

Table of Contents

Chapter 1. The Basic Economics of Antitrust	1
§ 1.1 Price Theory: Economic Behavior and Perfect Competition	1
1.1a. The Perfectly Competitive Market	2
1.1b. Behavior of the Competitive Firm	7
§ 1.2 Monopoly	12
1.2a. Price and Output of the Protected Monopolist	12
1.2b. Monopsony; Output Effects; Policy Implications	15
1.2c. The <i>De Facto</i> Monopolist	18
§ 1.3 Antitrust Policy and the Social Cost of Monopoly	18
1.3a. Monopoly as a Status; Monopolization as a Process	18
1.3b. The Deadweight Loss Caused by Monopoly	20
1.3c. The Social Cost of Monopoly: Rent-Seeking	21
§ 1.4 Industrial Organization Theory and Economies of Scale	23
1.4a. The General Case of Economies of Scale	24
1.4b. Two-Sided Platforms	28
§ 1.5 Less-than-Perfect Competition	31
1.5a. Product Differentiation and Monopolistic Competition	31
1.5b. Price Discrimination	32
1.5c. Oligopoly	33
§ 1.6 Barriers to Entry	33
Chapter 2. History and Ideology in Antitrust Policy	37
§ 2.1 The Development of American Antitrust Policy	37
2.1a. The Goals of the Sherman Act: Efficiency and Interest Group Explanations	37
2.1b. The Common Law and the Federal Antitrust Laws	41
2.1c. A Thumbnail History of Federal Antitrust Policy	44
§ 2.2 On the Role of Economics in Antitrust	49
2.2a. Antitrust and Economics Before 1960	49
2.2b. The Chicago School and Its Aftermath	51
2.2c. Error Cost Analysis; Competitor v. Consumer Suits; Private v. Public Suits	55

2.2d.	The Consumer Welfare Principle: Theory and Measurement.....	59
Chapter 3. Market Power and Market Definition		61
§ 3.1	Introduction.....	62
3.1a.	Market Power Technically Defined	64
3.1b.	Market Share as a Surrogate for Market Power ...	65
3.1c.	Market Share as More than a Surrogate; Independent Relevance of Market Share	66
3.1d.	The Relevant Antitrust Market.....	66
§ 3.2	Estimating the Relevant Market; the SSNIP and the “Hypothetical Monopolist”.....	67
3.2a.	Size of Hypothesized Price Increase	69
3.2b.	The “Profit-Maximizing” Increase; Critical Loss Analysis	70
3.2c.	Broader and Narrower Markets; General Irrelevance of Submarkets.....	73
§ 3.3	The Product Market; General Considerations	75
3.3a.	Markets and Brands; “Lock-In”	77
3.3a1.	Single Brand Ordinarily Not a Relevant Market; <i>Kodak</i> ; Patented Pharmaceuticals	77
3.3a2.	Lower Court Decisions Limiting <i>Kodak</i>	80
3.3b.	Substitutes v. Complements; Cluster Markets and Two-Sided Platforms.....	81
3.3b1.	Relevant Market Consists of Substitutes	81
3.3b2.	The Limited Rationale for Finding “Cluster” Markets	82
3.3b3.	Assessing Market Power on Two-Sided Platforms	83
§ 3.4	Product Differentiation and the “Cellophane” Fallacy.....	85
3.4a.	Cross-Price Elasticities and Their Meaning.....	85
3.4b.	Cross-Elasticity of Demand in the du Pont (Cellophane) Case	86
3.4c.	Correcting for the “Cellophane” Fallacy	88
§ 3.5	Supply Elasticities; Foreign Imports	89
3.5a.	Foreign Imports and the Alcoa Case	90
3.5b.	Other Decisions Addressing (or Failing to Address) Supply Issues.....	91
§ 3.6	The Geographic Market	93
3.6a.	Shipped Goods; Minimum Geographic Market	94
3.6b.	Stationary Goods and Services	94

