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MICHIGAN STATE UNIVERSITY ■ INSTITUTE OF PUBLIC UTILITIES REGULATORY RESEARCH AND EDUCATION

ANTITRUST LAW AND POLICY FOR REGULATED INDUSTRIES

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KEY STATUTES

Interstate Commerce Act (1887)

- See Revised Interstate Commerce Act of 1978, 49 USC, section 10101 et. seq. (49 USC 10101 et seq., 2011)
- Originally authorized to regulate the railroad industry and to deter formation of monopolies.
- Created and authorized the first regulatory commission, the Interstate Commerce Commission, which was charged with requiring that interstate railroad rates be just and reasonable and non-discriminatory.
- The Motor Carrier Act of 1935 extended the jurisdiction of the Interstate Commerce Commission to interstate motor carriers. Motor Carrier rate regulation was subsequently deregulated.
- The agency was terminated in 1995.

Sherman Anti-Trust Act (1890) [\[link\]](#)

- Title 15, United States Code, sections 1-7 (15 USC 1-7, 2011).
- Allows the Federal Government to investigate and regulate trusts, companies, and organizations which attempt to form monopolies or cartels. The act is still valid and continues to form the basis for most antitrust prevention.

Clayton Act (1914) [\[link\]](#)

- Title 15, United States Code, sections 12-27 (15 USC 12-27, 2011).
- Prevents anticompetitive practices, and bolsters the already enacted Sherman Anti-trust Act.

United States Federal Trade Commission Act (1914) [\[link\]](#)

- Title 15, United States Code, sections 41-58 (15 USC 41-58, 2011)
- Creates and enables the Federal Trade Commission.

Federal Power Act (1920)

- Title 16 United States Code, sections 791-828c. (16 USC 791-828c (2011)).
- Created and authorized the Federal Power Commission and its successor, the Federal Energy Regulatory Commission to regulate wholesale sales and the transmission services of electric utilities in interstate commerce.

Federal Communications Act (1934)

- Title 47 United States Code, sections 151-620. (47 USC 151-620 (2011)).

- Created and authorized the Federal Communications Commission to regulate all interstate and foreign communications by wire and radio, telegraph, telephone, and broadcast and to make communication by wire/radio affordable and available to all people.

Public Utility Holding Company Act (1935)

- Title 42 United States Code, section 16451 et. seq. (15 USC 16451 et. seq. (2011)).
- Also referred to as the Wheeler-Rayburn Act.
- Required non-exempt holding companies to register with and be subject to close financial regulation by the SEC, which also discouraged and limited their formation.
- Repealed and replaced by the Public Utility Holding Company Act of 2005 under the Energy Policy Act, which gives the Federal Energy Regulatory Commission a limited role in allocating costs of multi-state electric utility companies to individual subsidiary companies.

Robinson-Patman Act (1936)

- Title 15 United States Code, section 13 (15 USC 13 (2011)).
- Also referred to as the "Anti-Price Discrimination Act."
- Amends the Clayton Act by preventing unfair price discrimination (sellers must offer the same price terms to customers at a given trade level).

Natural Gas Act (1938)

- Title 15 United States Code, sections 717-717z. (15 USC 717-717z (2011)).
- Enabling statute that extended the Federal Power Commission's, and its successor, the Federal Energy Regulatory Commission's, authority over interstate gas pipeline transmission service.
- Open access to interstate gas pipeline transmission was afforded through FERC Order 436.

Celler-Kefauver Act (1950)

- Title 15 United States Code, section 18 (15 USC 18 (2011)).
- Also referred to as the "Anti-Merger Act."
- Prohibits asset acquisition of competitor companies if competition would be reduced as a result of such acquisition.

The Public Utilities Regulatory Policy Act (PURPA, 1978)

- Section 201 established that qualified facilities (QFs) that were either cogeneration or small renewable energy facilities could interconnect with electric utilities.
- Electric utilities were required to purchase power from QFs at the utilities' own avoided costs.

Staggers Act (1980)

- Significantly deregulated rate regulation of railroads, while requiring railroads to provide access to each others' bottleneck facilities.

The Energy Policy Act (1992)

- Created Exempt Wholesale Generators that were exempt from the PUHCA. Also provided for open transmission access to any generator, whether or not owned by a utility.

Telecommunications Act (1996)

- Allowed telecommunications carriers to enter into other lines of business and also made the regulation of telecommunication and communication services technology neutral, so that different rules did not apply to different technologies.

KEY CASES

Keogh v. Chicago & N.W.R.CO., 260 U.S. 156 (1922).

- Plaintiff cannot recover under Sherman Anti-Trust act unless they can show defendant's actions caused a specific amount of damages (proven with factual/legal evidence). Fixed-Rate or Filed-Rate Doctrine. [\[link\]](#)

Brown Shoe Co. v. United States, 370 U.S. 294 (1962).

- Anti-trust policy protects competition, not competitors. Here, the Court recognized that products, like shoes, although similar are not the same. Thus, a company that now sells shoes for men, women, and children is not necessarily creating a monopoly, as each product is marketed toward different groups. However, based on the circumstances, a monopoly may be present when such consolidations begin to reduce competition amongst other companies.

Parker v. Brown, 317 U.S. 341 (1943).

- The validity of a California Agricultural program was challenged because it allegedly conflicted with federal antitrust law; the court heard the case because it was "arising under" a "law regulating commerce, and a specific amount in controversy was not necessary as the case rose under anti-trust law. In this case, state action is exempt from antitrust regulation. [\[link\]](#)

National Broadcasting Co. v. United States, 319 U.S. 190 (1943).

