

Spring 2000

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E52-359

14.292
Antitrust Seminar

This seminar covers various topics in antitrust policy using mostly material from recent and pending cases. The first half will concentrate on single-firm monopoly (Section 2) cases in particular the *IBM* and *Microsoft* cases. This is done both because of the intrinsic interest and because these cases touched on many of the areas relevant to other aspects of antitrust. In the second half of the seminar students (even those taking the seminar as listeners) will be expected to make oral presentations based on actual case materials.

Considerable use is made of F. Fisher, J. McGowan, and J. Greenwood *Folded Spindled and Mutilated: Economic Analysis and U.S. v. IBM* Cambridge MIT press 1983 (cited as *Folded* below). Since tie-in contracts are (rightly or wrongly) per se illegal you do not have to buy this (now out-of-print) book.

In the reading list starred items (*) are for background reading but even non-starred items can often be skimmed as the list is long. It has not been possible to separate all reading by sub-topic so some readings covering more than one topic are given under the subject where they first appear and indicated with a #.

Part I: Section 2 and the *IBM* and *Microsoft* Cases

1. The ALCOA-United Shoe Machinery Doctrine

Readings:

United States v. Aluminum Company of America 148 F. 2d 416 (1945).

United States v. United States Shoe Machinery Corporation, 110 F. Supp. 25 (1953).

*C. Kaysen, *United States v. United Shoe Machinery Corporation*, Cambridge Harvard University Press 1956.

R. Bork, *The Antitrust Paradox*, New York Basic Books 1978 pp. 138-141 163-174.

#F. M. Fisher "Diagnosing Monopoly" The Quarterly Review of Economics and Business, 19 No. 2 (Summer 1979), pp. 7-33.

#*Folded* Chapters 1-2.

2. The Early Computer Industry and the IBM Case; General

*F. M. Fisher J. W. McKie and R. B. Mancke *IBM and the U.S. Data Processing Industry An Economic History*, New York Praeger 1983 esp. Parts I and II.

#R. T. DeLamarter *Big Blue: IBM's Use and Abuse of Power*, New York Dodd Mead & Co. 1986.

#G. Brock, *The U.S. Computer Industry: A Study of Market Power*, Cambridge Ballinger 1973.

#L. W. Weiss, "The Structure-Conduct-Performance Paradigm and Anti-trust" *U. of Pennsylvania Law Review*, 127 (1979) pp. 1124-1139.

#F. M. Scherer review of *Folded*, *Journal of Economic Literature*, 22 (June 1984) pp. 620-621.

#R. J. Dennis review of *Folded*, *Cornell Law Review* 70 (March 1985) pp. 580-598.

Frdmsdmerica Computer Corp. v. IBM Corp. 481 F. Supp. 965 (N. D. Cal. 1979).

3. Market Definition

United States v. E.I. duPont de Nemours and Company

Fisher McKie and Mancke, Chapters 5-10 esp. Chapter 8.

6. Profits

Folded Chapter 7.

*F. M. Fisher "On the Misuse of the Profits-Sales Ratio to Infer Monopoly Power" *Rand Journal of Economics*, Vol. 18 No.3 Autumn 1987.

7. Barriers to Entry

Folded Chapter 6.

Bork Chapters 16 19

8. Anticompetitive Actions

R. C. Landis and R. S. Rolfe "Market Conduct Under Section 2: When is it Anticompetitive?" Chapter 7 in F. M. Fisher ed. *Antitrust and Regulation Essays in Memory of John J. McGowan*, Cambridge MIT Press 1985.

*J. A. Ordover and R. D. Willig "An Economic Definition of Predation Pricing and Product Innovation" *Yale Law Journal*, 91 (1981) pp. 8-53.

F. H. Easterbrook "Predatory Strategies and Counterstrategies" *U. of Chicago Law Review*, 48 (1981) pp. 304-213.

*J. A. Ordover A. O. Sykes and R. D. Willig "Non-price Anticompetitive Behavior by Dominant Firms Toward the Producers of Complementary Products" Chapter 6 in *Antitrust and Regulation*.

**Berkey Photo Co. v. Eastman Kodak Co*, 603 F 2d. 263 (2d. Cir. 1979).

Folded Chapter 8.

*R. Pittman and B. Snapp [GET PITTMAN REFERENCE].

9. The Trial Experience

S. Brill "What to Tell Your Friends About IBM", *The American Lawyer*, April 1982 (Xerox).

Folded Chapter 9.

