Antitrust Law: Case Development and Litigation Strategy

Dale Collins
Georgetown University Law Center, Spring 2026
Tuesdays, 3:30 pm – 5:30 pm
wdc30@georgetown.edu
www.appliedantitrust.com

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SEMINAR PAPERS: PAPER TOPICS

Welcome to the course. I hope that everyone is having a safe and restful break.

This course requires a paper rather than an exam. Since the semester goes by quickly and gets very busy with papers and exams at the end, I encourage you to start working on your papers early, starting with finding a topic and crafting the precise question your paper will address.

The introductory email explains in some detail the paper requirements for the course's two-credit and three-credit sessions (pp. 4-6). For now, three things are important:

1. While this is a procedure and case strategy course, you can write on any U.S. antitrust topic that interests you. I used to require that papers address a procedural question, but I allowed so many exceptions that I decided to drop the requirement. Paper topics are not exclusive—more than one student can write on the same topic.
2. We must agree on the precise question the paper will address. History suggests that this usually takes several rounds of discussions or emails. The introductory memorandum to the course explains this in more detail. The deadline for approval is Wednesday, January 28—about two weeks into the course.
3. Unless we agree otherwise, two-credit papers should be in the form of a reasoned memorandum of law, and three-credit papers should be in a form suitable for publication in a law journal.

Below are some popular questions to help you think about a paper topic. You are free to adopt one of these questions as a paper topic (but we still need to agree on the precise wording of the question you will address). Alternatively, we can work together on another topic of your choice.

Two-credit papers. Two-credit papers should provide a neutral, reasoned analysis in answering a question of law in a memorandum of law. These papers address what the law *is*, not what the law *ought* to be.

1. You have asked me to review the law in the various circuits as to whether and, if so, under what conditions a Rule 23(b)(3) class may be certified where the class definition encompasses some unidentified putative class members that were not injured by the challenged conduct. There is a split in the circuits on this question, and in the next few years, the Supreme Court will likely address the question.[1]

[1] The Supreme Court recently granted review but dismissed the writ as improvidently granted, leaving the issue unresolved and likely to return. *Laboratory Corp. of Am. Holdings v. Davis*, No. 24-304, slip op. at 1 (U.S. June 5, 2025) (mem.) (dismissing writ of certiorari as improvidently granted).

2. You have asked me what needs to be alleged in a horizontal price-fixing complaint in addition to consciously parallel conduct to withstand a motion to dismiss under Rule 12(b)(6) on the element of conspiracy in a claim alleging a violation of Section 1 of the Sherman Act.

3. You have asked me to examine the FTC invitation-to-collude complaints and accompanying consent decrees to determine the circumstances under which the FTC is likely to challenge a firm for issuing an unaccepted invitation to collude in violation of Section 5 of the FTC Act.

4. You have asked me whether the standard for obtaining a preliminary injunction in federal district court against the consummation of an allegedly anticompetitive merger is lower for the Federal Trade Commission ("FTC") than it is for the Department of Justice ("DOJ"). You have also asked if the FTC's standard is lower, what arguments can the merging parties make to the court to bring the standard in an FTC action closer to that in a DOJ action?

5. You have asked me to (1) identify the rule in Comcast Corp. v. Behrend, 569 U.S. 27 (2013), regarding class certification; (2) determine why the majority rejected the plaintiffs' evidence as insufficient to sustain class certification; (3) determine how and why the dissent differed from the majority; and (4) evaluate how *Comcast* has been applied in subsequent antitrust cases.

6. You have asked me whether a price-fixing plaintiff may withstand a motion to dismiss under Rule 12(b)(6) when the complaint seeks "umbrella damages" under Section 4 of the Clayton Act and alleges that (1) the plaintiff purchased its product from a nonconspiratorial competitor (2) at a supracompetitive price (3) enabled by the conspiracy.

7. You have asked me whether the jury findings in a breach of contract action are binding on the court on a purely equitable antitrust counterclaim when the defense in the contract action is that the allegedly breached covenants were anticompetitive restraints of trade that violated Section 1 of the Sherman Act and hence were void for public policy.[2]

8. You have asked me to explain the concept of pleading a factual allegation "on information and belief" in a complaint under Rule 8(a) of the Federal Rules of Civil Procedure, determine what degree of diligence an attorney must perform before pleading a factual allegation on information and belief to comply with Rule 11, and analyze under what conditions, if any, a court can credit factual allegations made on information and belief in deciding a *Twombly* motion to dismiss a complaint under Rule 12(b)(6).

9. You have asked me to explain the concept of offensive collateral estoppel under Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), and Parklane Hosiery Co., Inc. v.

[2] This question was suggested by claims and counterclaims in Epic Games, Inc. v. Google. *See* Complaint for Injunctive Relief, Epic Games, Inc. v. Google LLC, No. 3:20-cv-05671-JD (N.D. Calif. filed Aug. 13, 2020); Defendants' Answers, Defenses, and Counterclaims to Epic Games, Inc.'s First Amended Complaint for Injunctive Relief (Oct. 11, 2021) (see here for major filings). You may find the following filings in the case helpful: Google's Statement on a Non-Jury Trial on Epic's Claims and Defenses (Nov. 1, 2023), and Brief of Epic Games, Inc. in Support of Maintaining the Jury Trial (Nov. 1, 2023).

Shore, 439 U.S. 322 (1979), and to examine when and how offensive collateral estoppel has been used in federal antitrust cases.[3]

Two-credit papers should address a question that can be answered in 15-18 double-spaced pages in 12-point Times Roman. Consider 15 pages a minimum requirement. There is no maximum page or word limit—keep the paper concise, but take whatever space is necessary to do a complete job.

Three-credit papers. Three-credit papers require more depth than two-credit papers and must include a normative section critiquing the law or proposing new solutions. The law school requires that three-credit papers contain at least 6000 words (excluding footnotes). Historically, most three-credit papers submitted for this course range between 30 and 40 pages. As with two-credit papers, there is no maximum page or word limit—keep the paper concise, but take whatever space is necessary to do a complete job.

While any two-credit topic above can be expanded into a three-credit paper by adding a normative section, here are some additional topics particularly suited for three-credit treatment:[4]

1. In 1914, Congress passed the Federal Trade Commission Act.[5] The act prohibits "unfair methods of competition"—which the statute does not define—and created a five-person Federal Trade Commission (FTC) empowered to investigate, challenge, and administratively adjudicate violations of the act. A paper could examine the history of the FTC's efforts to examine the scope of unfair methods of competition beyond conduct that violated the Sherman or Clayton Acts, explore how courts sought to constrain unfair methods of competition to conduct that violated the "letter or spirit" of the Sherman and Clayton Acts,[6] the resulting 2015 policy statement on Section 5,[7] the withdrawal of this statement as one of the FTC's first acts under Chair Lina Khan,[8] and the FTC's new

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[3] Offensive collateral estoppel, also known as issue preclusion, is a legal doctrine preventing a defendant from relitigating an issue that has already been decided against it in a previous case.

[4] To be clear, even if you chose one of these topics, we still will need to agree on the precise wording of the question for a three-credit paper. As we will discuss later, you will use this language in the opening sentence of the second paragraph of the paper's introduction to tell the reader the question the paper will address.

[5] Ch. 311, 38 Stat. 717 (1914) (current version at 15 U.S.C. §§ 41-58).

[6] *See, e.g.*, Boise Cascade Corp. v. FTC, 637 F.2d 573 (9th Cir. 1980); Official Airline Guides, Inc. v. FTC, 630 F.2d 920 (2d Cir. 1980); E.I. du Pont de Nemours & Co. v. FTC, 729 F.2d 128 (2d Cir. 1984) (Ethyl); 1-800 Contacts, Inc. v. FTC, 1 F.4th 102 (2d Cir. 2021).

[7] Fed. Trade Comm'n, Statement of Enforcement Principles Regarding "Unfair Methods of Competition" Under Section 5 of the FTC Act (Aug. 13, 2015); *see* Statement of the Federal Trade Commission on the Issuance of Enforcement Principles Regarding "Unfair Methods of Competition" under Section 5 of the FTC Act (August 13, 2015).

[8] Press Release, Fed. Trade Comm'n, FTC Rescinds 2015 Policy that Limited Its Enforcement Ability under the FTC Act (July 1, 2021); *see* Statement of Chair Lina M. Khan Joined by Commissioner Rohit Chopra and Commissioner Rebecca Kelly Slaughter on the Withdrawal of the Statement of Enforcement Principles Regarding "Unfair Methods of Competition" Under Section 5 of the FTC Act (July 1, 2021); Dissenting Remarks of Commissioner Noah Joshua Phillips Regarding the Commission's Withdrawal of the Section 5 Policy Statement (July 1, 2021); Dissenting Statement of Commissioner Christine S. Wilson (July 1, 2021); Statement of the Commission on the Withdrawal of the Statement of Enforcement Principles Regarding "Unfair Methods of Competition" Under Section 5 of the FTC Act (July 9, 2021); Dissenting Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson on the "Statement of the Commission on the Withdrawal of the Statement of Enforcement Principles Regarding 'Unfair Methods of Competition' Under Section 5 of the FTC Act" (July 9, 2021).

Section 5 policy statement.[9] The paper could conclude with a normative proposal of the reach of Section 5's "unfair methods of competition" prohibition.

