

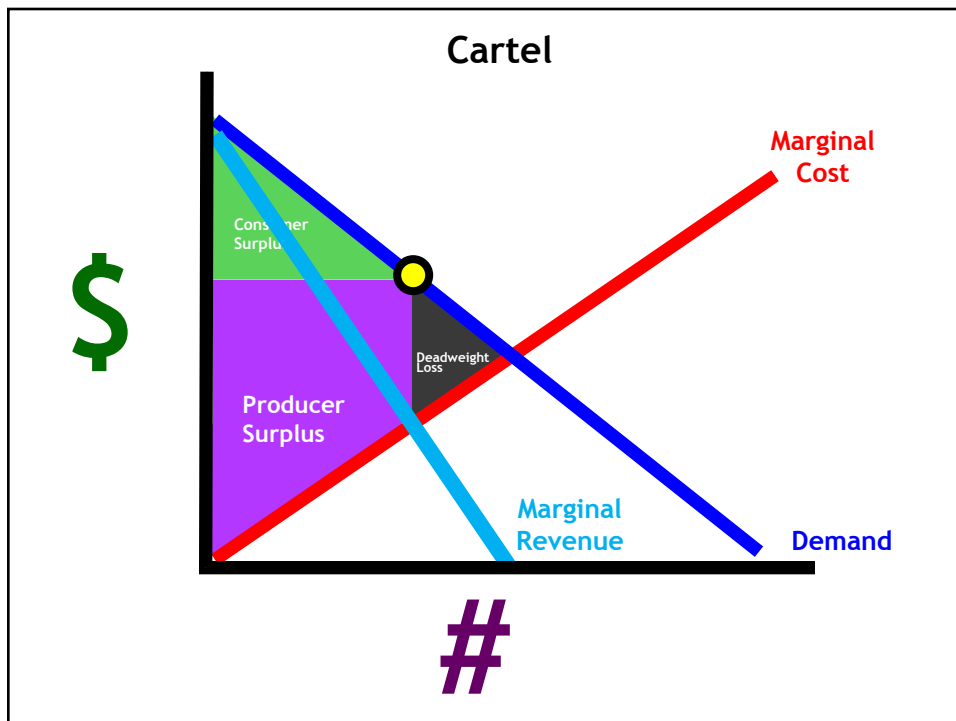


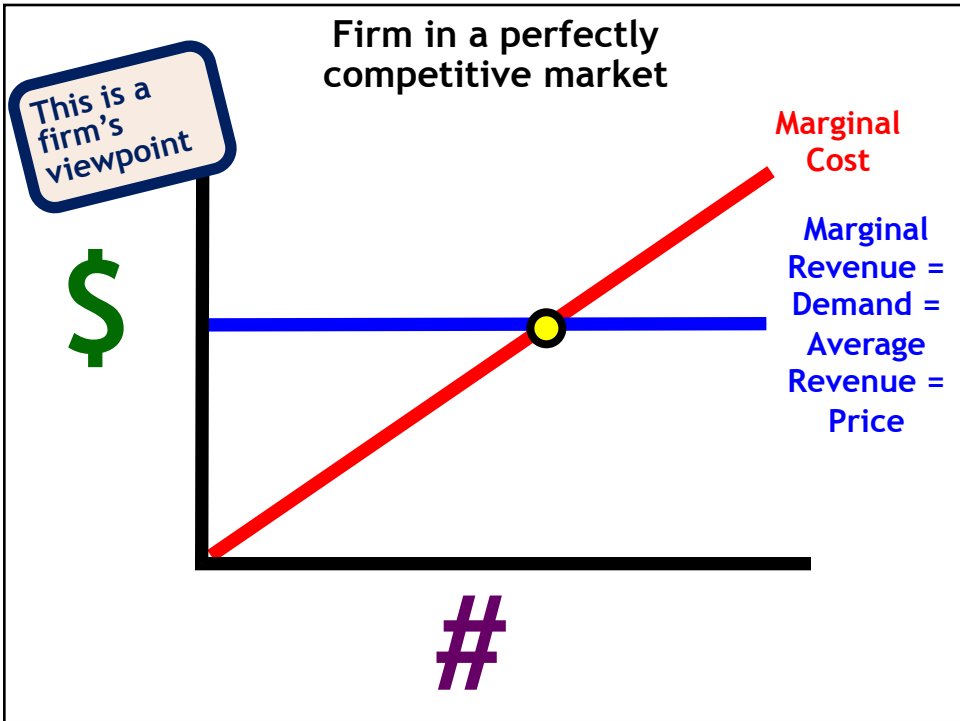
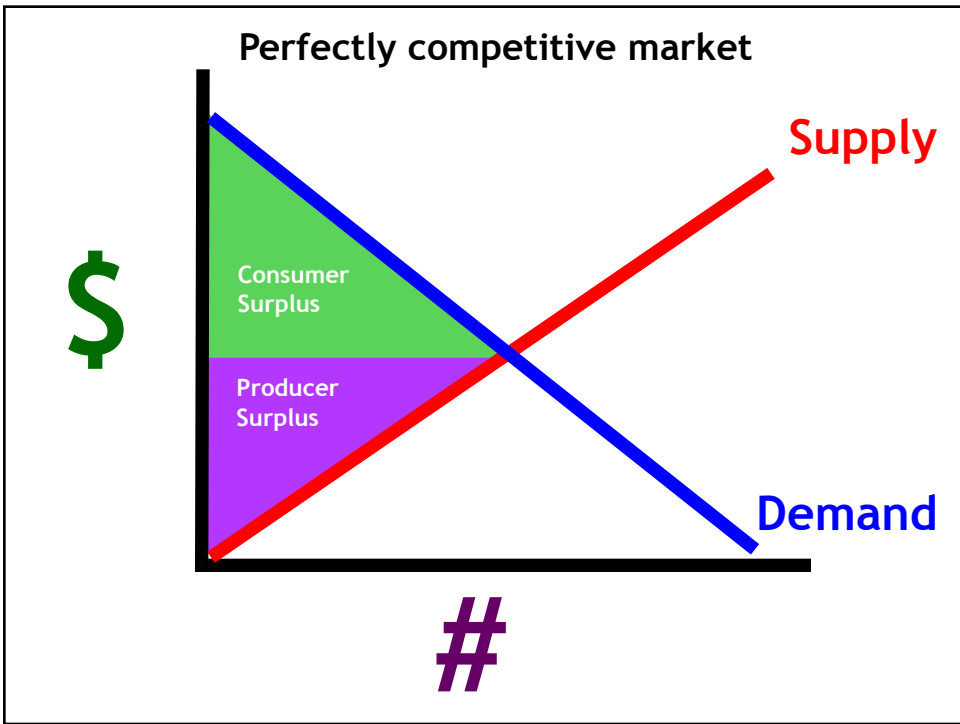
Horizontal Restraints

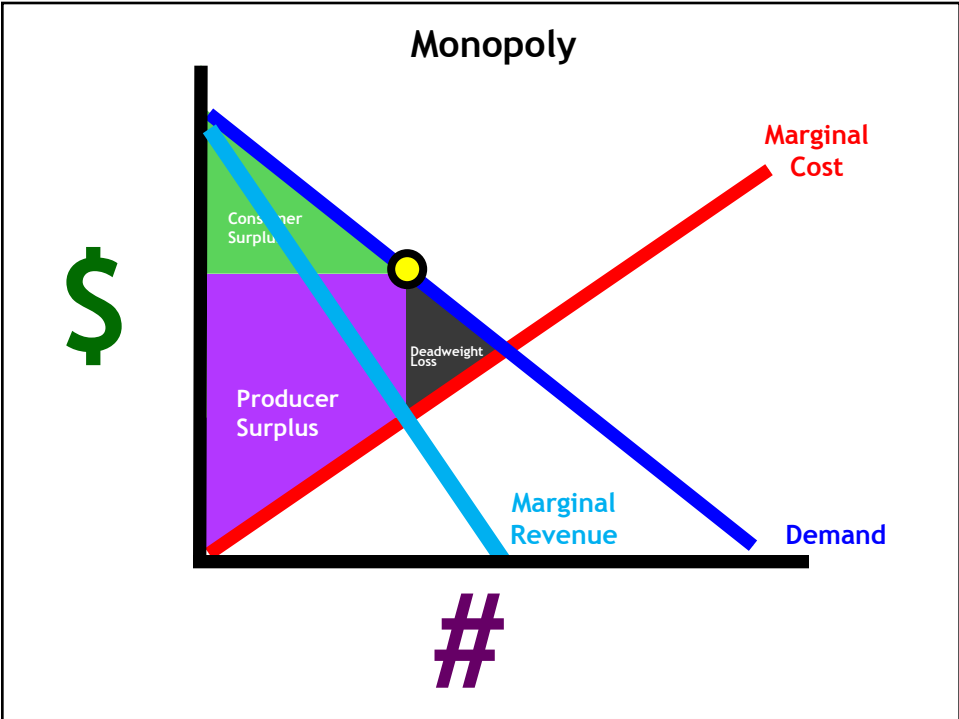
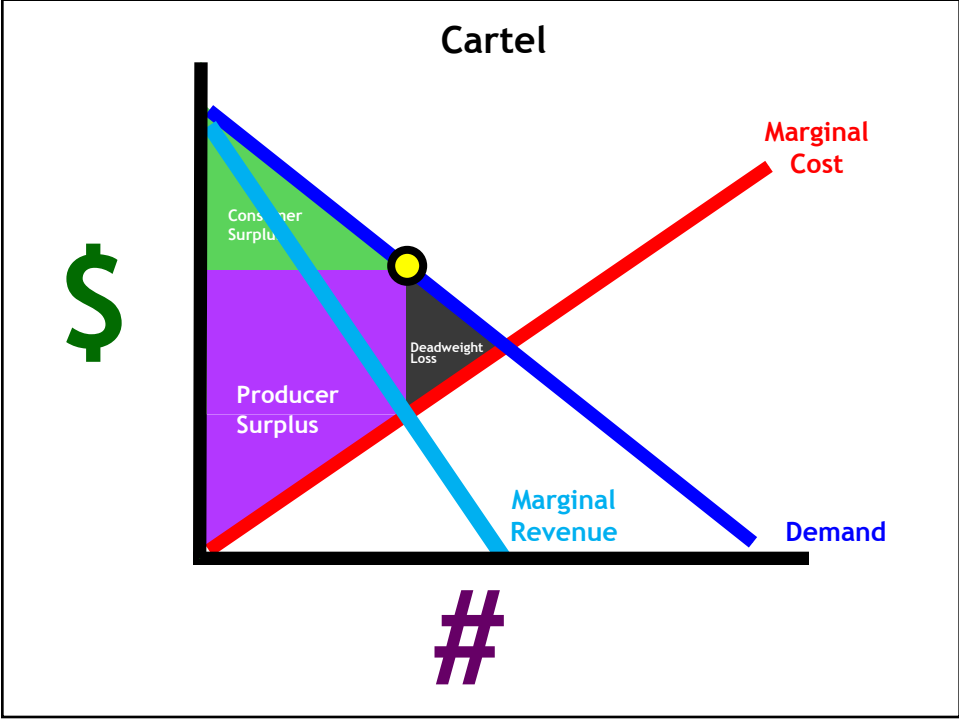
Antitrust
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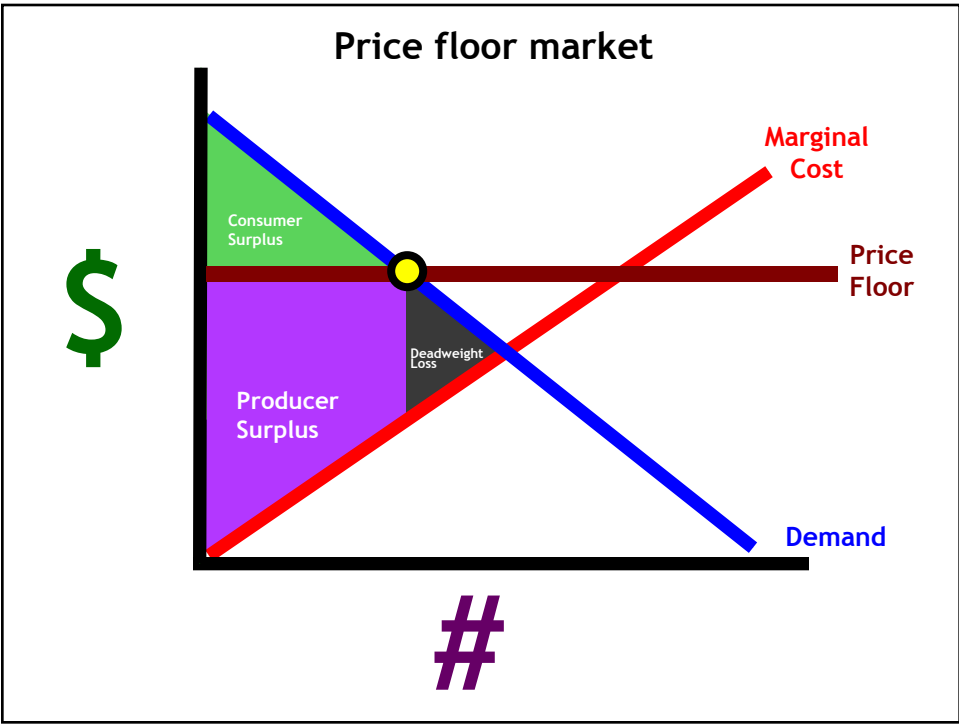
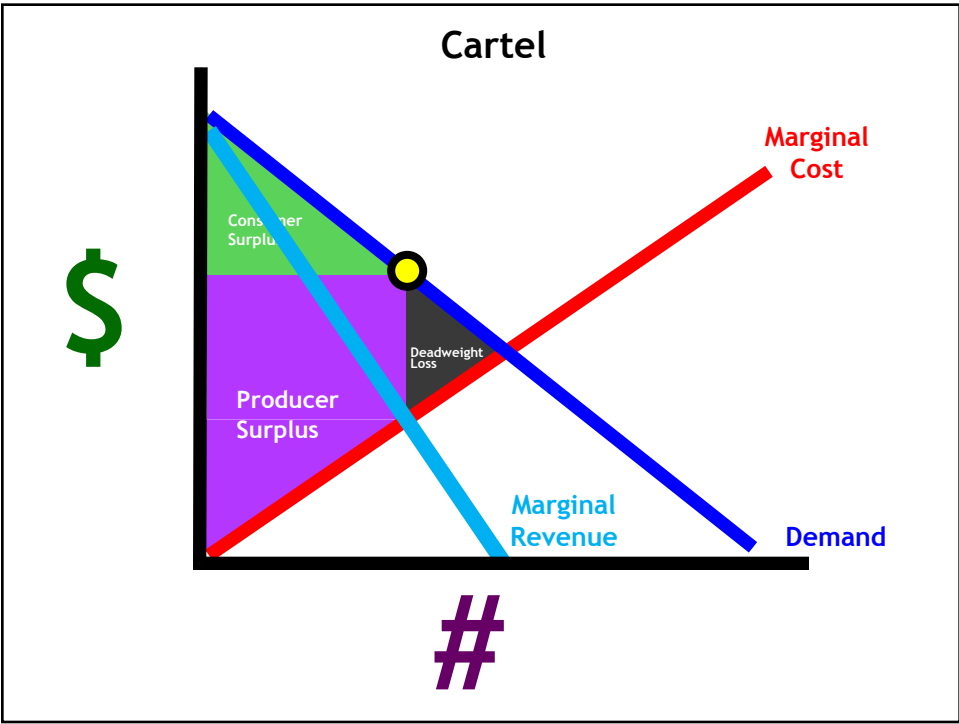


