Updated in December 2006†

118

*United States of America**

– *Albert A Foer*†

The United States of America[1] is a constitution based Federal Republic, bordering the North Atlantic Ocean to the East, the North Pacific Ocean to the west, Canada to the north and Mexico to the south.

Britain's American colonies became independent in 1776, and were recognised as the new nation of the United States of America, following the Treaty of Paris, in 1783. The original states were added to, during the nineteenth and twentieth centuries, as 37 more states were acquired across the North American continent and overseas.

Economy

The US has a market-oriented economy. Private individuals and firms make most of the decisions, and the Federal and State Governments buy the required goods and services from the private market place.

US business firms enjoy greater flexibility than their counterparts in Western Europe and Japan, in terms of decisions to expand, to downsize (make workers redundant), and to develop new products. There has been a gradual development of a two-tier labour market, with those at the bottom lacking the education and professional skills of those at the top and, as a result, failing to get comparable pay rises, health insurance coverage and other benefits.

The period between 1994 and 2000 observed solid increases in real output, low inflation rates and a drop in employment to less than five percent. The year 2001, however, saw an end to this boom, although the American economy showed great resilience after the 9/11 terrorist attacks. The economy recovered moderately in 2002, with the GDP growth rate rising to 2.4 percent. A major short-term problem in the first half of 2002 was a sharp decline in the stock market, fuelled partly by the exposure of various dubious accounting practices in some major corporations. In 2003, the growth in output and productivity were promising signs.

PROFILE	
Population:	291 million***
GDP (Current US$):	10.9 trillion***
Per Capita Income: (Current US$)	37,610 (Atlas method)*** 35,750 (at PPP.)**
Surface Area:	9.6 million sq. km
Life Expectancy:	77 years
Literacy (%):	97 (of ages 15 and above)
HDI Rank:	8

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Competition Evolution and Environment

The history of antitrust in the US is generally thought to have commenced with passage of the *Sherman Act* in 1890, although the first antitrust laws were passed by several states prior to a federal law.[2] In 1914, two additional federal laws were passed: the *Clayton Act*[3] and the *Federal Trade Commission (FTC) Act*[4]. Although there have been amendments to these three federal laws (most importantly, the 1936 *Robinson-Patman Act*[5] and the 1976 *Hart-Scott-Rodino Act*[6]), the basic framework has not changed since 1914. Most of the states have passed laws that mimic the *Sherman* and *FTC Act*s (see annexure for state laws).

* Original paper submitted in August 2004. Revised in August 2005.
1 http://www.cia.gov/cia/publications/factbook/geos/us.html
2 15 U.S.C.A. Section 1.
3 15 U.S.C.A. Section 12.
4 15 U.S.C.A. Section 41.
5 15 U.S.C.A. Section 13.
6 *HSR* is now Section 7A of the *Clayton Act*, 15 U.S.C.A. sec. 18(a).

Private causes of action are not only permitted, but are encouraged by the statutory trebling of damages and award of attorneys' fees, with the result that an estimated 9 out of 10 antitrust cases are in fact private rather than public. It is private causes of action and criminal sanctions that most noticeably separate the US from other countries' antitrust regimes.[7]

Many people wonder about the word "antitrust". In the second half of the nineteenth century, large industrial organisations rather suddenly appeared in a nation that was then largely rural. Some took the form of trusts (such as the sugar, railroad, oil, and whiskey trusts), in which many separate firms came under the control of a single corporate management seeking monopoly control over an industry. Popular opposition to these combinations on the part of farmers, small businesses, shippers, and consumers led to passage of the *Sherman Act* in 1890. While "trusts" are no longer around, the imagery of 'trust busting' (a more colourful if highly imprecise way of describing competition policy) has stuck.

Competition Legislation

The Sherman Act

The *Sherman Act* has two key sections. Section 1 proscribes agreements in restraint of trade: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is…declared to be illegal". The collective activity that is central to this provision can be between two or more competing sellers or competing buyers (horizontal), or a seller and its customer (vertical).

Read literally, Section 1 would prohibit all contracts that had the incidental effect of restraining trade, regardless of the effect on competition or economic welfare. In a landmark ruling in 1911, the Supreme Court held that Section 1 prohibited only restraints of trade that *unreasonably* restrict competition.

