9.6.06

Lesson 1: Why do we have antitrust laws?

🕒 45 minutes

LESSON OVERVIEW

In this lesson, students focus on the basic building blocks of antitrust law. Students will learn about the key provisions of the Sherman Antitrust Act. They will identify the important characteristics of a free market economy and discuss some of the challenges presented. Students will also analyze the public policy concerns which are an important part of developing a "level playing field" for businesses. This session lays the groundwork for the next four lessons connected to the documentary.

PREPARING TO TEACH

- ☑ Post lesson outcomes.
- ☑ Give each student a copy of Handout#4- The Antitrust Primer to read prior to the first session.
- ☑ Vocabulary Strategy Handouts #1, 2 and 3.
- ☑ Seluron
- ☑ Antitrust Review

OUTCOMES

As a result of this lesson, students will be able to:

*Explain the need for rules and fairness in a society
*Critically analyze a simulation (such as Seluron.)
*Identify and define antitrust vocabulary words
*Describe the history and the policy concerns behind antitrust law;
*Explain two benefits and two challenges of a free market economy.

CALIFORNIA STATE STANDARDS

Antitrust Lessons	U.S. History/8th grade	U.S History and Geography- Twentieth Century/11th Grade	Principles of Economics/12th Grade
Lesson 1—Why Do We have Antitrust Laws?	4. Discuss entrepreneurs, industrialists, and bankers in politics, commerce and industry(ex: Rockefeller)	9. Understand the effect of political programs and activities of the Progressives (e.g. federal regulation of railroad transport,...Theodore Roosevelt, ...)	12.3 Students analyze the influence of the federal government on the American economy. (Specific reference to "attempting to make markets more competitive")

HANDOUTS

Each student should read the Sherman Antitrust Primer Handout #4 in preparation for discussion during the first class.

1. Vocabulary Strategy
   Handout #1-Vocabulary Words (need 1 copy)
   Handout #2-Definitions (need 1 copy)
   Handout #3-Antitrust Words to Know (need class set)
2. Antitrust Primer (Court TV)
   Handout #4-Antitrust Primer (need class set)

Community Resource People

You might want to invite a lawyer specializing in antitrust law or someone from your county prosecutor or state Attorney General's Office as a resource person for this lesson. Send a copy of the lesson when confirming the date and location of the class.

WEB RESOURCES

Federal Trade Commission:
www.ftc.gov

US DOJ Antitrust Division:
www.usdoj.gov/atr/index.html

http://www.antitrustinstitute.org/links/primers.cfm

Area of the AAI website with links to antitrust background pieces

Teaching Tips

1

The first part of the lesson lays a vocabulary foundation for viewing the documentary and for participating in the other lessons.

2

Here is a strategy for teaching/reviewing the vocabulary and definitions with students:

- **Interactive Vocabulary review in-class**—Reproduce one copy of Handouts # 1 and 2 then cut the vocabulary words and definitions into strips so that each student can be given one or two. Divide students in half and give the words to one group and the definitions to the other. Ask the students with the words to find the students with the definitions. To debrief, reconvene as a large group and ask students to give definitions of a word they learned from another student.

3

SELURON
Seluron ("no rules" spelled backwards), also known as the "Marker Game," helps to develop a definition of "rule" or "law", appreciation of the necessity and purpose for rules and laws, and some basic ideas of fairness. The game can easily be adapted to fit the needs of the group.

Announce to the class that you will begin to study the law by playing a game. (If your class is too large for everyone to participate use the fishbowl methodology. Invite a few students to the center to participate and have the rest of the class watch carefully. When you debrief be sure to include the observers as well as the participants.)

Organize the students by rows (in groups or teams) of unequal numbers (five to seven) and give a marker (or some common items) to the first student in each group. When each group has a marker, tell the students to begin play. Pause after one minute and say "Oh, I forgot to give you the rules."

After a few seconds or so, tell the students to pass the marker to the back of the row and then back to the front, one at a time. Let them begin and then stop them with a correction tell them they forgot to pass the markers over their left shoulders only. In response, they likely will complain that they hadn't been told of this rule. Don't respond to their complaints. Begin the game again.