- The Supreme Court held that the FCC has the authority to enact and enforce regulations over associations between broadcasting networks and affiliate stations.

McLean Trucking Co. v. United States, 321 U.S. 67 (1944).

- The Supreme Court held:
"Under the Commission's order in this case the relatively close holdings which will emerge from the consolidation cannot be altered without the Commission's approval. And it is the consolidation as approved which is exempted from the operation of the anti-trust laws and the prohibition against rail affiliation without approval. Any future change which may bring the consolidation into clash with either prohibition may be considered when it arises." 321 U.S. at 91-92.
- The Supreme Court held, here, that a companies' consolidation does not violate anti-trust laws so long as it received permission from the commission.

F.C.C. v. FCA Communications, Inc., 346 U.S. 86 (1953).

- "What may substantially lessen competition in those areas where competition is the main reliance for regulation of the market cannot be automatically transplanted to areas in which active regulation is entrusted to an administrative agency... What competition is and should be in such areas must

be read in the light of the special considerations that have influenced Congress to make specific provision for the particular industry." 346 U.S. at 98.

United States v. RCA, 358 U.S. 334 (1959).

- "Antitrust considerations" are relevant to the issue of "public interest, convenience, and necessity;" thus the Justice Department was free to challenge the merger despite the FCC's express permission, approving the merger.

California v. F.P.C., 369 U.S. 482 (1962).

- The Commission should not have made a decision on the merits of a merger application while there was a pending suit in the court system, for the same matter, challenging the validity of the transaction under antitrust law. The Court held that the Commission should have waited for the court's decision.

United States v. El Paso Natural Gas Company., 376 U.S. 651 (1964).

- "The effect on competition in a particular market through acquisition of another company is determined by the nature or extent of that market and by the nearness of the absorbed company to it, that company's eagerness to enter that market, its resourcefulness, and so on." 376 U.S. at 660.

Carterfone v. AT&T, 13 F.C.C.2d 420 (1968), reconsideration denied, 14 F.C.C.2d 571.

- This case gave consumers permission to purchase a range of equipment and functions (in addition to what their utility company provided them) for telephones. It is often considered an integral part the internet's growth.

Northern Natural Gas Co. v. Federal Power Commission, 399 F.2d. 953 (D.C. Cir. 1968).

- "The Commission failed to apply proper standards to determine relevant antitrust policy and consequently ignored significant anti-competitive effects of the joint venture... Commission should weigh the foreseeable gains from limited competition along with other economic, social and political factors encompassed within the "public interest" concept. Furthermore, unless it is determined that other considerations, such as gas quality, greater expansibility and convenience afforded by a new, outweigh any cost advantages of an exchange-displacement project, then the Commission must also reconsider those elements of its cost analysis which we have found to be unsupported by sufficient evidence." 388 F.2d. at 977

Gulf States Utilities Co. v. Federal Power Commission, 411 U.S. 747 (1973).

- The Supreme Court held that FPC has a broad duty of conducting independent review of rates because it assumed public utilities may abuse their market power.

Otter Tail Power Co v. United States, 410 U.S. 366 (1973).

- Supreme Court ruled that a monopoly, in this case, Defendant electric utility, has a duty to share its crucial facilities with nondiscriminatory terms, and allow a competitor to transmit power over its lines. Here, the electric utility had violated the Sherman Act by only supplying electricity to customers directly and refusing to supply by wholesale.

Verizon Communications, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398 (2004).

- The Supreme Court held that the Telecommunication Act (1996), which creates a duty for telecommunications utilities to share their networks with competitors, did alter the basic application of the Sherman Anti-Trust Act. The Court reasoned that the Telecommunications Act did not create or permit new claims. [\[link\]](#)

Public Utility District No. 1 of Grays Harbor County v. Idacorp, Inc., 379 F.3d. 641 (9th Cir. 2004)

- “While market-based rates may not have historically been the type of rate envisioned by the *filed rate doctrine*, we conclude that they do not fall outside the purvey of the doctrine.” 379 F.3d. at 651. [\[link\]](#)

Credit Suisse Securities (USA) LLC v. Billing, 551 U.S. 264 (2007).

- By Congress creation of the Securities and Exchange Commission (SEC), the SEC is implicitly precluded from applying antitrust laws to regulated industries. [\[link\]](#)

Pacific Bell Telephone Co. v. LinkLine Communications, Inc., 503 F.3d. 876 (2007).

- The court permitted Defendant to sell space on its phone lines at an inflated price so that Plaintiff could deliver internet service; basically, Defendant was not required to sell the space at a reasonable price at both the retail and wholesale levels.

Complaint, *United States v. Morgan Stanley*, before United States District Court for the Southern District of New York (filed Sept. 30, 2011).

- Alleges that a swap agreement between Morgan Stanley and KeySpan ensured that capacity would be withheld from the electricity generation market, inflating prices to retail suppliers and consumers and associated profits. [\[link\]](#)

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FILMS

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The Informant (Directed by Steven Soderbergh, 2009). A fact-based film showing a humorous account of the 1996 Lysine price fixing controversy. [\[link\]](#)

Fair Fight in the Marketplace (Directed by David Donnenfield & Kevin White, 2007). A short history of antitrust laws in American, including case studies, commentaries, and additional insights. [\[link\]](#)