

# **Antitrust Law & Economics Under Attack: Populism Versus Innovation**

*Dr. Aurelien Portuese<sup>1</sup>*

The economic analysis of antitrust laws is on the wane. The Chicago School influentially developed an antitrust approach with the principle of economic efficiency as the North Star of enforcement analysis. Robert Bork has seminally singled out *The Antitrust Paradox* of his time: Antitrust suppressed the competition it should foster. Conducive to an economic analysis of antitrust laws, "Borkian" antitrust has nonetheless experienced continuous criticisms. Recently, powerful assaults revived an old antitrust approach—the populist approach. Self-proclaimed the "Neo-Brandeisians" after Justice Louis D. Brandeis who extolled small businesses and mocked the "Curse of Bigness," antitrust populism represents a paradigm-shift away from antitrust law & economics in favor of greater discretionary power in redesigning markets for the sake of a market competition made of small business units.

This article argues that the limits of the Borkian antitrust do not justify embracing the populist Brandeisian antitrust. Antitrust is at a crossroads: It can reject Brandeisian antitrust without necessarily reverting to a passé Borkian antitrust. Economic analysis of antitrust laws remains relevant only if we take efficiency seriously—namely, as including not only allocative and productive efficiencies but also and most importantly, dynamic efficiency (i.e., innovation). An economic analysis of antitrust laws relevant to today's (and tomorrow's) economy can only be innovation-centric. Dynamic efficiency in the antitrust analysis would avoid the misguided populist antitrust approach, but it would also frame antitrust analysis in line with Schumpeterian principles. If innovation matters, Schumpeterian competition needs to be the cornerstone of a renewed economic analysis of antitrust laws.

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<sup>1</sup> Director of The Schumpeter Project, Information Technology, and Innovation Foundation; Adjunct Professor, Global Antitrust Institute, George Mason University, and Catholic University of Paris. All errors are mine. Email: [aportuese@itif.org](mailto:aportuese@itif.org)

# Antitrust Law Economics 5th

**Daniel J. Gifford, Robert T. Kudrle**



## **Antitrust Law Economics 5th:**

*Competition Law and Antitrust* David J. Gerber, 2020 Competition law now affects virtually all aspects of economic life in many parts of the world This book provides an overview of competition law s substantive content and methods as well as an analysis of its dynamics It is a critical tool for anyone dealing with competition law Law, Economics and Antitrust Paddy McNutt, 2005-01-01 those who are dealing with antitrust issues the book is very useful and if somebody has already acquired the basic economic principles underlying antitrust regimes one should read this book Pal Bela Szilagyi and Dorina Juhasz Erasmus Law and Economics Review The book is quite often an interesting read and provokes plenty of unexpected thoughts Scholars familiar with the public choice literature and American antitrust law could benefit from the stimulating questions McNutt raises throughout and for the wealth of examples from European competition law Scott E Graves The Law and Politics Book Review Patrick McNutt s book is a brilliant expos of the interaction between law economics and antitrust The author an economist and distinguished regulator handles both the legal and economic material deftly It is provocative particularly when dealing with issues such as the efficiency of competition and the effectiveness of antitrust rules His case studies are particularly compelling The book is written with huge flair and great learning It combines theoretical and practical considerations The comparative coverage is excellent A must read for all interested in law and economics Antitrust specialists will discover many novel and valid insights David O Keeffe University College London UK and College of Europe Bruges Belgium This book continually stimulates the reader to think about the issues in non standard and illuminating ways following new and significant directions Yet the discussion always is authoritatively grounded in the author s extensive knowledge of the pertinent law and the relevant economic analysis William J Baumol New York University US and Princeton University US Professor McNutt provides a refreshing and different perspective on the important fundamental issues underlying competition law and policy Barry E Hawk Skadden Arps Slate Meagher Flom LLP US In this accessible yet rigorous textbook Patrick McNutt presents a clear and refreshing approach to a wide range of topics in law economics and antitrust The issues covered include duty and obligation contracting liability property rights efficient entry compensation oligopoly pricing issues in strategic antitrust and merger analysis Using a selection of case studies where appropriate and examples based in game theory the book examines these issues from both a law and economics and a microeconomics perspective Emphasis is placed on a thorough assessment of the economic and legal arguments blending the rigours of microeconomic analysis with common law standards The analysis contained in the book will not only review and indeed adapt neoclassical economic analysis but will also apply some of the methodology from the relatively new paradigm known as law and economics to many of the issues The book also addresses the increasing overlap between emerging approaches in public choice and in law and economics Practitioners in competition law and regulation of utilities will draw great value from this original and pertinent volume as will scholars in the areas of regulation competition law competition policy and law and

