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**FUNDAMENTALS
OF
ANTITRUST LAW**

Third Edition

**Phillip E. Areeda
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Wolters Kluwer
Law & Business

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Fundamentals of Antitrust Law Third Edition



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Fundamentals of Antitrust Law

Third Edition

by Phillip E. Areeda and Herbert Hovenkamp

Whether you are developing litigation strategy, counseling clients on compliance, representing clients before regulators, or advising on mergers and acquisitions, *Fundamentals of Antitrust Law* puts the information you need at your fingertips. Organized by issue, this convenient one-volume resource covers the full range of anticompetitive conduct, as well as procedural issues. *Fundamentals of Antitrust Law* is also keyed to the leading Areeda & Hovenkamp *Antitrust Law* treatise. Extensive cross references, organization that follows the larger treatise, and an extensive index allow you to get to the information you need quickly and easily.

Highlights of the 2007 Supplement

The 2007 Supplement brings you up to date on the latest developments in antitrust law and adds significant new and revised material on a number of critical topics, including the following:

- Analysis of the Supreme Court's decision *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc.*, holding that a predatory purchasing claim must satisfy the type of test established in *Brooke Group* for predatory purchasing claims.
- Completely revised discussion of the domain of the antitrust laws, including
 - regulatory immunities and exemptions
 - anticompetitive purpose and burdens on rivals
 - Noerr-Pennington* doctrine and “sham” or bad faith action
 - Parker* immunity
 - the relationship between antitrust and federal regulation
- The latest cases involving predatory pricing, including the Seventh Circuit's decisions in *Wallace v. IBM Corp.*, rejecting a claim that



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IBM's participation in the provision of free, open-source operating system software constituted predatory pricing, and in *Schor v. Abbott Laboratories*, rejecting a challenge to Abbott Labs' pricing of an AIDS cocktail drug.

- The decision in *Reifert v. South Central Wisconsin MLS Corp.* rejecting a claim of an illegal tie by a plaintiff wanting to obtain access to a multiple listing service without joining the realtors' association, where there was no evidence of competition in the market for the services offered by the association.

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Preface

Fundamentals of Antitrust Law is an abridgement of the 18-volume *Antitrust Law* treatise. For this abridgement I have selected and edited those Paragraphs of *Antitrust Law* that are most general and most frequently cited, and that have provoked the largest amount of litigation or controversy. I have omitted or sharply reduced most of the economic, historical, and jurisprudential discussions that add so much depth to the field of antitrust but that are generally less useful to the practitioner engaged in daily litigation or counseling. Also omitted is coverage of specialized areas of antitrust that are of interest to subgroups of practitioners. Among these are most of the discussion of antitrust in specific regulated industries, foreign and interstate commerce requirements, secondary line enforcement of the Robinson-Patman Act, and state antitrust law. Finally, I have omitted some areas that are no longer as important to antitrust enforcement today as they were several decades ago. Chief among these is the discussion of conglomerate mergers. Of course all of these continue to receive complete and updated treatment in the full text of the *Antitrust Law* treatise.

The structure of this *Fundamentals* book resembles that of *Antitrust Law*. Chapter numbers are the same but individual Sections have been renumbered consecutively. Material from the *Antitrust Law* treatise that was omitted is described briefly in each chapter introduction, and the *Fundamentals* book is filled with copious cross-references to the longer *Antitrust Law* text.

Iowa City
June 2006

—Herbert Hovenkamp

PART ONE

Preliminary and Pervasive Issues: Antitrust Goals, Coverage, Procedure, and Economics

Summary of Contents

Chapters in lightface italics are synopses only.