2. On April 23, 2024, the FTC, by a 3-1 vote, proposed a new rule to make noncompetition covenants outside the sale of a business an "unfair method of competition" under Section 5 of the FTC Act.[10] This blanket prohibition of noncompetition covenants rejects 400 years of jurisprudence holding that the legality of such covenants is to be determined by whether they were "reasonable" in scope, duration, and geographic coverage in the circumstances. The proposal raises questions about whether the FTC has any power under the FTC Act to promulgate substantive legislative rules defining unfair methods of competition and, if so, whether the courts' cabining of "unfair methods of competition" excludes the FTC's power to promulgate this rule. The rule also raises serious constitutional questions about whether it falls outside the Commission's authority under the "major question" and nondelegation doctrines. Opponents in two cases obtained injunctions vacating the rule.[11] On September 5, 2025, the Commission voted 3-1 to vacate the rule and withdraw its notices of appeal in the Fifth and Eleventh Circuits.[12] Although the rule has been withdrawn, it still presents an excellent vehicle for analyzing whether the FTC has authority to promulgate substantive unfair methods of competition rules.[13]

3. In *Axon Enterprises, Inc. v. FTC*,[14] the Supreme Court rejected a long-standing judicial rule that constitutional structural challenges to the FTC's adjudicative process can be heard in the first instance only in the administrative proceeding itself and held that district courts have federal question jurisdiction to hear these claims. In the wake of *Axon*, almost every FTC merger antitrust complaint—including complaints in federal district court under Section 13(b) of the FTC Act seeking a preliminary injunction pending a final resolution of the merits in an administrative adjudicative proceeding—has been met with affirmative defenses and sometimes counterclaims that the FTC's adjudicative process is structurally unconstitutional. These defenses and counterclaims variously allege, for example, (a) constraints on removal of the commissioners and the administrative law judge violate Article II of the Constitution and the separation of powers, (b) Congress

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[9] Fed. Trade Comm'n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act (Nov. 10, 2022); *see* Press Release, Fed. Trade Comm'n, FTC Restores Rigorous Enforcement of Law Banning Unfair Methods of Competition (Nov. 10, 2022); Dissenting Statement of Commissioner Christine S. Wilson (Nov. 10, 2022).

[10] Non-Compete Clause Rule, 89 Fed. Reg. 38,342 (May 7, 2024) (to be codified at 16 C.F.R. pt. 910). *See* Press Release, Fed. Trade Comm'n, FTC Announces Rule Banning Noncompetes (Apr. 23, 2024); *see also* Press Release, Fed. Trade Comm'n, FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition (Jan. 5, 2023). The proposed rule can be found here.

[11] *See* Ryan, LLC v. FTC, 746 F. Supp. 3d 369 (N.D. Tex. 2024) (setting aside the rule); Properties of the Villages, Inc. v. FTC, No. 5:24-CV-316-TJC-PRL, 2024 WL 3870380 (M.D. Fla. Aug. 15, 2024) (granting preliminary injunction enjoining the rule). Many of the significant filings in these cases can be found here (but the stire needs updating)

[12] *See* Press Release, Fed. Trade Comm'n, Federal Trade Commission Files to Accede to Vacatur of Non-Compete Clause Rule (Sept. 5, 2025).

[13] I have collected the proposed rule, the FTC fact sheet, and the supporting and dissenting statements of the commissioners here. If you are interested in exploring the FTC's proposed noncompete rule for a possible paper topic, be sure to read Commissioner Christine Wilson's dissenting statement. It tees up a number of the issues admirably.

[14] 598 U.S. 175 (Apr. 14, 2023).

unconstitutionally delegated legislative power to the Commission by failing to provide an intelligible principle by which the Commission would exercise the delegated power (presumably in violation of the nondelegation doctrine); (c) granting the relief sought would constitute a taking of the respondent's property in violation of the Fifth Amendment to the Constitution, (d) the adjudication of the complaint against the respondent through the related administrative proceedings violates the respondent's Seventh Amendment right to a jury trial, and (e) the adjudication of the complaint against the respondent through the related administrative proceedings adjudicates private rights and therefore violates Article III of the U.S. Constitution and the Seventh Amendment.[15] A paper could survey the constitutional affirmative defenses and counterclaims against the FTC's adjudicative process, how the FTC has responded to these challenges, the likelihood of success of each claim under current law, and the prospects that the current Supreme Court, if and when it accepts a case raising constitutional challenges, would uphold one or more of these challenges.[16]

4. Section 1 of the Sherman Act prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce."[17] Although early Sherman Act cases interpreted this language literally to prohibit *every* restraint of trade,[18] the Supreme Court in 1911 in *Standard Oil* held that the Sherman Act only prohibits *unreasonable* restraints of trade—an interpretation that has not since been questioned.[19] The *Standard Oil* Court also adopted two different standards of proof of unreasonableness, depending on the nature of the challenged conduct. In modern terms, the *per se rule* is a conclusive presumption of unreasonableness flowing from the nature and likely effects of the challenged conduct.[20] Per se illegal restraints are "plainly" or "manifestly" anticompetitive[21] and have a "pernicious effect on competition and lack . . . any redeeming virtue."[22] The other *Standard Oil* standard is the *rule of reason*, which

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[15] These particular claims are drawn from Defendant Intercontinental Exchange, Inc.'s Answer and Affirmative Defenses and Counterclaims, Defenses Fourth through Eight and Counterclaims ¶¶ 39-48, FTC v. Intercontinental Exchange, Inc., No. 3:23-cv-01710-AMO (N.D. Cal. filed Apr. 25, 2023). The case settled in August 2023, shortly before the preliminary hearing, so the constitutional issues will not be decided in this case. *See* Joint Stipulation For Dismissal Without Prejudice, FTC v. Intercontinental Exchange, Inc., No. 3:23-cv-01710-AMO (N.D. Cal. filed Aug. 7, 2023). An interesting question is to what extent did the constitutional challenges put pressure on the FTC to settle?

[16] A case on point that had an excellent chance of reaching the Supreme Court was Illumina, Inc. v. FTC, 88 F.4th 1036 (5th Cir. Dec. 15, 2023), where the court of appeals summarily rejected each of the four constitutional arguments Illumina had made. Unfortunately, Illumina decided to abandon their merger and did not file a petition for certiorari in the Supreme Court. *See* Press Release, Illumina, Inc., Illumina Announces Decision to Divest GRAIL (Dec. 17, 2023).

[17] 15 U.S.C. § 1.

[18] *See* United States v. Trans-Missouri Freight Ass'n, 166 U.S. 290 (1897); United States v. Joint-Traffic Ass'n, 171 U.S. 505 (1898);

[19] Standard Oil Co. v. United States, 221 U.S. 1, 60 (1911).

[20] Atlantic Richfield Co. v. USA Petroleum Co., 495 U.S. 328, 342 (1990); Arizona v. Maricopa Cty. Med. Soc'y, 457 U.S. 332, 344 (1982).

[21] Business Elecs. Corp. v. Sharp Elecs. Corp., 485 U.S. 717, 723 (1988), Broadcast Music, Inc. v. CBS, 441 U.S. 1,8 (1979); National Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 692 (1978); Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36, 50 (1977).

[22] Northern Pacific. Ry. Co. v. United States, 356 U.S. 1, 5 (1958); *accord* Northwest Wholesale Stationers, Inc. v. Pac. Stationery & Printing Co., 472 U.S. 284, 289 (1985); State Oil Co. v. Khan, 522 U.S. 3, 10 (1997); Catalano, Inc. v. Target Sales, Inc., 446 U.S. 643, 646 & n.9 (1980); United States v. Topco Assocs., 405 U.S. 596,

essentially means there is no presumption of unreasonableness. The rule of reason is the default rule, and requires the plaintiff to prove the unreasonableness of the challenged restraint by affirmative proof. Although there have been some efforts to broaden the definition of unreasonableness, current law holds that a restraint is unreasonable if it is on balance anticompetitive, that is, if it creates or facilitates the exercise of market power to the detriment of the customer.[23]

Beginning in the 1980s, a third standard, the *quick look*, emerged. This intermediate standard of proof, recognized by the Supreme Court in *California Dental* in 1999,[24] raises a rebuttable presumption of unreasonableness for restraints that appear inherently suspect but do not trigger the conclusive presumption of unreasonableness of the per se rule because of a lack of judicial experience with them.[25] The quick look applies where "an observer with even a rudimentary understanding of economics could conclude that the arrangements in question would have an anticompetitive effect on customers and markets."[26] Despite the Supreme Court's endorsement, the quick look has gained little traction in the lower courts.[27] A paper could examine the historical evolution of the per se, rule of reason, and quick look methods of proof of an unreasonable restraint of trade, examine in detail the rules that emerge from *California Dental* and the application of these rules in subsequent cases, and conclude with a normative analysis of when and how, if at all, the quick look should be applied in modern antitrust law.[28]

5. In October 2016, the Antitrust Division and the FTC jointly announced that agreements among competing employers to fix wages or to refrain from soliciting or hiring each other's employees ("no-poach" agreements) would be treated as per se violations of

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607 (1972); Fortner Enters. v. U.S. Steel Corp., 394 U.S. 495, 498 (1969); United States v. General Motors Corp., 384 U.S. 127, 146 (1966); White Motor Co. v. United States, 372 U.S. 253, 262 (1963).

[23] Ohio v. Am. Express Co., 138 S. Ct. 2274, 2284 (2018) ("[T]he plaintiff has the initial burden to prove that the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market."); *see* Texaco Inc. v. Dagher, 547 U.S. 1, 5 (2006) (noting that under rule of reason analysis "antitrust plaintiffs must demonstrate that a particular contract or combination is in fact unreasonable and anticompetitive before it will be found unlawful"); Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 551 U.S. 877, 886 (2007) ("In its design and function the rule [of reason] distinguishes between restraints with anticompetitive effect that are harmful to the consumer and restraints stimulating competition that are in the consumer's best interest.").