Over the years, the concept of unreasonableness has been analysed in two ways: some restraints are *per se* unreasonable, and others are subject to the so-called Rule of Reason. The former are restraints (such as horizontal price fixing, bid-rigging, or the division of customers or markets) that are considered so unreasonable that there is no need to undertake an elaborate inquiry about the factual context or effect. If prices are fixed, the law is deemed violated.

For restraints that are not *per se* illegal, on the other hand, it is necessary to weigh the various circumstances and to decide whether the conduct is on the whole pro-competitive or anti-competitive. In recent years, the Rule of Reason has been applied in an increasingly large proportion of cases, although in some circumstances, the investigation is truncated by a "quick look" approach that limits the scope of the inquiry. It is often uncertain where lies the line between *per se* and Rule of Reason.

Section 2 of the *Sherman Act* prohibits obtaining a monopoly by anti-competitive methods or the abuse of monopoly (not monopoly itself): "Every person who shall monopolise, or attempt to monopolise, or combine or conspire with any other person or persons, to monopolise any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony".

Thus, great size alone or market share alone is not illegal. Exactly what this means in practice may not always be clear. Given the broad language of both principal sections of the *Sherman Act*, it is easy to understand that the antitrust law in the U.S. has been largely created through case laws, through the evolution of the common law interpretation of a broad statutory mandate (It should be noted that judges in the American system are not specialists in antitrust). This has the advantage of flexibility to respond to changing market conditions and economic learning, but it also creates uncertainty and a substantial quantity of litigation and counselling activity.

It is important to note that the *Sherman Act* can be enforced as a civil law or as a criminal law, a judgment left to the Antitrust Division of the Department of Justice. Typically, criminal prosecution is directed at the worst *per se* violations, primarily price fixing, bid rigging and naked divisions of territories or customers.

Corporations have been fined large penalties and individuals have been sent to prison. Criminal penalties are now influenced by Federal Sentencing Guidelines [note: a recent Supreme Court decision has changed these guidelines from mandatory to suggestive].[8] The criminal penalty for a corporation is effectively 20 percent of the affected commerce. An amnesty programme that provides a degree of leniency for certain cartel members that come forward to cooperate with the Justice Department has proven to be an effective law enforcement tool.

---

7 Various primers on U.S. antitrust can be accessed at http://www.antitrustinstitute.org/links.cfm. A useful small volume is John H. Shenefield & Irwin M. Stelzer, The Antitrust Laws, A Primer (Washington, D.C.:American Enterprise Institute, 2001, 4th ed.). For far more detail, one could go to treatises such as Lawrence A. Sullivan & Warren S. Grimes, The Law of Antitrust: An Integrated Handbook (St. Paul, MN: West Group, 2000) or Stephen F. Ross, Principles of Antitrust Law (Westbury, NY: Foundation Press, 1993). An excellent recent casebook is Andrew I. Gavil, William E. Kovacic, and Jonathan B. Baker, Antitrust Law in Perspective (St. Paul, MN: Thomson West (2002). (The above authors have all been closely associated with the American Antitrust Institute.)

8 18 U.S.C.A. Section 18, Appendix Section 2R1.1 (2003).

Clayton Act

The early enforcement of the *Sherman Act* revealed certain weaknesses, which were addressed in 1914. The *Clayton Act* more specifically outlaws a list of specific types of conduct, the effect of which "may be substantially to lessen competition, or to tend to create a monopoly in any line of commerce". The incipient nature of this language, focusing on the probable effects of actions rather than on completed actions, reacts to one weakness in the *Sherman Act*. Included in the list of specific conduct that is illegal under the Clayton standard are exclusive dealing, tying arrangements, and mergers.

The *Clayton Act*, by amendment in 1935, contains the *Robinson-Patman Act*, making it unlawful for any business engaged in interstate or foreign commerce to discriminate in price on sales to resellers between different purchasers of the same type and quality of commodity. A price difference is generally permitted if it is cost-justified or if the lower price is necessary to compete for the business of a particular purchaser.

The *Robinson-Patman Act*, passed to protect small business against unfair advantages taken by larger competitors, has been criticised by many economists for not serving the goal of economic efficiency. Rarely enforced by the federal antitrust officials, price discrimination is still the frequent subject of private litigation.