3.6c.	Price Movements and Shipping Patterns	97
3.6c1.	Price Movements Generally; Asymmetry.....	97
3.6c2.	The Elzinga-Hogarty Test	99
3.6d.	Price Discrimination.....	100
§ 3.7	Computation and Interpretation of Market Shares.....	101
3.7a.	Revenue v. Units.....	102
3.7b.	Output v. Capacity.....	103
§ 3.8	Market Definition in the Justice Department Merger Guidelines	105
3.8a.	Product Market Delineation in the 2010 Guidelines.....	106
3.8b.	Geographic Market Definition Under the 2010 Guidelines.....	108
3.8c.	Calculation of Market Shares Under the 2010 Merger Guidelines	109
3.8d.	Conclusion; the Guidelines as a Policy Statement	110
§ 3.9	Alternative Methods of Establishing Market Power.....	110
3.9a.	Measuring Residual Demand Directly	111
3.9b.	Persistent Price Discrimination	112
3.9c.	Persistent Monopoly Profits; High Margins; Exclusion Payments.....	113
3.9c1.	Monopoly Profits v. Accounting Profits	114
3.9c2.	Power Inferred from Exclusion Payments: <i>Actavis</i> Decision.....	115
3.9d.	Market Power and Intellectual Property.....	116
3.9e.	Assessing Market Power for Vertical Restraints	118
Chapter 4. Antitrust Policy Toward Collusion and Oligopoly		121
§ 4.1	Introduction: The Basic Economics of Price Fixing.....	121
4.1a.	The (Virtual) Universality of Cartel Cheating	124
4.1a1.	Divergence Between Cartel and Single Firm Profit Maximization.....	124
4.1a2.	Cartel Cheating Strategies	125
4.1a3.	Detecting and Punishing Cheating; Cartel “Amnesty”	126
4.1b.	Competitive Fringe Firms	129
4.1c.	Internal Efficiencies of the Cartel	130
§ 4.2	Imperfect Competition	132
4.2a.	Non-Cooperative Cournot Oligopoly	134
4.2b.	Oligopoly Strategies.....	136

§ 4.3	Antitrust Policy Toward Oligopoly and Tacit Collusion.....	136
4.3a.	Attacking Oligopoly; the Turner-Posner Debate.....	137
4.3b.	Identifying Tacit Collusion and Facilitators; Policy Options.....	138
§ 4.4	Proving a Price or Output “Agreement” from Indirect or Circumstantial Evidence; Hub-and-Spoke Conspiracies.....	142
§ 4.5	Reaching Oligopoly Behavior on Less Explicit Evidence of Agreement.....	147
4.5a.	Introduction; Incomplete Agreements.....	148
4.5b.	Challenging Facilitators Established by Agreement.....	150
4.5c.	“Unilateral” Facilitators; Basing-Point Pricing Schemes.....	151
4.5d.	Other Facilitators, Including Algorithms; § 5 of Federal Trade Commission Act.....	155
4.5e.	Motions to Dismiss and Summary Judgment in Conspiracy Cases; Courts’ General Adherence to Traditional Conspiracy Requirements.....	159
§ 4.6	Intraenterprise Conspiracy.....	160
 Chapter 5. Joint Ventures of Competitors, Concerted Refusals, Patent Licensing, and the Rule of Reason ... 167		
§ 5.1	Introduction: Naked and Ancillary Agreements Among Competitors.....	168
5.1a.	Distinguishing Naked from Ancillary Restraints; Question of Law.....	170
5.1b.	Why Multilateral Activity Deserves Closer Antitrust Scrutiny.....	171
5.1c.	Partial Condemnation; Less Restrictive Alternatives.....	175
§ 5.2	Joint Ventures: An Overview.....	176
5.2a.	Potential Harms and Benefits.....	176
5.2b.	Ventures Facilitating R & D, Advertising and Promotion; Ancillary Market Divisions.....	180
5.2b1.	Free Rider Problems.....	180
5.2b2.	Ancillary and Naked Agreements Pertaining to Advertising.....	181
5.2b3.	Ancillary Market Divisions and Noncompetition Agreements.....	183
5.2c.	Transactional Efficiencies Justifying Joint Venture Price Setting.....	187

