

Antitrust Law

I. Antitrust Origins, Objectives, and Statutes

A. Major antitrust statutes

1. The Sherman Act 1890 § 1–2

The Sherman Act 1890 § 1–2, as amended 15 U.S.C. §§ 1–2 [887]

- **Section 1.** Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.
- **Section 2.** Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.
 - The Sentencing Reform Act of 1984, 18 U.S.C. § 3571, specifies an alternative fine of not more than the greater of twice the gain or loss from the violation.

2. The Clayton Act 1914 § 7

The Clayton Act 1914 § 7, as amended 15 U.S.C. § 18 [891–93]

- No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the FTC shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.
- No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.
- This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.
- Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.
- Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: Provided, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.
- Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Power Commission, Surface Transportation Board, the Securities and Exchange Commission in

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Peter Whelan



Antitrust Law Answer Book 2011 1:

Legal Theory of Auction Kristijan Poljanec, 2022-09-09 The widespread understanding of auction structure considers auction as consisting of three contracts contract between the seller and the auctioneer contract between the auctioneer and the buyer and the sale contract between the seller and the buyer The book challenges this concept arguing that the traditional tripartite concept of auction is too narrow and does not correspond to the actual structure of auction relations Demonstrating that an auction structure consists of a plethora of legal relationships including noncontractual relations this book explores the legal concept of auction sale and the structure of accompanying relations The book provides a historical overview of auctions and different auction models Following a brief introduction to the economic theory auction models are examined against the following legal criteria price formation publicity parties autonomy legal form and applied technology to find a legal concept and nature of auction The book explores the legal position of key auction figures and auction objects to identify the categories of legal relations that appear at auction It explores the legal nature of the main contract as well as the relations between the consignor and the auctioneer the auctioneer and the bidders the bidders themselves the consignor and the bidders The book covers relations arising from droit de suite financial and bidding agreements to provide a comprehensive overview of lesserknown legal relations that commonly arise in auction practice *Le intese verticali* Rosa Magri, 2013-10-06 L opera analizza il problema delle intese verticali nello spazio economico europeo *Oversight of the Antitrust Enforcement Agencies* United States. Congress. House. Committee on the Judiciary. Subcommittee on Regulatory Reform, Commercial and Antitrust Law, 2015 **The Criminalization of European Cartel Enforcement** Peter Whelan, 2014-08-07 Cartel activity is prohibited under EU law by virtue of Article 101 1 of the Treaty on the Functioning of the European Union Firms that violate this provision face severe punishment from those entities responsible for enforcing EU competition law the European Commission the national competition authorities and the national courts Stiff fines are regularly imposed on firms by these entities such firm focused punishment is an established feature of the antitrust enforcement landscape within the EU In recent years however focus has also been placed on the individuals within the firms responsible for the cartel activity It is increasingly recognized that punishment for cartel activity should be individual focused as well as firm focused Accordingly a growing tendency to criminalize cartel activity can be observed in the EU Member States The existence of such criminal sanctions within the EU presents a number of crucial challenges that need to be met if the underlying enforcement objectives are to be achieved in practice without violating prevailing legal norms For a start given the severe consequences of a custodial sentence the employment of criminal antitrust punishment must be justifiable in principle one must have a robust normative framework rationalizing the existence of criminal cartel sanctions Second for it to be legitimate antitrust criminalization should only occur in a manner that respects the mandatory legalities applicable to the European jurisdiction in question These include the due process rights of the accused and the principle of legal certainty

Finally the correct practical measures such as a criminal leniency policy and a correctly defined criminal cartel offence need to be in place in order to ensure that the employment of criminal antitrust punishment actually achieves its aims while maintaining its legitimacy These three particular challenges can be conceptualized respectively as the theoretical legal and practical challenges of European antitrust criminalization This book analyses these three crucial challenges so that the complexity of the process of European antitrust criminalization can be understood more accurately In doing so this book acknowledges that the three challenges should not be considered in isolation In fact there is a dynamic relationship between the theoretical legal and practical challenges of European antitrust criminalization and an effective antitrust criminalization policy is one which recognizes and respects this complex interaction The BRICS-Lawyers' Guide to Global Cooperation Rostam J. Neuwirth,Alexandr Svetlicinii,Denis De Castro Halis,2017-10-12 In the international trade and development arena new and developing economies have created a block that is known as BRICS Brazil Russia India China and South Africa Initially conceived to drive global change through economic growth the financial crisis and reversal of fortunes of the BRICS nations have raised questions about their ability to have an impact on the governance of global affairs This book explores the role of law in various areas of BRICS cooperation including trade investment competition intellectual property energy consumer protection financial services space exploration and legal education It not only covers the specifics of each of the BRICS nations in the selected areas but also offers innovative and forward looking perspectives on the BRICS cooperation and their contribution to the reform of the global governance networks This is a unique reference book suitable for academics government officials legal practitioners business executives researchers and students Jones and Sufrin's EU Competition Law Brenda Sufrin,Alison Jones,Niamh Dunne,2023 The complete guide to EU competition law combining key primary sources with expert author commentary The most comprehensive resource for students on EU competition law extracts from key cases academic works and legislation are paired with incisive critique and commentary from an expert author team New to this Edition Full analysis of important developments in competition law and policy since 2019 including relevant case law new EU legislation and notices and competition law goals A comprehensive discussion of the evolving law and policy governing market definition vertical horizontal cooperation and sustainability agreements A new chapter on competition law in the digital economy incorporating a discussion of the Digital Markets Act Accountable Care Organizations Robert James Cimasi,2013-06-05 An accountable care organization ACO is a healthcare organization characterized by a payment and care delivery model that seeks to tie provider reimbursements to quality metrics and reductions in the total cost of care for an assigned group of patients Accountable Care Organizations Value Metrics and Capital Formation explores the historical ba *Geostrategic Solutions to Oil Vulnerabilities in the Gulf Region* Ahmad Shikara,2013-07-11 For the foreseeable future oil and gas will continue to be major determining geostrategic factors in the process of maintaining security and stability in the Arabian Gulf region Oil vulnerabilities will continue to be a source of

