Fighting 21st Century Monopoly Power: Legal Tools and Applications

Reading Group
Spring 2022
Yale Law School

Faculty Sponsor: Professor Amy Kapczynski
Office: Room L25
amy.kapczynski@yale.edu; 203-432-8005

Student Organizers

Daniel Backman
daniel.backman@yale.edu

Brandon Baum
brandon.baum@yale.edu

Matt Buck
matt.buck@yale.edu

Colin Burke
colin.burke@yale.edu

Sachin Holdheim
sachin.holdheim@yale.edu

Kart Kandula
kart.kandula@yale.edu

Introduction

The United States has a monopoly problem. Markets are increasingly concentrated across sectors, contributing to lower wages, higher prices, ballooning corporate profits, and political and economic inequality. In response, lawyers, policymakers, and activists are reimagining and reforming the legal foundations that undergird market organization. At the center of their focus lie antitrust law and regulatory policy. In a July 2021 address on competition policy, President Joe Biden—reflecting the influence of today’s antimonopoly movement—said, “We’re now 40 years into the experiment of letting giant corporations accumulate more and more power” by “pull[ing] back on enforcing laws to promote competition.” “I believe,” the President went on, “the experiment failed.”

This reading group will explore the status quo’s failures and some key proposed alternatives. In the first three weeks, students will discuss how law has evolved to facilitate private corporate power and the harms that concentrations of market power cause in the economy and society. The syllabus will then introduce students to some of the key legal tools to address monopoly power, including antitrust, public utility regulation, public options, and other regulatory approaches. The second half of the course will apply these tools and ideas to specific sectors, including finance, health care, agriculture, and pandemic response.

This syllabus is inspired by, and builds upon, the Law & Political Economy Project’s Anti-Monopoly and Regulated Industries Summer Academy. Concerns central to the LPE approach—including questions of power, democracy, and equality—will be at the center of the group’s readings and discussions.

Some sessions will feature guest speakers, who will be announced as they are confirmed.
This reading group will meet for 13 weeks, with 75-minute sessions each week. Students must attend at least 10 sessions to receive credit for this course.

**Reading Assignments**

1. **Introduction** (70 pages)

   
   28 pages

   
   10 pages

   
   Excerpt: Read the Executive Summary and Introduction
   
   18 pages

   
   5 pages

   
   Excerpt: Read the Introduction; *Optional*: Parts I-II
   
   9 pages

2. **History / Case Law** (75 pages)

   
   Excerpt: Read the Introduction and Parts III and V
   
   38 pages

Key Federal Antitrust Statutes (Sherman Act, Clayton Act, FTC Act) – Excerpts
2 pages

Case Excerpts:

Excerpt: Read Part III and “The Probable Effect of the Merger” section
9 pages

Excerpt: Majority opinion although the Appendix is worth looking through
3 pages

utilizes the Chicago School approach unlike the other cases]
Excerpt: Majority opinion
6 pages

Optional: Sandeep Vaheesan, Two-and-a-Half Cheers for 1960s Merger Policy, HLS
Antitrust Association Blog (Dec. 12, 2019),
https://orgs.law.harvard.edu/antitrust/2019/12/12/two-and-a-half-cheers-for-1960s-
merger-policy/.

Optional: Eleanor M. Fox and Philipp Bazenov, Antitrust and Inequality: The History of
(In)Equality in Competition Law and Its Guide to the Future (July 21, 2021), NYU Law
Excerpt: Pages 1-10, 69-85

3. Market Power Today (43 pages) – Guest speaker: Matt Stoller

Heather Boushey & Helen Knudsen, The Importance of Competition for the American
Economy, The White House: Blog (July 9, 2021),
https://www.whitehouse.gov/cea/written-materials/2021/07/09/the-importance-of-
competition-for-the-american-economy/.
5 pages

Jan De Loecker et al., The Rise of Market Power and the Macroeconomic Implications,
135 Quar. J. of Econ. 561 (2020),
Excerpt: Read the Introduction
6 pages

Steven Berry et al., Do Increasing Markups Matter? Lessons from Empirical Industrial
Organization, 33 J. of Econ. Perspectives 44 (2019),
https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.33.3.44.
4. Anti-Monopoly Toolkit I - Antitrust (Goals) (79 pages)


3 pages


25 pages


6 pages


Excerpt: Pages 741-758; Optional 764-770)

18 pages


5 pages


17 pages


5 pages

Excerpt: Introduction and Part 1

Optional: Petition for Rulemaking to Prohibit Exclusionary Contracts, Open Markets Institute et al. (July 21, 2020), https://static1.squarespace.com/static/5e449c8c3ef68d752f3e70dc/t/5f1729603e615a270b537c3d/1595353441408/Petition+for+Rulemaking+to+Prohibit+Exclusionary+Contracts.pdf.

5. Anti-Monopoly Toolkit I - Antitrust (Structure) (50 pages)


6. Anti-Monopoly Toolkit II - Public Utility, Corporate Regulation (45 pages) – Guest Speaker: Daniel Hanley (TBC)


7. Digital Platforms (80 pages)


Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations of the Subcommittee on Antitrust, Commercial and Administrative
   Excerpt: Pages 6-21
   16 pages

   Excerpt: Read the Introduction
   6 pages

   Excerpt: Read the Introduction
   7 pages

   4 pages


   Excerpt: Read the Introduction


8. Labor (64 pages)

   6 pages

39 pages


14 pages


5 pages

9. **Vertical Restraints** (48 pages) – Guest speaker: Sanjukta Paul


5 pages


23 pages


20 pages


Excerpt: Pages 29-38

10. Health Care / Pharma (72 pages)

- Excerpt: Pages 1930-1967, 2002-2021
  58 pages

- Excerpt: Pages 58-68; Optional: 79-99
  11 pages

- 3 pages

11. Banking / Finance (90 pages) – Guest speaker: Saule Omarova

- Excerpt: Read Part I
  15 pages

- 34 pages

- 33 pages

- 8 pages


12. **Food / Agriculture** (42 pages) – Guest speaker: Claire Kelloway


13. **COVID / Intellectual Property** (42 pages) - Guest speaker: Amy Kapczynski