	5.2d.	The Relation Between Joint Venture Analysis and Merger Analysis.....	189
§ 5.3		Competitor Exchanges of Price or Output Information; Posting Agreements	191
	5.3a.	Industry-Wide Dissemination of Price and Output Information	192
	5.3b.	Direct Competitor Exchange of Price Information.....	194
	5.3c.	Agreements to Post or to Post and Adhere.....	195
	5.3d.	Agreements of Wage and Salary Information; “Anti-Poaching” Agreements	196
§ 5.4		Concerted Refusals to Deal, Joint Venture Membership Restrictions, and Standard Setting.....	197
	5.4a.	Harms and Benefits; Appropriate Antitrust Standard.....	197
	5.4a1.	A Rule of Reason, with Exceptions	198
	5.4a2.	Special Treatment for the Learned Professions?	203
	5.4b.	Efficient Joint Ventures and Refusals to Deal	205
	5.4b1.	Closed-Membership and Other Traditional Joint Ventures.....	205
	5.4b2.	Open-Membership Ventures; Positive Network Externalities	206
	5.4c.	Standard Setting and Rule Enforcement in Private Entrepreneurial and Professional Associations	210
	5.4d.	Agreements Involving Non-Competitors	214
§ 5.5		Agreements Governing the Licensing and Use of Patents and Other Intellectual Property	216
	5.5a.	Introduction; Basic Issues	216
	5.5b.	The Scope of the Patent Misuse Doctrine, Antitrust and Beyond	217
	5.5c.	Patent Licensing; the “Scope of the Patent” Rule.....	221
	5.5c1.	Price Fixing; Output Restrictions; Royalty Rates; Exclusivity.....	222
	5.5c2.	Horizontal Territorial and Other Market Division Agreements.....	224
	5.5c3.	Pay-for-Delay Settlements of Pharmaceutical Patent Disputes; <i>Actavis</i>	226
	5.5c4.	Package Licenses	228
	5.5c5.	Patent Pools.....	229
	5.5c6.	FRAND: Patent Licensing and Standard-Essential Patents.....	231

	5.5d. Agreements Concerning Non-Patent Intellectual Property	236
§ 5.6	Characterization and Evaluation: The Per Se Rule and the Rule of Reason.....	236
	5.6a. The Supreme Court and the Per Se Rule	236
	5.6b. The Exaggerated Distinction Between Rule of Reason and Per Se Treatment	239
	5.6c. Identifying Anticompetitive Conduct: A Tentative Road Map	243
	5.6d. The Truncated, or “Quick Look,” Rule of Reason.....	248
	5.6e. Reforming the Rule of Reason	250
Chapter 6. Exclusionary Practices and the Dominant Firm: The Basic Doctrine of Monopolization and Attempt..... 255		
§ 6.1	The Monopolization Offense.....	255
§ 6.2	Monopoly Power and Illegal Monopolization	257
§ 6.3	Conduct Requirements—Is Bad Conduct Necessary?.....	260
§ 6.4	Identifying Monopolizing Conduct	261
§ 6.5	The Offense of Attempt to Monopolize	264
	6.5a. Attempt Law’s Specific Intent Requirement	265
	6.5b. “Dangerous Probability of Success”	267
Chapter 7. Exclusionary Practices in Monopolization and Attempt Cases..... 273		
§ 7.1	Introduction.....	274
§ 7.2	Merger and Monopoly	275
§ 7.3	Output Expansion; Strategic Capacity Construction.....	278
§ 7.4	Price Discrimination; Leasing Practices	279
§ 7.5	Unilateral Refusals to Deal I: General Doctrine.....	280
	7.5a. Protecting the Incentive to Invest	282
	7.5b. Scope of Duty to Deal.....	288
	7.5c. Refusals to Deal in Cooperative Networks	289
§ 7.6	Unilateral Refusal to Deal II: Vertical Integration, Price Squeezes, Tying and Exclusive Dealing.....	291
	7.6a. <i>Kodak</i> and Aftermarket Opportunism.....	291
	7.6b. Vertical Integration and Refusals to Deal: Price or Supply “Squeezes”	293
	7.6c. Quasi-Tying and Exclusive Dealing—Technological Ties.....	295
§ 7.7	Refusal to Deal III: The “Essential Facility” Doctrine	297
	7.7a. What Is a Qualifying “Essential Facility”?	299
	7.7b. The Extent of the Duty to Deal.....	300
	7.7c. Reasonableness of Refusal to Deal	301