After the re-start, stop them again, adding another rule to the game. (E.g. only right hands can be used) The markers should come back to the front, and students should start again, this time because the markers must be passed with the right hand and received with the left hand, etc.

Students will be confused by the lack of directions, and several students may become frustrated or angry. This is the point of the game. Continue to stop and start the game with new directions, stopping the game when you think the point is well made or in response to their demand for rules.

The instructor decides arbitrarily who wins the game after allowing play to continue for a brief period of time. (For example, tell the students that the team with the most people with glasses wins.) When the "winners" are announced, most of the remaining students are likely to be frustrated about the way the game was played.

This frustration is the basis for the discussion that follows. The following questions can serve as a beginning--

How does this game make you feel?
Was it fair? Unfair? Why was it unfair?
What are some examples of fairness?
What was wrong with the game?
What will make the game fair?
If you want rules, what would the purpose of these rules be?
How would the rules help the game?

Connect SELURON to antitrust---in business, rules and fairness are needed. The major goal of antitrust is the protection of competition through having fair rules everyone must abide by.

4

Introduction

Brainstorm: (5 – 10 minutes) This should be a quick discussion with students mainly to be sure that they have the foundation for the next strategy. Most of this discussion is based on Handout #4 -the Antitrust Primer. Student should have read the handouts prior to this discussion. This discussion should not be a lecture. It is mainly to make sure that students know some of the key foundational information.

What is a market economy? An economy ruled by the ebb and flow of supply and demand (the amount of goods that producers are able to sell and the willingness and ability to buy a good or service.) When someone manipulates either supply or demand the market becomes distorted. Some factors that determine demand include–income of consumers, tastes of consumers and the price of other similar goods or services. If any of those factors change then the supply and demand flow could be altered resulting in a change in the market for a particular good or service.

For example—Let's say that a tennis shoe company puts out it's new line of shoes and one particularly expensive pair looks like a cheaper pair made by another company---which company will benefit from this substitution? Substitution happens when one product will likely be substitutable for the other---they are considered to be in the same market. Companies can market products that are nearly the same. What are some of the issues companies need to consider in this situation? Ask students to brainstorm some of the questions the companies might have—for example:

*How well known is the shoe company with the expensive shoes?
*Will consumers want the brand or the shoe?
*What attraction does the cheaper shoe have in the market?
*Should the company with the expensive shoes lower the price?

How does the U.S. economy work? The US has a market economy that uses special protections. While US authorities seek to prevent market distortion or corruption, they do allow for the legal domination of particular market areas if the company has acted fairly and certain goods meet government standards. So while you can have monopolies, you cannot monopolize. ("You can be a dragon but you cannot dragonize." Bert Foer, of the American Antitrust Institute.) Examples of monopolies that are allowed include those that are the result of good business skill, superior product, natural advantage. There are also natural monopolies such as utility companies which are the sole producers of their product for an area.

What kind of protections do consumers have? Consumers are protected by the government when it protects the competitiveness of markets. You cannot take advantage of consumers by teaming up with other supposedly competing companies to agree on what prices to charge and a dominant company cannot take unusual actions to drive out competitors.

What does antitrust mean?
Definition: laws and regulations designed to protect trade and commerce from unfair methods of business competition. They are based on a desire for fairness in the marketplace and an understanding that competition will make an economy efficient and innovative. Three basic ideas form the basis for antitrust—

1. Consumers can buy goods and services at prices that are based on or near the costs of production (not exorbitant compared to costs)
2. Consumer preferences are reflected in the quality and quantity of goods and services.
3. New businesses have the opportunity to enter the market and compete on the merits.

How does antitrust protect individuals? It protects them from those who would charge unfair prices that would immediately or eventually harm consumers. It promotes innovation through competition. When consumers have choices, if they don't like the way they are treated by a company, they can take their business somewhere else.

How does it protect businesses?

Antitrust does not protect inefficient competitors. In a competitive market, there will be losers as well as winners. What antitrust does is to protect the competitive process, so that to the greatest extent possible, competition will be on the merits, and in the end, this will be best for consumers and for the entire economy. Unfair methods of competition will be subject to government intervention or private litigation. This also means that businesses in their role as consumers (e.g., when they purchase supplies) will have the benefits of competition, including competitive prices, choice, and innovation.