Section 7 of the *Clayton Act* is the principal tool for prohibiting anticompetitive M&As. Both stock and asset acquisitions are included, and case law has also brought joint ventures within the scope of Section 7.

The Federal Trade Commission Act

In 1914, Congress passed the *Federal Trade Commission Act*, establishing the Federal Trade Commission (FTC) as an independent regulatory agency. Section 5 of the *FTC Act* provides with great simplicity: "Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful".

The FTC also has power to enforce the *Clayton Act* and the *Robinson-Patman Act* (but not *Sherman Act's* criminal jurisdiction). It is clear, from case law, that Section 5 covers at least the same conduct that is made illegal by all the other antitrust laws, but the extent of the FTC's reach beyond this remains uncertain.

Sub-National Laws

Each of the various states has its own antitrust and consumer protection laws, often referred to as 'Little FTC' or "Little Sherman" Acts. Generally speaking, they are similar to the federal law and typically the states apply federal precedents in their enforcement. In addition to filing antitrust suits under their own state laws, State Attorneys General may file federal antitrust suits under the *parens patriae* (having the standing to bring an antitrust suit on behalf of injured citizens) authority granted to them through the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Under the Supreme Court's Illinois Brick opinion in 1977, states could not invoke the *parens patriae* mechanism on behalf of indirect purchasers (i.e., usually consumers). Many states thereafter passed "Illinois Brick Repealer" statutes that allow the recovery of damages by indirect purchasers in state antitrust cases. The Supreme Court in 1989 held that these repealer statutes are not preempted by federal antitrust law.

The role of the states as antitrust enforcers has been enhanced by the National Association of Attorneys General and its Multistate Antitrust Task Force, which coordinates activities involving more than one state. The states are often viewed as more interventionist and more populist in their enforcement philosophies than the federal agencies, reflecting a tension in the overall antitrust scene between Chicago School conservatives (who have dominated the federal agencies since 1980) and those who favor more aggressive policies.

Nevertheless, State antitrust laws have been controversial in the US To the extent that state laws empower local officials to take on strictly local cartels and anticompetitive practices, most would agree that this is worthwhile. Because the US has antitrust courses in all law schools and a well-developed body of antitrust law, this reflection of federalism works reasonably well. But it has also presented problems that some think outweigh the benefits.

For one thing, federalism increases the risk of inconsistent business standards depending on where one is doing business. Some argue that because state laws are enforced by state attorneys general who are elected officials, they may be tempted to place the interests of local competitors or other political interests ahead of sound antitrust enforcement.

The United States may be the only country in the world that has significant antitrust enforcement at the sub-national level, although the EU's implementation of subsidiarity raises comparable challenges.

Institutions, Competencies and Anticompetitive Business Practices

The three key enforcement institutions for U.S. antitrust are the Antitrust Division of the Justice Department, the Federal Trade Commission, and the various States' Office of the Attorney General. Other important institutions that influence antitrust are the Antitrust Section of the American Bar Association (ABA), the trade press, and other civil society organisations.

The Antitrust Division is headed by an Assistant Attorney General who is appointed by the President, subject to confirmation by the Senate.[9] In summary, from the website: "The Division prosecutes serious and willful violations of the antitrust laws by filing criminal suits that can lead to large fines and jail sentences. Where criminal prosecution is not appropriate, the Division institutes a civil action seeking a court order, forbidding future violations of the law and requiring steps to remedy the anti-competitive effects of past violations. Many of the Division's accomplishments on these fronts were made possible by an unprecedented level of cooperation and coordination with foreign antitrust agencies and with state attorneys general".

The Federal Trade Commission (FTC) is an independent regulatory agency consisting of five commissioners, no more than three from any one political party, appointed by the President with consent by the Senate. The Chairman is appointed by the President and plays a strong leadership role.[10] The three major components of the agency are the Bureaus of Competition, Consumer Protection, and Economics, with the Office of the General Counsel currently playing a large role in international and policy matters.

The FTC and the Antitrust Division have a similar civil antitrust jurisdiction. The FTC has no criminal jurisdiction, but typically plays a larger role than the Antitrust Division in the issuance of reports and development of long-range policy.

