

Selected Bibliography for:

Penn Law Review Antitrust Symposium

The Post-Chicago Antitrust Revolution

October 11-12, 2019

Panel 1: The History & Framing of the Chicago School

How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust (Robert Pitofsky ed., 2008), available at <u>Biddle</u>.

POST-CHICAGO DEVELOPMENTS IN ANTITRUST LAW (Antonio Cucinotta et al., eds., 2002), available at Biddle.

Jonathan B. Baker, *A Preface to Post-Chicago Antitrust, in* Post-Chicago Developments in Antitrust Law 60 (Antonio Cucinotta et al., eds., 2002), *available here*.

Daniel D. Crane, Chicago, Post-Chicago, & Neo-Chicago, 76 U. CHI. L. REV. 1911 (2009), available here.

Eleanor M. Fox, *The Efficiency Paradox, in* How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust 77 (Robert Pitofsky ed., 2008), *available <u>here</u>*.

______, Post-Chicago, Post-Seattle & the Dilemma of Globalization, IN POST-CHICAGO DEVELOPMENTS IN ANTITRUST LAW 76 (Antonio Cucinotta et al., eds., 2002), available at Biddle.

Herbert Hovenkamp, Antitrust Policy after Chicago, 84 MICH. L. REV. 213 (1985), available here.

_____, *The Reckoning of Post-Chicago Antitrust,* IN POST-CHICAGO DEVELOPMENTS IN ANTITRUST LAW 1 (Antonio Cucinotta et al., eds., 2002), *available at Biddle*.

Thomas E. Kauper, *Influence of Conservative Economic Analysis on the Development of the Law of Antitrust, in* How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust 40 (Robert Pitofsky ed., 2008), *available at <u>Biddle</u>*.

John E. Lopatka & William H. Page, "Obvious" Consumer Harm in Antitrust Policy: the Chicago School, the Post-Chicago School & the Courts, in Post-Chicago Developments in Antitrust Law 129 (Antonio Cucinotta et al., eds., 2002), available <u>here</u>.

Daniel L. Rubinfeld, On the Foundations of Antitrust Law & Economics, in HOW THE CHICAGO SCHOOL



Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust 51 (Robert Pitofsky ed., 2008), available at <u>Biddle</u>.

F. M. Scherer, *Conservative Economics & Antitrust: A Variety of Influences, in* How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust 30 (Robert Pitofsky ed., 2008), *available at Biddle*.

______, Some Principles for Post-Chicago Antitrust Analysis, 52 CASE W. RES. L. REV. 5 (2001), available <u>here</u>.

Richard Schmalensee, *Thoughts on the Chicago Legacy in U.S. Antitrust, in* How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust 11 (Robert Pitofsky ed., 2008), *available at Biddle*.

Joshua D. Wright, *Abandoning Antitrust's Chicago Obsession: The Case for Evidence-Based Antitrust*, 78 ANTITRUST L.J. 241 (2012), *available* <u>here</u>.

Joshua D. Wright et al., *Requiem for a Paradox: The Dubious Rise & Inevitable Fall of Hipster Antitrust*, 51 ARIZ. ST. L.J. 293 (2019), *available <u>here</u>*.

Panel 2: Monopoly Power

Donald Brown & G. A. Wood, *The Social Cost of Monopoly Power* (Yale ICF Working Paper, 2004), available <u>here</u>.

David S. Evans & Keith N. Hylton, *The Lawful Acquisitions & Exercise of Monopoly Power & Its Implications for the Objectives of Antitrust*, 4 Competition Pol'Y Int'l 203 (2008), available <u>here</u>.

C. Scott Hemphill & Tim Wu, Parallel Exclusion, 122 YALE L.J. 1182 (2013), available here.

Michael S. Jacobs, Second Order Oligopoly Problems with International Dimensions: Sequential Mergers, Maverick Firms & Buyer Power, IN POST-CHICAGO DEVELOPMENTS IN ANTITRUST LAW 161 (Antonio Cucinotta et al., eds., 2002), available at <u>Biddle</u>.