7.7d.	Essential Facility Doctrine Inconsistent with General Antitrust Goals; <i>Aspen</i> Contrasted	302
§ 7.8	“Predatory” Product Design and Development; Failure to Predisclose; Altered Complementary Products	303
7.8a.	Predatory Product or Process Innovation	303
7.8b.	Failure to Predisclose New Technology	306
7.8c.	<i>Microsoft</i> : Unnecessarily Harmful Redesigns and Licensing Requirements	307
§ 7.9	The Troublesome “Leverage” Theory; Nonmonopolistic Advantage in Second Market	309
§ 7.10	Raising Rivals’ Costs (RRC); Market Preemption	311
§ 7.11	Unreasonably Exclusionary Practices Involving Patents or Other Intellectual Property Rights	316
7.11a.	<i>Walker Process</i> : Improper Infringement Suits on Unenforceable Patents	317
7.11b.	Enforcement of Patent Known to Be Invalid or Unenforceable; <i>Noerr</i> Issues	319
7.11c.	Accumulation; Nonuse	322
7.11d.	Unilateral Refusal to License, Simple and Conditional	324
7.11d1.	Absolute Refusal to License	324
7.11d2.	Conditional Refusals to License	327
7.11d3.	Refusal to License FRAND-Encumbered Patents	327
7.11e.	Patent “Ambush” and Failure to Disclose, Particularly in Standard Setting	328
§ 7.12	Business Torts as Antitrust Violations	330
§ 7.13	Conduct Requirements in Attempt Cases	332
Chapter 8. Predatory and Other Exclusionary Pricing		333
§ 8.1	Introduction	333
§ 8.2	When Is a Price Predatory? The Areeda-Turner Test	335
§ 8.3	Predatory Pricing: Application and Criticism of the Areeda-Turner Test	337
8.3a.	The Average Variable Cost (AVC) Surrogate	337
8.3b.	The Problem of Long-Run, Strategic Behavior; “Predatory” Prices Above Cost	339
§ 8.4	Structural Issues: When Is Predatory Pricing Plausible? Recoupment	341
8.4a.	The Predator’s Market Position; Predatory Pricing in Oligopoly	342
8.4b.	Barriers to Entry	345
§ 8.5	Judicial Adaption of the Areeda-Turner Test: Price/Cost Relationships and Intent	346
8.5a.	Price/Cost Relationships	346

8.5b.	Intent.....	347
§ 8.6	Judicial Adaption of Areeda-Turner: Identifying Relevant Costs; Multi-Product Firms; Customer-Specific Pricing.....	348
§ 8.7	Judicial Adaption of Areeda-Turner: Structural Issues and Recoupment.....	350
§ 8.8	Predatory Pricing and the Robinson-Patman Act.....	352
§ 8.9	More Complex Exclusionary Pricing Strategies, Particularly Discounts.....	358
8.9a.	Quantity and Loyalty Discounts.....	358
8.9b.	Package Pricing and Bundled Discounts.....	361
8.9b1.	The Varieties of Bundled Discounts.....	361
8.9b2.	The “Attribution” Test for Bundled Discounts.....	363
§ 8.10	Predatory Buying and Most-Favored-Nation Clauses in Purchase Agreements.....	365
Chapter 9. Vertical Integration and Vertical Mergers.....		369
§ 9.1	Introduction.....	369
§ 9.2	The Economics of Vertical Integration.....	372
9.2a.	The Implications of Coase’s Work; Transaction Cost Economics.....	372
9.2b.	Cost Savings, Technological and Transactional.....	373
§ 9.3	Plausible Anticompetitive Consequences of Vertical Integration.....	376
9.3a.	Strategic Control of Inputs.....	377
9.3b.	Price Discrimination.....	377
9.3c.	Foreclosure, Raising Rivals’ Costs, and Entry Barriers.....	379
§ 9.4	Vertical Mergers and Antitrust Law.....	380
§ 9.5	The Vertical Merger Guidelines.....	387
Chapter 10. Tie-Ins, Reciprocity, Exclusive Dealing and Most-Favored-Nation Agreements.....		393
§ 10.1	Introduction: The Judicial Test for Tie-Ins.....	394
§ 10.2	Tying Arrangements and Consumer Welfare.....	396
§ 10.3	Market Power and Per Se Unlawful Ties; Sherman v. Clayton Act Tests.....	397
10.3a.	The Rationale and Development of Tying’s Market Power Requirement.....	398
10.3b.	Tying Arrangements in Imperfectly Competitive Markets; Locked-In Customers.....	400
10.3c.	Intellectual Property and the Presumption of Market Power.....	403