The agencies have jointly issued various guidelines, the most important of which are the horizontal merger guidelines, and they share responsibility for pre-merger notification review. There is no formal division of labour between the two federal agencies, but over time an informal division has developed based on industry expertise.

Whilst having two overlapping agencies must be explained by history rather than by logic, a strong argument can be made that it works fairly well, with little duplication but a spirit of workable rivalry that seems appropriate for enforcers of competition policy.

Whereas the Antitrust Division always proceeds through the federal district courts, the FTC normally works through an administrative process that culminates in a vote by the commissioners, and which is appealable in the federal courts. When it opposes mergers, the FTC, like the Antitrust Division, generally seeks injunctions in the federal district courts.

Box 118.1: "Our Customers are the Enemy"

Global cartels in the markets for lysine, citric acid, and vitamins were put together by corporate executives of Archer Daniels Midland Co. (ADM) and others in 1990-1992. Their efforts were effective in raising market prices by approximately 25 percent for periods ranging from three to eleven years. They were prosecuted by the US Department of Justice during 1996-2000 and continue to be the subject of private litigation and prosecution in other countries.

In one investigation, a whistleblower took movies of the conspiracy in action, a movie that the Justice Department makes available on request because of the dramatic and sometimes comic way in which it reveals how a cartel operates. A highlight of the movie occurs when the ADM executive tells a co-conspirator from another company, "Our competitors are our friends. Our customers are the enemy".

Despite ADM's enormous political influence, the three principal perpetrators of price fixing at ADM were the most severely punished individuals in the history of the *Sherman Act*. Co-defendants Hoffman La Roche and BASF agreed to pay the Justice Department criminal fines totalling US$725mn, the largest criminal fine ever recovered by the Justice Department for any violation of a US criminal statute.

Moreover, the cartel members have been sued in state courts by classes of consumers who were injured by the cartels when the monopoly rents they charged to manufacturers were passed on to consumers (A recent study of cartels concluded that on average they raise prices between 20 and 36 percent above the pre-cartel price).

Because of a Supreme Court precedent, the Illinois Brick case, indirect purchasers such as consumers of products containing vitamins cannot sue for damages in the federal courts, but roughly half of American consumers are eligible to recover under state antitrust laws that have in effect ignored the federal precedent. For example, a consumer class action against the vitamin cartel was recently settled out of court in California for many millions of dollars. It is estimated that private parties overcharged by the vitamin cartel will recover at least US$2bn.

Source: John M Connor, Global Price Fixing, Our Customers Are the Enemy (Boston, Kluwer Academic Publishers 2001)

9 Substantial information about the Division can be found on its website, http://www.usdoj.gov/atr/index.html.
10 The Commission's website is www.ftc.gov.

Virtually every state has its own antitrust law that is enforced by the State Attorney General; however, only around a dozen states have substantial antitrust programmes or staff. Most states have criminal penalties for violation, but fines are more common than imprisonment. A state can sue in its own courts, or can go to federal court to seek damages that it suffered in its capacity as a direct purchaser. It can also bring class actions as *parens patriae* to recover damages for injuries to state residents.

An important development in recent years has been the creation of the Multistate Antitrust Task Force.[11] The Task Force, a function of the National Association of Attorneys General, often coordinates the efforts of many states, giving the states an influence that makes them, collectively, an undeniably important third force of antitrust enforcement.

Although state antitrust laws are generally similar to the federal laws and states usually adopt federal interpretations, there are some differences (importantly, many states permit indirect purchasers to recover antitrust damages, despite a Supreme Court decision that indirect purchasers – most often consumers – do not have standing for damages under the *Clayton Act*), and there may be differences in outlook and policy from a particular federal regime. For example, states sometimes are more supportive of small business and more interested in the abuse potential of vertical relationships, than the federal officers are.