Handout #1: Antitrust Words to Know

1. Antitrust
2. Boycott
3. Cartel
4. Collusion
5. Competition
6. Consumer
7. Consumer Driven Market
8. Contemporaneous
9. Department of Justice
10. Distributor
11. Economy
12. Ethics
13. Exclude
14. Federal Trade Commission
15. Injunction
16. Intellectual Property
17. License
18. Market

19. Market Share
20. Merger
21. Monopoly
22. Patent
23. Per Se
24. Predatory pricing
25. Producer
26. Restraint
27. Supplier
28. Treble
29. Trust

Handout #2: Antitrust Definitions

1. The entire enterprise of buying and selling commodities and securities. In an antitrust context, often refers to a part of an industry in which competing products and/or services are offered for sale.
2. The system or range of economic activity in a country, region, or community.
3. One that produces especially a person or organization that produces goods or services for sale; someone who manufactures something.
4. Someone whose business is to supply a particular service or commodity.
5. alliance of businesses formed to control production, competition and prices
6. One that markets or sells merchandise, especially a wholesaler.
7. A secret agreement between two or more parties for a fraudulent, illegal, or deceitful purpose.
8. The rules or standards governing the conduct of a person or the members of a profession
9. The permanent union of two or more commercial interests or corporations.
10. Rivalry between two or more businesses striving for the same customer or market.
11. to engage in a concerted refusal to have dealings with (as a store, business, or organization)?? usually to express disapproval or to force acceptance of certain conditions

12. the United States federal department responsible for enforcing federal laws (including the enforcement of all civil rights legislation); created in 1870
13. an independent agency of the United States federal government that maintains fair and free competition; enforces federal antitrust laws; educates the public about identity theft
14. The ownership of ideas and control over the tangible or virtual representation of those ideas, including patents, copyrights and trade secrets.
15. Act of setting prices at low levels to force competitors out of the market.
16. A grant made by a government that confers upon the creator of an invention the sole right to make, use, and sell that invention for a set period of time.
17. Official or legal permission to do or own a specified thing.
18. An act that requires only that the government prove that the act occurred, without regard to its impact. E.g. price fixing is per se illegal. Most other antitrust violations are weighed under a Rule of Reason.
19. The laws and institutions that promote competitive markets by making monopolization and unreasonable restraints on trade illegal.
20. One that consumes, especially one that acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing.
21. The consumer controls the ebbs and flows of goods and their popularity in the market
22. An influence that inhibits or restrains; a limitation.
23. Triple; in legal context –the plaintiff was awarded treble damages in the lawsuit.

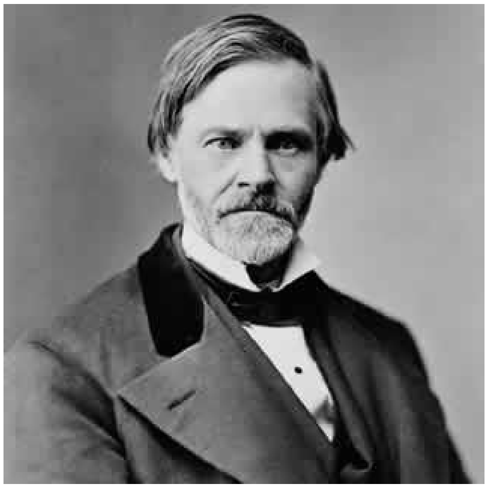
24. The proportion of industry sales of a good or service that is controlled by a company
25. the act of forcing out someone or something
26. occurring in the same period of time
27. Several corporations combine stock and operate as a giant business.
28. A court order prohibiting a party from a specific course of action.
29. A single firm that controls a sufficiently large part of a market that it has the power to set its own prices without regard to what competitors are doing.

