



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*

Private actions are a huge proportion of antitrust suits, but ...

- Private plaintiffs, as individuals
- Class actions
- Federal government

Private plaintiffs, including as part of a class action, face difficult hurdles to being able to bring suits. There's the requirement of "antitrust injury," a thorny concept that we aren't getting into. But it's a significant barrier. Also, litigation is very expensive and substantial damages are hard to get. So appreciate that being a private antitrust plaintiff isn't easy.

- State governments as *parens patriae*

Because private enforcement has a lot going against it, DOJ, FTC, and state AG enforcement is a huge part of the antitrust ecosystem ... as you can infer from the captions of the cases we've been reading ...

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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

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These things are not easy.

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.