The Antitrust Section of the ABA (American Bar Association) has over 10,000 members (including many economists as well as attorneys), and plays an important role in keeping the antitrust bar current on matters of policy and practice, as well as influencing legislation relating to antitrust.[12]

A great deal is written about antitrust in the US, apart from daily news media, such as the Wall Street Journal and the New York Times, there are specialty media such as The Daily Deal, FTC:WATCH, subscription services offered by BNA (Bureau of National Affairs) and CCH (Commerce Clearing House), and periodicals, such as the ABA's Antitrust Law Journal and Antitrust Magazine, the independent Antitrust Bulletin, and seemingly hundreds of law reviews and economics journals that provide research and commentary. The daily press has very few journalists with an antitrust specialty; most reporters specialise in legal or business fields, reporting generally, and are occasionally assigned to an antitrust story.

Within the NGO sector, the American Antitrust Institute[13] is one of the few organisations that focuses entirely on antitrust. There are many conservative think-tanks, such as the American Enterprise Institute, the Cato Foundation, and the Heritage Foundation, that often criticise antitrust from a Chicago School or laissez faire perspective. Consumer organisations such as Consumers Union, National Consumer Alliance, and Consumers Federation of America sometimes weigh in on antitrust issues affecting their members.

Premerger Notification

The *Hart-Scott-Rodino Antitrust Improvements Act* of 1976 (*HSR*) dramatically changed the way in which mergers and acquisitions are handled, essentially moving from "a regime of post hoc adjudication to ad hoc regulation and pre hoc administrative negotiation".[14] Before *HSR*, mergers were attacked after they had been consummated and it was left to a court to "unscramble the eggs", a process that proved quite unsatisfactory. Today, transactions above a certain threshold in size must submit disclosure forms and merger documents to both the Justice Department and the FTC and then wait thirty days (in most circumstances) before consummating the transaction.

The agencies decide which one will screen the deal (usually based on familiarity with the industry involved and available resources) and if there appears to be any question of legality, the screening agency will make what is known as a second request, seeking substantially more information from the companies and from other sources. Once all the requested information has been submitted, the agency then has another thirty days to determine whether to allow the deal to be consummated or to seek a preliminary injunction in federal district court. (The FTC also has the option of allowing the deal to go forward and then challenging it in an administrative proceeding). In theory a merger may be attacked many years after its consummation, but this rarely occurs.

In point of practice, the timeframe is fairly flexible, subject to negotiation, and it frequently occurs that a disagreement is settled rather than litigated, such that the deal can go forward after certain divestitures have been agreed to. Typically, a dispute that goes to court ends with the court's judgment of whether to grant a preliminary injunction. There are two reasons for this.

First, to grant the injunction, the court must decide, among other things, that the government is likely to prevail on the

11 See http://www.naag.org/issues/issue-antitrust.php.

12 The Section's website is http://www.abanet.org/antitrust/home.html.

13 See www.antitrustinstitute.org. For a detailed review of the Institute's first five years as a virtual public interest network, its achievements, and some of the obstacles it has faced, see http://www.antitrustinstitute.org/recent2/275.cfm. A law school-based organisation that supports antitrust research is the Loyola University Chicago Institute for Consumer Antitrust Studies, http://www.luc.edu/law/academics/special/center/antitrust.shtml.

14 Albert A. Foer, "Toward Guidelines for Merger Remedies," 52 Case Western Reserve L. Rev. 211, 212 (2001).

Box 118.2: Consumers Interject Facts to Save Big Bucks

When two of the three 'big box' office supply giants, Staples and Office Depot, attempted to merge in 1996, the FTC went to court to stop it. After a seven-day trial, the US District Court agreed with the FTC and issued a preliminary injunction, dooming the merger.

A major issue in the case was whether the relevant product market had been properly described as "consumable office supplies sold through office superstores". After all, office supplies could be purchased from many other outlets besides superstores and within this greater market, the merging companies had only a small market share.

In urging that the deal be stopped, one consumer advocacy organisation shopped at various office superstores and submitted information to the FTC showing that in markets where all three giants (the third was Office Max) competed, their prices were lowest. Where only two competed, the prices were higher. And where only one was in a market, its prices were higher than in the more competitive markets.

This anecdotal evidence reportedly inspired the FTC to undertake additional and more systematic studies that confirmed the consumers' information. The FTC's careful marshalling of the data convinced the court to come to a conclusion that surprised many observers.

Economists studying the case concluded that the savings for consumers each year, as a result of stopping the merger, would be approximately as much as the combined annual antitrust budget of the FTC and the Antitrust Division, around US$250mn.

