Table of Contents

CHAPTER 1. OVERVIEW

§ 1:1 Introduction

CHAPTER 2. PRICE-FIXING AGREEMENTS

- § 2:1 Overview
- § 2:2 Direct evidence of price-fixing
- § 2:3 Per se rule or rule of reason?
- § 2:4 Agreements indirectly involving price
- § 2:5 Bid rigging
- § 2:6 Surreptitiously-obtained evidence of price fixing
- § 2:7 Class actions involving price fixing claims
- § 2:8 Sufficiency of civil complaint based on criminal case
- § 2:9 The single enterprise theory—Copperweld and American Needle
- § 2:10 State antitrust laws
- § 2:11 Exemptions and immunities

Appendix 2-A. Sherman Act Violations Yielding a Corporate Fine of \$10 Million or More

Appendix 2-B. KYB Sentencing Memo

CHAPTER 3. BID RIGGING AND MARKET ALLOCATIONS

- § 3:1 Introduction
- § 3:2 Methods of bid rigging
- § 3:3 —Identical bids
- § 3:4 —Sham bids
- § 3:5 —Failure to submit a bid
- § 3:6 —Bid rotation
- § 3:7 —Rigging bids to maintain a market share
- § 3:8 —Other methods of bid rigging
- § 3:9 Proving a bid rigging conspiracy
- § 3:10 Coercion
- § 3:11 DOJ enforcement
- § 3:12 Indicia of bid rigging
- § 3:13 Private actions
- § 3:14 Related causes of action
- § 3:15 Market allocation
- § 3:16 Standing, antitrust injury, and indirect purchaser rules

CHAPTER 4. PROOF OF PRICE-FIXING BY CIRCUMSTANTIAL EVIDENCE

- § 4:1 Introduction
- § 4:2 Proof by circumstantial evidence
- § 4:3 —Suspicious bidding practices
- § 4:4 —Possession of competitor's price list
- § 4:5 —Behavior in other markets
- § 4:6 —Evidence of solicitation of price-fixing
- § 4:7 —Combination of factors
- § 4:8 Conscious parallelism
- § 4:9 —The concept of interdependence
- § 4:10 —Plus factors
- § 4:11 ——Conspiratorial motivation
- § 4:12 ——Opportunity to conspire
- § 4:13 ——Prior conspiracy
- § 4:14 ——Actions against self-interest
- § 4:15 —Pattern of uniform acts
- § 4:16 —Plus factors—Multiple factors
- § 4:17 Price announcements
- § 4:18 Sufficiency of complaints post-*Twombly*
- § 4:19 Direct versus circumstantial evidence

CHAPTER 5. HORIZONTAL BOYCOTTS

- § 5:1 Introduction
- § 5:2 Supreme Court cases on group boycott
- § 5:3 Rule of reason versus per se analysis
- § 5:4 Boycotts involving the health care industry—Denial of staff privileges and similar arrangements
- § 5:5 —Enforcement of ethical rules
- § 5:6 —Efforts by providers to resist health care cost controls
- § 5:7 Noneconomic boycotts
- § 5:8 Joint ventures
- § 5:9 Proof of concerted action
- $\S~5:10~$ Capability to conspire—Post-Copperweld, post-American Needle
- § 5:11 Sufficiency of complaints, post-Twombly
- § 5:12 Conclusion

CHAPTER 6. INFORMATION EXCHANGES

- § 6:1 Introduction
- § 6:2 Exchange of pricing information—Purpose of the exchange
- § 6:3 Price information—Anticompetitive effect becomes the standard
- § 6:4 "Controlling circumstances" exception limited

Table of Contents

§ 6:5	—Legitimate business reasons for the exchange
§ 6:6	—Other theories used to prosecute price information exchanges
§ 6:7	Statistical information—Intellectual property information
§ 6:8	—Confidential business information
§ 6:9	Salary information exchanges
§ 6:10	Credit information exchange
§ 6:11	Exchanges of information between competitors—Price "signaling" and "price scraping"
§ 6:12	Administrative guidance
§ 6:13	—Business review letters
§ 6:14	——Challenged transactions
§ 6:15	— — Unchallenged transactions
§ 6:16	—Consent decrees
§ 6:17	—Health care guidelines
§ 6:18	— —Hospital information exchanges antitrust safety zone
§ 6:19	 — Hospital information exchanges outside the antitrust safety zone
§ 6:20	——ACOs
§ 6:21	——Business review examples
§ 6:22	—Competitor collaborations guidelines
§ 6:23	—Practical advice

