**Readings:** The majority of readings for class will be from a casebook, Elhaug & Geradin, Global Antitrust Law and Economics, 2nd Ed. (2011). You are not required to purchase any additional texts. I also will assign supplemental readings, which will be made available on Sakai. Unless otherwise indicated, all pages below refer to the textbook.

**Class Participation:** Our classroom experience will significantly rely on your completion and analysis of each reading assignment before attending class. It also will rely on your insights and contributions. Each week, a panel of students should expect to be called upon to discuss the readings intelligently and to lead the discussion. Panelists’ performance will contribute to 10% of their final grade.

Students not on the week’s panel are encouraged to participate, and I hope to involve as many students as possible in each discussion.

**Grading:** A final exam will constitute the remaining 90% of the final grade. It will be a take-home exam, will be graded blindly, and can be taken on any day during the exam period. It will be completely open book and open note, and you may consult any outside written sources of knowledge that you find useful.

I am likely to give one of the exam questions in advance and allow students to turn that question in at their convenience (before the end of exam period). In place of that question, students are instead permitted to write a 3-4 page research paper that discusses an emerging issue in competition law.

For students with borderline scores, in-class preparedness and constructive participation (with a significant emphasis on quality, and no reward for quantity) will sway the final grade.

**Assignments:** We will begin with a background of the motivations behind antitrust law and a rudimentary introduction to industrial organization economics. We will then delve into substantive antitrust law, beginning with examining prohibited multilateral conduct (enshrined in Sect.1 of the Sherman Act and Article 81 of the Treaty of Rome) and then examining prohibited unilateral conduct (enshrined in Sect.2 and Article 82). If time permits, we will then investigate the law governing mergers, the substantive and jurisdictional limitations of antitrust law, and the politics of antitrust enforcement.
I. BACKGROUND

A. A Playful Introduction
   Rockefeller, *The 21st Century Antitrust Lawyer* (supplement)
   Rockefeller, *The Enduring Nature of Antitrust* (supplement)

B. Introductory Economics
   Sullivan & Harrison, excerpts (supplement)
   Elhauge & Geradin casebook, pp. 1-10

C. The Sherman Act’s Legislative History
   The Sherman Act §§1-2, Treaty of Rome Art. 81-82 (supplement)
   Historical Perspectives (supplement)
   Letwin, *Congress and the Sherman Antitrust Law: 1887-1890*
   Thorelli, *The Federal Antitrust Policy*
   Bork, *Legislative History and the Policy of the Sherman Act*
   Robert Lande, *Wealth Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged*

D. Normative Foundations for Antitrust Enforcement (supplement)
   Scherer & Ross, *Industrial Market Structure*
   Bork, *The Antitrust Paradox: A Policy at War With Itself*
   Posner, *Antitrust Law*
   Pitofsky, *The Political Content of Antitrust*
   Hovenkamp, *Antitrust Policy After Chicago*
   Kwoka & White, *The Antitrust Revolution*
   Acemoglu & Robinson, “Is This Time Different? Capture and Anti-Capture of U.S. Politics”
   Farber & McDonnell, “Is There a Text in this Class?” *The Conflict Between Textualism and Antitrust*, (optional)

E. The Early Cases (supplement)
   *United States v. Trans-Missouri Freight Assoc.*
   *United States v. Joint Traffic Assn.*
   *United States v. Addyston Pipe & Steel Co.*
   *Standard Oil v. United States*

F. Introduction to U.S. and EU Antitrust Enforcement
   Elhauge & Geradin casebook, pp. 11-16, 26-32, 49-62, 70-72

II. PROHIBITED HORIZONTAL AGREEMENTS

A. Relevant Laws, pp.73-85
   (Recall Early Cases: Development of the Rule of Reason and Per Se Illegality of Horizontal Price Agreements)
B. Agreements on Prices, pp.85-121
   *United States v. Trenton Potteries Co.*
   Supplementary materials on price fixing
   FN59 from *U.S. v. Socony-Vacuum Oil*
   *The Fix is In*, This American Life audio
   Ashenfelter & Graddy, *Anatomy of the Rise & Fall of a Price-Fixing Conspiracy* (optional)
   *Marketplace* excerpt, Feb.15, 2008
   *Arizona v. Maricopa County Medical Society*
   *Texaco v. Dagher*
   *American Needle v. National Football League* (pp.816-29)