[24] *See, e.g.*, California Dental Ass'n v. FTC, 526 U.S. 756 (1999); FTC v. Indiana Federation of Dentists, 476 U.S. 447 (1986); *NCAA*, 468 U.S. at 109-10; *see also* Texaco Inc. v. Dagher, 547 U.S. 1, 7 n.3 (2006) (recognizing "quick look" as a mode of analysis).

[25] *See* NCAA v. Board of Regents, 468 U.S. 85, 109 (1984); Deutscher Tennis Bund v. ATP Tour, Inc., 610 F.3d 820, 829-30 (3d Cir. 2010); Craftsmen Limousine, Inc. v. Ford Motor Co., 491 F.3d 380, 387 (8th Cir. 2007); United States v. Brown Univ., 5 F.3d 658, 669 (3d Cir. 1993).

[26] *California Dental*, 526 U.S. at 770.

[27] For modern cases rejecting the applicability of the quick look on the evidence presented, see, for example, NCAA v. Alston, 141 S. Ct. 2141, 2155 (2021); Winn-Dixie Stores, Inc. v. E. Mushroom Mktg. Coop., Inc., No. 22-2289, 2023 WL 8888532, at *4-*7 (3d Cir. Dec. 26, 2023); Aya Healthcare Servs., Inc. v. AMN Healthcare, Inc., 9 F.4th 1102, 1113 n. 6 (9th Cir. 2021); 1-800 Contacts, Inc. v. Fed. Trade Comm'n, 1 F.4th 102, 117 (2d Cir. 2021); *In re* HIV Antitrust Litig., 656 F. Supp. 3d 963, 996 (N.D. Cal. 2023); Giordano v. Saks Inc., 654 F. Supp. 3d 174, 201 (E.D.N.Y. 2023); Ogden v. Little Caesar Enterprises, Inc., 393 F. Supp. 3d 622, 636 (E.D. Mich. 2019); Food Lion, LLC v. Dean Foods Co., No. 2:07-CV-188, 2016 WL 1259959, at *1 (E.D. Tenn. Mar. 30, 2016); Hannah's Boutique, Inc. v. Surdej, 112 F. Supp. 3d 758, 770 (N.D. Ill. 2015).

[28] In thinking about the quick look, you might look at Wayne D. Collins, *Rethinking the Quick Look: California Dental Association and the Future of Rule of Reason Analysis*, ANTITRUST, Fall 1999, at 54.

Section 1 of the Sherman Act and prosecuted criminally.[29] Between December 2020 and January 2022, the Division brought six criminal cases alleging wage-fixing or no-poach conspiracies—all in labor-intensive industries such as healthcare, staffing, and aerospace engineering.[30] The results were dismal: juries acquitted all defendants in United States v. Jindal (wage-fixing among physical therapist staffing companies), United States v. DaVita (no-poach agreements among dialysis providers), and United States v. Manahe (wage-fixing among home health agencies during the pandemic); the court granted a Rule 29 judgment of acquittal in United States v. Patel (no-poach conspiracy among aerospace outsourcing executives), holding that the government's evidence was insufficient to establish a market-allocation agreement; and the Division voluntarily dismissed United States v. Surgical Care Affiliates before trial.[31] The Division's only success came from a guilty plea—not a trial conviction. Then, in April 2025, the Division finally secured its first jury conviction for wage-fixing in United States v. Lopez, where the defendant was found guilty of conspiring to fix the wages of home healthcare nurses in Las Vegas and was sentenced to 40 months in prison.[32] A paper could examine whether the Division's string of losses reflects a fundamental mismatch between per se treatment and the realities of labor markets—where information-sharing and industry norms may blur the line between coordination and competition—or instead reflects prosecutorial overreach in case selection, evidentiary presentation, or jury instruction. The paper could also assess whether the Lopez conviction signals a turning point or an outlier, and evaluate the relative merits of criminal versus civil enforcement in labor markets.

6. Algorithmic pricing uses computer algorithms and artificial intelligence to dynamically set prices in response to market demand and competitors' offerings. Under what conditions, if any, could using algorithmic pricing by a single firm or a group of competitors violate Sections 1 or 2 of the Sherman Act or Section 5 of the FTC Act? Key considerations might include the extent to which firms train their pricing algorithms on competitor data, how sophisticated algorithms could learn to engage in tacit collusion

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[29] *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Guidance for Human Resource Professionals (Oct. 2016). The agencies issued updated joint guidance in January 2025. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Guidance for Business Activities Affecting Workers (Jan. 2025).

[30] *See* United States v. Jindal, No. 4:20-cr-00358 (E.D. Tex. filed Dec. 2020); United States v. Surgical Care Affiliates, LLC, No. 3:21-cr-00011 (N.D. Tex. filed Jan. 2021); United States v. Hee, No. 2:21-cr-00098 (D. Nev. filed Mar. 2021); United States v. DaVita Inc., No. 1:21-cr-00229 (D. Colo. filed July 2021); United States v. Patel, No. 3:21-cr-00220 (D. Conn. filed Dec. 2021); United States v. Manahe, No. 2:22-cr-00013 (D. Me. filed Jan. 2022).

[31] For an overview of the Division's initial losses and their implications, see Creighton Macy & Travis Townsend, *Labor Pains: Taking Stock of Criminal Antitrust Enforcement Against Wage-Fixing and No-Poach Agreements*, 37 Crim. Just. 14 (Summer 2023). In *Patel*, the court granted defendants' motion for judgment of acquittal under Federal Rule of Criminal Procedure 29 at the close of the government's case, concluding that no reasonable jury could find beyond a reasonable doubt that the alleged agreements constituted a market allocation. *See* Order, United States v. Patel, No. 3:21-cr-00220 (D. Conn. Apr. 28, 2023) (ECF No. 548).

[32] *See* Press Release, U.S. Dep't of Justice, Jury Convicts Home Health Agency Executive of Fixing Wages and Fraudulently Concealing Criminal Investigation (Apr. 14, 2025); Press Release, U.S. Dep't of Justice, White-Collar Executive Incarcerated for Fixing Nurse Wages and Fraud (Nov. 21, 2025). Lopez was also convicted on five counts of wire fraud for concealing the criminal investigation when he sold his company. The defendant filed a motion for mistrial and indicated he would appeal.

without human direction, and what kinds of information sharing about pricing algorithms might cross the line.

7. The FTC's *Amazon* case presents a narrower question about algorithmic pricing: the use of pricing bots and price optimization programs. In September 2023, the FTC and 17 states sued Amazon in the Western District of Washington for antitrust violations; additional states and Puerto Rico have since joined the action.[33] Among other things, the complaint alleges that Amazon used pricing bots and a price optimization program (codenamed "Project Nessie") to "covertly" raise prices for Amazon shoppers, extracting over a billion dollars from American households. Specifically, the complaint alleges Project Nessie analyzed historical pricing data to identify products where competitors were likely to follow Amazon's price increases, then algorithmically raised prices on those items, which in turn induced competitors to increase their prices. The complaint concludes that Project Nessie violated Section 5 of the FTC Act (Count IV). In September 2024, the district court denied Amazon's motion to dismiss the federal claims, sustaining both the Section 2 Sherman Act monopolization claims and the Section 5 claim based on Project Nessie.[34] The court subsequently dismissed certain state law claims brought by New Jersey and Pennsylvania, holding that potential antitrust liability for Project Nessie was insufficient to support those claims.[35] Trial is scheduled for March 2027. A paper could summarize the relevant allegations in the complaint together with any facts developed through an Internet search, evaluate under what conditions, if any, Amazon's conduct could have violated the Sherman Act or the Federal Trade Commission Act, and critique the district court's rulings on Amazon's motions to dismiss.[36]

8. The *Amazon* litigation addresses whether a dominant firm's unilateral use of pricing algorithms can violate Section 2 or Section 5. The *RealPage* litigation presents a distinct theory: whether an algorithm that aggregates and operationalizes competitors' nonpublic pricing data facilitates coordinated conduct in violation of Section 1. In August 2024, the Department of Justice and eight state attorneys general sued RealPage, a provider of revenue management software for multifamily rental housing, in the Middle District of North Carolina.[37] The complaint alleged that RealPage contracted with competing landlords who agreed to share nonpublic, competitively sensitive information about rental rates and lease terms, which RealPage then used to train and operate its algorithmic pricing software. According to the complaint, the software generated pricing recommendations that aligned rents across competing properties, effectively replacing independent pricing decisions with algorithm-mediated coordination. The complaint

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[33] Complaint, FTC v. Amazon.com, Inc., No. 2:23-cv-01495-JHC (W.D. Wash. filed Sept. 26, 2023) (updated redacted version released Nov. 2, 2023). The FTC and state plaintiffs filed a second amended complaint on October 31, 2024.

[34] *See* Sealed Order On Defendant's Motion To Dismiss & Plaintiffs' Motion To Bifurcate, FTC v. Amazon.com, Inc., No. 2:23-cv-01495-JHC (W.D. Wash. Sept. 30, 2024) (public version released Oct. 7, 2024).

[35] *See* Order on Defendant's Motion to Dismiss Counts XIV, XV, and XIX, FTC v. Amazon.com, Inc., No. 2:23-cv-01495-JHC (W.D. Wash. Mar. 21, 2025).

[36] *See* Sealed Order On Defendant's Motion To Dismiss & Plaintiffs' Motion To Bifurcate, FTC v. Amazon.com, Inc., No. 2:23-cv-01495-JHC (W.D. Wash. Sept. 30, 2024) (public version).