economics      *Comparative Competition Law and Economics* Roger J. Van den Bergh, 2017-09-29 Offering a concise and critical comparison of EU competition law and US antitrust law from an economic perspective this is the ideal textbook for international and interdisciplinary courses combining law and economic approaches      **EC Competition Law** Alison Jones, B. E. Sufrin, 2008 Ideal for students taking a course on competition law in its European context this book guides students through a wide range of carefully selected cases and materials with exceptional analysis and comment The selection of writings has been chosen to present the most important perspectives on the subject as well as the broader socio economic context of EC competition law This third edition has been fully updated with all the recent developments within EC Competition Law since 2004 including coverage of the review of Article 82 and the green paper on damages as well as further information on US anti trust law Each chapter now begins with a central issues section which helps students to focus and direct their learning Editions are kept up to date via an accompanying Online Resource Centre which also contains relevant weblinks and material including an additional chapter on State Aids Combining the strengths of a modern textbook and traditional materials book *Cases and Materials on EC Competition Law* provides a wide ranging and thorough guide to the study of Competition Law enabling students to engage with both legal and economic aspects and making it ideal for both under and postgraduate courses on EC Competition Law      *Competition Law, Innovation and Antitrust* Hedvig Schmidt, 2009-01-01 a must read for anyone wanting to study tying in more detail the book offers a very thorough analysis of tying together with some recommended improvements to the way in which tying is currently assessed under the EU and the US antitrust rules Common Market Law Review Schmidt s *Competition Law Innovation and Antitrust* is a superb introduction to the subject of tying arrangements and other bundled sales in high technology markets principally as they are treated under US antitrust law and EU competition law Schmidt thoroughly assesses the economics of such arrangements the benefits they confer and the potential harms they impose and then gives a positive introduction to the law This is a comprehensive treatment of its subject and an indispensable aid to the competition law scholar or practitioner Herbert Hovenkamp University of Iowa College of Law US This innovative book assesses the hotly debated topic of tying from three different perspectives competition law economics and intellectual property rights It highlights the faults and benefits of the current approaches to tying under EC competition law and US antitrust law In the light of modern economic thinking the recent review of Article 82 EC and Sherman Act Section 2 the author identifies a more economic approach to tying that moves away from the per se illegality label that has so far impinged on tying case law Hedvig Schmidt recognizes the significance that tying can play on innovation and product development and thus suggests a new approach which carves out a safe haven for technological integrated products to ensure continuous stimulation of innovation With comparative assessments and investigations this book is a must read for academics specializing in competition law and theory as well as practitioners and policy makers of competition law and intellectual property      **Handbook of Research in Trans-Atlantic**

**Antitrust** Philip Marsden, 2008-01-01 The book is handsomely produced by Edward Elgar The notes contain more than citations and are well worth reading A welcome feature is that after each set of notes there is a list of the most important writings on the topic followed by a list of the most important cases Edward Elgar is well known in economic circles hence the endnotes to which economists are accustomed It has published several books on competition for lawyers over the last years and is a welcome entrant to the lawyers market Valentine Korah World Competition This extremely well done and important book collects writings by more than two dozen academics and practitioners on important topics in competition law This is an excellent book important for research by anyone who is serious about global or comparative competition policy European Law Review This Handbook assembles a valuable collection of insightful analyses dealing with many cutting edge issues arising in modern antitrust enforcement on both sides of the Atlantic Philip Lowe European Commission The contributions to this Handbook provide a comprehensive up to date treatment of antitrust law in the Americas and Europe I would recommend it to anyone who wants to learn about antitrust law and its administration in the major enforcement areas of the world This is bound to become an important reference for antitrust students and experts Keith Hylton Boston University US This comprehensive research Handbook brings together cutting edge legal and economic analysis into antitrust issues by leading experts from Europe the USA Canada Mexico and South America The Handbook of Research in Trans Atlantic Antitrust covers a wide range of areas including the meaning of consumer welfare mergers in monopsony markets unilateral effects private and criminal enforcement implementing competition policy in regulated sectors abuse of intellectual property rights competition remedies international enforcement cooperation complainants rights dominant firm pricing tying and bundling The Handbook also includes discursive consideration of the similarities and differences among the various regimes on either side of the Atlantic as well as a look to future trends and applications in regional and global contexts Offering a comparative view of pressing antitrust issues this Handbook will be of great interest to academics lawyers practitioners and officials *Economic Law as an Economic Good* Karl M. Meessen, Marc Bungenberg, Adelheid Puttler, 2009-07-29