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Per se, quick look, and rule of reason

Per se categories (solid)

- Horizontal price fixing
- Horizontal output caps
 - because of demand curve, fixing output generally has same effect as fixing price
 - sometimes easier for a cartel to coordinate (police)
- Horizontal market division
 - allows mini-monopolies such that participants can set price or output at profit maximizing level
 - sometimes easier for a cartel to coordinate (police)

Quick-look rule of reason

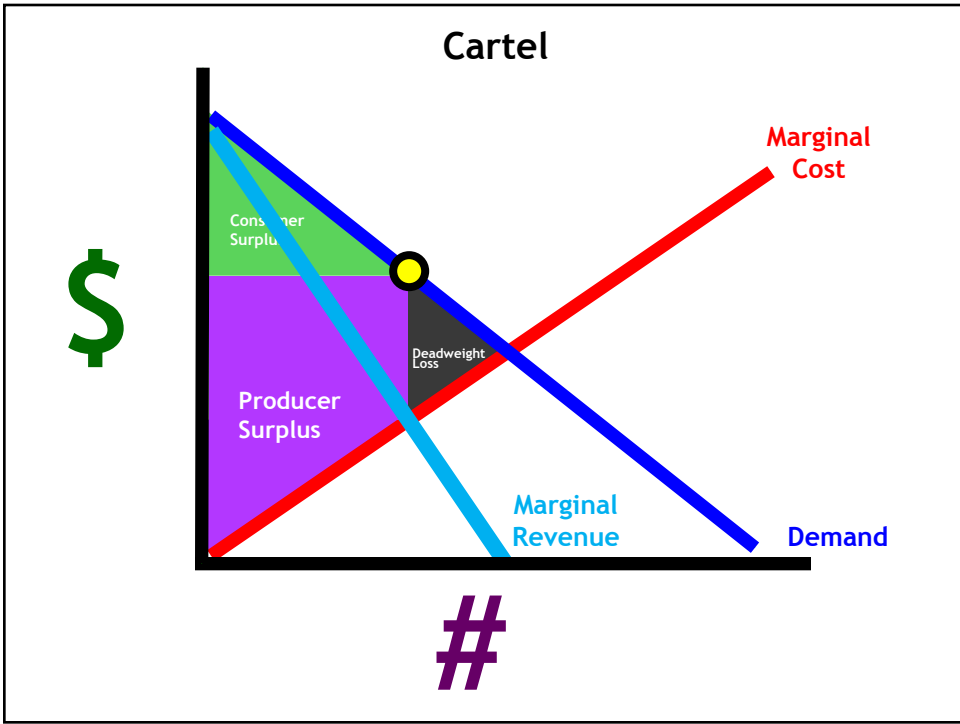
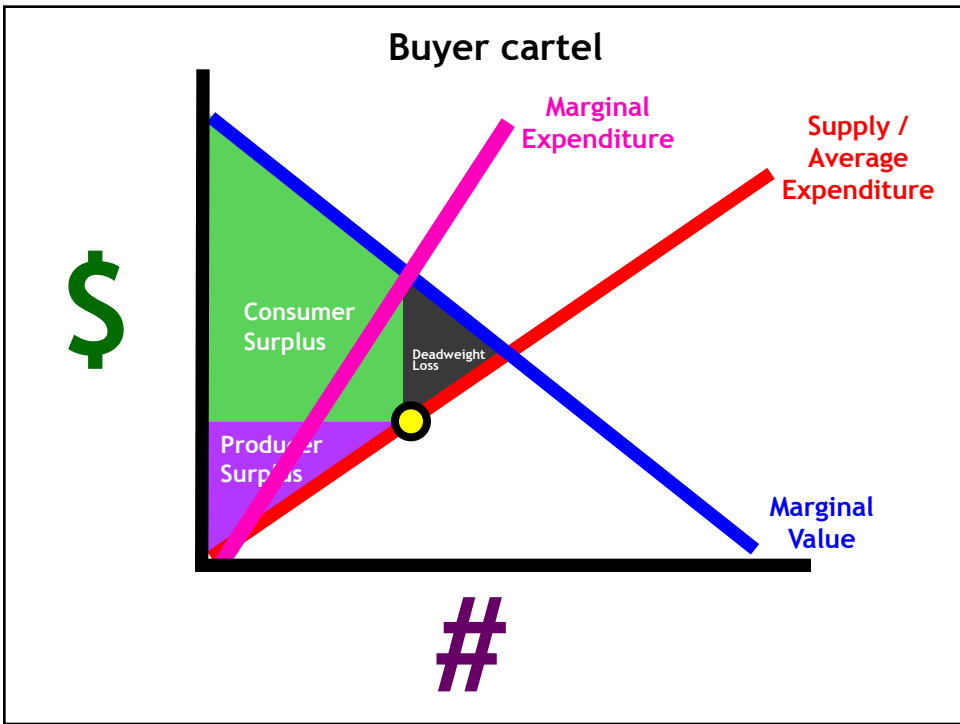
- essentially RoR without empirical evidence steps

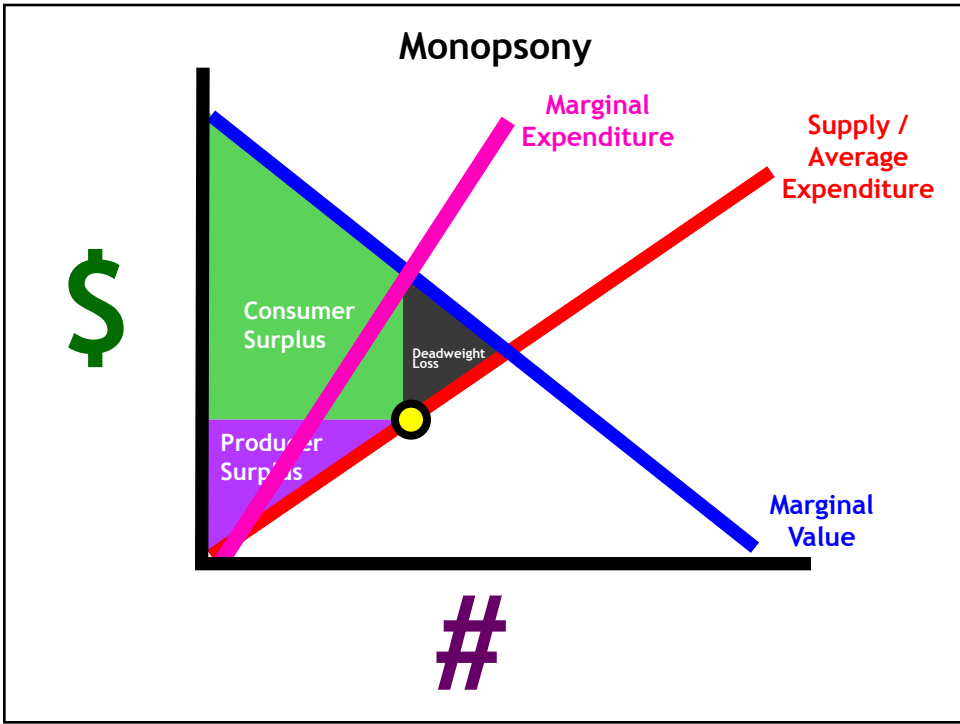
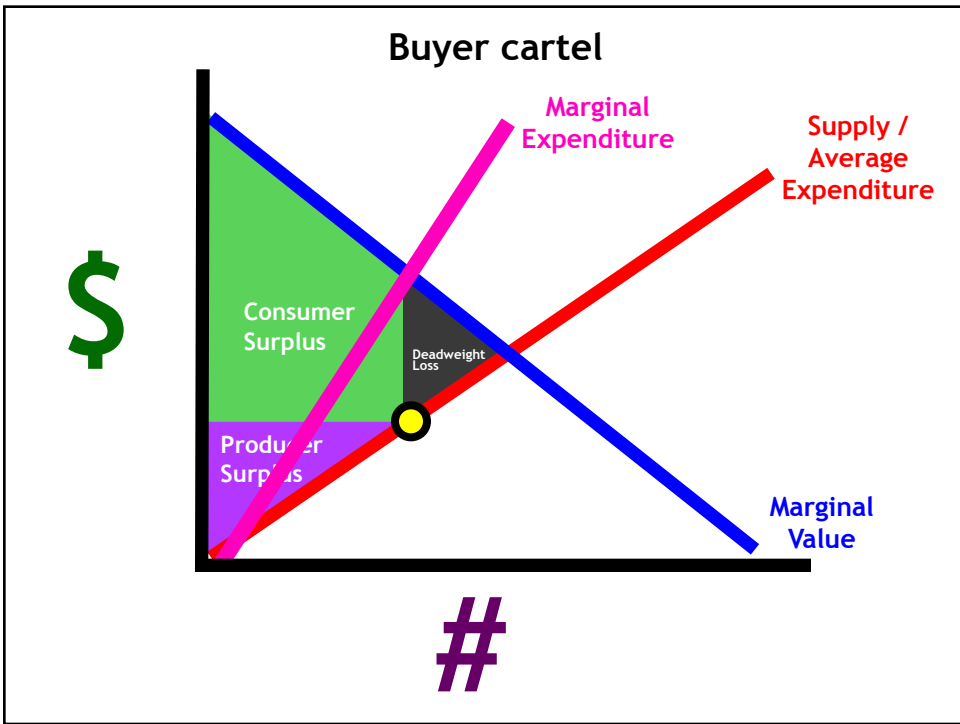