[37] Complaint, United States v. RealPage Inc., No. 1:24-cv-00710 (M.D.N.C. filed Aug. 23, 2024).

alleged violations of both Section 1 (coordination) and Section 2 (monopolization of the revenue management software market).

In January 2025, the DOJ amended its complaint to add six major landlords as defendants.[38] The litigation has since followed divergent paths. In November 2025, the DOJ and RealPage agreed to a proposed settlement that, if approved, would impose detailed restrictions on RealPage's use of nonpublic data: limiting training data to information at least 12 months old, prohibiting the use of real-time lease data, and barring geographic modeling below the state level.[39] The settlement requires no admission of wrongdoing or financial penalties but mandates a compliance monitor and requires RealPage to cooperate in the government's continuing case against the landlord defendants. Several landlords have also reached settlements, including a $7 million agreement with Greystar in November 2025.[40] Meanwhile, consolidated private class actions remain pending in the Middle District of Tennessee, and several state attorneys general—who did not join the DOJ settlement—continue to pursue independent actions. Adding another dimension, New York enacted legislation in late 2025 specifically targeting algorithmic rent-setting, which RealPage has challenged on First Amendment grounds.[41]

A paper could examine the antitrust theories underlying algorithm-facilitated price coordination, including whether the exchange of pricing data through a common algorithm constitutes an agreement under Section 1, the role of the algorithm provider as a hub in a hub-and-spoke conspiracy, and how traditional information-sharing doctrine applies when data is operationalized through machine learning rather than merely disseminated. A paper could also evaluate the DOJ settlement as a potential blueprint for compliant algorithmic pricing tools, assess the relative merits of federal versus state enforcement approaches, or analyze the First Amendment questions raised by state legislation targeting pricing algorithms.

9. Antitrust law has long recognized that restraints of trade can, in certain circumstances, promote competition rather than reduce it and hence not violate the antitrust laws.[42] The procompetitive effects of a restraint are called *efficiencies*. Efficiencies arise most often in merger antitrust cases. An acquisition, for example, may reduce the merged company's costs, incentivizing it to lower prices, or enable it to innovate faster by combining the patent portfolios and research capabilities of the merging firms. Often, a merger will simultaneously entail anticompetitive effects, such as a reduction in the number of competing firms, and procompetitive effects, such as efficiencies. Merger antitrust law has developed a three-step burden-shifting approach to the analysis.[43] First, the plaintiff

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[38] First Amended Complaint, United States v. RealPage Inc., No. 1:24-cv-00710 (M.D.N.C. filed Jan. 7, 2025) (adding Greystar, LivCor, Cortland, Cushman & Wakefield, Willow Bridge, and Blackstone as defendants).

[39] Press Release, Dep't of Justice, Justice Department Requires RealPage to End the Sharing of Competitively Sensitive Information and Alignment of Pricing Among Competitors (Nov. 24, 2025).

[40] *See, e.g.*, Press Release, Office of the Att'y Gen. of Calif., Attorney General Bonta Announces $7 Million Settlement with Greystar for Participating in an Algorithmic Rent Alignment Scheme (Nov. 18, 2025).

[41] *See* Complaint, RealPage Inc. v. James, No. 1:25-cv-10264 (S.D.N.Y. filed Nov. 25, 2025) (challenging N.Y. Gen. Bus. Law § 340, as amended by A.B. 1417-B, as violating the First Amendment).

[42] For the seminal case, see Chicago Bd. of Trade v. United States, 246 U.S. 231 (1918).

[43] This approach was developed in United States v. Baker Hughes, Inc., 908 F.2d 981, 982-83 (D.C. Cir. 1990). All modern courts have adopted the Baker Hughes three-step burden-shifting approach in analyzing merger

bears the burden of making a prima facie case that the merger has a gross anticompetitive tendency. Second, if the plaintiff satisfies this burden, the defendants bear the burden of production of showing that the procompetitive tendencies of the merger are likely to outweigh the anticompetitive tendencies. Finally, if the defendants satisfy this burden, the burden of persuasion on whether the merger's net effect is anticompetitive or procompetitive falls on the plaintiff. Despite these well-established legal principles, the federal antitrust agencies have viewed efficiency defenses with great skepticism, if not outright hostility, and modern courts have yet to find a case where an efficiency defense has prevailed. A paper could describe the types of efficiencies that occur in mergers, review the treatment of efficiencies under the Merger Guidelines and by modern courts, and propose a normative framework for how efficiencies should be treated in modern antitrust law.

10. A major focus of the Biden antitrust agencies was the creation and exercise of monopsony power.[44] Monopsony power exists when a single buyer (the monopsonist) has substantial control over an input market for a specific type of labor or product and can influence the input price and other terms of purchase to its advantage due to the lack of competition on the buying side of the market. This can result in the monopsonist paying lower prices than would be the case in a competitive market, potentially leading to a reduction in overall market supply, inefficiencies, and welfare losses. Despite their oft-stated desire to bring antitrust merger cases alleging that the merger would create or facilitate the exercise of monopsony power in a labor market in violation of Section 7, the Biden antitrust agencies litigated the question to the merits in only one case, and then in a very specialized labor input market.[45] A paper could examine the competitive effects of the exercise of monopsony power (perhaps limited to labor markets), the extent to which the antitrust laws could be used to prohibit or control the creation or use of monopsony power, some of the difficulties the agencies might face in finding and bringing such cases, and any proposals you have to changes in the statutes or judicial rules to improve competitive outcomes when monopsony power is present.

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challenges under Section 7 of the Clayton Act. This is not too surprising since, apart from its analytical appeal, the opinion was written by Clarence Thomas and joined by Ruth Bader Ginsberg, both of whom became Supreme Court Justices.

[44] A focus on monopsony power was an element in President Biden's Executive Order on Promoting Competition in the American Economy (July 9, 2021) and in the 2023 Merger Guidelines. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines § 2.10 (rev. Dec. 18, 2023).

[45] *See* United States v. Bertelsmann SE & Co. KGaA, 646 F.Supp.3d 1 (D.D.C. Nov. 15, 2022) (enjoining the acquisition by Bertelsmann's Penguin Random House of Simon & Schuster from ViacomCBS because of likely anticompetitive effects in the market for the acquisition of U.S. publishing rights to anticipated "top-selling" books by well-known authors). The FTC also alleged that the proposed Kroger/Albertsons merger would violate Section 7 in local markets for union grocery labor. *See* Compl. ¶¶ 63-82, , Kroger Co., No. D-9428, (F.T.C. issued Feb. 26, 2024) (administrative complaint). In the FTC's accompanying federal preliminary injunction action, the district court concluded that plaintiffs had not established a prima facie case that the merger would substantially lessen competition for union grocery labor, but the court nonetheless preliminarily enjoined the transaction based on likely anticompetitive effects in local retail supermarket and large format grocery markets. Opinion & Order, FTC v. Kroger Co., No. 3:24-cv-00347-AN, 2024 WL 5053016, at *30-38 (D. Or. Dec. 10, 2024). In Washington State's parallel case, the King County Superior Court permanently enjoined the merger on consumer retail grounds, defining the relevant product market as supermarkets and rejecting the proposed divestiture, without separately adjudicating a labor market theory. *See* Findings of Fact & Conclusions of Law, State v. Kroger Co., No. 24-2-00977-9 SEA (Wash. Super. Ct. King Cnty. Dec. 10, 2024).

11. On January 16, 2024, in JetBlue/Spirit, Judge William G. Young of the United States District Court for the District of Massachusetts ruled for the United States, six states, and the District of Columbia, finding that JetBlue's $3.8 billion pending acquisition of Spirit Airlines violated Section 7 and entered a permanent injunction blocking the transaction.[46] JetBlue and Spirit are two of the fastest-growing airlines in the nation. At the time, JetBlue was the sixth-largest airline by revenue in the United States, with a U.S. revenue share of approximately 5%. Spirit was the seventh largest airline in the United States, with a revenue share of about 4%. The combination would produce the fifth-largest U.S. airline, with a U.S. revenue share of about 10%. Although these shares are usually too small to raise antitrust concerns, both JetBlue and Spirit have unique characteristics in the domestic airline space. JetBlue was a "low cost carrier" (LCC) with a lower cost structure than legacy airlines. JetBlue prided itself as a "maverick" and "unique disruptor" in the airline industry, often taking an aggressive pricing approach to competing with legacy and other low-cost carriers. As a result, when JetBlue entered a market, fares tend to decrease, and when JetBlue exited a market, fares tend to increase, a phenomenon known in the industry as the JetBlue Effect." Spirit is an "ultra low cost carrier" (ULCC) with an even lower cost structure and even lower fares than JetBlue. JetBlue planned to eliminate Spirit as a brand and reconfigure its planes with JetBlue seat configurations, service amenities, and trade dress to better compete with the legacy carriers. Although Judge Young acknowledged that the acquisition would permit JetBlue to compete with the legacy carriers, he found that the acquisition would eliminate one of the airline industry's few primary competitors that provides unique innovation and price discipline, further consolidate an oligopoly by immediately doubling JetBlue's stakeholder size in the industry, likely incentivize JetBlue further to abandon its roots as a maverick, low-cost carrier, eliminate head-to-dead competition between JetBlue and Spirit on origin-and-destination routes on which they both compete, eliminate Spirit's unique mode of competition with other airlines, and eliminate Spirit as a choice for particularly budget-minded consumers. Judge Young also rejected the merging parties' ease of entry, failing company, and efficiency defenses. A paper could set the merger in the context of the modern airline industry, critically evaluate the court's assessment of the plaintiffs' theories of anticompetitive harm, the defendants' defenses, and the court's ultimate