Governments or at least the clever ones among them are aware of the factors guiding business activities In the course of adopting and enforcing economic legislation they seek to attract business activities in order to increase national income and fiscal revenues generate employment opportunities and very generally please voters Hence economic law may be considered an economic good as suggested by the title of this book That function which most rules of economic law have in the competition of systems was strengthened by the worldwide liberalization of trade Today it is of greater significance than ever before Lawyers and economists academics and practitioners from inside and outside Germany have taken a look at the facts and discussed approaches to conceptualizing them The resulting thirty essays collected in this volume contribute to the interpretation of existing and the making of new economic law Jones and Sufrin's EU Competition Law Brenda Sufrin, Alison Jones, Niamh Dunne, 2023 The complete guide to EU competition law combining key primary sources with

expert author commentary The most comprehensive resource for students on EU competition law extracts from key cases academic works and legislation are paired with incisive critique and commentary from an expert author team New to this Edition Full analysis of important developments in competition law and policy since 2019 including relevant case law new EU legislation and notices and competition law goals A comprehensive discussion of the evolving law and policy governing market definition vertical horizontal cooperation and sustainability agreements A new chapter on competition law in the digital economy incorporating a discussion of the Digital Markets Act *EU Competition Law* Alison Jones, Brenda Sufrin, 2014 A stand alone guide to competition law providing extracts from key cases academic works and legislation along with incisive critique and commentary from two experts in the field *Competition Law* Richard Whish, David Bailey, 2021 Combining detailed coverage with exceptional clarity this is the unparalleled resource for students and practitioners The leading academics in the field explain the purpose of competition policy introduce key concepts and techniques in competition law and provide insights into the complexities of market behaviour This stand alone resource draws on a wide variety of sources and analyses the law in its economic context The tenth edition incorporates extensive new legislation case law decisional practice guidelines and literature New areas of coverage and discussion include The goals of competition law and policy in the 21st century including consumer welfare and the neo Brandesian school The rise of digital platforms and two sided markets and the challenges they present for competition law and policy The latest developments in private enforcement of competition law including the Supreme Court's judgment in *Merricks v Mastercard* The implications of the European Green Deal and the sustainability agenda for competition law Changes to UK law as a result of Brexit Book jacket

*Antitrust Law and Economics of Product Distribution*, 2006 Antitrust Law and Economics of Product Distribution explores the economics of product distribution and examines whether the courts have formulated legal standards consistent with those economic principles focusing on the sale of goods through dealers distributors and franchisees **Jones and Sufrin's EU Competition Law** Alison Jones, B. E. Sufrin, Niamh Dunne, 2019 The most comprehensive resource for students on EU competition law extracts from key cases academic works and legislation are paired with incisive critique and commentary from an expert author team **The Political Economy of Competition Law in Asia** Mark Williams, 2013-01-01 This is a very timely book which provides an unprecedented analysis of the factors which have shaped the competition law systems of ten Asian countries and Australia The comprehensive discussion from varying viewpoints against the backdrop of the significantly different environments within which the respective regimes have developed creates a framework for the comparative assessment of competition law systems elsewhere in the world Lutz Christian Wolff The Chinese University of Hong Kong New competition laws have been adopted throughout Asia in recent years and some of the older laws have been significantly strengthened This makes Asia a fascinating region in which to look at the political and economic circumstances of the countries in which such laws are to be found and to consider the very different conditions that exist within them This

book will be an invaluable guide to anyone with an interest in the developing competition law regimes of this immensely important part of the world Richard Whish King's College London UK This detailed book describes and analyses the essential political economy features that provide the backdrop to the competition policies and competition law regimes of several of the most important Asian economies The book also discusses the impact of these political economy influences in determining whether the adopted competition policy is effective Each of the authors experts in their respective countries offer specific insights into the nature and structure of their competition regimes and discuss to what extent the varied political economy factors unique to that country help to determine whether and to what extent the established system promotes or hinders economic competition in that jurisdiction Comprising wide coverage of Asian jurisdictions including Australia this book will strongly appeal to students and academics of law politics economics and economic development policy makers in national governments international agencies and competition authorities as well as practicing competition lawyers and in house counsel

