

Antitrust: Some Notes and Quotes

- **Sherman Act (1890)**
 - §1: Prohibits agreements in restraint of trade
 - §2: Prohibits monopolization, attempts to monopolize, or conspiracies to monopolize trade
- **Clayton Act (1914)**
 - §2: Prohibits price discrimination if the effect of such discrimination may be to substantially lessen competition. (Replaced by Robinson-Patman Act in 1936)
 - §3: Prohibits certain kinds of agreements (exclusive dealing or tying) if they tend to substantially lessen competition
 - §7: Prohibits certain acquisitions by one business of another
- **Federal Trade Commission Act (1914)**
 - Established regulatory agency to enforce Clayton Act and Robinson-Patman Act
 - §5(a)(1): Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful

Antitrust Statutes

Sherman Act

- **Section 1:** Every contract, combination ... or conspiracy, in restraint of trade ... among the several States, or with foreign nations, is declared to be illegal.
- **Section 2:** Every person who shall monopolize, or attempt to monopolize, or combine or conspire with [others] to monopolize any part of trade or commerce ... shall be deemed guilty of a felony
....

EC Treaty

- **Article 81 (1):** The following shall be prohibited as incompatible with the Common Market: all agreements ... which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.
- **Article 82:** Any abuse ... of a dominant position within the common market ... shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States.

Monopoly

“The offense of monopoly ... has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historical accident.”

UNITED STATES V. GRINNELL CORP., 384 U.S. 563, 570-71 (1966)

- Per Se Illegal
 - “There are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable.” NORTHERN PACIFIC RAILWAY V. UNITED STATES, 356 U.S. 1, 5 (1958)
- Price fixing is *per se* illegal
 - “[A] combination formed for the purpose and with the effect of raising, depressing, fixing, pegging or stabilizing the price of a commodity in interstate or foreign commerce is illegal *per se*. UNITED STATES V. SOCONY-VACUUM OIL CO., 310 U.S. 150, 223 (1940)