CHAPTER 7. SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AS AN ANTITRUST LAW

- § 7:1 Introduction
- § 7:2 History and statutory language
- § 7:3 Procedural considerations
- § 7:4 Substantive enforcement
- § 7:5 Traditional antitrust violations
- $\S~7:6$ "Reverse payment" patent settlements—\$Actavis\$ and later cases
- § 7:7 Nontraditional antitrust violations
- § 7:8 —Violations of the policy or spirit of the antitrust laws
- § 7:9 —Incipient violations of the antitrust laws
- § 7:10 The changing enforcement environment
- § 7:11 —Anticompetitive effects
- $\S 7:12$ —Enforcement priorities
- § 7:13 —Procedures and substantive analysis
- § 7:14 Conclusion

CHAPTER 8. JOINT SELLING AND PURCHASING ARRANGEMENTS

§ 8:1 Introduction

	TELATIONS WITH CON
§ 8:2	Applicable statutes, modes of analysis, and administrative guidance—The antitrust laws
§ 8:3	—Agency guidelines
§ 8:4	Joint selling arrangements
§ 8:5	—When the per se rule applies
§ 8:6	—When the rule of reason applies
§ 8:7	—Agency guidelines
§ 8:8	—Business review letters
§ 8:9	Joint purchasing arrangements
§ 8:10	—When the per se rule applies
§ 8:11	—When the rule of reason applies
§ 8:12	—Administrative guidance
§ 8:13	Conclusion
CHA	PTER 9. TRADE ASSOCIATIONS
§ 9:1	Introduction
§ 9:2	Overview of the antitrust problem
§ 9:3	Informal discussions
§ 9:4	Membership restrictions
§ 9:5	Availability of benefits to nonmembers
§ 9:6	Programs involving certification or standards setting
§ 9:7	Restrictions on member conduct
§ 9:8	Joint political activity
§ 9:9	Information sharing programs
§ 9:10	Association and member liability for trade association activities
§ 9:11	Joint research and development
§ 9:12	Joint exporting activity
§ 9:13	Summary and conclusion
CHA	PTER 10. JOINT VENTURES
§ 10:1	Introduction
§ 10:2	Why form a joint venture?
§ 10:3	—The positive points
§ 10:4	—The negative points
§ 10:5	Antitrust laws and guidelines affecting joint ventures
§ 10:6	—Statutes—Laws applying to mergers and
	acquisitions
§ 10:7	— —The Sherman Act
§ 10:8	— — The Clayton Act and the Robinson-Patman Act
§ 10:9	——Other laws
§ 10:10	—Guidelines—Health care guidelines
§ 10:11	——International operations guidelines
§ 10:12	——Intellectual property guidelines
§ 10:13	_
§ 10:14	Preformation review of joint ventures

Table of Contents

§ 10:15	—Hart-Scott-Rodino premerger notification rules
§ 10:16	-National Cooperative Research and Production Act
	of 1993
§ 10:17	—FTC advisory opinion process
§ 10:18	—DOJ business review letters
§ 10:19	Substantive analysis of joint ventures
§ 10:20	—Fully integrated joint ventures
§ 10:21	—Production joint ventures—Rule of reason analysis
	and the NCRPA
§ 10:22	——Sample cases
§ 10:23	 — Health care guidelines and production joint
	ventures
§ 10:24	—Research joint ventures
§ 10:25	—Network joint ventures
§ 10:26	—Joint selling and buying arrangements
§ 10:27	Substantive analysis of ancillary or collateral
	restraints
§ 10:28	Conclusion