[46] United States v. JetBlue Airways Corp., 712 F. Supp. 3d 109 (D. Mass. 2024), *appeal dismissed*, No. 24-1092, 2024 WL 3491184 (1st Cir. Mar. 5, 2024). For the major filings in the case, see here. Following the injunction, JetBlue and Spirit mutually terminated their merger agreement on March 4, 2024, concluding that regulatory approval was unlikely before the agreement's July 2024 deadline. JetBlue paid Spirit a $69 million termination fee. See Press Release, JetBlue Airways Corp., JetBlue Announces Termination of Merger Agreement with Spirit (Mar. 4, 2024); Press Release, Spirit Airlines, Inc., Spirit Announces Termination of Merger Agreement with JetBlue (Mar. 4, 2024). Both airlines subsequently pivoted toward premium offerings. Spirit departed from its traditional ultra-low-cost model, introducing bundled fare tiers—including a business-class-style "Go Big" product with complimentary food, drinks, and checked baggage—and later rebranding these as "Spirit First," "Premium Economy," and "Value." *See* Press Release, Spirit Airlines, Inc., Go Big or Go Comfy: Spirit Airlines to Offer Unmatched Value with New Travel Options and Transformed Guest Experience (July 30, 2024). JetBlue announced plans to introduce a domestic first-class cabin across its fleet and to open its first airport lounges. *See* Leslie Josephs, JetBlue to Bring 'Junior Mint' First Class to Domestic Flights in 2026, CNBC (Dec. 11, 2024). Despite these efforts, Spirit filed for Chapter 11 bankruptcy protection in November 2024. In re Spirit Airlines, Inc., No. 24-11988 (Bankr. S.D.N.Y. filed Nov. 18, 2024). The airline emerged in March 2025 after converting approximately $795 million in debt to equity, but it filed for Chapter 11 a second time in August 2025, citing continued losses and excess industry capacity. In re Spirit Airlines, Inc., No. 25-11516 (Bankr. S.D.N.Y. filed Aug. 29, 2025).

conclusion, and conclude with a normative proposal for how antitrust should treat airline mergers in the future.

12. On December 10, 2024, two courts blocked Kroger's proposed $24.6 billion acquisition of Albertsons—the largest supermarket merger in U.S. history—in separate but overlapping rulings issued within an hour of each other.[47] Judge Adrienne Nelson of the United States District Court for the District of Oregon granted the FTC's motion for a preliminary injunction, concluding that the FTC had demonstrated a likelihood of success on the merits of its claim that the merger would substantially lessen competition in local supermarket and large-format grocery markets.[48] Separately, Judge Marshall Ferguson of the King County Superior Court in Washington permanently enjoined the merger under Washington's Consumer Protection Act, finding that the evidence "convincingly show[ed] that the current competition between Kroger and Albertsons stores is fierce" and that C&S Wholesale Grocers—the proposed divestiture buyer—would be unable "to replicate the ferocity of that competition or compete in Washington against the colossus of a merged Kroger and Albertsons."[49] Both courts rejected the defendants' proposed divestiture of 579 stores to C&S, with each court expressing grave doubts about C&S's ability to operate a large-scale retail grocery business given its limited retail experience. A paper could examine the parallel federal and state proceedings, critically evaluate both courts' approaches to market definition—including their rejection of the defendants' argument that supermarkets compete directly with Walmart, Costco, and Amazon—and assess the standards applied in evaluating the adequacy of the proposed divestiture. The paper could also explore the role of state attorneys general in merger enforcement when they pursue independent litigation parallel to federal proceedings.

13. The day after the Kroger/Albertsons merger was blocked, Albertsons terminated the merger agreement and sued Kroger in the Delaware Court of Chancery, alleging willful breach of contract and breach of the implied covenant of good faith and fair dealing.[50] Albertsons claims that Kroger failed to comply with its contractual obligation to use "best efforts" and take "any and all actions" to eliminate antitrust impediments to the merger—language that Albertsons characterizes as a "hell or high water" commitment.[51] According to Albertsons, Kroger repeatedly refused to offer a divestiture package

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[47] *See* Opinion & Order, FTC v. Kroger Co., No. 3:24-cv-00347-AN, 2024 WL 5053016 (D. Or. Dec. 10, 2024); Findings of Fact & Conclusions of Law, State v. Kroger Co., No. 24-2-00977-9 SEA (Wash. Super. Ct. King Cnty. Dec. 10, 2024).

[48] The FTC and nine state attorneys general filed suit in February 2024. *See* Complaint for Temporary Restraining Order and Injunctive Relief, FTC v. Kroger Co., No. 3:24-cv-00347 (D. Or. filed Feb. 26, 2024); Complaint, Kroger Co., No. D-9428 (F.T.C. filed Feb. 26. 2014) (administrative complaint).

[49] *See* Press Release, Wash. Att'y Gen., Judge Blocks Kroger-Albertsons Merger Following AG Ferguson Challenge (Dec. 10, 2024). Washington filed its lawsuit in January 2024—the first state to do so—and the case proceeded to trial in September 2024. Washington was subsequently awarded over $28 million in attorneys' fees and costs.

[50] Verified Complaint, Albertsons Cos. v. Kroger Co., C.A. No. 2024-1276-LWW (Del. Ch. filed Dec. 10, 2024; public version Dec. 14, 2024).

[51] See Gail Weinstein et al., *Practice Points Arising from Albertsons' Claims Against Kroger for Breach of their Merger Agreement*, Fried Frank (Jan. 21, 2025), https://corpgov.law.harvard.edu/2025/01/21/practice-points-arising-from-albertsons-claims-against-kroger-for-breach-of-their-merger-agreement/. The merger agreement reportedly capped Kroger's divestiture obligation at 650 stores but placed no cap on non-store assets such as banners, private labels, distribution centers, and manufacturing facilities.

sufficient to satisfy the FTC, ignored regulators' feedback, and rejected stronger divestiture buyers. Albertsons seeks the $600 million reverse termination fee specified in the merger agreement, plus additional expectation damages—including the lost merger premium—on the ground that Kroger's conduct constitutes "willful breach" under the agreement.[52] Kroger filed counterclaims in March 2025, alleging that Albertsons executives—including CEO-designate Susan Morris—secretly collaborated with C&S Wholesale Grocers to pursue an independent regulatory strategy that undermined Kroger's efforts and ultimately contributed to the courts' adverse rulings.[53] Kroger contends that Albertsons' misconduct forfeits any entitlement to the termination fee and seeks affirmative damages for Albertsons' alleged breaches. The cross-actions present issues similar to those litigated in *In re Anthem-Cigna Merger Litigation*, where the Delaware Court of Chancery found that both parties had breached their merger agreement's efforts covenants following an antitrust injunction, but ultimately awarded no damages to either side because the government would have blocked the merger regardless of the breaches.[54] A paper could examine the interpretation and enforcement of "best efforts" and "hell or high water" provisions in merger agreements; analyze how courts should assess causation when both parties claim the other's breach contributed to regulatory failure; evaluate the role of divestiture caps and cooperation obligations in allocating antitrust risk between merging parties; and consider whether the *Anthem-Cigna* framework provides adequate guidance for resolving post-injunction breach disputes or whether alternative approaches—such as enhanced specificity in drafting or modified damages rules—would better serve the interests of transacting parties.

14. Vertical mergers occur within the chain of manufacture and distribution, such as mergers between an input manufacturer and a final goods producer, or between a wholesaler and a retailer. The canonical anticompetitive effect is foreclosure. For example, a lithium battery manufacturer acquires a lithium mine that premerger supplied several battery manufacturers. After the acquisition, the combined company refuses to sell lithium to competitor-battery manufacturers. The idea is that, by foreclosing its downstream competitors by refusing to sell them a critical input, the combined company will disadvantage them—in the extreme, drive them out of business—and reap anticompetitive gains as the customers of the foreclosed competitors shift to the combined firm. A more nuanced variation on foreclosure is raising rivals' costs, in which the merged firm raises its prices rather than cutting them off altogether. Until recently, antitrust enforcement agencies had litigated no vertical mergers since 1980. The Supreme

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[52] The merger agreement provided for a $600 million termination fee (approximately 2.5% of the $24.6 billion deal value) if the merger failed to close by a specified end date due to failure to obtain antitrust clearance, provided that all non-antitrust closing conditions were satisfied. A "willful breach" by Kroger would entitle Albertsons to seek additional damages beyond the termination fee.

[53] *See* Press Release, Kroger Co., Kroger Files Legal Response, Brings Counterclaims Against Albertsons (Mar. 25, 2025). Kroger alleges that Morris used personal email and cell phones to communicate secretly with C&S's CEO to advance an alternative regulatory strategy, and that this conduct led C&S to criticize the divestiture package it had voluntarily agreed to accept—criticism that the Washington state court cited in blocking the merger.

[54] *See* In re Anthem-Cigna Merger Litig., 2020 WL 5106556 (Del. Ch. Aug. 31, 2020) (311-page opinion finding that Cigna breached efforts covenants through covert campaign to undermine the merger but that Anthem failed to prove damages because the DOJ would have obtained an injunction regardless), *aff'd*, 251 A.3d 1015 (Del. 2021).