	10.3d. The Rationale for Per Se Illegal Tie-Ins	404
§ 10.4	When Are Products Tied Together?	406
	10.4a. Coercion by Contract, Condition, or Understanding.....	406
	10.4b. Proof of a Relevant Tying “Agreement;” Uncommunicated Conditions.....	408
	10.4c. Package Discounts	409
	10.4d. Coercion by Package Design; Technological Ties	409
§ 10.5	The Requirement of Separate Tying and Tied Products.....	411
	10.5a. Introduction; Basic Competitive Market Test	411
	10.5b. “New” Products	412
	10.5c. Efficiency—“Economies of Joint Provision”	413
§ 10.6	Competitive Effects	415
	10.6a. The Leverage Theory: Using Tie-Ins to Turn One Monopoly into Two; Tipping.....	415
	10.6b. Entry Barriers, Foreclosure, and Collusion.....	416
	10.6b1. Entry Barriers and Tying Arrangements	416
	10.6b2. Foreclosure; Market Share	417
	10.6c. Tie-Ins as Price Discrimination and Metering Devices; Franchise Agreements.....	418
§ 10.7	Tie-Ins and Efficiency: Toward a General Rule of Reason.....	420
	10.7a. Efficiencies and Tying Law’s Idiosyncratic Per Se Rule.....	420
	10.7b. Nonforeclosing Ties; Full-Line Forcing and Unwanted Tied Products; Lack of Consumer Injury	420
	10.7c. Conclusion: Moving Tying Law Toward a Rule of Reason.....	422
§ 10.8	Exclusive Dealing.....	423
	10.8a. Anticompetitive Foreclosure and Its Variations	423
	10.8a1. The Foreclosure Theory of Exclusive Dealing.....	423
	10.8a2. Raising Rivals’ Costs	424
	10.8a3. Defining Markets to Measure Vertical Foreclosure.....	425
	10.8b. Exclusive Dealing as a Cartel Facilitator.....	426
	10.8c. The Difference Between Exclusive Dealing and Tying.....	426
	10.8d. Efficiency Explanations and Defenses for Exclusive Dealing	428

10.8e.	The Legal Standard for Exclusive Dealing Contracts.....	429
§ 10.9	Vertical Most-Favored-Nation (MFN) and “Anti- Steering” Clauses	432
Chapter 11. Intra-brand Restraints on Distribution.....		437
§ 11.1	Introduction.....	438
§ 11.2	Perceived Competitive Threats of Minimum RPM and Vertical Territorial Restraints	439
11.2a.	Introduction	439
11.2b.	Vertical Restraints as Collusion Facilitators; Powerful Individual Dealers.....	439
11.2b1.	Dealer Power; Policy Implications.....	441
11.2b2.	Manufacturer Collusion and Vertical Restraints	442
11.2c.	Price Discrimination.....	443
§ 11.3	Vertical Restraints and Efficiency	444
11.3a.	The Free-Rider Problem	444
11.3b.	Variations on the Free-Rider Problem and Alternative Explanations.....	446
11.3b1.	Purchase of Preferred Distribution Services; Shelf Space; Quality Certification.....	446
11.3b2.	Facilitating Resale Density	446
11.3b3.	Protection of Dealer Margins; Enforcement of Distribution Contracts.....	447
§ 11.4	The Agreement Requirement in Vertical Restraints Cases	448
11.4a.	Agreements—Horizontal and Vertical, Price and Nonprice.....	448
11.4b.	The <i>Colgate</i> Doctrine	449
11.4c.	Dealer Terminations.....	451
11.4d.	The Agreement Requirement and Antitrust Policy Respecting Vertical Restraints; Restraints Initiated by Powerful Dealers.....	452
§ 11.5	Resale Price Maintenance in the Courts.....	452
11.5a.	From <i>Dr. Miles</i> to <i>Leegin</i>	452
11.5b.	The Meaning of “Resale”—Consignment Exception	456
11.5c.	Maximum RPM.....	459
11.5d.	The Difference Between Price and Non-Price Agreements.....	461