C. Agreements on Output Restrictions, pp.121-40
   *NCAA v. Board of Regents of Univ. of Oklahoma*
   Comm. Dec. 84/380/EEC, *Synthetic Fibres*

D. Agreements on Market Division, pp.140-53
   *Palmer v. BRG of Georgia*
   Comm. Dec. 91/227, *Soda-Ash-Solvay*

E. Group Refusals to Deal, pp.153-62
   *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*
   *NYNEX Corp. v. Discon, Inc.*, (pp.776-80)
   *Fashion Originators’ Guild of America v. FTC*
   Comm. Dec. 1999/60, *Pre-Insulated Pipe*

F. Group Refusals and Joint Ventures, pp.162-80
   *United States v. Terminal Railroad Assoc.*
   Associated Press v. United States
   *Northwest Wholesale Stationers v. Pacific Stationary & Printing*
   *Int’l Belgium and others v. Commission*, E.C.R. 3369, *ANSEAU*

G. Social Welfare Justifications, pp.163-225
   *Goldfarb v. Virginia State Bar* (supplement)
   *National Society of Professional Engineers v. United States*
   *FTC v. Indiana Federation of Dentists*
   *California Dental Assn. v. FTC*
   *FTC v. Superior Court Trial Lawyers Assoc.*
   Wouters, E.C.R. I-1577
   *United States v. Brown University*
New York Times, “For Law Schools, a Price to Pay the A.B.A.’s Way”  
(Dec.17, 2011) (supplement)

H. Intellectual Property Justifications, pp.225-249
   United States v. General Electric
   United States v. New Wrinkle, Inc.
   Comm. Regulation No. 772/2004, on Technology Transfer Agreements

I. Buyer Cartels, pp.249-264
   Mandeville Island Farms v. American Crystal Sugar
   Comm. Dec. 80/917, Nat’l Sulphuric Acid Assoc.

III. PROVING A HORIZONTAL AGREEMENT EXISTS

   A. Inferring Agreements from Parallel Conduct
      Interstate Circuit v. United States, pp.872-78
      Theatre Enterprises v. Paramount Film Distributing Corp., pp.843-45
      Donald Turner, The Definition of Agreement (supplement)
      Richard Posner, Oligopoly and the Antitrust Laws (supplement)
      James Surowiecki, Price Fixing for Dummies (supplement)
      William Kovacic, et al., Plus Factors and Agreement in Antitrust Law
      (supplement) (optional)
      American Tobacco v. United States, pp.863-66
      Osakeyhtio and Others v. Commission (Woodpulp II), 1993 E.C.R. I-1307,
      pp.878-83
      Matsushita Electric v. Zeneth Radio, pp.845-51
      Imperial Chemical Indus. v. Commission (Dyestuffs), pp.866-72
      Compagnie Royale Asturienne and Rheinzink GmbH v. Commission,

   B. Facilitating Practices
      American Column and Lumber v. United States, pp.858-863
      Maple Flooring Manufacturers Assoc. v. United States, pp.886-91
      United States v. Container Corp. of America, pp.891-97
      Cement Manufs. Protective Assoc. v. United States, pp.851-53
      United States v. Gypsum, pp.897-901
      Comm. Dec. 92/157, UK Tractors, pp.907-12

IV. MONOPOLY (i.e. PROHIBITED UNILATERAL CONDUCT)

   A. Relevant Laws & Basic Legal Elements, pp.265-75

   B. Market Definition & Market Power, pp.291-335 (optional: 276-91)
      United States v. DuPont (The Cellophane Case)
James Surowiecki, Satellite Sisters (supplement)
A Critique:
“Is Market Definition Necessary?”, pp.317-19
Louis Kaplow, Why (Ever) Define Markets? (supplement)
Herbert Hovenkamp, Markets in Merger Analysis (supplement)
Hogan Lovells, Continued Role for Market Definition (supplement)