CHAPTER 11. NOERR-PENNINGTON AND STATE ACTION

A. THE NOERR-PENNINGTON DOCTRINE

§ 11:1	Introduction
§ 11:2	Supreme Court cases
§ 11:3	Specific issues under the general rule
§ 11:4	—Petitioning for unlawful action
§ 11:5	—Threats of litigation
§ 11:6	—Soliciting criminal prosecution
§ 11:7	—Influencing standard-setting associations
§ 11:8	The sham exception
§ 11:9	—Lack of probable cause
§ 11:10	—Corrupt conduct
§ 11:11	—Success of the claim as a factor
§ 11:12	—Defensive litigation as a sham
§ 11:13	—Standing and the sham exception
§ 11:14	—Presumption of genuineness
§ 11:15	—The number of claims as a factor
§ 11:16	—Copyright/patent infringement cases and the sham exception
§ 11:17	The commercial exception
§ 11:18	Application of the doctrine in the international context
8 11:19	Application beyond the Sherman Act

B. THE STATE ACTION DOCTRINE

§ 11:20 State action doctrine

CHAPTER 12. INTERLOCKING DIRECTORATES

- § 12:1 Introduction
- § 12:2 The law—Statutory text
- § 12:3 —To whom does § 8 apply?—Threshold requirement
- § 12:4 — The one-year grace period
- § 12:5 ——Directors and officers
- § 12:6 ——Agents
- § 12:7 ——Common carriers
- § 12:8 —Mootness
- § 12:9 —Applicability to the corporation
- § 12:10 Who can enforce § 8?—Suit by private parties
- § 12:11 What companies are "competitors"?
- § 12:12 Competition—De minimis rule
- § 12:13 —What corporate entities are involved?—Indirect interlocks
- § 12:14 ——Subsidiaries
- § 12:15 ——"Deputization"
- § 12:16 —Is potential competition covered?
- § 12:17 Implementing a compliance program—Does your company have a § 8 compliance program?
- § 12:18 —Establishing the ground rules—Who is going to do it?
- § 12:19 —Are you going to include subsidiaries?
- § 12:20 —How often should you analyze the situation?
- § 12:21 —How are you going to involve the directors themselves?
- § 12:22 —More suggestions

CHAPTER 13. THE WEBB-POMERENE ACT, THE ACT OF STATE DOCTRINE, AND THE EXPORT TRADING COMPANY ACT OF 1982 (INCLUDING THE FTAIA)

- § 13:1 Introduction
- § 13:2 The Webb-Pomerene Act of 1918—Legislative history
- § 13:3 —Provisions of the act
- § 13:4 —Webb-Pomerene associations in practice
- § 13:5 —Case discussions
- § 13:6 —International reactions
- § 13:7 —Whither Webb-Pomerene?
- § 13:8 The Export Trading Company Act of 1982— Legislative history
- § 13:9 —Title I—General provisions
- § 13:10 —Title II—The Bank Export Services Act—General provisions

TABLE OF CONTENTS

§	13:11	———Banking institutions that can invest in an
		export trading company
§	13:12	———Limitations on investments by bank holding
		companies
§	13:13	— — —Limitations on extensions of credit
§	13:14	— — —Limitations on the activities of a bank-
		affiliated export trading company
§	13:15	— — Notice requirement
§	13:16	———Results of the BESA
§	13:17	—Title III—Export trade certificates of review
§	13:18	——Procedural requirements
§	13:19	— — — Eligibility considerations
§	13:20	————The four statutory standards
§	13:21	— — How to apply for a certificate of review
§	13:22	— — — Things to consider
§	13:23	— — — Challenges to an existing certificate
§	13:24	————Challenges by the government
§	13:25	————Challenges by private parties
§	13:26	— — Experience under Title III certification
		procedure
§	13:27	—Title IV—The Foreign Trade Antitrust
		Improvements Act
§	13:28	— — Jurisdiction prior to the FTAIA
§	13:29	———Changes under the FTAIA
§	13:30	———The 2017 International Enforcement
		Guidelines
§	13:31	U.S. export cartels in the twenty-first century
§	13:32	Act of state doctrine
§	13:33	The comity doctrine
		-

APPENDIX

Appendix A. FTC/DOJ Antitrust Guidelines for Collaborations among Competitors

Table of Laws and Rules

Table of Cases

Index