John B. Kirkwood & Robert H. Lande, *The Chicago School's Foundation Is Flawed: Antitrust Protects Consumers, Not Efficiency, in* How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust 89 (Robert Pitofsky ed., 2008), *available at <u>Biddle</u>*.



Thomas G. Krattenmaker, Robert H. Lande & Steven C. Salop, *Monopoly Power & Market Power in Antitrust Law*, 76 GEO. L.J. 241 (1987), *available here*.

Robert H. Lande, *Market Power Without a Large Market Share: The Role of Imperfect Information & Other 'Consumer Protection' Market Failures* (American Antitrust Institute Working Paper, March 14, 2007), *available <u>here</u>*.

______, A Traditional & Textualist Analysis of the Goals of Antitrust: Efficiency, Preventing Theft from Consumers, & Consumer Choice, 81 FORDHAM L. REV. 2349 (2013), available here.

Robert H. Lande & Chris Sagers, Who Should Conservatives Blame for Alex Jones' Ban from Social Media? Themselves, SLATE ONLINE (Aug. 24, 2018), available here.

Robert H. Lande & Richard O. Zerbe, *Anticonsumer Effects of Union Mergers: An Antitrust Solution*, 46 DUKE L.J. 197 (1996), *available here*.

Marina Lao, 'Neutral' Search as a Basis for Antitrust Action?, Harv. J.L. & Tech. Occasional Paper Series (July 2013), available <u>here</u>.

_____, Search, Essential Facilities, & the Antitrust Duty to Deal, 11 Nw. J. Tech. & Intell. Prop. 275 (2013), available here.

Barak Orbach, *The Durapolist Puzzle: Monopoly Power in Durable-Goods Market*, 21 YALE J. ON REG. 67 (2004), *available here*.

Anna Pavlova & Suleyman Basak, *Monopoly Power & the Firm's Valuation: A Dynamic Analysis of Short Versus Long-Term Policies* (MIT Sloan Working Paper, 2001), *available here*.

Rudolph J. R. Peritz, *Dynamic Efficiency & US Antitrust Policy, in Post-Chicago Developments in Antitrust Law 108 (Antonio Cucinotta et al., eds., 2002), available at <u>Biddle</u>.*

Ganesh Sitaraman, *Taking Antitrust Away from the Courts: A Structural Approach to Reversing the Second Age of Monopoly Power* (Vanderbilt L. Res. Paper, Jan. 16, 2019), *available here*.

Tim Wu, Intellectual Property, Innovation, & Decentralized Decisions, 92 VA. L. REV. 123 (2006), available here.



Panel 3: Merger Underenforcement

Jonathan B. Baker & Fiona Scott Morton, *Antitrust Enforcement against Platform MFNs*, 127 YALE L.J. 2176 (2018), *available <u>here</u>*.

Jonathan B. Baker et al., *Five Principles for Vertical Merger Enforcement Policy* (Georgetown Law Faculty Publications, 2019), *available* <u>here</u>.

Jonathan B. Baker, Jonathan Sallet & Fiona Scott Morton, *Unlocking Antitrust Enforcement*, 127 YALE L.J. 1916 (2018), *available <u>here</u>*.

Jonathan B. Baker & Carl Shapiro, *Reinvigorating Horizontal Merger Enforcement, in* How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust 235 (Robert Pitofsky ed., 2008), *available here*.

Cory S. Capps, Buyer Power in Health Plan Mergers, 6 J. Competition L. & Econ. 375 (2010), available <u>here</u>.

Cory S. Capps et al., *The Silent Majority Fallacy of the Elzinga-Hogarty Criteria: A Critique & New Approach to Analyzing Hospital Mergers* (NBER Working Paper, Apr. 2001), *available here*.

Ulrich Doraszelski et al., Ownership Concentration & Strategic Supply Reduction (CEPR Discussion Paper, Mar. 2014), available here.

