

# DAILY OUTLINES

## COMPARATIVE ANTITRUST & COMPETITION LAW

### DAY 1 (MONDAY, JUNE 30, 2014)

#### I. INTRODUCTION TO ANTITRUST AND ANTI-MONOPOLY LAW

##### A. COMPETITION

1. Parameters of economic competition
2. Key economic terms
  - a. Price
  - b. Output
  - c. Demand
  - d. Efficiency
  - e. Welfare
    - i. Consumer
    - ii. Producer
    - iii. Total
  - f. Concentration

##### B. SOCIETAL VALUES AND COMPETITION

1. Fairness
2. Opportunity
3. Diversity
4. Freedom
5. Cooperation

## 6. Open Markets

### II. INTRODUCTION TO AMERICA'S ANTITRUST LAWS

#### A. AMERICAN HISTORY AND ANTITRUST

1. Progressivism and Antitrust
2. The Sherman Act of 1890 (15 U.S.C. § 1, et seq.)
3. The Clayton and FTC Acts of 1914
  - a. Clayton Act Revisions – 1950
  - b. Hart-Scott-Rodino Act – 1976

#### B. THE CHICAGO SCHOOL REVOLUTION OF THE 1980s

1. Consumer welfare and allocative efficiency
2. The concentration/efficiencies paradigm
  - a. Robert Bork and “The Antitrust Paradox”
3. The Post-Chicago Era
  - a. Behavioral and evolutionary economics

#### C. U.S. ANTITRUST ENFORCEMENT

1. Federal
  - a. Executive branch
    - i. DOJ: civil and criminal enforcement
    - ii. FTC: civil enforcement – FTC §5
  - b. Legislature
  - c. Courts
2. States

- a. Parens patriae
- b. State laws
- 3. Private enforcement
  - a. Treble damages
  - b. Injunctive relief

### III. INTRODUCTION TO CHINA'S 2008 ANTI-MONOPOLY LAWS

- A. HISTORY & CONTEXT
- B. CHINA'S SOCIALIST VALUES
  - 1. Confucianism and Antitrust
- C. INTRODUCTION TO CHINA'S AML

### IV. READINGS

- A. OUTLINE
- B. RELEVANT STATUTES
  - 1. Sherman Act §§ 1 and 2
  - 2. Clayton Act § 7
  - 3. FTC Act § 5
  - 4. Anti-Monopoly Law of the People's Republic of China (Arts. 1-9)
- C. ARTICLES
  - 1. Horton, "Confucianism and Antitrust" (2013) (pgs. 193-214)

# DAILY OUTLINES

## COMPARATIVE ANTITRUST & COMPETITION LAW

### DAY 2 (TUESDAY, JULY 1, 2014)

- I. INTRODUCTION TO HORIZONTAL PRICE-FIXING
    - A. THE ECONOMICS OF PRICE-FIXING
      - 1. Why is price-fixing harmful?
        - a. *United States v. Andreas*, 216 F.3d 645 (7<sup>th</sup> Cir. 2000)
      - 2. Enforcing price-fixing agreements
        - a. Solving cartel “cheating” issues
      - 3. Horizontal non-price agreements
- II. PRICE-FIXING IN THE U.S.
  - A. THE SHERMAN ACT § 1
  - B. PER SE ILLEGALITY
    - 1. *U.S. v. Trenton Potteries* (1927)
    - 2. *U.S. v. Socony-Vacuum Oil Co.* (1940)
  - C. INTRODUCTION TO THE “RULE OF REASON”
    - 1. *U.S. v. Brown Univ.* 5 F. 3d 658 (3d Cir. 1993)
- III. PRICE-FIXING IN CHINA
  - A. AML ARTS. 13-15
  - B. ENFORCEMENT IN CHINA
    - 1. NDRC

2. SAIC

C. RELEVANT CASES

1. Rice Noodles (2010)
2. Green Mung Beans (2010)
3. Pre-Mixed Concrete (2011)
4. Paper Manufacturing (2011)
5. Sea and Sand Dredging (2012)
6. LCD Panels (2013)

IV. STUDENT ACTIVITIES

A. CARTEL FORMATION

B. CARTEL ENFORCEMENT

V. READINGS

A. CASES

1. *U.S. v. Andreas* (7<sup>th</sup> Cir. 2000)
2. *U.S. v. Brown Univ.* (3<sup>rd</sup> Cir. 1993)

