

Chapter 21
Antitrust Law

1 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

INTRODUCTION

- Antitrust Laws
 - Regulate economic competition
 - Restraints of trade
 - Monopolies
 - Specific antitrust laws addressed
 - Sherman Act
 - Clayton Act
 - Federal Trade Commission Act

2 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Sherman Act
Monopolies and Restraint of Trade

- Section 1
 - Every contract, combination, and conspiracy in restraint of trade in interstate commerce is illegal
 - Applies to actions by two or more people
 - Focuses on finding an agreement restraining trade
 - Examines restrictive agreements
- Section 2
 - It is illegal for every person to monopolize, attempt of monopolize, or combine or conspire with others to monopolize in interstate commerce
 - Applies to an action of one person
 - Focuses on the structure of a monopoly
 - Examines misuse of monopoly power

3 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Restraint of Trade, Sec. 1

- *Per se* rule
 - Applies to agreements made among horizontal competitors
 - Horizontal price fixing
 - Horizontal market division
 - Group boycotts
- Rule of reason
 - Applies to agreements made among vertical competitors
 - Defendants must prove to a court a pro-competitive business justification for their acts

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

US v. Socony-Vacuum Oil Co. Landmark Case

- The US Supreme Court affirmed the judgment of the trial court that illegal price fixing took place when the oil companies agreed to purchase distressed oil from independent refiners
- Such price fixing was a violation of the *per se* rule of the Sherman Act

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Standard Oil of NJ v. US Landmark Case

- The US Supreme Court reasoned that Congress intended the Sherman Act to apply only to unreasonable restraints on trade that would result in monopolization
- The US Supreme Court thusly created the rule of reason

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Monopoly Power

- Monopoly power is based on structural analysis
- Courts have found that no monopoly exists when a firm controls less than 65% of its relevant markets, but that 2/3 of the relevant market would questionably constitute a monopoly
- After monopoly power is examined, a court must determine whether a firm holds such substantial power over a market that it can engage in actions not associated with natural growth to exclude competitors and control prices

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Clayton Act

- Activities that reduce competition or could lead to monopoly power are considered illegal, even though they might not violate the Sherman Act
- Sec. 2—Robinson-Patman Act—makes it illegal for any seller to discriminate in the prices charged for goods of the same quality to different purchasers where the price difference has an anticompetitive effect at both primary and secondary levels
- Sec. 3—prohibits exclusive dealing agreements and tying arrangements
- Sec. 7—Celler-Kefauver Act—precludes mergers if they lessen competition or tend to create a monopoly
 - Amended by the Hart-Scott-Rodino Antitrust Improvement Act of 1976
- Sec. 8—prohibits interlocking directorates and officers

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Federal Trade Commission

- Created as a “trust busting” agency
- FTC’s antitrust division has the authority to enforce
 - FTCA
 - Clayton Act
 - Robinson-Patman Act
 - Hart-Scott-Rodino Act

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Mergers

- Horizontal
 - Occurs when two or more companies that previously competed with the same or similar products in the same geographic area merge
- Vertical
 - Occurs when a company at one stage of distribution acquires a company at a higher or lower stage of distribution
- Conglomerate
 - Combination of two or more firms dealing in unrelated products and operating in markets not horizontally or vertically linked

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Consolidation

- Occurs when two companies are consolidated and a new corporate entity is created

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Defenses

- Changing market conditions
- Colgate Doctrine
- "Thrust upon" defense
- Failing company and inadequate resources defense

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Exceptions

- Labor—unions protected from antitrust legislation
- Agriculture—agricultural organizations excepted from the Sherman Act
- Baseball—baseball is not subject to antitrust laws although other professional sports are
- Insurance—insurance exempted from antitrust laws
- Exports may be exempted
- Political activities—businesses are allowed to lobby Congress
- State government—state regulations of economic activity are exempt from antitrust laws

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Enforcement of Antitrust Laws

- Sherman Act
 - Criminal
 - DOJ
 - Civil
 - DOJ
 - State attorneys general
- Clayton Act
 - FTC
 - DOJ
 - State attorneys general
 - Private parties
- FTCA
 - FTC

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

International Considerations

- Many nations do not have a history of regulating anticompetitive behavior
- International Antitrust Enforcement Assistance Act provides guidance to businesses engaged in international operations
- EU has antitrust legislation modeled after US antitrust laws

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Summary

- Sherman Act
 - Monopolies and Restraint of Trade
- Restraint of Trade, Sec. 1
- US v. Sacony-Vacuum Oil Co
- Standard Oil of NJ v. US
- Monopoly Power
- Clayton Act
- Federal Trade Commission
- Mergers
- Consolidation
- Defenses
- Exceptions
- Enforcement of Antitrust Laws
- International Considerations

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