



Key antitrust statutes

- (a) Sherman act (1890)
- (b) Clayton & FTC acts (1914)
- (c) HSR act (1974)

Criminal: Hardcore violations only
 (a) Subject matter: price fixing, bid rigging, market division
 (b) Clandestine nature
 Everything else: Civil

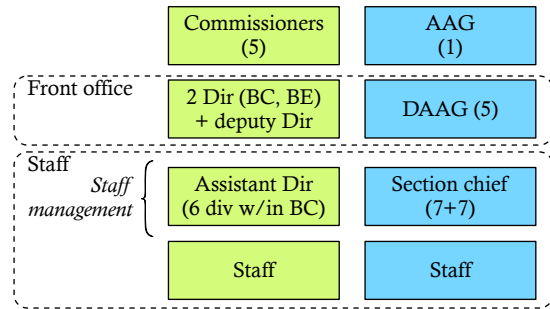
§1 SA: "No unreasonable agreements in restraint of trade." (Horizontal-cartels, JVs, vertical-exclusivity, tying)
 §2 SA: "No abuse of a monopoly position" (> 50% share, defense of monopoly market or leveraging monopoly into second market)
 §7 CA: "No acquisitions that may substantially lessen competition"

Distributed enforcement of the AT laws

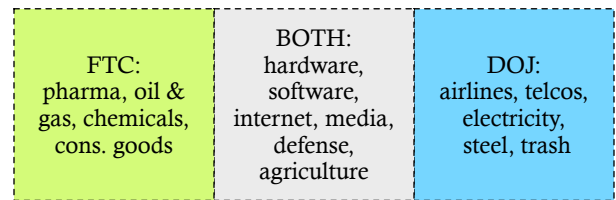
- (a) DOJ = criminal + civil
- (b) FTC = civil
- (c) States = state AT laws and private litigation under Fed. laws

| | §1, 2; RPA; criminal | §1, 2 i/d | §3, 7; RPA; HSR i/d | §5 FTC, i |
|---------|----------------------|-----------|-----------------------|-----------|
| DOJ | + | + | + | - |
| FTC | - | - | i = ALJ eq = court | i only |
| States | - | + | + | - |
| Private | - | + | + | - |

FTC & DOJ Organization

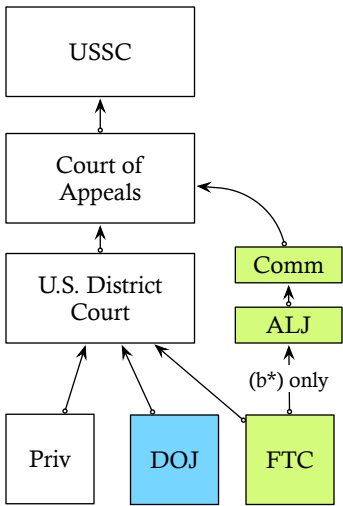


FTC & DOJ Responsibilities ("Clearance")



Enforcement through litigation, remedies

(Rare. Most other countries have opted for administrative process)



Civil remedies

- (a) Preliminary injunctions
- (b*) Permanent injunctions (FTC: cease & desist orders)
- (c) (Treble-) damages
- (d) Other equitable relief, e.g., disgorgement, restitution, rescission, divestiture
- (e) Fines for violation of HSR, court orders

Criminal remedies

- (a) Individuals: \$1m, 10y, 2x gain/loss
- (b) Corp: \$100m; 2x gain/loss
- (c) Joint & several liability; no contribution

Statutes of limitation

- (a) §4 CA (priv. action), 4 years, broad tolling (e.g., fraud. concealment)
- (b) §1, 2 SA (crime), 5 years, broad tolling

Extraterritorial application

- (a) U.S. harm = AT
- (b) Non-U.S. only harm = no AT
- (c) U.S. and non-U.S. harm: AT if U.S. harm is proximate cause of non-U.S. harm

Antitrust immunities

- Noerr-Pennington: (a) only vis-a-vis govt. (1st Am.) (b) no misrepresentations (c) no sham (use of process, not outcome of the process)
- State action: (a) "clearly articulated policy" (b) "actively supervised"
- Implied: (a) exercise of legal authority (b) core sub. matter (e.g. SEC) (c) "plain repugnancy"
- Express exemptions: Insurance, baseball, labor, agricultural coops, railroads, etc.

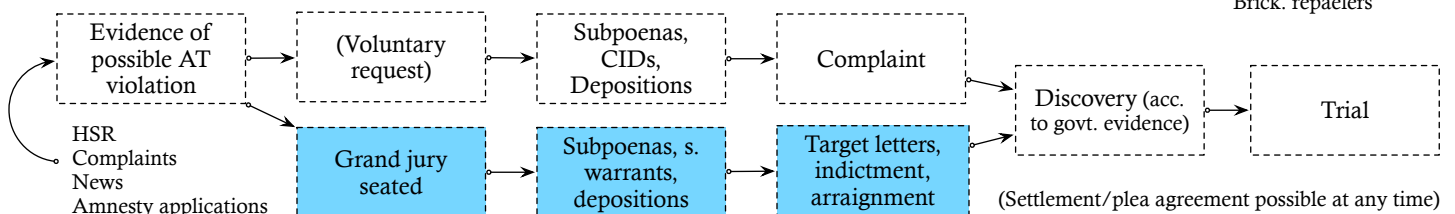
Private π, standing requir.

- Harm to prop. or business: (a) Customers = overcharge (b) Competitors = lost profits
- AT violation is prox. cause: (a) not from "too much" competition (Brunswick)
- No limitations: (a) direct purchasers only (Illinois Brick) (b) damages quantifiable

Timing (very rough rules of thumb)

- FTC (ALJ) (3.5-4.5y)**
- (a) ALJ trial (12-18m)
 - (b) Commission appeal (12-24m)
 - (c) Ct. of Appeals (12m)
- DOJ/FTC (Ct. / PI) (7-18m)**
- (a) District ct. trial (3-6m)
 - (b) Ct. of Appeals (4-12m)
- DOJ/FTC (Ct.) (2-4y)**
- (a) District ct. trial (12-36m)
 - (b) Ct. of Appeals (12m)

Key steps in civil and criminal investigations



25 States have Ill. Brick. repaelers