Source: Serdar Dalkir and Friederick R Warren-Boulton, Prices, market Definition, and the Effects of Merger: Staples Office Depot (1997) in John E Kwoka, Jr and Lawrence J White (eds), The Antitrust Revolution (4th ed.) (New York, Oxford University Press 2004)

merits. Second, the prospect of a long and expensive trial is usually enough to cool the parties' interest in merging. The preliminary injunction hearing in practice thus turns out to be the trial that counts.

In most years, something over 2,000 pre-merger notifications are filed and about three percent go to second requests, with a bit over half of these resulting in termination or restructuring of the deal.

Private Rights of Action

US antitrust statutes encourage private enforcement.[15] Section 4 of the *Clayton Act* authorises private parties to sue for treble damages and injunctions to remedy federal antitrust violations. A successful private plaintiff recovers reasonable attorneys' fees, while a successful defendant does not. Private plaintiffs may use judgments or decrees entered *against* a defendant in a government antitrust suit as "*prima facie* evidence against such defendant…as to all matters respecting which said judgment or decree would be an estoppel as between the parties". These encouragements have been offset to some extent, it is important to note, by various court-imposed restrictions that relate to the type of injury that can be alleged and limits on standing and recovery by indirect purchasers.

Attorneys for antitrust plaintiffs often (but not always) are compensated on contingency, as a percentage of the recovery. The largest private antitrust recovery to date is roughly US$3bn, achieved by plaintiffs in a class action of retailers against Visa and MasterCard.

Sectoral Regulation

Although the antitrust and consumer protection laws usually apply generally across all industries in the U.S., certain industries have been singled out by Congress for sectoral regulation, and in these industries the interplay of statute, regulatory agency, and antitrust can be varied and complex. For example, a telecommunications merger may be stopped by either the FCC or the Department of Justice; an electricity merger may be stopped by either the Federal Energy Regulatory Commission or the Department of Justice.

The States often play a role in sectoral regulation, as well, as in the case of electricity, where state utility commissions regulate utilities within their jurisdiction. The Federal Trade Commission often provides non-binding advice to the states with respect to electricity issues. Typically, the sectoral agencies and the antitrust agency both review matters that relate directly to competition, and they generally, but not always, reach agreement on how to proceed.

Consumer Protection

Antitrust is usually considered a form of consumer protection, but there are also a myriad of laws that are specifically crafted for the protection of consumers. Many of these are enforced by the Federal Trade Commission, but some are lodged in other agencies, such as the Consumer Product Safety Commission.

In some situations, the same consumer protection law will be administered by multiple agencies, each for a particular

15 See Ernest Gellhorn & William E. Kovacic, Antitrust Law and Economics (St. Paul, MN: West Group 1994, 4th ed., 461-468.

sector of the economy. A consumer protection function also resides in virtually every state, typically as part of the Office of the Attorney General.

Concluding Observations and Future Scenario

Antitrust Modernisation Commission

In mid-2004, a new blue-ribbon study commission was created by Congress to take a three-year look at the antitrust laws.[16] The 12-person Antitrust Modernization Commission will be debating the following questions, among others:

- Should the role of the states in antitrust enforcement be curtailed?
- Do the realities of "the new economics" require any modifications in antitrust laws or policies?
- Do the increased importance of international trade and the presence of so many new antitrust regimes around the world require any changes in US policies?
- Is there a need to reduce the role of private antitrust actions, such as eliminating the treble damages requirement or making class actions more difficult? and
- Are any changes needed to assure that intellectual property will be respected, even when it clashes with antitrust objectives?

These questions reflect both changes in the economy, in politics, and in thinking about antitrust that have occurred in the US over the past quarter century. Although economics has come, during this period, to play a much larger role in American antitrust, there remain significant differences of opinion among economists, lawyers, business people and politicians as to how large a role antitrust should play and what policies should be pursued. The body of literature that will be produced by the Modernization Commission may not answer all the questions, but it is likely to provide a major data base for anyone interested in the evolution of competition policy.

16 The Commission's website is www.AMC.gov. Testimony and public comments on these and other questions posed by the AMC are posted on the AMC website. See Albert A. Foer, 'Putting the Antitrust Modernisation Commission into Perspective', 51 Buffalo L. Rev. 1029 (2003), available at http://www.antitrustinstitute.org/recent2/292.cfm.