Joseph Farrell, *Negotiation & Merger Remedies: Some Problems* (UC Berkeley, Competition Policy Center Working Paper, Feb. 7, 2004), *available here*.

Joseph Farrell & Carl Shapiro, *Antitrust Evaluation of Horizontal Mergers: An Economic Alternative to Market Definition* (Feb. 15, 2010), *available here*.

______, *Scale Economies & Synergies in Horizontal Merger Analysis* (UC Berkeley, Center for Competition Policy Working Paper, Feb. 18, 2004), *available here*.

Lawrence M. Frankel, *The Flawed Institutional Design of U.S. Merger Review: Stacking the Deck against Enforcement*, 2008 UTAH L. REV. 159 (2008), available <u>here</u>.

Joseph E. Harrington, Jr., How Do Hub-and-Spoke Cartels Operate? Lessons from Nine Case Studies (Aug. 24, 2018), available <u>here</u>.

C. Scott Hemphill & Nancy L. Rose, Mergers that Harm Sellers, 127 YALE L.J. 2078 (2018), available here.



C. Scott Hemphill & Philip J. Weiser, *Beyond* Brooke Group: *Bringing Reality to the Law of Predatory Pricing*, 127 YALE L.J. 2048 (2018), *available* <u>here</u>.

Herbert Hovenkamp, Prophylactic Merger Policy, 70 HASTINGS L.J. 45 (2018), available here.

Herbert Hovenkamp & Carl Shapiro, *Horizontal Mergers, Market Structure, & Burdens of Proof,* 127 YALE L.J. 1996 (2018), *available here*.

Michael Katz & Jonathan Sallet, *Multisided Platforms & Antitrust Enforcement*, 127 YALE L.J. 2142 (2018), available here.

Jon Leibowitz, Building on the Muris & Pitofsky Years: Evolving Remedies from "Time-Outs" to Civil Penalties (Not the Third Rail of Antitrust), 80 Tul. L. Rev. 595 (2005), available here (PennKey required).

Fiona Scott Morton & Herbert Hovenkamp, *Horizontal Shareholding & Antitrust Policy*, 127 YALE L.J. 2026 (2018), *available here*.

Steven C. Salop, Invigorating Vertical Merger Enforcement, 127 YALE L.J. 1962 (2018), available here.

Howard Shelanski, Antitrust & Deregulation, 127 YALE L.J. 1922 (2018), available here.

Tim Wu, *Taking Innovation Seriously: Antitrust Enforcement If Innovation Mattered Most*, 78 ANTITRUST L.J. 313 (2012), *available <u>here</u>*.

Panel 4: Antitrust & Patent Holdup

(2012), available here.

Michael A. Carrier, <i>Innovation for the 21st Century: A Response to Seven Critics</i> , 61 ALA L. REV. 597 (2010) available <u>here</u> .
, Patent Assertion Entities: Six Actions the Antitrust Agencies Can Take, CPI ANTITRUST CHRONICLE, Jan. 30, 2013, available here .
, Unsettling Drug Patent Settlements: A Framework for Presumptive Illegality, 108 MICH. L. REV. 3 (2009), available here .
Colleen V. Chien & Mark A. Lemley, Patent Holdup, the ITC, & the Public Interest, 98 CORNELL L. REV. 1