Rule of reason

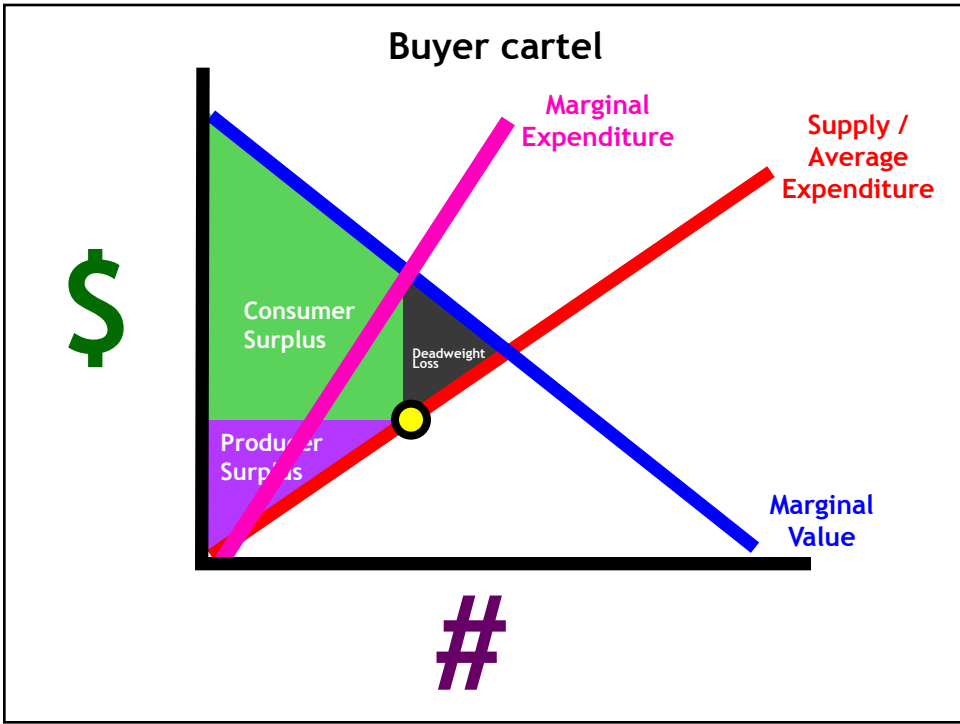
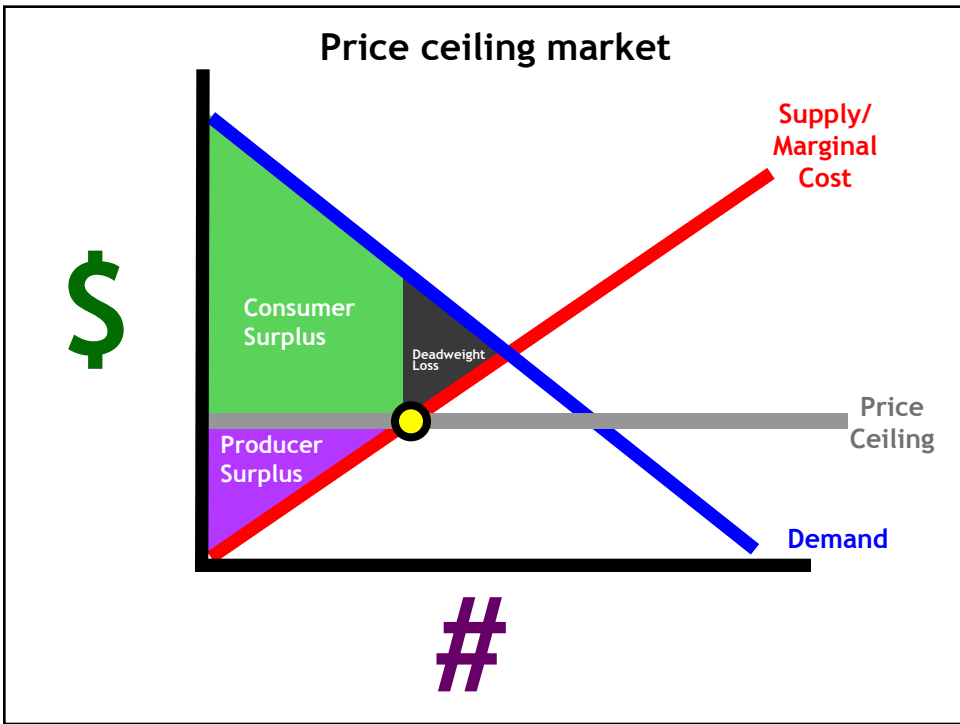
- the default mode of analysis

Buyer cartels under the Sherman Act § 1

- Buyer cartels that fix prices are illegal per-se under § 1 like seller cartels that fix prices.
- This is despite the fact that antitrust law is often said to be about enhancing consumer welfare.