§ 11.6	Vertical Nonprice Restraints Under the Rule of Reason	461
11.6a.	Balancing “Intrabrand” and “Interbrand” Competition	463
11.6b.	Sylvania’s Impact in the Lower Courts	465
11.6c.	Boycott Claims.....	467
11.6d.	Exclusive Dealerships, Sole Outlets, and Refusals to Deal.....	467
11.6e.	Dual Distribution.....	468
Chapter 12. Mergers of Competitors.....		471
§ 12.1	Introduction: Federal Merger Policy and the Horizontal Merger Guidelines.....	472
12.1a.	The Relevance of Market Structure to Merger Analysis	474
12.1b.	The Basic Concerns of Merger Policy: Reduced Market Output or Innovation, Higher Prices, and Offsetting Efficiencies.....	475
§ 12.2	Efficiency and Merger Policy.....	478
12.2a.	The Dubious Legacy of the Warren Era	478
12.2b.	Assessing the Efficiency Effects of Horizontal Mergers.....	479
12.2b1.	The Welfare “Tradeoff” Model	479
12.2b2.	Must Efficiencies Be “Passed On”?	484
12.2b3.	Efficiencies Must Be “Merger-Specific” and “Extraordinary”	485
§ 12.3	Estimating Anticompetitive Consequences I: Mergers Facilitating Unilateral Price Increases.....	486
12.3a.	Introduction	486
12.3b.	Merger to Monopoly.....	486
12.3c.	Unilateral Effects in Product Differentiated Markets.....	486
12.3d.	Mergers That Threaten Innovation.....	490
12.3e.	Platform Acquisitions and Potential Competition	492
§ 12.4	Estimating Anticompetitive Consequences II: Mergers Facilitating Coordinated Interaction	494
12.4a.	Measuring Market Concentration: The CR4 and the Herfindahl	495
12.4a1.	The Four-Firm Concentration Ratio (CR4).....	495
12.4a2.	The Herfindahl-Hirschman Index (HHI).....	496
12.4b.	Market Share Thresholds Under the Horizontal Merger Guidelines	499

12.4c.	The Weight to Be Given to Market Definition and Market Share Measures	501
12.4d.	How Should Concentration Count? The <i>Philadelphia Bank</i> Presumption	502
§ 12.5	The Significance of Product Differentiation	506
12.5a.	General Effects	506
12.5b.	More Extreme Product Differentiation: When Is a Merger Horizontal?	507
§ 12.6	Barriers to Entry in Merger Cases	509
12.6a.	The Appropriate Definition of Entry Barriers for Merger Policy	509
12.6b.	What Constitutes an Entry Barrier?	512
12.6b1.	Economies of Scale	512
12.6b2.	Risk and Size of Investment; Sunk Costs	513
12.6b3.	Advertising, Promotion, and Customer Loyalty	514
12.6b4.	Government Entry Restrictions, Including Intellectual Property	515
12.6c.	Entry Barrier Analysis Under the 2010 Horizontal Merger Guidelines	516
§ 12.7	Observed Anticompetitive Behavior; Post-Acquisition Review	518
§ 12.8	The “Failing Company” Defense and Related Factors Affecting Firm Viability	519
§ 12.9	Partial Acquisitions and Acquisitions “Solely for Investment”; Horizontal Shareholding	521
 Chapter 13. Public Enforcement of the Federal Antitrust Laws		
§ 13.1	Public Enforcement Generally; the Antitrust Division	525
13.1a.	Criminal Enforcement	527
13.1b.	Civil Enforcement	529
§ 13.2	The Federal Trade Commission	530
 Chapter 14. Private Enforcement		
§ 14.1	Introduction: § 4 of the Clayton Act	536
§ 14.2	Permissible Plaintiffs—Who Should Enforce the Antitrust Laws?	536
§ 14.3	Antitrust’s Special Requirement of Competitive Injury	537
14.3a.	“Antitrust Injury”; Private Merger Challenges ...	537
14.3a1.	Mergers Alleged to Facilitate Exclusionary Practices	537
14.3a2.	Consumer Plaintiffs	539