**Monopsony in Law and Economics** Roger D. Blair, Jeffrey L. Harrison, 2010-09-06 Most readers are familiar with the concept of a monopoly A monopolist is the only seller of a good or service for which there are not good substitutes Economists and policy makers are concerned about monopolies because they lead to higher prices and lower output The topic of this book is monopsony the economic condition in which there is one buyer of a good or service It is a common misunderstanding that if monopolists raise prices then monopsonists must lower them It is true that a monopsonist may force sellers to sell to them at lower prices but this does not mean consumers are better off as a result This book explains why monopsonists can be harmful and the way law has developed to respond to these harms

**The Application of the Competition Rules (Antitrust Law) of the European Economic Community to Enterprises and Arrangements External to the Common Market** Boaz Barack, 2013-06-29

*Merger Control in Post-Communist Countries* Jurgita Malinauskaite, 2010-11-01 This book provides a critical analysis of merger control regimes in the former socialist countries with small market economies looking at the unique challenges facing these economies Questions will be asked as to what extent these countries have had to follow dictation from the EU and whether this implementation of EU merger control rules has been justified from the point of view of these countries economic situations The book will analyse the merger control regimes in Estonia Latvia and Lithuania Slovenia and Slovakia However reference will be made to other small market economies of the EU including Cyprus Ireland Luxembourg and Malta in order to evaluate the particular difficulties the former socialist countries with small market economies have had in the implementation and further development of merger control rules

**International Competition Enforcement Law Between Cooperation and Convergence** Jörg Philipp Terhechte, 2011-03-24 The international dimensions of competition law and policy are most often examined at the level of substantive law In this legal area both intentional and spontaneous assimilation and harmonization trends can be recognized which manifest themselves e g in comparable approaches to combating particularly harmful restraints so called hardcore

cartels However the complex terrain of enforcement law has been mainly ignored up to date Are there common approaches in this field as well How are the various competition laws linked with each other in respect to procedural norms This book conceptualizes International Competition Enforcement Law against the backdrop of these issues and at the level of comparative law The ciphers cooperation and convergence will serve as the two principle ideas for this book

**Competition Law** Richard|Bailey Whish (David),2024      **The Atlantic Divide in Antitrust** Daniel J. Gifford,Robert T. Kudrle,2015-02-11 How is it that two broadly similar systems of competition law have reached different results across a number of significant antitrust issues While the United States and the European Union share a commitment to maintaining competition in the marketplace and employ similar concepts and legal language in making antitrust decisions differences in social values political institutions and legal precedent have inhibited close convergence With *The Atlantic Divide in Antitrust* Daniel J Gifford and Robert T Kudrle explore many of the main contested areas of contemporary antitrust including mergers price discrimination predatory pricing and intellectual property After identifying how prevailing analyses differ across these areas they then examine the policy ramifications Several themes run throughout the book including differences in the amount of discretion firms have in dealing with purchasers the weight given to the welfare of various market participants and whether competition tends to be viewed as an efficiency generating process or as rivalry The authors conclude with forecasts and suggestions for how greater compatibility might ultimately be attained      *Antitrust: The Person-centred Approach* Abayomi Al-Ameen,2013-10-07 This book proposes a different approach to theorising and analysing antitrust issues working on the premise that at present antitrust is addressed from top down and narrow perspectives which in effect limit the attention paid to or exclude issues that could otherwise be considered This reasoning is motivated by the pursuit of inclusiveness and broadness in the antitrust context The work contends that traditional top down antitrust theories are weak because they are incomplete and insufficient in their description and analysis of antitrust issues Thus it identifies the need to construct a bottom up approach Invariably such an approach would have to avoid ex ante judgments about the suitability of the normative contents of antitrust laws and theories lest it fall into the same trap that plagues traditional theories As a possible solution the author proposes a procedural account referred to as the person centred approach built on theories such as Sen s Capability and carefully reviews its practicality

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