- “The statute does not confine its protection to consumers, or to purchasers ... ” *Mandeville Inland Farms v. American Crystal Sugar* (U.S. 1948)
- In *Mandeville Inland Farms*, there were only three sugar beet refineries that sugar beet farmers could sell to. All three agreed to purchase pricing according to a formula that was pegged to the average of all three refineries’ profits—which set all their offer prices to the same level.
- But bona-fide joint purchasing that allows multiple smaller buyers to obtain advantages that large buyers can get, is actually looked on favorably by antitrust law.







Bid rigging as per-se illegal under § 1

- Bid rigging is a form of per-se illegal price fixing, where price is determined by competitive bidding.
- Bid rigging can be on the seller side (e.g., construction companies taking turns on who will submit the winning bid for construction contracts, essentially market division)
- Bid rigging can also be on the buyer side, esp. in auctions.
- Bid rigging is a frequent focus for federal prosecutions.
- Bid rigging by real-estate speculators at foreclosure auctions in CA, GA, NC, & AL has resulted in more than 130 prosecutions since 2010 through a joint DOJ-Antitrust-Division/FBI task force.
- Aubrey McClendon (co-founder and former CEO of Chesapeake) was indicted in 2016 for a bid rigging conspiracy to buy oil and gas leases. (He died the next day in a single-vehicle collision.)