Antitrust Law

I. Sherman Act

a. Section 1: Collusive Conduct/Conspiracy

   i. Must be more than one party involved – not applicable within one company

   ii. Entity comprised of persons/corps. With separate economic interest can collude – trade organizations

   iii. Types of agreements

       1. horizontal

           a. same level in the production/marketing of a product
           b. most closely scrutinized for potential collusion – legitimate business justification for such agreements weakest

       2. vertical

           a. different levels in value chain
           b. Some deals closely scrutinized for obvious anticompetitive potential:

               i. Exclusive dealing – manufacturers limit competition at retail level
               ii. Tying agreements – seller with a dominant position for one good requires buyers to purchase other products from it as well

   iv. Per Se Rules

       1. bright line rules – practices generally so competitive and lacking in justification that held illegal without inquiry into circumstances:

           a. price fixing
           b. dividing markets
           c. participating in group boycotts

       2. apply primarily to horizontal agreements

       3. some vertical agreements – resale price restrictions

v. Rule of Reason

   1. applies to Sherman 1 cases that are not per se

   2. requires assessment of both anticompetitive and procompetitive impact of agreement

   3. Joint Venture agreements usually subject to rule of reason analysis
a. If JV creates new market efficiencies or new products – procompetitive
b. Courts consider each ancillary restraint (factor constraining competition) to determine whether necessary to achieve procompetitive purposes

b. **Section 2: Monopolistic Conduct**
   i. Requires both Monopoly Power and Monopoly Conduct/Abuse

   ii. Monopoly Power/Market Power
   
   1. power of firm to act independently of market forces in setting price
   2. Market Share key – to determine, need to consider:
      a. Substitutes
      b. Geographic markets
   3. Barriers to entry

   iii. Monopoly Conduct
   
   1. conduct that excludes competition that is not explained by general requirements of competition on the merits of a company’s products
   2. monopolizing conduct need not be otherwise illegal/unusual – ok for small companies

II. **Clayton Act** – prohibition of business transactions, particularly mergers, if they substantially lessen competition

III. **Federal Trade Commission Act**
    a. created Federal Trade Commission – expertise in antitrust
    b. Section 5: prohibition against
       i. unfair methods of competition
       ii. unfair or deceptive acts or practices in or affecting commerce

IV. **Robinson-Patman Act**
    a. protect small retailers
    b. prohibits types of price discrimination

V. **Hart-Scott-Rodino Act**
    a. Added Section 7A to Clayton Act
    b. Regulates mergers – requires *pre-merger notification* to government in cases involving large companies

VI. **State Statutes**
    a. Most states have antitrust laws – “little FTC Acts”
    b. Broad language prohibiting unfair and deceptive practices
    c. Often special provisions to protect consumers
VII. **Interpretation of Antitrust Laws**  
a. Primary responsibility for interpretation – federal courts  
b. Dept. of Justice and FTC play role through  
   i. enforcement activities  
   ii. formal and informal guidelines in areas of emerging concern  
      1. – Merger Guidelines 1982

VIII. **Analysis of Mergers**  
a. Horizontal – most suspect  
b. Vertical –  
   1. complex rule of reason analysis  
   2. consideration of barriers to entry  
   3. market distortion impact  
c. Conglomerate  
   1. least scrutinized  
   2. look at possibility that unmerged companies would have introduced increased competition in markets

IX. **Exemptions**  
a. Express Statutory Exemption  
   i. Organized Labor  

b. Implied  
   i. Patents  

c. Political Activity  
   i. Ability for competing companies to organize political action to reduce competition  
   ii. Trade organizations highly scrutinized – can't drift into actual collusion  

d. State Action Exemption