Mexico Adopts New Regulations to Implement the Law

Mexico's Competition Law framework has undergone a process of adjustment that includes the issuance of new regulations to implement the law and amendments to the internal regulations of the Federal Competition Commission (FCC).

The amendments to the internal regulations came into effect on November 28, 2006. The main purpose of the amendments was to reorganise the Commission's internal structure by creating, dividing and reorganising several general operational and administrative directorates.

The amendments also divided the role of the Investigations General Directorate, assigning the investigation of absolute and relative monopolistic practices to two separate bodies. These directorates were coordinated by the newly created Planning, Linkage and International Affairs Unit.

(Source: International Law Office, 14.12.06)

Competition Law into Effect in El Salvador

On January 01, 2006, the Competition Law came into force in El Salvador. The most significant feature of the Law was the creation of a new public entity – the Competition Superintendency – which manages its own resources and exercises independent legal authority.

The Superintendency's main objective was to promote, protect and guarantee free competition by preventing and eliminating practices which limit or restrict competitive commercial activity or impede an economic agent's access to the Salvadoran market. Its overall aim was to increase economic efficiency, consumer welfare and commercial stability.

The introduction and effective enforcement of the Law has improved commercial conditions in EI Salvador, by offering greater guarantees for foreign investors and ensuring the benefits of competition.

(Source: International Law Office, 26.10.06)

US Merger Filings Rise

The Federal Trade Commission (FTC) and the Department of Justice (DoJ) released the report showing the details of cases dealt with the 1,695 pre-merger filings received in fiscal year 2005, to Congress on September 08, 2006.

The Commission challenged 14 mergers leading to nine consent orders, four abandoned deals. Meanwhile, the department's antitrust division challenged four mergers, three of which were resolved consent decrees, and one of which was restructured.

Figures show that merger filings increased by 14 percent since 2004, but that there were still only a third as many filings as there had been in 2000. This is largely due to changes in legislation that took place in 2001.

(Source: Global Competition Review, 13.09.06)

FTC takes Aim at Doctors

The US Federal Trade Commission (FTC) has accused two medical practice associations and 18 medical practices of price-fixing. This follows investigations in similar areas, such as dentistry.

According to the Commission, the associations and practices refused to deal with healthcare plans, except on collectively agreed terms. The cooperation did not lead to any discernible increase in efficiency.

The Commission filed a complaint and a consent order on August 24, 2006. The proposed consent order would prohibit any further collusion between the practices and their associations on the fees they demand from healthcare plan members. The order also bans the four doctors who orchestrated the price-fixing from negotiating contracts on behalf of any physician or medical practice for the next three years.

(Source: Global Competition Review, 31.08.06)

† ***Albert A. (Bert) Foer*** *is founder and president of the Pmerican Antitrust Institute, www.antitrustinstitute.org, an independent non-profit organisation in Washington, DC, that monitors antitrust enforcement in the US. Foer is a graduate of the University of Chicago Law School where he was a Law Review Editor and he also has an advanced degree in political science. He has practiced law, served as a senior official of the Federal Trade Commission, and been the CEO of a regional chain of retail jewelry stores as well as writing many articles and playing a leadership role in a variety of non-profit organisations.*

Illustrative list of Antitrust laws in US States

1. **Alabama**
   Title 8. Commercial Law and Consumer Protection
   Restraint of Trade or Production
   http://www.legislature.state.al.us/CodeofAlabama/1975/coatoc.htm

2. **Alaska**
   Trade and Commerce
   Competitive Practices and Regulation of Competition
   Section 471 Unlawful acts and Practices
   http://www.legis.state.ak.us/cgi-bin/folioisa.dll/stattx04/query=*/doc/{t18179

3. **Arizona**
   Competition and Competitive Practices
   Uniform State Antitrust Act
   http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=44

4. **California**
   Antitrust Act
   http://www.weblocator.com/attorney/ca/law/b07.html#cab070000

5. **Colorado**
   Title 6, Article 4 Colorado Antitrust Act of 1992
   http://198.187.128.12/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0