Contents
Preface

PART ONE	Preliminary and Pervasive Issues: Antitrust Goals, Coverage, Procedure, and Economics
<i>CHAPTER 1</i>	<i>The Objectives of Antitrust Law</i>
CHAPTER 2	The Domain of the Antitrust Laws: Jurisdiction, Immunities, and Exclusions from Coverage
CHAPTER 3	The Antitrust System of Remedies
<i>CHAPTER 4</i>	<i>The Economic Basis for Antitrust Policy</i>
PART TWO	Market Structure Issues
CHAPTER 5	Market Power and Market Definition
CHAPTER 6	Monopolization
CHAPTER 7	Monopolization: Particular Exclusionary Practices
CHAPTER 8	Power and the Power-Conduct Relationship in Monopolization and Attempt
CHAPTER 9	Mergers: Generally and Horizontal
<i>CHAPTER 10</i>	<i>Vertical Mergers</i>
<i>CHAPTER 11</i>	<i>Conglomerate Mergers</i>
<i>CHAPTER 12</i>	<i>Partial Acquisitions and Post-Acquisition Evidence</i>
<i>CHAPTER 13</i>	<i>Interlocking Directors</i>
PART THREE	Restraints of Trade: Horizontal and Vertical
CHAPTER 14	Conspiracy, Horizontal and Vertical
CHAPTER 15	The “Rule of Reason” and “Per Se Rule”—General Issues

Summary of Contents

CHAPTER 16	Vertical Distribution Restraints Limiting Intra-brand Competition
CHAPTER 17	Tying Arrangements
CHAPTER 18	Exclusive Dealing and Related Practices
CHAPTER 19	Horizontal Agreements: An Introduction
CHAPTER 20	Horizontal Agreements Limiting Participants' Output
CHAPTER 21	Horizontal Agreements Facilitating Development, Production, or Distribution
CHAPTER 22	Horizontal Agreements Excluding Rivals

PART FOUR	Collateral Antitrust Provisions
-----------	---------------------------------

CHAPTER 23	<i>The Robinson-Patman Act</i>
CHAPTER 24	<i>State Antitrust Law: A Brief Introduction</i>

Appendices

APPENDIX A	D.C. Circuit's <i>Microsoft</i> Decision
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Table of Cases
Index

Contents

Preface xliii

PART ONE Preliminary and Pervasive Issues: Antitrust Goals, Coverage, Procedure, and Economics

CHAPTER 1	The Objectives of Antitrust Law	1-1
CHAPTER 2	The Domain of the Antitrust Laws: Jurisdiction, Immunities, and Exclusions from Coverage	2-1
§2.01	Regulatory Immunities and Exemptions; General Principle Stated	2-3
§2.02	Anticompetitive Purpose and Burden on Rivals or Rivalry Not Intrinsically Wrongful; Causation	2-8
	a. Generally	2-8
	b. Validation by legislation, judicial decision or authorized administrative action	2-13
	c. Anticompetitive consequences of successful petition not “caused” by private act; boycotts against government distinguished	2-14
	d. No antitrust remedy for burden on rivals incidental to good faith petitioning	2-18
§2.03	“Sham” or Bad Faith Action	2-19
	a. <i>Noerr</i> principle; “sham” exception	2-19
	b. “Sham” in legislative or rule-making context	2-23
	c. “Sham” in adjudication and quasi-adjudication	2-25
	d. “Access denying”	2-33
	e. Lower court decisions defining “sham”	2-35
	f. Conclusion	2-37
§2.04	Scope of <i>Parker</i> Immunity Outlined; Summary Disposition of <i>Parker</i> Claims	2-37
	a. <i>Parker</i> outlined	2-37