H. S. Houthakker review of *Folded*, *Journal of Political Economy* 93 (June 1985) pp. 618-622.

10. The *Microsoft* Case

Fisher, "The IBM and Microsoft Cases: What's the Difference?"

Fisher and Rubinfeld, "*U.S. v. Microsoft* -- an Economic Analysis"

Schmalensee and Evans, "Be Nice to your Rivals: How the Government is Selling and Antitrust Case

**D General Box Co. v. Rockaway Corp.

Complaint.

Answer.

**E Computer Reservation Systems

Comments and proposed rules of the Department of Justice.

William J. Baumol "The Apollo Reservation System and the Public Interest."

Reply comments of American Airlines esp. NERA comments (Appendix D).

U.S. Air et al v. American Airlines & United Airlines, Plaintiff's Statement of the Case and Appendix of Factual Allegations.

Continental Airlines et al v. American Airlines and United Airlines, Complaint.

"1985 Report of the Department of Justice to Congress on the Airline Computer Reservation System Industry."

2. Conspiracy and Damages

F. M. Fisher "Janis Joplin's Yearbook and the Theory of Damages" Journal of Accounting Auditing and Finance, Winter/Spring 1990 vol. 5 No's 1/2 pp. 145-157. Reprinted in Industrial Organization Economics and the Law, (collected works Volume I) edited by J. Monz. (London Harvester-Wheatsheaf and Cambridge MIT Press 1990).

**A. Zenith v. Matsushita.

Plaintiff's Preliminary Pretrial Memorandum.

H. J. DePodwin et al Economic Study of the Japanese Television Industry.

Supreme Court briefs for petitioners and respondents.

**B. CBS v. ASCAP
(BMI v. CBS)

Fisher testimony.

Opinion 441 U.S. 1 (1978).

also
*400 F. Supp. 737 (Southern District of NY 1975).

C. Corrugated Containers.

*D. L. Rubinfeld and P. O. Steiner "Quantitative Methods in Antitrust Litigation" 46 Law and Contemporary Problems, 69 (Autumn 1983).

J. C. Beyer "Final Report Concerning Expert Testimony on Damages."

M. O. Finkelstein and H. Levenbach "Regression Estimates of Damages in Price-Fixing Cases" 46 Law and Contemporary Problems, 145 (Autumn 1983).

F. M. Fisher "Statisticians Econometricians and Adversary Proceedings" 81 Journal of American Statistical Association, 277 at 282-285.

**D. Marine Construction

F. M. Fisher "Collusion in the Marine Construction Industry: An Economic Analysis."

K. J. Arrow and R. Noll "Report."

**E. Burlington Industries et al v. Milliken & Co. et al

Opinion 690 Federal Reporter 380 (1982).

3. Mergers

General:

**U.S. Department of Justice Merger Guidelines.

Symposium: "Horizontal Mergers and Antitrust" (papers by Salop, White, Fisher and Schmalensee), 1 Journal of Economic Perspectives, 2 (Fall 1987).

A. The Pacific Division Transfer Case (United and Pan American Airlines)

F. M. Fisher "Pan American to United: The Pacific Division Transfer Case, 18 Rand Journal of Economics, 4 (winter 1987)

**Joint application.

Testimony of Richard Cooper.

Testimony of Gloria Hurdle.

Testimony of Michael E. Levine.

Testimony of Gary J. Dorman.

Testimony of Paul McAvoy.

Testimony of Franklin M. Fisher.

Rebuttal Testimony of Dennis Carlton William Landes and Sam Peltzman.

Post-hearing Brief of Department of Justice.

Tentative Opinion and Order of Secretary Dole.

**B. Northwest and Republic

Comments of the U.S. Department of Justice.

Direct Testimony and Exhibits of the U.S. Department of Justice esp. "Testimony of Richard L. Johnson" (DOJ-T-1) and "Testimony of Gloria J. Hurdle" (DOJ-T-2).

Comments of Joint Applicants.

Joint Applicants Rebuttal Exhibits esp. "Rebuttal Testimony of J. W. Champion" (JA-RT-2) "Rebuttal Testimony of Dr. Gary J. Dorman" (JA-RT-4) and "Rebuttal Testimony of Franklin M. Fisher" (JA-RT-5).

"Rebuttal Testimony of Gloria J. Hurdle" (DOJ-RT-1).

4. Vertical Restraints

**Western v. North American and Eastern, Trial materials. (This is not a real case but one made up for the ABA Antitrust Section.)