Court last heard a vertical merger case in 1972.[55] There were no adjudicated vertical cases between 1979, when the Second Circuit denied enforcement of an FTC challenge, and the DOJ's AT&T/Time Warner challenge, decided in 2018. During this interim, when the agencies did challenge a vertical merger, they resolved the investigation through behavioral consent decrees requiring the merged firm to deal with rivals postmerger on fair, reasonable, and nondiscriminatory terms.[56] Things changed dramatically in the Trump administration when then-Assistant Attorney General Makan Delrahim took the position that the Division would no longer accept behavioral consent relief and challenged the AT&T/Time Warner transaction (where the DOJ lost spectacularly).[57] Vertical mergers were a major focus of the Biden antitrust agencies, where they rejected behavioral consent decrees to resolve vertical concerns and subsequently lost four of the five vertical mergers they challenged in court.[58] A paper could explore the possible procompetitive and anticompetitive effects of vertical mergers, the history of DOJ/FTC antitrust enforcement—the 1960s when vertical mergers were all but per se unlawful, the middle period when the agencies favorably treated vertical mergers and concerns were settled with behavioral consent decrees, and the current period where the agencies are hostile to vertical mergers and will not accept consent decrees—the current state of vertical merger law, and any changes the Supreme Court is likely to make if and when it accepts a vertical merger case for review.

15. In *Illumina/GRAIL*,[59] the Fifth Circuit reviewed the FTC's decision ordering Illumina, a DNA-sequencing firm, to divest GRAIL, a cancer detection company. Reversing a dismissal of the complaint by the administrative law judge, the Commission found that the acquisition provided Illumina with the ability to harm Grail's multi-cancer early-detection (MCED) test competitors by foreclosing, raising the cost of, or otherwise impeding access to Illumina's next-generation gene sequencing (NGS) platform, a necessary input for running MCED tests. The Fifth Circuit largely affirmed the approach of the Commission to its vertical merger analysis, finding that the FTC had sufficiently

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[55] Ford Motor Co. v. United States, 405 U.S. 562 (1972) (Ford/Autolite).

[56] *See, e.g.*, United States v. Comcast Corp., 808 F. Supp. 2d 145 (D.D.C. 2011) (Comcast/NBC Univeral); United States v. Google Inc., No. 1:11-cv-00688 (D.D.C. Oct. 5, 2011) (Google/ITA); United States v. United Techs. Corp., 946 F. Supp. 2d 135 (D.D.C. 2013) (UTC/Goodrich); United States v. Monsanto Co., No. 1:07-cv-00992, 2008 WL 5636384 (D.D.C. Nov. 6, 2008) (Monsanto/Delta & Pine Land); United States v. Charter Commc's, Inc., No. 1:16-cv-00759-RCL (D.D.C. Sept. 9, 2016); General Elec. Co., 156 F.T.C. 255 (2013) (GE/Avio); *In re* Pepsico, Inc., 150 F.T.C. 231 (2010) (Pepsi/PBG); Coca-Cola Co., 150 F.T.C. 520 (2010) (Coca-Cola/CCE); Press Release, U.S. Dep't of Justice, Comcast Corporation Abandons Proposed Acquisition of Time Warner Cable after Justice Department and the Federal Communications Commission Informed Parties of Concerns (Apr. 24, 2015) (Comcast/Time Warner Cable); Press Release, U.S. Dep't of Justice, Lam Research Corp. and KLA-Tencor Corp. Abandon Merger Plans (Oct. 5, 2016) (Lam/KLA).

[57] *See* United States v. AT&T Inc., 310 F. Supp. 3d 161 (D.D.C. June 12, 2018), *aff'd*, 916 F.3d 1029 (D.C. Cir. 2019)

[58] The four cases the Biden agencies lost are United States v. UnitedHealthcare Group Inc., 630 F. Supp. 3d 118 (D.D.C. Sept. 21, 2022) (UnitedHealthcare/Change); FTC v. Meta Platforms, Inc., 654 F. Supp. 3d 892 (N.D. Cal. 2023) (Meta/Within); FTC v. Microsoft Corp., 681 F. Supp. 3d 1069 (N.D. Cal. 2023) (Microsoft/Activision); and FTC v. Tempur Sealy Int'l, Inc., 768 F. Supp. 3d 787 (S.D. Tex. 2025) (Tempur Sealy/Mattress Firm). The Fifth Circuit agreed that the FTC had made out a prima facie case of liability in Illumina, Inc. v. FTC, 88 F.4th 1036 (5th Cir. Dec. 15, 2023) (Illumina/GRAIL), although it reversed and remanded because the FTC applied an incorrect standard for assessing the parties' efforts to resolve the prima facie competitive concerns. See the next topic.

[59] *Id.*, *vacating and remanding* Illumina, No. 9401 (F.T.C. Mar. 31, 2023). For the primary filings in the case, see here.

made out its prima facie case that the merger was likely to substantially lessen competition under both the 1962 *Brown Shoe* test (whose continued vitality had been—and probably still is—very much in question) and the more modern "ability-and-incentive" foreclose test. The Fifth Circuit also agreed with the FTC that Illumina's efficiency claims were not cognizable as a defense. However, the court of appeals partially rejected the FTC's approach to "litigating the fix." The Fifth Circuit agreed, contrary to the approach urged by two other courts, that the Commission could make out its prima facie case on the likely competitive effects of the original transaction without considering the fix.[60] But the FTC also required Illumina to prove that its "fix" (an "Open Offer" to GRAIL's future competitors to supply them with its NGS platform at the same price and with the same access as Illumina provided to Grail) *completely* cured all of the competitive concerns proven in the FTC's prima facie case. The Fifth Circuit rejected this "total-negation standard," held that Illumina only had to show that the acquisition with the Open Offer in place sufficiently mitigated competitive concerns so that the "fixed" transaction was no longer likely to substantially lessen competition, vacated the Commission's decision, and remanded for the Commission to reconsider the adequacy of the Open Offer under the proper standard. A paper could examine the business environment in which the Illumina/GRAIL acquisition took place, review the procedural history of the case before the administrative law judge and the full Commission, and critically evaluate Fifth Circuit's tests for proving a prima facie vertical merger case, its treatment of efficiencies, and its approach to how the standards and burdens of proof shift in evaluating a "fix" in a Section 7 case.[61]

16. In *FTC v. Meta Platforms, Inc.*, the FTC challenged, among other things, Facebook's acquisitions of Instagram (2012) and WhatsApp (2014). A coalition of state attorneys general filed a companion complaint. The district court held that laches does not bar an antitrust case brought by a federal enforcement agency, but it dismissed the States' claims on laches grounds.[62] The FTC's case proceeded past the pleading stage, but the court ultimately ruled against the FTC on the merits in 2025.[63] Four issues emerge from these cases that a paper could explore: (1) Should laches apply to merger challenges brought by the DOJ or FTC, or is the current rule of non-application justified as a matter of law or public policy? (2) Should the rule regarding laches operate differently across sovereign plaintiffs? (3) When laches does govern, what is the operative rule for assessing unreasonable delay and prejudice, and how should courts take into account measure

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[60] Illumina had argued that the Commission must show that the "fixed" transaction was reasonably likely to substantially lessen competition in violation of Section 7 to prove its prima facie case. Illumina's approach was supported by Judge Nichols in United States v. UnitedHealthcare Group Inc., No. 1:22-CV-0481 (CJN), 2022 WL 4365867 (D.D.C. Sept. 21, 2022) (UnitedHealth/Change), and by Judge Reyes in a pretrial conference in United States v. Assa Abloy AAB, No. 1:22-cv-02791 (D.D.C. filed Sept. 15, 2022) (Assa Abloy/Spectrum Brands).

[61] Illumina/GRAIL was the subject of multiple proceedings in the European Union, including a European Commission order that Illumina divest GRAIL. *See* Press Release, Eur. Comm'n, *Commission Orders Illumina To Unwind its Completed Acquisition of GRAIL* (Oct. 12, 2023).

[62] *See* FTC v. Facebook, Inc., 560 F. Supp. 3d 1 (D.D.C. 2021) (dismissing the FTC's complaint without prejudice and granting leave to amend, but recognizing that Instagram and WhatsApp claims were not barred); FTC v. Facebook, Inc., 581 F. Supp. 3d 34 (D.D.C. 2022) (denying motion to dismiss the FTC's amended complaint and allowing the FTC's claims challenging Facebook's acquisitions of Instagram and WhatsApp to proceed); New York v. Facebook, Inc., 549 F. Supp. 3d 6 (D.D.C. 2021) (dismissing the States' complaint on laches grounds), *aff'd sub nom.* New York v. Meta Platforms, Inc., 66 F.4th 288 (D.C. Cir. 2023).

[63] FTC v. Meta Platforms, Inc., No. CV 20-3590 (JEB), 2025 WL 3458822 (D.D.C. Dec. 2, 2025).

prejudice when the challenged conduct is an acquisition that has been integrated for years? (4) When laches does not govern, what kinds of proof are required to establish an unlawful acquisition years after closing and what proof problems become central as time passes—including market definition in a fast-moving sector, the weight to give post-closing evidence in reconstructing the but-for world, causal attribution of market power or competitive effects to the acquisition rather than subsequent market evolution, and the administrability and proportionality of structural relief long after integration?

17. In August 2024, Judge Amit Mehta of the United States District Court for the District of Columbia ruled that Google violated Section 2 of the Sherman Act by willfully maintaining monopoly power in the markets for general search services and general text advertising.[64] The court found that Google's exclusive distribution agreements—under which Google paid Apple, Mozilla, and Android device manufacturers billions of dollars annually to make Google the default search engine—unlawfully foreclosed rivals from critical distribution channels and denied them the scale necessary to compete. The liability decision is the most significant Section 2 ruling since the D.C. Circuit's 2001 decision in *United States v. Microsoft Corp.*[65] The case has now entered a remedies phase, in which the DOJ has proposed structural relief that could include divestiture of the Chrome browser and modifications to Google's arrangements with Android device manufacturers and Apple.[66]^53 A paper could examine Judge Mehta's application of Section 2 doctrine—including his treatment of market definition, monopoly power, and exclusionary conduct—and critically assess whether the court's analytical framework adequately distinguishes anticompetitive exclusion from competition on the merits. The paper could also evaluate the competing remedial proposals and offer a normative framework for determining when structural relief is appropriate, administrable, and proportionate in platform monopolization cases.