concern both in the region and abroad as long as fossil fuel sources occupy the largest share of the global energy mix. What is apparent however is that the largest international consumer of oil, the United States, has yet to devise a comprehensive solution to these vulnerabilities and other countries are facing their own challenges in finding viable alternative options. This paper intends to explore new models of global governance in producer-consumer relations to ameliorate the adverse effects of oil vulnerabilities such as supply disruptions or peak oil scenarios. The paper will also seek to answer some vital questions regarding energy security encompassing oil resource availability, reliability, affordability, and sustainability. In particular, it seeks to address the following questions/issues and concerns: Is there a clear strategic vision for overcoming oil vulnerabilities in the Arab Gulf? And if not, is there a need for one? How might major oil vulnerabilities involving transportation choke points and critical infrastructure be overcome? i.e. operational mechanisms. To what extent do current geo-political strategies or alternative energy options represent realistic propositions? This requires a cost-benefit analysis: if fossil fuel sources are affordable, will there be viable long-term opportunities to achieve the energy diversification called for in strategic planning? What innovative strategies may be employed to overcome oil vulnerabilities in the region? Such strategies should be based on global governance and a well-structured protocol of interdependent partnerships between producers and consumers. Owing to the unpredictability of geopolitical events in general and in the Middle East in particular, it is difficult to envision the creation of a sustainable energy security strategy to suit both producers and consumers. Nonetheless, it is vital that a dynamic and pragmatic strategy be formulated to avert or mitigate oil vulnerabilities, be it on a multilateral, bilateral, or national level.

Regulating Vertical Agreements Maria Fernanda Caporale Madi, 2020-10-09. Vertical agreements represent a variety of supply and distribution contracts involving different market players such as suppliers of diverse inputs, manufacturers, distributors, and retailers. They gain particular significance in a global economy where technological advances are dynamic and are changing all the time. Such agreements are signed among businesspeople on a daily basis, and antitrust experts around the world are often asked to advise on whether they have any negative impact on competition or whether they infringe antitrust law. Taking into consideration the complex economic impacts of these vertical alliances and the different market conditions that firms face in a wide variety of situations, the author proposes an in-depth examination of the following topics: resale price fixing, geo-blocking clauses, exclusive and selective distribution systems, the concept of economic efficiency in the context of vertical restraints, self-assessment of potential anticompetitive effects and antitrust risks, ex post control of vertical restraints, digital economies and its policy impact, alternative enforcement models under various institutional frameworks, the role and influence of political pressure groups. The book offers very constructive theoretical and political insights at the frontier between the disciplines of Economics and Law. By comparing two world's leading antitrust jurisdictions, this book explores the lessons to be learned from the legal rules in the European Union and in Brazil, considering their promises and drawbacks and formulates policy recommendations.

Harvard Law Review Harvard Law

Review,2012-12-07 The Harvard Law Review is offered in a digital edition for ereaders featuring active Contents linked notes and proper ebook formatting The contents of Issue 2 December 2012 include ARTICLES Historical Gloss and the Separation of Powers by Curtis A Bradley and Trevor W Morrison Aggregate Litigation Goes Public Representative Suits by State Attorneys General by Margaret H Lemos BOOK REVIEW Fixing Washington by Richard L Hasen NOTE Ending Student Loan Exceptionalism The Case for Risk Based Pricing and Dischargeability In addition several case commentaries by students explore recent cases on Equal Protection as to gay marriage application of Miranda to Somali pirates OSHA statutes of limitation Fourth Amendment applications to DNA searches environmental law and greenhouse gas rules and willful blindness as knowledge in digital copyright law Finally the issue includes a student study of a recent regulation regarding health care reform

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