6. **Delaware**
   Title 6: Trade and Commerce
   Article 21 Antitrust Law
   http://198.187.128.12/delaware/lpext.dll?f=templates&fn=fs-main.htm&2.0

7. **Florida**
   Antitrust Law
   http://www.ncbusinesscourt.net/FAQ/plaintiff/Florida%20Antitrust%20Law.htm

8. **Hawaii**
   Antitrust Act
   http://www.capitol.hawaii.gov/sessioncurrent/bills/SB702_cd1.htm

9. **Idaho**
   Title 48. Monopolies and Trade Practices
   Competition Act
   http://www3.state.id.us/idstat/TOC/48001KTOC.html

10. **Illinois**
    Antitrust Act
    http://www.weblocator.com/attorney/il/law/antitrust.html

11. **Indiana**
    Trade Regulation
    http://www.state.in.us/legislative/ic/code/

12. **Iowa**
    Title XIII Commerce
    Subtitle 5 Regulation of Commercial Enterprises
    Chapter 553: Competition Law
    http://www2.legis.state.ia.us/IowaLaw.html

13. **Kentucky**
    Commerce and Trade
    http://www.lrc.state.ky.us/statrev/frontpg.htm

14. **Massachusetts**
    Antitrust Act
    http://www.mass.gov/legis/laws/mgl/93-6.htm

15. **Michigan**
    Antitrust Reform Act
    http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=mcl-Act-274-of-1984&highlight

16. **Minnesota**
    Restraint of Trade
    Antitrust Act 325D
    http://www.revisor.leg.state.mn.us/data/revisor/statutes_index/current/A/AN/antitrust_act.html

17. **Missouri**
    Missouri Antitrust Law
    http://www.moga.state.mo.us/statutes/chapters/chap416.htm

18. **Montana**
Trade and Commerce
Chapter 14 Unfair Trade Practices and Consumer Protection
http://data.opi.state.mt.us/bills/mca_toc/30_14.htm

19. **New Jersey**
Title 56 Trade Names, Trade –Marks and Unfair Trade Practices
56:9-1 Antitrust Act
http://lis.njleg.state.nj.us/cgi-bin/om_isapi.dll?clientID=106852&Depth=2&TD=WRAP&advquery=Antitrust%20Act&depth

20. **North Dakota**
Antitrust Act
http://www.state.nd.us/lr/cencode/t51c081.pdf

21. **Pennsylvania**
Title 73. Trade and Commerce
Unfair Trade Practices and Consumer Protection
http://members.aol.com/StatutesP8/73.Cp.1.html

22. **Rhode Island**
Title 6 Commercial Law- General Regulatory Provision
Chapter 6-36: Antitrust Laws
http://www.rilin.state.ri.us/Statutes/TITLE6/6-36/INDEX.HTM

23. **South Carolina**
Title 39 – Trade and Commerce
Chapter 3 – Trusts, Monopolies and Restraint of Trade
Article 1. Combinations Lessening Competition
http://www.scstatehouse.net/code/t39c003.htm

24. **Texas**
Antitrust Act
http://www.bccmeteorites.com/b07.html

25. **Utah**
Title 13. Trade and Commerce
Chapter 05. Unfair Competition Act
http://www.le.state.ut.us/~code/TITLE13/13_05.htm

26. **Vermont**
Title 9 Commerce and Trade, Part 3,
Consumer Fraud Act 1990 (2453)
http://198.187.128.12/vermont/lpext.dll?f=templates&fn=fs-main.htm&2.0

27. **Virginia**
Title 59.1 Trade and Commerce
Chapter 1.1 Virginia Antitrust Act
http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC59010000001000010000000

28. **Washington**
Title19 – Business regulation
19.86 – Unfair Business Practices – Consumer Protection
http://www.leg.wa.gov/RCW/index.cfm?fuseaction=chapterdigest&chapter=19.86

29. **West Virginia**
Chapter 47, *18 Antitrust Act and Restraint of Trade*
http://www.legis.state.wv.us/WVCODE/47/masterfrm2Frm.htm

30. **Wisconsin**
Antitrust Act
http://www.lawlead.com/guides/WI/wi_antitrust.htm

31. **Wyoming**
Title 40: Trade and Commerce
http://www.legisweb.state.wy.us/titles/statutes.htm - 2k