18. On March 21, 2024, the DOJ and sixteen state attorneys general filed a civil antitrust action against Apple, alleging that Apple willfully acquired and maintained monopoly power in the smartphone market in violation of Section 2 of the Sherman Act.[67] The complaint alleges that Apple has maintained its monopoly not through superior products or innovation, but by imposing contractual restrictions and withholding access to hardware and software features that would enable developers to create products that threaten Apple's smartphone dominance. Specifically, the complaint challenges Apple's conduct with respect to five categories of products and services: (1) "super apps" that provide a broad collection of functionality capable of replacing the iPhone's native apps; (2) cloud streaming apps that would allow users to play high-quality video games without purchasing expensive hardware; (3) messaging apps, where Apple degrades the

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[64] United States v. Google LLC, No. 1:20-cv-03010-APM, 2024 WL 3647537 (D.D.C. Aug. 5, 2024) (Google Search). For many of the major filings in the case, see here (this site needs updating).

[65] 253 F.3d 34 (D.C. Cir. 2001) (en banc) (per curiam).

[66] *See* United States' Proposed Remedy Framework, United States v. Google LLC, No. 1:20-cv-03010-APM (D.D.C. filed Nov. 20, 2024). Google has opposed structural relief and proposed narrower behavioral remedies. *See* Defendant Google LLC's Proposed Remedy Framework, United States v. Google LLC, No. 1:20-cv-03010-APM (D.D.C. filed Dec. 18, 2024). A remedies hearing is scheduled for April 2025.

[67] Complaint, United States v. Apple Inc., No. 2:24-cv-04055 (D.N.J. filed Mar. 21, 2024); *see* Press Release, U.S. Dep't of Justice, Justice Department Sues Apple for Monopolizing Smartphone Markets (Mar. 21, 2024). For many of the major filings in the case, see here (this site needs updating).

experience of messaging between iPhones and Android devices by refusing to adopt the RCS standard; (4) smartwatches, where Apple limits the interoperability of rival watches with the iPhone; and (5) digital wallets, where Apple restricts third-party access to the iPhone's NFC tap-to-pay functionality.[68] A paper could examine the complaint's theory of smartphone monopolization, critically assess whether Apple's challenged conduct constitutes exclusionary behavior or legitimate product design, and evaluate how Section 2 doctrine should apply to firms that compete through integrated hardware-software ecosystems.

19. On August 13, 2020, Epic Games filed separate antitrust injunctive relief actions in the Northern District of California against Apple and Google, alleging that each company violated the Sherman Act by monopolizing the app distribution and in-app payment processing markets on its respective operating systems.[69] At the heart of the antitrust claims were the 30 percent commissions each platform charged on in-app purchases and the requirement that apps use their in-built payment systems. In both actions, the platforms counterclaimed for damages arising from the challenged restrictions. The two actions were not consolidated. Apple did not request a jury trial on its contract claims, and the *Apple* action was adjudicated in a bench trial. On September 10, 2021, Judge Yvonne Gonzalez Rogers entered judgment for Apple on the federal antitrust claims, which the Ninth Circuit affirmed.[70] Judge Rogers rejected the market definitions urged by each party, found the relevant market to be "digital mobile gaming transactions," and held that Apple lacked monopoly power in that market. Judge Rogers also found that Epic had breached its contractual obligations to Apple and was liable for damages.[71] In the *Google* action, Google requested a jury trial on its breach of contract claims. Over two years later, on December 11, 2023, in a trial conducted by Judge James Donato, the jury found that Google monopolized the Android app distribution market and the market for Android in-app billing services for digital goods and services.[72] Consequently, the jury found liability only on the antitrust claims, with Judge Donato deciding the scope of the injunction to be entered in a separate proceeding. A paper could examine the

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[68] Apple moved to dismiss the complaint on September 16, 2024. The motion remains pending.

[69] *See* Complaint for Injunctive Relief, Epic Games, Inc. v. Apple, Inc., No. 3:20-cv-05640 (N.D. Calif. filed Aug. 13, 2020) (see here for major filings); Complaint for Injunctive Relief, Epic Games, Inc. v. Google LLC, No. 3:20-cv-05671-JD (N.D.Calif. filed Aug. 13, 2020) (see here for major filings). On February 5, 2021, the Judicial Panel on Multidistrict Litigation consolidated multiple related consumer and developer litigations against Google into a multdistrict litigation named *In re* Google Play Store Antitrust Litigation and assigned the case to Judge James Donato of the Nothern District of California. *See* Transfer Order, *In re* Google Antitrust Litig., MDL No. 2981 (J.P.M.L. Feb. 5, 2021).

[70] Epic Games, Inc. v. Apple Inc., 559 F. Supp. 3d 898 (N.D. Cal. 2021), *aff'd in part, rev'd in part and remanded*, 67 F.4th 946 (9th Cir. 2023).

[71] In fact, Epic stipulated that it had breached its agreement with Apple and as to the damages for such breach. *Epic Games (Apple)*, 559 F. Supp. 3d at 1064, 1068.

[72] Verdict Form, *In re* Google Play Store Antitrust Litig., No. 3:20-cv-05671-JD (N.D. Calif. Dec. 11, 2023). Liability on the contract claims was not before the jury because Epic stipulated it had breached its contract with Google. *See* Final Jury Instructions for Epic Trial (Dec. 6, 2023) ("For Google's request for a judgment on its breach of contract counterclaim, Dkt. No. 833 at 2 n.2, the Court will decide Epic's illegality defense after the jury returns its verdict, and will treat the parties' stipulated facts, *id*. at 1-2, as proved."); Joint Set of Proposed Jury Instructions 1-2 & nn.1-2 (Dec. 4, 2023) (containing stipulations). If the jury had rejected Epic's antitrust claims, damages would have been tried to a jury in a separate proceeding. If the jury's verdict on Epic's antitrust claims was upheld, then the breached restrictive covenants should be void for public policy and the contract counterclaim dismissed.

similarities and differences in the operation of the Apple and Google app stores and in-app payment processing services, review the antitrust claims brought by the plaintiffs, critically analyze Judge Rogers' opinion, the Google Play Store jury's verdict and the decision by Judge Donato on Google's motion for judgment as a matter of law,[73] and conclude with an analysis of whether the two cases should have different antitrust outcomes.

20. Separately, a paper could explore the competing proposals for relief in the *Epic/Google* case and assess the merits of the relief Judge Donato ultimately granted.[74]

21. The Robinson-Patman Act (RPA) was passed in 1936 to strengthen prohibitions on price discrimination included in the Clayton Act. The RPA was intended to protect small dealers from the buying power advantages of large chain stores with which the small firms competed. The act bans sellers from charging different buyers different prices for goods of like grade and quality if the price difference harms competition between favored and disfavored purchasers.[75] Early court interpretations took an aggressive view and effectively eliminated any defense against a prima facie RPA violation. However, the RPA came under heavy criticism from opponents who argued that, under certain circumstances, price discrimination could be procompetitive rather than anticompetitive.[76] By the late 1970s, the federal enforcement agencies had largely ceased bringing Robinson-Patman Act cases, and in 1977, the Justice Department issued a lengthy report calling for the repeal of the RPA.[77] The FTC also effectively withdrew from RPA enforcement, limiting its investigations and prosecutions to industry-wide price discrimination with a clear anticompetitive effect. Biden antitrust officials, however, are interested in reviving RPA enforcement and have been investigating possible RPA violations for the first time in decades. On December 12, 2024, these efforts culminated in the FTC's suit against Southern Glazer's Wine and Spirits, alleging that the company engaged in unlawful price discrimination in violation of the Robinson-Patman Act by offering discounts and rebates to large buyers that it did not make available to smaller buyers.[78] A paper could examine the origins and purposes of the

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[73] *See* Order re Google's Renewed Motion for Judgment as Matter of Law or for New Trial in Epic Case (July 3, 2024) (reported at 2024 WL 3302068).

[74] *See* In re Google Play Store Antitrust Litig., No. 20-CV-05671-JD, 2024 WL 4438249 (N.D. Cal. Oct. 7, 2024), *aff'd*, 147 F.4th 917 (9th Cir. 2025), *and modified*, 152 F.4th 1078 (9th Cir. 2025).

[75] This type of price discrimination is called *secondary line price discrimination* in antitrust law and *third degree price discrimination* in economics. The RPA also prohibits primary line price discrimination (predatory pricing), certain discrimination in promotional allowances and fees, and certain types of commercial bribery. This paper topic only concerns secondary line price discrimination.

[76] For a treatment of the economics of price discrimination, see, for example, Dennis Carlton & Mark Israel, *Should Competition Policy Prohibit Price Discrimination?*, *in* THE HANDBOOK OF COMPETITION ECONOMICS (2009).

[77] U.S. Dep't of Justice, Report on the Robinson-Patman Act (1977). For a good history of RPA enforcement through the early 1980s, *see* Hugh C. Hansen, *Robinson-Patman Law: A Review and Analysis*, 51 FORDHAM L. REV. 1133 (1984); *see also* Timothy J. Muris & Jonathan E. Nuechterlein, *Antitrust in the Internet Era: The Legacy of United States v. A&P*, 54 REV. INDUS. ORG. 651 (2019) (examining A&P's conduct as a factor in the passage of the Robinson Patman Act).