C. Anticompetitive Conduct (optional: 344-53)
   i. Below Cost Predatory Pricing, pp.353-383
      Brooke Group v. Brown & Williamson Tobacco
      Azko Chemie BV v. Commission
      Easterbrook, Predatory Strategies and Counterstrategies
      (supplement)
   ii. Above Cost Predatory Pricing, pp.383-404
      Compagnie Maritime Belge Transps. SA v. Commission
      Irish Sugar PLC v. Commission
      United States v. AMR
      Weyerhaeuser v. Ross-Simmons Hardwood Lumber
   iii. Excessive Pricing, pp.404-15
      Verizon Communications v. Trinko
      United Brands v. Commission
   iv. Exclusions, Unilateral Refusals to Deal, & Essential Facilities,
      pp.415-62
      Otter Tail Power Co. v. United States
      Aspen Skiing Co. v. Aspen Highlands Skiing Corp.
      Eastman Kodak v. Image Technical Servs.
      Verizon v. Trinko
      Commercial Solvents and Others v. Commission
      Radio Telefis Eireann v. Commission (Magill)
      Oscar Bronner GmbH v. Mediaprint Zeitungs
      IMS Health v. NDC Health
   v. Price Squeezing, pp.477-94
      Pacific Bell v. Linkline Communications
      Deutsche Telekom v. Commission
      TeliaSonera v. Commission

D. Attempt to Monopolize, pp.500-11
   Lorain Journal Co. v. United States
   United States v. American Airlines
   Spectrum Sports Inc. v. McQuillan

V. RESTRICTIVE VERTICAL AGREEMENTS

A. Vertical Price & Non-Price Agreements, leading up to Leegin
   Lecture on Vertical Restraints (supplement)
Optional background reading: pp.695-743
Continental TV v. GTE Sylvania, Consten Grundig, Volkswagen, Glaxo (on non-price agreements)
State Oil v. Kahn, Commission Regulation No. 330/2010 (on max vertical price agreements)
Leegin Creative Leather Prods. v. PSKS, 743-67
SA Binon & Cie v. SA Agence, 767-73

B. Exclusive Dealing, pp.521-25, 533-38, 550-562
United States v. Griffith
FTC v. Motion Picture Advertising Service
(Note: you do not need to prepare the Microsoft case at this time)
EU Guidelines on Vertical Restraints

C. Tying Arrangements, pp.562-601
Jefferson Parish Hospital v. Hyde
Eastman Kodak v. Image Technical Services
Optional: Illinois Tool Works v. Independent Ink

VI. MICROSOFT
Microsoft v. Commission (CFI, 2007), pp.462-69, 617-626

VII. MERGERS
Introduction, pp.913-22
Mergers Lecture (supplement)
Horizontal Mergers
FTC v. Staples, pp.941-49, 983-87, 1006-09
FTC v. Heinz, pp.953-60, 1009-16
Gencor Ltd. v. Commission, pp.960-62
Airtours v. Commission, pp.962-81, 985-88
Commissioner v. Superior Propane, pp.994-1005
Vertical & Conglomerate Mergers, pp.1029-31, 1049-52

VIII. LIMITS TO ANTITRUST
A. Jurisdictional Limitations, pp.1137-88
Hartford Fire Insurance v. California
F. Hoffman-La Roche v. Empagran
Imperial Chemical Industries v. Commission (Dyestuffs)
A. Ahlstrom Osakeyhtiio v. Commission (Wood Pulp)
B. State Action Immunity
   Elhauge & Geradin casebook, pp. 34-49
   *Parker v. Brown* (supplement)
   *Columbia v. Omni Outdoor Advertising* (supplement)
   *FTC v. Phoebe Putney* (supplement)
   *FTC v. NC Board of Dentists* (supplement)

January 4, 2017