

1.2: Competition Laws and Policy

The story of Rockefeller's Standard Oil summarizes much of the early thought about the dangers of monopolies.

The federal government's power to regulate market activity derives from the commerce clause.

Key concepts:

Trust busting

Interstate commerce

The Sherman Act (1890):

Section 1 -- Restraint of trade

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce ... is declared to be illegal.

Section 2 -- Monopolization and attempts to monopolize

"Every person who shall monopolize, or attempt to monopolize ... shall be deemed guilty of a felony."

Clayton Act (1914):

Section 2 – Price discrimination

Section 3 – Price fixing

Section 7 – Mergers

Section 8 – Interlocking directorates

Labor union exemption

Subsequent additions to law: Robinson-Patman, Hart-Scott-Rodino

Key federal agencies:

Dept. of Justice (DOJ) Antitrust Division

Federal Trade Commission (FTC)

U.S. competition policy is not just a set of laws – it is also judicial history ("case law").

Key concepts:

Per se violations

Rule of reason

DoJ Horizontal Merger Guidelines

Competition Law in the U.S.

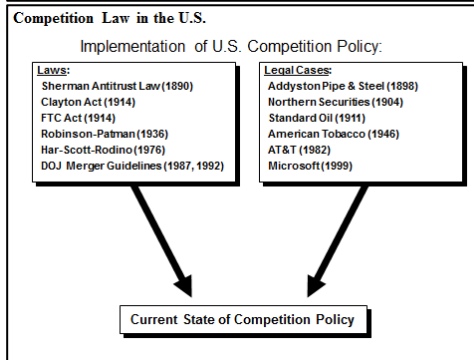
Background:
 [Rubinfeld, "Antitrust Policy", 2001]

- Grew out of the U.S. "trust-busting" policies of the late 19th century.
- A set of instruments whose goal is to make markets operate more competitively.
- Codified in law and enforced by the judicial system.
- Relies heavily on the economics of industrial organization.
 - *Structure-Conduct Approach*: Relatively interventionist, emphasizing barriers to entry and market dominance (Mason, Bain)
 - *The Chicago School*: Relatively non-interventionist, emphasizing the tradeoffs between efficiencies and competitive effects (Posner, Bork)

Competition Law in the U.S.

Background:

- Article 1, Section 8 of the U.S. Constitution establishes the power of the Congress "to regulate commerce ... among the several states."
- Post-Civil War era witnessed the development of large "national" business enterprises, of which Rockefeller's Standard Oil Trust was most emblematic.
- Populist backlash against Standard Oil Trust and others led to the passage of the Sherman Anti-Trust Act in 1890.
- Clayton Act (1914) and subsequent legislation have attempted to clarify competition laws.
- Most U.S. anti-trust / competition laws were on the books long before industrial economics fully developed as a discipline within economics.



Competition Law in the U.S.

Goals of U.S. Competition Policy:

1. Minimization of dead weight losses due to abuse of market / monopoly power
2. Consumer protection (from "unreasonable" pricing practices)
3. Protection of small business
4. Dispersal of economic power

Relevant exercises: Read Rubinfeld (all), and Kwoka and White, 8 – 13.