	b.	Summary disposition of claims implicating <i>Parker</i>	2-44
§2.05		Federal Regulation Qualifies Antitrust Mandate	2-45
	a.	Introduction	2-45
	b.	Basic principle resolving particular cases	2-46
	1.	Basic principle recalled	2-46
	2.	Oversight nearly always incomplete	2-47
	c.	Background considerations	2-49
	1.	Variations in regulatory powers and premises; "pervasiveness" inadequate ground for determining antitrust immunity	2-50
	2.	Competitive policy within regulatory framework	2-54
	3.	Flexibility in antitrust rules	2-55
	4.	Procedure is substance	2-56
	5.	Broader or narrower immunity depending on requested relief?	2-56
	6.	Non-doctrinal influences	2-58
	d.	Impact of regulation on antitrust analysis of non-immune conduct	2-59
§2.06		Relation Between Antitrust and Federal Regulatory Regime; General Conclusions Summarized	2-63
	a.	Express statutory immunity	2-63
	b.	Implied immunity	2-64
	c.	Deferral to federal agency apart from any immunity	2-66
	d.	Relation between federal antitrust immunities and regulatory immunities created by state or local government	2-67
CHAPTER 3		The Antitrust System of Remedies	3-1
§3.01		"Standing" of Private Plaintiffs	3-3
	a.	Introduction	3-3
	b.	Standing doctrine limits equity	3-5
	c.	Basic standing requirements summarized	3-7
	1.	Injury to "business or property"	3-7
	2.	Injury-in-fact "by reason of" the antitrust violation	3-7
	3.	Proximity	3-7
	4.	"Antitrust Injury"	3-8
	5.	Cognizable injury and reasonably quantifiable damages	3-8

	d.	Associated General Contractors (AGC); "directness" and "target area" tests	3-8
	e.	Nature of "standing" inquiry	3-12
	1.	Broadly or narrowly defined?	3-12
	2.	More than pleading requirement	3-14
	f.	To test standing, assume a violation	3-14
	g.	Impulses to broaden or narrow standing requirements	3-17
	h.	Standing law summarized	3-19
§3.02		"Business or Property"	3-21
§3.03		"Antitrust Injury"	3-23
	a.	Development; rationale	3-23
	b.	Antitrust injury equally important in private equity actions	3-28
	c.	Per se offenses	3-31
	d.	"Antitrust Injury" analyzed at early stage of litigation	3-34
	e.	Recent developments	3-35
§3.04		Causation and Injury-in-Fact	3-36.1
	a.	"Material" or "substantial" cause	3-36.2
	b.	Independent cause fully accounts for claimed injury	3-39
	c.	Insufficient logical connection	3-41
	d.	No loss or own mismanagement	3-43
	e.	Injury-in-fact but without causation	3-44
§3.05		Remote, Derivative, Duplicative, or Inferior Plaintiff	3-46
	a.	Introduction	3-46
	b.	Too many links in chain of causation	3-47
	c.	Derivative and genuinely duplicative injuries	3-48
	d.	Derivative but only "quasi-duplicative" injuries	3-50
	e.	Inferior plaintiffs	3-52
	f.	Remote but "inextricably intertwined" plaintiffs	3-56
	g.	"Direct" and "target area" tests revisited	3-58
	h.	Recent developments	3-60
§3.06		Reasonably Ascertainable Damages	3-61
	a.	Policy dilemma	3-61
	b.	Illustrative damage assessment problems	3-63
	1.	Price-fixing conspiracy (or other illegal prices)	3-63

2. Boycotting experienced newcomer; lost profits 3-65
3. Boycotting inexperienced newcomer 3-66
4. Terminated dealer 3-67
5. Foreclosed supplier 3-68
- c. Inherently offset injuries 3-69
 1. Tying and the *Fortner* case 3-69
 2. Tying and price discrimination 3-72
 3. *In pari delicto* situations 3-75
 4. Health insurers and life-threatening illnesses; cigarette cases 3-76
- d. Nominal damages 3-78
- e. Permissible deviations from generally accepted methodologies 3-81
- f. "Disaggregation" of damages flowing from unlawful conduct, from injuries caused by lawful conduct, or other factors 3-84
- g. Conclusion 3-86