Jorge L. Contreras, A Brief History of FRAND: Analyzing Current Debates in Standard Setting & Antitrust through a Historical Lens, 80 Antitrust L.J. 39 (2015), available <u>here</u>. , Fixing FRAND: A Pseudo-Pool Approach to Standards-Based Patent, TPRC 41: The 41st Research Conference on Communication, Information & Internet Policy, Mar. 31, 2013, available here. , Much Ado about Holdup, 2019 U. ILL. L. REV. 875 (2019), available here. , Technical Standards & Ex Ante Disclosure: Results & Analysis of an Empirical Study, 53 JURIMETRICS 163 (2013), available here. , Technical Standards, Standards-Setting Organizations & Intellectual Property: A Survey of the Literature (with an Emphasis on Empirical Approaches) (University of Utah College of Law Research Paper, Feb. 26, 2019), available here. Douglas H. Ginsburg, Koren Wong-Ervin & Joshua D. Wright, The Troubling Use of Antitrust to Regulate FRAND Licensing, 10 CPI ANTITRUST CHRON. 2 (2015), available here. Bruce H. Kobayashi & Joshua D. Wright, Federalism, Substantive Preemption, & Limits on Antitrust: An Application to Patent Holdup, 5 J. COMPETITION L. & POL'Y 469 (2009), available here. , The Limits of Antitrust & Patent Holdup: A Reply to Cary et al., 78 ANTITRUST L.J. 505 (2012), available here. Mark A. Lemley, Ten Things to Do about Patent Holdup of Standards (and One Not to), 48 B.C. L. REV. 149 (2007), available here. Mark A. Lemley & Carl Shapiro, Patent Holdup & Royalty Stacking, 85 Tex. L. Rev. 1991 (2007), available here.

A. Douglas Melamed & Carl Shapiro, *How Antitrust Law Can Make FRAND Commitments More Effective*, 127 YALE L.J. 2110 (2018), available <u>here</u>.

Joanna Tsai & Joshua D. Wright, *Standard Setting, Intellectual Property Rights, & the Role of Antitrust in Regulating Incomplete Contracts*, 80 ANTITRUST L.J. 157 (2015), *available here*.

Joshua D. Wright & Aubrey N. Stuempfle, *Patent Holdup, Antitrust, & Innovation: Harness or Noose?*, 61 ALA. L. REV. 559 (2010), *available here*.



Panel 5: Resetting Antitrust Presumptions

THE ANTITRUST REVOLUTION: ECONOMICS, COMPETITION, & POLICY, 6th ed. (John E. Kwoka, Jr. & Lawrence J. White eds., Oxford 2014), *available* at <u>Biddle</u>.

David S. Evans & Richard Schmalensee, *The Industrial Organization of Markets with Two-Sided Platforms*, 3 COMPETITION POL'Y INT'L 151 (2007), *available here*.

Harry First & Andrew I. Gavil, *Re-Framing Windows: The Durable Meaning of the Microsoft Antitrust Litigation*, 2006 UTAH L. REV. 641 (2006), available <u>here</u>.

John J. Flynn, *The Role of Rules in Antitrust Analysis*, 2006 UTAH L. REV. 605 (2006), available <u>here</u>. (PennKey required).

Andrew I. Gavil, *The FTC's Study & Advocacy Authority in Its Second Century: A Look Ahead*, 83 GEO. WASH. L. REV. 1902 (2015), *available* <u>here</u>.

John Michael Grant, Antitrust Wars: A New (False) Hope? The Supreme Court's Decision in Apple v. Pepper (June 5, 2019), available <u>here</u>.

Jeremy C. Kress, Modernizing Bank Merger Review, 37 YALE J. ON REG. ___ (2020), available here.

Geoffrey A. Manne & Joshua D. Wright, *Innovation & the Limits of Antitrust* (George Mason Law & Economics Research Paper, Oct. 27, 2012), *available* <u>here</u>.

Steven C. Salop, An Enquiry Meet for the Case: Decision Theory, Presumptions, & Evidentiary Burdens in Formulating Antitrust Legal Standards (Georgetown University Law Center, Nov. 6, 2017), available here.

______, The Evolution & Vitality of Merger Presumptions: A Decision-Theoretic Approach (June 22, 2015), available here.

Frederic M. Scherer, *The Political Economy of Patent Policy Reform in the United States* (KSG Working Paper, Oct. 2007), *available here*.

Jennifer E. Sturiale, *Compulsory Licensing of Intellectual Property as Merger Remedy: A Decision-Theoretic Approach*, 72 LA. L. REV. 605 (2012), available <u>here</u>.

Joshua D. Wright & Douglas H. Ginsburg, Whither Symmetry? Antitrust Analysis of Intellectual Property Rights at the FTC & DOJ, 9 COMPETITION POL'Y INT'L (2013), available here.