Business Law
Text & Exercises 6th Ed.

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Chapter 41: Antitrust Law

Learning Outcomes

- LO1 Outline which anticompetitive activities are prohibited by the Sherman Act.
- LO2 List anticompetitive activities outlawed by the Clayton Act.
- LO3 Note which anticompetitive activities are banned by the Federal Trade Commission Act.

Learning Outcomes

LO4 • **State who enforces the antitrust laws.**

LO5 • **Identify exemptions from antitrust laws.**

Introduction

- **Antitrust Laws** regulate economic competition.
- Today's antitrust laws are descendents of common law actions intended to **limit restraints on trade and regulate economic competition.**
- **Embodied almost entirely in:**
  - The Sherman Antitrust Act of 1890.
  - The Clayton Act of 1914.

LO1

The Sherman Act

- **Section 1 and 2 contain the main provisions of the Sherman Act.**
  - Section 1: Requires two or more persons, as a person cannot contract, combine, or conspire alone. Concerned with finding an agreement.

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The Sherman Act

- **Section 1 and 2** (cont’d):
  - Section 2: Applies both to an individual person and to several people. Deals with the structure of monopolies in the marketplace.
- **Jurisdictional Requirements:** tied to interstate commerce, and U.S. nationals abroad whose activities affect U.S. commerce.

Rule of Reason vs. *Per Se* Violations

- **Courts use the Rule of Reason to determine whether an agreement between rivals restrain trade:**
  - The purpose of the arrangement,
  - The powers of the parties, and
  - The effect of their actions in restraining trade.
- **If legitimate competitive benefits outweigh the anticompetitive effects, court will hold the agreement lawful.**

Rule of Reason vs. *Per Se* Violations

- **Some agreements are so blatant and substantially anticompetitive they are deemed illegal per se (inherently), and courts are prevented from applying the rule of reason in analysis.**
  - Price-Fixing Agreements. →
  - Group Boycotts. →
  - Market Divisions. →

Per Se Violations

- **Price Fixing:** agreement between competing firms in the market to set an established price for the goods or services they offer.
- **Group Boycotts**: agreement between two or more sellers to refuse to deal with a particular person or firm.
- **Market Divisions:** occurs when competitors in the same market agree that each will have exclusive rights to operate in a particular geographic area.

Trade Associations

- **Industry specific organizations created to provide for the exchange of information, representation of the business interests before governmental bodies, advertising campaigns, and setting of regulatory standards to govern their industry or profession.**
  - Rule of Reason is applied to determine if a violation of the Act has occurred.

Territorial or Customer Restrictions

- **Imposed by manufacturers on the sellers of the products, to insulate dealers from direct competition with each other.**
  - Rule of Reason is applied to determine if a violation of the Act has occurred.

Resale Price Maintenance Agreements

- **Agreements between a manufacturer and a distributor or retailer in which the manufacturer specifies the retail price at which retailers must sell products furnished by the manufacturer or distributor.**
  - Rule of Reason is applied to determine if a violation of the Act has occurred.

Refusals to Deal

- **A single manufacturer acting unilaterally is generally free to deal, or not to deal, with whomever it wishes.**
- **In some cases a unilateral refusal to deal may violate antitrust law if: firm has, or is likely to have monopoly power, and refusal is likely to have an anticompetitive effect.**

Monopolies

- **Predatory Pricing:** attempt by a firm to drive its competitor from the market by selling its product at prices substantially *below* the normal costs of production.
- **Monopolization:**
  - The possession of monopoly power **and**
  - The willful acquisition and maintenance of the power.

Monopolies

- **Market-Share Test:** before court can determine whether firm has dominant market share, it must define the "relevant market" which consists of two elements:
  - (1) relevant product market, and
  - (2) relevant geographic market.

Attempts to Monopolize

- **Firm actions are scrutinized to determine whether they were intended to exclude competitors and garner monopoly power and had a “dangerous” probability of success.**

LO2

The Clayton Act

- **The Clayton Act deals with:**
  - Price Discrimination. →
  - Exclusionary Practices. →

Clayton Act: Price Discrimination

- **Price Discrimination:** illegal charging of different prices to competing buyers for identical goods, unless:
  - Charge of lower price was temporary and in good faith to meet another seller's equally low price to the buyer's competitor.
  - A particular buyer's purchases saved the seller costs in producing and selling the good.

Clayton Act: Exclusionary Practices

- **Exclusive Dealing Contracts:** seller forbids a buyer to purchase products from the seller's competitors. Prohibited if the effect of the contract is to "substantially lessen competition or tend to create a monopoly."

Clayton Act: Exclusionary Practices

- **Tying Arrangements**: agreement in which buyer of a specific product or service is obligated to purchase additional products or services from the seller.

Mergers

- ***Merger*** **occurs when one business firm absorbs the assets and liabilities of another, so that the other ceases to exist.**
  - Prohibited when the effect may be to lessen substantially competition.
  - A crucial consideration is market concentration, which refers to the market shares among the various firms in a market.

Interlocking Directorates

- **Occurs when an individual serves on the board of directors of two or more competing companies simultaneously.**
- **These are prohibited if the two firms meet certain size requirements.**

LO3

Federal Trade Commission Act

- **FTC Act:** enacted in 1914 to deal with "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce."
- Condemns all forms of anticompetitive behavior not covered under federal antitrust laws. Also, created the Federal Trade Commission.

LO4

Federal Enforcement of Antitrust Laws

- **U.S. Department of Justice:**
  - Prosecutes violations of the Sherman Act as criminal or civil violations. Violations of the Clayton Act are not crimes.
  - Remedies: divestiture and dissolution.
- **The Federal Trade Commission has sole authority to enforce the FTCA.**

Enforcement: Private Actions

- **Private party injured under the Sherman or Clayton Act can:**
  - Sue for damages and attorneys fees.
  - Plaintiff must prove:
    - Antitrust violation either caused or was a substantial factor in plaintiff's injury, and the unlawful actions of Defendant affected Plaintiff's business protected by antitrust laws.
  - Treble Damages.

LO5 Exemptions from Antitrust Laws

- Labor.
- Agricultural associations and fisheries.
- Insurance.
- Foreign trade.
- Professional baseball.
- Cooperative research and production
- Joint efforts y businesspersons to obtain legislative or executive action.
- And Others.