B. Book Chapters

1. China's AML: The First Five Years (pgs. 84-89)
2. Competition Law in China (pgs. 89-91)

# DAILY OUTLINES

## COMPARATIVE ANTITRUST & COMPETITION LAW

### DAY 3 (WEDNESDAY, JULY 2, 2014)

- I. COLLUSIVE ANTICOMPETITIVE EFFECTS AND THE RULE OF REASON
  - A. CASES
    - 1. *National Soc. Of Professional Engineers v. U.S.* (1978)
    - 2. *U.S. v. Brown Univ.* (3d. Cir. 1993)
    - 3. *FTC v. Superior Ct. Trial Lawyers Ass'n* (1990)
    - 4. *Polygram Holding v. FTC* (D.C. Cir. 2005)
      - a. The Three Tenors
  - B. VALUES AND COOPERATION
- II. PROVING ANTICOMPETITIVE AGREEMENTS
  - A. DEFINING AGREEMENTS
    - 1. Intra-enterprise Agreements
    - 2. Tacit Collusion
  - B. PRICE-FIXING MECHANISMS
    - 1. Information Exchanges
      - a. Price signaling
    - 2. Trade Associations
    - 3. Threats and Intimidation
  - C. "ECONOMIC PLAUSIBILITY" AND AGREEMENTS
    - 1. *Matsushita Electric Ind. Co. v. Zenith Radio Co.* (1986)

2. Heightened pleading standards
  - a. *Bell Atlantic Co. v. Twombly* (2007)

### III. PREPARING FOR ANTITRUST TRIALS

#### A. ANTITRUST DISCOVERY

#### B. STUDENT ACTIVITIES

#### C. READINGS

1. Horton/Huang – Analyzing Information Exchanges between Competitors under the AML (2013) (pgs. 95-108; 117)
2. AML and Practice in China (2011) (pgs. 59-64)
3. Cases
  - a. *Natl. Soc. Engins.* (excerpts)
  - b. *FTC v. Sup. Ct. Trial Lawyers* (excerpts)

# DAILY OUTLINES

## COMPARATIVE ANTITRUST & COMPETITION LAW

### DAY 4 (THURSDAY, JULY 3, 2014)

- I. HORIZONTAL MARKET DIVISIONS
  - A. TERRITORIAL AGREEMENTS
    - 1. *Palmer v. BRG of Georgia* (1990)
  - B. OUTPUT RESTRICTIONS
    - 1. *NCAA v. Univ. of Oklahoma* (1984)
    - 2. *Polygram Holding v. FTC* (D.C. Cir. 2005)
  - C. QUALITY AGREEMENTS
    - 1. Standards setting
    - 2. Trade Associations
  
- II. JOINT VENTURES
  - A. NEW PRODUCTS
    - 1. *BMI v. CBS* (1979)
  - B. RESEARCH & DEVELOPMENT
  - C. PRODUCTION & MANUFACTURING
  - D. DISTRIBUTION
  - E. ADVERTISING
  - F. LOBBYING



III. TRIAL PREPARATION

- A. *U.S. v. BROWN UNIV.*
- B. *U.S. v. PROF. SOC. ENGINES.*
- C. *FTC v. SUP. CT. TRIAL LAWYERS*

IV. READINGS

A. CASES

- 1. *Palmer v. BRG of Georgia* (1990)
- 2. *NCAA v. Univ. of Okla.* (1984)

B. ARTICLES/BOOK CHAPTERS

- 1. Horton/Huang (pgs. 114-16)
- 2. Competition Law in China (pgs. 91-94)
- 3. AML and Practice in China (pgs. 70-73)

## DAILY OUTLINES

### COMPARATIVE ANTITRUST & COMPETITION LAW

#### DAY 5 (FRIDAY, JULY 4, 2014)

- I. WEEK 1 STUDENT TRIALS
  - A. *U.S. v. BROWN UNIV.*
  - B. *U.S. v. PROF. SOC'Y. ENGINES.*
  - C. *FTC v. SUP. CT. TRIAL LAWYERS*

# **DAILY OUTLINES**

## **COMPARATIVE ANTITRUST & COMPETITION LAW**

### **DAY 6 (MONDAY, JULY 7, 2014)**

- I. INTRODUCTION TO MERGER ANALYSIS
  - A. POSSIBLE REASONS FOR MERGERS
    - 1. Procompetitive
    - 2. Anticompetitive
    - 3. Competitively neutral
  - B. U.S. STATUTORY FRAMEWORK
    - 1. Clayton Act § 7 (1914)
      - a. 1950 Amendments
    - 2. Hart-Scott-Radino Act (HSR) of 1976
      - a. Notification
      - b. Approval process
      - c. Litigation v. settlement
  - C. CONCENTRATIONS OF UNDERTAKINGS IN THE PRC
    - 1. AML Arts. 20-31
    - 2. Merger review process
    - 3. Review standards
- II. STRUCTURAL AND PERFORMANCE ISSUES IN MERGER ANALYSES
  - A. INDUSTRY STRUCTURE AND CONCENTRATION

1. Relevant Market Analyses
  - a. Product Market
  - b. Geographic Market
  - c. Entry
2. Concentration measures
  - a. HHIs
3. Industry history and performance
  - a. Technology issues
  - b. Network Issues