14.3b.	“Antitrust Injury” Beyond § 7; Per Se Violations.....	539
14.3c.	Causation, Injury-in-Fact, Antitrust Injury Distinguished.....	540
14.3d.	Injunctive Relief.....	542
§ 14.4	Statutory and Judicial Rules Limiting Antitrust Standing.....	543
14.4a.	“Business or Property”.....	543
14.4b.	Market Relationships; “Direct Injury” and “Target Area” Tests.....	544
14.4b1.	“Direct Injury”.....	544
14.4b2.	“Target Area”.....	545
14.4b3.	Supreme Court Attempts at a More Useful Alternative.....	545
§ 14.5	Special Problems of Antitrust Standing.....	548
14.5a.	“Duplicative Recovery”.....	548
14.5b.	Derivative Injuries.....	548
§ 14.6	The Indirect Purchaser Rule.....	550
14.6a.	Hanover Shoe, Illinois Brick, and Apple v. Pepper.....	550
14.6b.	Exceptions to the Illinois Brick Rule.....	552
14.6b1.	Pre-Existing Contracts.....	552
14.6b2.	Injunction Suits.....	554
14.6b3.	Cases Involving Vertical Agreements or Control.....	554
14.6c.	Policy Implications of the Indirect Purchaser Rule; State Indirect Purchaser Statutes.....	555
14.6d.	The Umbrella Plaintiff.....	557
 Chapter 15. Antitrust and the Process of Democratic Government..... 559		
§ 15.1	Regulation, Rent-Seeking and Antitrust Immunity.....	559
15.1a.	The Noerr Doctrine.....	559
15.1b.	Petitions to Governments Acting as Market Participants.....	560
§ 15.2	Petitions for Adjudicative Action.....	563
§ 15.3	The “Sham” Exception in Legislative and Adjudicative Contexts.....	565
15.3a.	Use of Abusive Methods; False Information.....	567
15.3b.	Baselessness in the Adjudicative Setting; Successful Claims.....	568
15.3c.	Single or Repetitive Claims.....	571
15.3d.	Threat to Sue; Ex Parte Statements.....	572
15.3e.	Petitions for Invalid Legislation and Administrative Rules.....	574

§ 15.4	Corruption of Private Decision Making Bodies.....	575
Chapter 16. Antitrust and Federal Regulatory Policy.....		579
§ 16.1	The Role of Antitrust in the Regulated Market.....	579
16.1a.	Express or Implied Repeal.....	580
16.1b.	The Relation Between Federal Regulation and Antitrust Jurisdiction: Two Views.....	580
16.1c.	Requisite Regulatory Oversight; “State Action” Compared.....	584
§ 16.2	Procedure in Areas of Divided Authority; “Primary Jurisdiction”.....	586
§ 16.3	Particular Exemptions.....	588
16.3a.	Miscellaneous Express Exemptions.....	588
16.3b.	Antitrust and Federal Labor Policy.....	590
16.3c.	The McCarran-Ferguson Act and the Insurance Exemption.....	594
16.3c1.	“Business of Insurance”.....	594
16.3c2.	“Regulated by State Law”.....	596
16.3c3.	Acts of Boycott, Coercion or Intimidation.....	597
Chapter 17. Antitrust Federalism and the “State Action” Doctrine.....		599
§ 17.1	Introduction; Preemption.....	599
§ 17.2	Federalism and the Policy of the “State Action” Doctrine.....	602
§ 17.3	Basic Qualifications for Exemption.....	603
§ 17.4	Authorization.....	605
§ 17.5	Active Supervision.....	609
17.5a.	When Is Supervision Required?.....	610
17.5b.	What Kind of Supervision Is Required?.....	613
17.5c.	Who Must Supervise?.....	616
§ 17.6	The Special but Shrinking Problem of Municipal Antitrust Liability.....	616
TABLE OF CASES.....		619
TABLE OF STATUTES.....		633
TABLE OF REGULATIONS.....		635
TABLE OF RULES.....		637
INDEX.....		639