The Basics of Antitrust Litigation

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• The **Sherman Act** and the **Clayton Act** are federal laws that protect **consumers** and **competitors** from anti-competitive or monopolistic conduct.
Sherman Act § 1

- Every contract, combination . . . or conspiracy, in restraint of trade or commerce . . . is declared to be illegal.
  - Competitors cannot agree to “gang up” against consumers.
Sherman Act § 2

• Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize . . . shall be deemed guilty of a felony.
• Under the Sherman Act, some conduct is illegal *per se*
  ▫ Horizontal Price Fixing
  ▫ Horizontal Boycotts

• Other conduct is analyzed under the “*rule of reason*”
  ▫ Vertical Agreements
Clayton Act § 4

• Any person . . . injured in his business or property by reason of anything forbidden in the antitrust laws . . . shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney’s fee.
Apple v. Pepper

- The Supreme Court will decide whether consumers who purchased iPhone apps from Apple on the App Store have standing to sue Apple for monopolizing the market for the apps.
  - Argued on November 26, 2018
Types of Antitrust Cases

- Drugs and Health Devices
- Financial Products
- Everything else (almost every other commodity product)
Financial Products Susceptible to Manipulation

- Gold
- SSA Bonds
- Mexican Bonds
- Silver
- U.S. Treasuries
- VIX
LIBOR Antitrust Litigation

- LIBOR (London InterBank Offered Rate) is the primary benchmark for short-term interest rates.
- It occupies a crucial role in operation of the financial markets.
LIBOR Antitrust Litigation

• Banks conspired to manipulate LIBOR so they could pay artificially low interest rates to purchasers of LIBOR-based financial instruments during the global financial crisis, which allowed the banks to reap billions of dollars in unlawful profits.
Mexican Bonds Antitrust Litigation

- In 2018, nine banks and their subsidiaries were sued for rigging the market for certain Mexican government bonds over more than a decade.
  - Prompted by an investigation by Mexican regulators started in 2017.
Mexican Bonds Antitrust Litigation

• The conspiracy inflated bond prices and lowered yields for purchasers in the $400 million market for bonds issued by local government entities in Mexico.
Generic Drug Price-Fixing Litigation

• 48 State AGs and several private plaintiffs (including Taft-Hartley health and welfare funds) have sued a dozen pharma manufacturers for conspiring to fix the prices of approximately 300 generic drugs.
Damages

- Often relatively small overcharges per trade, but aggregate damages can be large for a fund that trades frequently.

Reforms

- Injunctions
- Exposing misconduct
- Deterrence
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