B. ANALYZING MERGER CASES

1. U.S. Horizontal Merger Guidelines (2010)
2. U.S. cases
  - a. *Brown Shoe Co. v. U.S.* (1962)
  - b. *U.S. v. Philadelphia Nat'l Bank* (1963)
3. U.S. Merger litigation

C. PRC MERGER CASES

1. *Coca-Cola/Huiyan*
2. *GM—Delphi*
  - a. Vertical concerns
3. *Novartis-Alcon*

III. MERGER REMEDIES

A. STRUCTURAL

1. Divestitures

B. BEHAVIORAL

1. Consent decrees

C. EFFECTIVENESS OF REMEDIES

IV. READINGS

A. ARTICLES/BOOK CHAPTER EXCERPTS

1. Horton – A Comparison of Merger Remedies in the U.S. and EU
2. Horton – The New United States Horizontal Merger Guidelines
3. AML and Practice in China (pgs. 158-60; 164-166)
4. Competition Law in China (pgs. 133-34; 137-38; 141)
5. China's AML Law (pgs. 195-199)

# DAILY OUTLINES

## COMPARATIVE ANTITRUST & COMPETITION LAW

### DAY 7 (TUESDAY, JULY 8, 2014)

- I. DEFINING RELEVANT ANTITRUST MARKETS
  - A. PROVING RELEVANT MARKETS
    - 1. *FTC v. Staples* (D.C. Cir. 1997)
  - B. MARKET DEFINITION IN CHINA
  - C. ARE ANTITRUST MARKETS THE CORRECT FOCUS?
    - 1. 2010 U.S. Horizontal Merger Guidelines
    - 2. Competitive effects analysis
    - 3. Predicting competitive effects
  
- II. STUDENT MERGER SIMULATIONS
  - A. GROUP SIMULATIONS
    - 1. Putting mergers together
    - 2. Defending and challenging proposed mergers
  
- III. READINGS
  - A. BOOK CHAPTERS
    - 1. China's AML: The First Five Years (pgs. 179-187; 193-94)
    - 3. AML and Practice in China (pgs. 154-55; 163)
  - B. EXCERPTS FROM FTC V. STAPLES CASE

# DAILY OUTLINES

## COMPARATIVE ANTITRUST & COMPETITION LAW

### DAY 8 (WEDNESDAY, JULY 9, 2014)

- I. MONOPOLIZATION IN THE U.S.
  - A. STATUTES
    - 1. Sherman Act § 2
    - 2. Attempted Monopolization
    - 3. Conspiracies to monopolize
  - B. PROVING MONOPOLIZATION
    - 1. Market shares
    - 2. Intent
    - 3. Anticompetitive effects
      - a. Abusive practices
  - C. CASES
    - 1. *Aspen Skiing Co. v. Aspen Highlands* (1985)
    - 2. *U.S. v. Microsoft* (D.C. Cir. 2001)
- II. ABUSE OF A DOMINANT POSITION IN CHINA
  - A. STATUTES AND REGULATIONS
    - 1. AML 13-19
  - B. PROHIBITED CONDUCT
    - 1. Pricing
    - 2. Predatory pricing

3. Refusals to deal
4. Exclusive Dealing
5. Tying
6. Discriminatory treatment/price discrimination
7. Abuse of IP

C. PRC CASES

1. *Netcom, Shanda and Baidu*
2. *Tencent QQ v. Qihoo 360*
3. *J & J* (Resale price maintenance)

III. READINGS

A. BACKGROUND

1. AML and Practice in China (pgs. 90-91; 94-96; 106-110; 117-122)
2. Interview with Shang Ming

B. EVIDENCE FROM FTC V. STAPLES CASE



## DAILY OUTLINES

### COMPARATIVE ANTITRUST & COMPETITION LAW

#### DAY 9 (THURSDAY, JULY 10, 2014)

- I. COURSE REVIEW
  
- II. PREPARATION FOR MONOPOLIZATION/ABUSE OF DOMINANCE TRIALS
  - A. *U.S. v. MICROSOFT*
  - B. *Tencent QQ v. QIHOO 360*
  - C. *U.S. v. MONSANTO* (HYPOTHETICAL)
  
- III. READINGS
  - A. Cases
    - 1. *U.S. v. Microsoft*
    - 2. *Tencent QQ v. Qihoo 360*

## DAILY OUTLINES

### COMPARATIVE ANTITRUST & COMPETITION LAW

#### DAY 10 (FRIDAY, JULY 11, 2014)

- I. FINAL MONOPOLIZATION/ABUSE OF DOMINANCE MOCK TRIALS
  - A. *U.S. v. MICROSOFT*
  - B. *Tencent QQ v. QIHOO 360*
  - C. *U.S. v. MONSANTO*