



# Jurisdiction, Remedies, Injury, Standing, Limitations on Actions

Antitrust  
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## Jurisdiction

- Federal courts have exclusive jurisdiction over federal antitrust claims.
- States have their own similar antitrust law.
  - Suits in state court may have preclusive effect for later federal court actions.
- Certain provisions make it easier to get personal jurisdiction against corporate antitrust defendants.

## Remedies/Consequences

- Criminal
- Damages
- Injunctions
- Consent decrees

## Criminal Enforcement

- Fines of up to \$100 million for corporations, up to \$1 million for individuals. (15 U.S.C. § 1&2)
  - Alternatively, if larger, twice wrongful gain or victims loss. (18 U.S.C. § 3571(d))
- Imprisonment up to 10 years. (15 U.S.C. § 1&2)
- Nearly all criminal prosecutions are for per-se illegal horizontal restraints like price fixing.
  - But there is no technical hurdle to prosecuting rule-of-reason violations, and this has happened!
- Criminal intent must be proved. This requires either:
  - conduct had “anticompetitive effects” and was “undertaken with knowledge of its probable consequences” OR
  - even if anticompetitive effects didn’t happen, the defendant had “the purpose of producing anticompetitive effects”

## Civil Enforcers

- Private plaintiffs, as individuals
- Class actions
- Federal government
  - DOJ can enforce Sherman Act, and FTC can't.
  - FTC can enforce FTC Act.
  - But anything actionable under the Sherman Act is actionable as unfair competition under FTC Act § 5.
  - So FTC and DOJ work cooperatively to split workload.
  - FCC, Federal Reserve Board, DOT, and Surface Transportation Board have special industry-specific jurisdictions.
- State governments as *parens patriae*

## Damages

- Treble damages
  - Many believe this compensates for difficulty of proof and for lack of pre-suit interest so as to roughly properly calibrate deterrence.
- To get damages, must show:
  - actual causation (“material but-for cause” of P’s injury)
  - P’s injury flowed from anticompetitive effects
  - proximate causation
  - an amount of damages

## Effect on U.S. Interstate Commerce Requirement

- Must affect commerce.
  - Applies to non-profits engaging in commercial activities.
  - But wouldn't apply just to asking for donations.
- Must affect interstate commerce.
  - This is an incredibly low bar.
- Must affect U.S. commerce.
  - This has a little more bite – to avoid having foreigners doing things off in foreign countries unwittingly expose themselves to U.S. antitrust criminal and civil liability.