transactions	195
[4] Defenses and Justifications	196
[a] The Single Product "Defense"	196
[b] Good-Will	199
[5] Unfair Methods of Competition: Tying Products Sold by Others Where There is a Financial Incentive	200
[6] Reciprocal Dealing	201

CHAPTER 6. MONOPOLIZATION AND RELATED OFFENSES

§ 6.01	Introduction	203
§ 6.02	The Economics of Monopoly	203
§ 6.03	The Modern Offense of Monopolization: The Search for Standards	207
[A]	Early Interpretations	207
[1]	Preliminary Issues	207
[2]	<i>Standard Oil v. United States</i>	208
[3]	<i>United States v. U.S. Steel Corp.</i>	208
[B]	<i>United States v. Aluminum Co. of America</i>	209
[1]	Background	209
[2]	Market Definition	209
[3]	Alcoa's Conduct	210
[C]	The Search for Standards in the Aftermath of <i>Alcoa</i>	212
[1]	<i>United States v. Griffith</i>	212
[2]	<i>United States v. United Shoe Machinery Corp.</i>	212
[3]	<i>United States v. Grinnell</i>	213
§ 6.04	Market Power	214
[A]	The Economic Theory of Market Power	214
[1]	Market Share and Market Power	215
[2]	Market Definition and Cross-Elasticity of Demand	217
[3]	Elasticity of Supply	218
[4]	Geographic Markets	219
[B]	Market Power in the Courts	219
[1]	<i>Alcoa</i>	220
[2]	<i>United States v. Grinnell</i>	220
[3]	<i>Eastman Kodak v. Image Technical Services</i>	221
[4]	<i>Telex Corp. v. IBM Corp.</i>	223
[5]	<i>United Parcel Service and Dimmit Agri Industries</i>	224
[6]	Department of Justice and Federal Trade Commission Guidelines	225
§ 6.05	Monopolizing Conduct	226
[A]	Maintenance of Excess Capacity: <i>Alcoa</i>	226
[B]	Long-Term Leasing: <i>United Shoe</i>	227
[C]	Product Innovation and Predisclosure: <i>Berkey Photo, Inc. v. Eastman Kodak Co.</i>	228

	Page
[D] Physical and Technological Ties	229
[E] Limiting the Supply of an Essential Resource	230
[1] Refusals to Deal as a Means of Protecting Existing Power	230
[2] Refusals to Deal and Vertical Integration	232
[F] Price Squeeze	233
[G] Raising Rivals' Costs	234
[H] The Economics of Vertical Integration	235
[I] The Exercise of Monopsony Power	237
§ 6.06 Attempt to Monopolize	239
[A] Intent	240
[1] Intent to Do What?	240
[2] Proof of Intent	241
[B] Dangerous Probability of Success	242
[1] The Role of Market Analysis	242
[2] Market Share and "Dangerous Probability"	244
[C] Conduct Generally	245
[D] Predatory Pricing	246
[1] How Likely is Predatory Pricing?	247
[2] Standards for Predatory Pricing	250
[3] Predatory Pricing Standards in the Courts	254
§ 6.07 Oligopoly and "Shared Monopoly"	255
[A] Oligopoly Behavior	256
[B] Shared Monopoly	256
§ 6.08 Conspiracy to Monopolize	258

CHAPTER 7. MERGERS AND ACQUISITIONS

§ 7.01 Introduction	261
§ 7.02 Horizontal Mergers	261
§ 7.03 Non-Horizontal Mergers	261
[A] Vertical Mergers	262
[B] Conglomerate Mergers	263
[C] Loss of Potential Competitors	264
§ 7.04 Economic Analysis of Mergers	265
[A] Horizontal Mergers	265
[B] Vertical Integration Through Merger	266
§ 7.05 Legal Analysis of § 7: Overview	268
[A] Geographical Market	269

	Page
[B] Product Market	269
[C] Market Power	270
§ 7.06 Mergers Under The Sherman Act: The Early Years	271
§ 7.07 The Clayton Act	272
[A] Vertical Integration Through Merger	273
[B] Horizontal Mergers	277
[C] Conglomerate Mergers	283
[1] Mergers of Potential Competitors	283
[2] Potential Competition and Joint Ventures	287
§ 7.08 Failing Company Defense	288
§ 7.09 Department of Justice Merger Guidelines	290
[A] Product Market	291
[B] Geographical Markets	293
[C] Calculating Market Shares	293
[1] Horizontal Mergers	294
[a] Potential Adverse Competitive Effects of Mergers	295
[i] Coordinated Interaction	295
[ii] Unilateral Effects	295
[b] Efficiencies	295
[c] Entry Analysis	297
[i] Timeliness	298
[ii] Likelihood	298
[iii] Sufficiency of Entry	298
[2] Non-horizontal Mergers	298
[a] Vertical Integration	298
[b] Potential Competitors and Conglomerate Merg- ers	300
§ 7.10 Private Enforcement of § 7	301
§ 7.11 Conclusion	303

CHAPTER 8. PRICE DISCRIMINATION

§ 8.01 Introduction	305
[A] The Clayton Act and the Robinson-Patman Amend- ments	305
[B] Overview: The Components of the Robinson-Patman Act	306
[1] Price "Discrimination" and Price "Difference" . .	306
[2] Section 2(a) Components	307

	Page
[3] Defenses	307
[4] The <i>Per Se</i> Offenses	307
[5] Coverage	307
§ 8.02 The Economics of Price Discrimination	308
[A] First Degree Price Discrimination	308
[B] Second Degree Price Discrimination	310
[C] Third Degree Price Discrimination	311
§ 8.03 Definitional Issues	313
[A] Price Differences	313
[1] Discounts	313
[2] Base Point Pricing	314
[3] Indirect Price Discrimination	315
[4] Indirect Purchasers	316
[B] Commodities of "Like Grade and Quality"	316
§ 8.04 Injury to Competition	317
[A] Primary-Line Price Discrimination: Reconciling the Rob- inson-Patman Act with General Antitrust Goals	318
[1] <i>Utah Pie v. Continental Baking</i>	318
[2] <i>Brook Group Ltd. v. Brown & Williamson Tobacco</i>	319
[B] Secondary Line Discrimination	320
[1] The Inference of Injury	320
[2] Showing Actual Harm	321
§ 8.05 Seller's Affirmative Defenses	322
[A] Cost Justification	322
[1] The Basic Defense	322
[2] <i>United States v. Borden</i>	323
[3] The "Cost Justification" Standard	324
[B] Meeting Competition	324
[1] Good Faith: Verification and Information Ex- change	325
[2] Good Faith: Breadth of Response	326
§ 8.06 The <i>Per Se</i> Offenses	326
[A] Section 2(c): Unlawful Brokerage Payments	326
[B] Promotional Allowances	327
§ 8.07 Buyer Liability	329
[A] Generally	329
[B] The Plaintiff's § 2(f) Case	329

	Page
[C] The Circular "Meeting Competition" Defense	330
APPENDIX I Selected Antitrust Statutes	A-1
APPENDIX II Chart Cross-Referencing Major Antitrust Casebooks with This Text	A-14
TABLE OF CASES	I-1
INDEX	TC-1