[78] *See* Complaint, FTC v. Southern Glazer's Wine & Spirits, LLC, No. 8:24-cv-02684 (C.D. Calif. filed Dec. 12, 2024); Press Release, Fed. Trade Comm'n, FTC Sues Southern Glazer's for Illegal Price Discrimination (Dec. 12, 2024). On April 17, 2025, the district court denied Southern Glazer's motion to dismiss and the case is

RPA, briefly survey the seminal early cases, examine the possible anticompetitive and procompetitive effects of price discrimination, review the decline in agency enforcement, and explore the Biden administration's efforts to revive RPA enforcement.[79] The paper could conclude with a normative proposal of how antitrust law should treat price discrimination today.

22. The doctrine of fraudulent concealment tolls the running of the statute of limitations where (1) the defendants acted affirmatively to conceal their violation of the law, (2) the plaintiff lacked actual or constructive knowledge of its claim against the defendants, and (3) the plaintiff exercised due diligence given the state of its knowledge in investigating its possible cause of action up until the time the plaintiff actually discovered the operative facts underlying its claim. A paper could critically examine in depth the doctrine of fraudulent concealment, including the following questions:

    a. What constitutes an "affirmative act of concealment"? Must the act of concealment be separate and apart from the acts that constitute the violation itself, or are some antitrust violations "self-concealing" and require no separate act?
    b. What constitutes "actual or constructive knowledge" of a claim
    c. What constitutes "inquiry notice," that is, what are the characteristics of the set of facts that put a plaintiff on notice that it may have an antitrust claim and so trigger a duty to exercise due diligence or lose the benefit of the further tolling of the statute of limitations?

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continuing. *See* Order Denying Defendant's Motion To Dismiss, FTC v. S. Glazer's Wine & Spirits, LLC, No. 8:24-CV-02684-FWS-ADS (C.D. Cal. Apr. 17, 2025) (reported at 2025 WL 1392166).

Separately, on January 17, 2025—the last business day of the Biden administration—the FTC, in a 3-2 vote, authorized the filing of a complaint alleging that PepsiCo violated the Robinson-Patman Act by providing discriminatory promotional payments and services to a favored big-box retailer—later revealed to be Walmart—while failing to make equivalent benefits available to competing retailers on proportionally equal terms. Complaint for Permanent Injunction, FTC v. PepsiCo, Inc., No. 1:25-cv-00664 (S.D.N.Y. filed Jan. 23, 2025). The complaint invoked Sections 2(d) and 2(e) of the Act, which prohibit discriminatory promotional allowances and services, rather than the price discrimination provision of Section 2(a). Because Sections 2(d) and 2(e) are per se violations, the FTC was not required to prove competitive injury. The case drew sharp dissents from Commissioners Ferguson and Holyoak, who characterized the suit as politically motivated and lacking evidentiary support. After Commissioner Ferguson became Chairman in the Trump 2.0 administration, the FTC voluntarily dismissed the complaint without prejudice on May 22, 2025. Notice of Voluntary Dismissal Pursuant to F.R.C.P. 41(a)(1)(A)(i), FTC v. PepsiCo, Inc., No. 1:25-cv-00664-JMF (S.D.N.Y. May 22, 2025).

[79] For example, the FTC issued a policy statement warning drug companies and pharmacy benefits managers that their rebates and other pricing schemes could violate the RPA. *See* Fed. Trade Comm'n, Policy Statement of the Federal Trade Commission on Rebates and Fees in Exchange for Excluding Lower-Cost Drug Products (June 16, 2022). For other reports on the FTC's interest in enforcing the RPA, see Mary G. Kaiser & Aaron Heath Scheinman, Morrison & Foerster, *FTC Will Move Forward with Robinson-Patman Act Enforcement "in Short Order"* (Mar. 28, 2023); Alden Abbott & Satya Marar, *The Robinson-Patman Act: A Statute at Odds with Competition and Economic Welfare* (Mercatus Center, George Mason University June 6, 2023); Cong. Rsch. Serv., LSB11257, FTC Revives Enforcement of the Robinson-Patman Act (Dec. 2024); Mark Ross Meador, *Not Enforcing the Robinson-Patman Act is Lawless and Likely Harms Consumers*, Federalist Soc'y Blog (July 9, 2024) (defending RPA enforcement—Meador is now an FTC commissioner). *See generally* Daniel A. Hanley, *Controlling Buyer and Seller Power: Reviving Enforcement of the Robinson-Patman Act*, 52 HOFSTRA L. REV. 313 (2024); Brian Callaci, Daniel A. Hanley & Sandeep Vaheesan, *The Robinson-Patman Act as a Fair Competition Measure*, 97 TEMP. L. REV. 185 (2025).

d. Once on inquiry notice, how much diligence is "due," that is, what efforts must the potential plaintiff make to investigate whether it has a claim against the defendant to satisfy the requirement that it has exercised due diligence?
e. Does the doctrine of fraudulent concealment continue to toll the running of the statute of limitations if the plaintiff, on inquiry notice, conducts its due diligence but concludes that it has insufficient information to file a complaint consistent with the requirements of Rule 11 of the Federal Rules of Civil Procedure?
f. In a multiperson conspiracy, does the doctrine of fraudulent concealment apply separately to each potential defendant?

23. In the *Apple eBooks* case,[80] the district court, in a bench trial, found that Apple and five ebook publishers had engaged in a price-fixing conspiracy by jointly agreeing to adopt an "agency" model for ebook pricing. As part of the relief, the district court ordered Apple to revise and tighten its antitrust compliance program and appointed a "monitor" to watch over Apple's compliance with this part of the order. In a filing on November 27, 2013, Apple objected to the monitor's activities, alleging that the monitor was "already operating in an unfettered and inappropriate manner, outside the scope of the Final Judgment, admittedly based on secret communications with the Court, and trampling Apple's rights." What powers can a monitor have to monitor compliance with a court order, and did the Apple monitor go too far?

24. On January 15, 2025, the FTC, joined by the Illinois and Minnesota Attorneys General, filed a Section 13(b) complaint in the Northern District of Illinois alleging that John Deere monopolized the market for certain repair services for large Deere tractors and combines in violation of Section 5 of the FTC Act, Section 2 of the Sherman Act, and Illinois and Minnesota antitrust law.[81] According to the complaint, Deere, the world's largest manufacturer of large tractors and combine harvesters, willfully maintained its monopoly power over repair services by limiting the ability of farmers and independent repair providers (IRPs) to repair Deere equipment. Among other things, the complaint alleges that Deere restricts access to Service ADVISOR, a critical software repair tool, making it available only to its authorized dealers. This practice forces farmers to rely on Deere's network of authorized dealers for necessary repairs, allegedly resulting in inflated repair costs and delays. The complaint seeks a permanent injunction to prevent Deere from continuing its restrictive practices and to ensure that farmers and independent repair shops have access to the necessary tools and information for repairs. In June 2025, the district court denied Deere's motion for judgment on the pleadings and held that the plaintiffs had plausibly alleged monopolization and unfair competition claims.[82] As a

[80] United States v. Apple, Inc., No. 1:12-CV-2826, 2013 WL 4774755 (S.D.N.Y. Sept. 5, 2013), *aff'd*, 791 F.3d 290 (2d Cir. 2015).

[81] Complaint, FTC v. Deere & Co. , No. 3:25-cv-50017 (N.D. Ill. filed Jan. 15, 2025); *see* Press Release, Fed. Trade Comm'n, FTC, States Sue Deere & Company to Protect Farmers from Unfair Corporate Tactics, High Repair Costs (Jan. 15, 2025).

[82] Related antitrust right-to-repair challenges to Deere have proceeded on parallel tracks before Judge Iain D. Johnston. In the private MDL, the court denied Deere's Rule 12(c) motion for judgment on the pleadings, holding the consolidated complaint plausibly alleged relevant markets (including an aftermarket theory) and exclusionary conduct sufficient to proceed. *See* Memorandum Opinion and Order, Deere & Co. Repair Servs. Antitrust Litig., No. 3:22-cv-50188, MDL No. 3030 (N.D. Ill. Nov. 27, 2023) (reported at 703 F. Supp. 3d 862). In the subsequent government action, the FTC and the States of Illinois and Minnesota filed suit on January 15, 2025, and later filed an amended complaint adding Arizona, Michigan, and Wisconsin; on June 9, 2025, the court denied Deere's Rule 12(c)

result, the case is proceeding through discovery and pretrial motions. A paper could critically evaluate the extent to which FTC Act § 5 and Sherman Act § 2 provide a basis for establishing a "right to repair," as sought by the FTC and its co-plaintiffs in this case.

These are just suggestions. Feel free to come up with your own ideas. Just remember that we must agree on the question before you start writing. Also, when considering a question, it is essential to match the amount of work to the credits you are taking.

If you start thinking about a paper topic, I would be delighted to discuss it with you over email, the phone, or Zoom. Just let me know when is a convenient time for you. If we do not talk beforehand, I look forward to meeting you at our first class on Tuesday, January 13.

Dale Collins

P.S. At some point early in the course, be sure to familiarize yourself with the materials on writing seminar papers. You can find them on Canvas or AppliedAntitrust.com.

motion, holding that the amended complaint plausibly alleged relevant markets, monopoly power, exclusionary conduct (including restrictions on access to Deere's full-function diagnostic/repair tools and related information), and resulting anticompetitive effects. *See* Memorandum Opinion and Order, FTC v. Deere & Co., No. 3:25-cv-50017 (N.D. Ill. June 9, 2025) (reported at 2025 WL 1638474).