



Agenda

Study Group on the Changing Antitrust Frontier

Thursday, November 9 – Saturday, November 11, 2023

Thursday, November 9

6:15 – 6:30 pm Registration

6:30 – 7:15 pm Welcome Reception

7:15 – 9:30 pm Welcome Dinner

Introductions and Update on the Law & Economics Center

Henry N. Butler, Henry G. Manne Professor of Law and Economics and
Chairman, Law & Economics Center, George Mason University Antonin Scalia Law School

Friday, November 10

6:30 – 7:30 am Breakfast, *on own at hotel*

7:30 – 8:00 am Walk from hotel to Antonin Scalia Law School

8:00 – 9:15 am **Class 1: The Welfare Costs of Tariffs, Monopolies, and Theft | Butler**

Reading Assignment:

Chapter III: The Legislative Process and the Courts and Chapter IX: Market Structure and Antitrust, in
HENRY N. BUTLER, ET AL., ECONOMIC ANALYSIS FOR LAWYERS 130-147, 517-523 (3rd ed. 2014).

Matsushita Elec. Indus. Co. v. Zenith Radio Corp, Butler, Drahozal & Shepherd, pp. 12-17, 515-523
(please read the case and the notes).

9:15 – 9:30 am Break

9:30 – 10:45 am **Class 2: Rule of Reason & Consumer Welfare Standard**

Douglas H. Ginsburg, Judge, US Court of Appeals for the District of Columbia Circuit; Professor of Law,
George Mason University Antonin Scalia Law School

Reading Assignment:

Jay B. Sykes, The American Innovation and Choice Online Act, Congressional Research Service (2022).

Eric Cortellessa, Senate Vote on Big Tech Antitrust Bill Unlikely Before Election, Key Players Say,
TIME (2022).

Alex Reinauer, Terrible Tech Bills from the 117th Congress, Competitive Enterprise Institute (2022).

10:45 – 11:00 am Break

11:00 am – 12:15 pm **Class 3: Horizontal Mergers – Market Definition, Market Power, & Unilateral Effects**

John Yun, Associate Professor of Law; Executive Director, Global Antitrust Institute, George Mason University Antonin Scalia Law School

Reading Assignment:

Benjamin Klein, Market Power in Antitrust: Economic Analysis After Kodak, 3 Sup. Ct. Econ. Rev. 43, 71-82 (1993).

Jonathan Baker, Market Definition: An Analytical Overview, 74 Antitrust L. J. 129 (2007).

Carl Shapiro, *Mergers with Differentiated Products*, Antitrust 23 (1996).

12:15 – 1:30 pm **Working Lunch and Class 4: Progressive Eras of Antitrust**

Jonathan E. Nuechterlein, Partner, Sidley Austin LLP and Former General Counsel, Federal Trade Commission

Reading Assignment:

Muris, Timothy J. and Nuechterlein, Jonathan E. *Antitrust in the Internet Era: The Legacy of United States v. A&P*, 54 Review of Industrial Organization 650, 2019.

Muris, Timothy J. and Nuechterlein, Jonathan E. *Chicago and Its Discontents*, 87 University of Chicago Law Review 495, 2020.

1:30 pm **Adjourn for the Day: Afternoon Study Session**

Saturday, November 11

6:30 – 7:30 am **Breakfast, on own at hotel**

7:30 – 8:00 am **Walk from hotel to Antonin Scalia Law School**

8:00 – 9:15 am **Class 5: Vertical Mergers | Yun**

Reading Assignment:

2020 DOJ & FTC Merger Guidelines

Russell Pittman, *Three Economist's Tools for Antitrust Analysis*, in Competition Authorities in South Eastern Europe: Building Institutions in Emerging Markets (Boris Begović & Dušan V. Popović, eds.) 155, 167-70 (2018).

Jonathan B. Baker, Comcast/NBCU: *The FCC Provides a Roadmap for Vertical Merger Analysis*, 25 Antitrust 36 (2011).

9:15 – 9:30 am **Break**

9:30 – 10:45 am **Class 6: Change in the Air: 2023 Draft Merger Guidelines and HSR Premerger Notification Form**

Gus Hurwitz, Director of Law & Economics Programs, International Center for Law & Economics; Senior Fellow and Academic Director of the Center for Technology, Innovation, and Competition at the University of Pennsylvania Carey Law School

Reading Assignment:

Federal Trade Commission, *FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review*, (2023).

Herbert Hovenkamp, *The 2023 Draft Merger Guidelines: A Review*, (2023).

S.P. Kothari, *Notice of Proposed Rulemaking, Federal Trade Commission; Premerger Notification; Reporting and Waiting Period Requirements (Matter No. P239300)*, U.S. Chamber of Commerce, (2023).

U.S. Department of Justice, *Justice Department and FTC Seek Comment on Draft Merger Guidelines*, Office of Public Affairs (2023).

Recommended Readings:

2023 DOJ & FTC Draft Merger Guidelines

Federal Trade Commission, *Premerger Notification; Reporting and Waiting Period Requirements*, Federal Register, (2023).

10:45 – 11:00 am

Break

11:00 am – 12:15 pm

Class 7: Does Antitrust Have Digital Blind Spots? | Yun

Reading Assignment:

John M. Yun, *Does Antitrust Have Digital Blind Spots?*, 72 S.C. L. Rev. 305 (2020).

John M. Yun, *Overview of Network Effects & Platforms in Digital Markets*, Global Antitrust Institute Digital Report 1 (2020).

Catherine Tucker, *What Have We Learned in the Last Decade? Network Effects and Market Power*, 32 Antitrust 77 (2018).

12:15 pm

Program Adjourns, participants depart at their leisure