CHAPTER 4 The Economic Basis for Antitrust Policy 4-1

PART TWO Market Structure Issues

CHAPTER 5	Market Power and Market Definition	5-1
§5.01	Market Power Defined	5-5
§5.02	Market Definition—General Considerations	5-8
	a. "Market" defined	5-8
	b. A spectrum of power	5-11
	c. Time factor	5-12
	d. Unavoidable approximations	5-13
	e. How small a market?	5-13
	f. Aggregating separate markets; materiality	5-14
§5.03	Meaning of Market Shares; Relation to Market Definition	5-15
	a. Introduction; importance of well-defined market	5-15
	b. Large share	5-17
	c. Low shares; jury role	5-21
§5.04	Geographical Market: Price Relationships and Trading Patterns	5-24
	a. Price relationships	5-25
	b. Trading and shipping patterns	5-26
	1. Generally	5-26

	2. "Trade area" distinguished	5-29
	3. The Elzinga-Hogarty formulation	5-30
§5.05	Geographical Market: Transport Costs	5-36
	a. Introduction and summary	5-36
	b. Relationship of transport to other costs defines geographical market	5-40
	c. Transport costs approximate price differences: persistent one-way sales	5-43
	1. Exporting region	5-43
	2. Importing region: export seller cost advantage	5-44
	3. Importing region: capacity deficit; net cost advantage for local producers	5-44
	4. Importing region: noncompetitive pricing	5-46
	5. Exporting region's home demand; physical or legal barriers to greater exports	5-47
	6. Product differentiation	5-47
	7. Importing region: summary	5-48
	d. Transport cost exceeds price difference	5-49
	1. No cross-region sales	5-49
	2. Persistent one-way sales	5-49
	3. Persistent or recurring two-way sales	5-51
	e. One market or barriers overcome?	5-52
§5.06	Geographical Market: Customer Convenience and Preference	5-52
	a. Stationary goods; utility versus cost	5-53
	b. No common sellers	5-55
	c. Significant common sellers	5-55
	d. Limited common sellers	5-56
	e. Information, urgency, and third-party payors	5-57
§5.07	Geographical Market: Government Guidelines	5-58
§5.08	Product Market: Introduction	5-60
§5.09	Product Market: Producer Substitutes	5-62
	a. Perfect interchangeability	5-62
	b. Incomplete interchangeability	5-66
	c. Broaden market, add likely shifters to narrow market, or merely an entry condition	5-68
	d. Government Guidelines: narrow product market but include prompt entrants	5-69
§5.10	Product Market: User Substitutes	5-70
	a. Generally	5-70

	b.	Interchangeable use with large physical and price differences	5-72
	c.	Single market notwithstanding price differences	5-75
	d.	Closer and more remote substitutes	5-76
	e.	Government Guidelines	5-79
§5.11		Differentiated Products; Single-Brand Markets	5-80
	a.	General principle	5-80
	b.	Branded versus unbranded class	5-83
	c.	Price categories	5-84
	d.	Single-brand or differentiated product within a product class	5-84
	e.	Inclusive product class	5-87
§5.12		Derivative Markets, Aftermarkets, and Lock-in Problems	5-90
	a.	Introduction; hidden price increases	5-90
	b.	Aftermarkets; lock-ins impeding buyer shifts	5-93
§5.13		The Supreme Court's <i>Illinois Tool Works</i> Decision	5-100

CHAPTER 6 Monopolization 6-1

§6.01		Introduction: The Monopolization Problem	6-3
	a.	The basic issues	6-3
	b.	Basic issues interdependent	6-3
§6.02		Definitions; Qualification on "Intent"	6-4
§6.03		Monopolization Offense Requires Both Power and Conduct	6-5
	a.	The relevance of conduct	6-5
	b.	Persistence not required	6-8
	c.	Proof of conduct	6-8
	d.	Presumptive illegality rule as possible alternative for equity suits	6-9
	e.	Conduct requirement essential in criminal and treble damages cases	6-11
§6.04		Monopolizing Conduct Defined	6-11
	a.	Exclusionary conduct defined	6-11
	b.	Formulations requiring "purpose" or "intent" generally unnecessary and sometimes harmful	6-12
		1. Generally	6-12
		2. Ambiguous conduct	6-16
	c.	Not all conduct injuring rivals is anticompetitive	6-18