HANDOUT 3: ANTITRUST WORDS TO KNOW (ANSWERS)

1. **Antitrust-** The laws and institutions that promote competitive markets by making illegal monopolization and unreasonable restraints on trade.
2. **Boycott-** to engage in a concerted refusal to have dealings with (as a store, business, or organization), usually to express disapproval or to force acceptance of certain conditions
3. **Cartel**- alliance of businesses formed to control production, competition and prices
4. **Collusion-** A secret agreement between two or more parties for a fraudulent, illegal, or deceitful purpose
5. **Competition**- Rivalry between two or more businesses striving for the same customer or market.
6. **Consumer-** One that consumes, especially one that acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing.
7. **Consumer Driven Market-** The consumer controls the ebbs and flows of goods and their popularity in the market
8. **Contemporaneous-** occurring in the same period of time
9. **Department of Justice**- the United States federal department responsible for enforcing federal laws (including the enforcement of the Sherman Act); created in 1870
10. **Distributor**- One that markets or sells merchandise, especially a wholesaler
11. **Economy**- The system or range of economic activity in a country, region, or community
12. **Ethics**- The rules or standards governing the conduct of a person or the members of a profession
13. **Exclude**- the act of forcing out or keeping out, someone or something
14. **Federal Trade Commission-** an independent agency of the United States federal government that maintains fair and free competition; enforces federal antitrust laws; and protects consumers from deceptive acts and practices
15. **Injunction**- A court order prohibiting a party from a specific course of action.
16. **Intellectual Property**- The ownership of ideas and control over the tangible or virtual representation of those ideas, including patents, copyrights, and trade secrets
17. **License**- Official or legal permission to do or own a specified thing.
18. **Market**- The entire enterprise of buying and selling commodities and securities. In an antitrust context, often refers to a part of an industry in which competing products and/or services are offered for sale

19. **Market Share-** The proportion of industry sales of a good or service that is controlled by a company
20. **Merger**- The permanent union of two or more commercial interests or corporations into a single entity.
21. **Monopoly**- A single firm that controls a sufficiently large part of a market that it has power to set its own prices without regard to what competitors are doing.
22. **Patent-** A grant made by government that confers upon the creator of an invention the sole right to make, use, license, and sell that invention for a set period of time.
23. **Per Se**- An act is per se illegal if the government only has to prove that the act occurred, without regard to its impact. E.g., price-fixing is per se illegal. Most other antitrust violations are weighed under a Rule of Reason.
24. **Predatory pricing-**act of setting prices at low levels to force competitors out of the market.
25. **Producer**- One that produces, especially a person or organization that produces goods or services for sale; someone who manufactures something
26. **Restraint**- An influence that inhibits or restrains; a limitation.
27. **Supplier**- someone whose business is to supply a particular service or commodity
28. **Treble**-triple; as in the plaintiff was awarded treble damages in the lawsuit.
29. **Trust**- several corporations combine stock and operate as a giant business.

Handout #4



ANTITRUST PRIMER

Antitrust in the U.S.: simple laws, infinite uses

By Kathryn Rubenstein, Court TV

In 1890, the 51st Congress passed the Sherman Antitrust Act, named for Senator John Sherman of Ohio. The law, intended to thwart trusts and monopolies that operated in "restraint of trade or commerce," was a response to a growing concern over the expanding power of big business. Sherman said at the time that the statute "does not announce a new principle of law, but applies old and well recognized principles of common law."

While the Sherman Act made it illegal to monopolize or to restrain trade through unfair collaborations or conspiracies, the statute didn't specify exactly what conduct would be prohibited. That task was left to federal judges who would continually shape and change the law.

Early Applications
Shortly after 1890, antitrust sentiment waned, and the Sherman Act was not widely applied. Where it was employed, its effects were often minor.
In the early days of antitrust legislation, the Supreme Court maintained a strict interpretation of the Sherman Act. The first came in 1895 with U.S. v. E.C. Knight Co., when the court ruled that the Sherman Act did not apply to a trust composed of major sugar producers which controlled 98% of the country's sugar refining capacity. The court held that the law did not extend to manufacturing, stating that "commerce succeeds to manufacture, and is not a part of it."

The Act's Rebirth

During the first decade of the 20th century, concern grew around the country over major corporations' growing monopolistic practices. Theodore Roosevelt's "square deal" philosophy -- which struck a balance between the rights of companies and those of the average citizen -- bolstered the effectiveness of antitrust legislation.

In 1902 Roosevelt began his war on trusts. He persuaded Congress to form a Bureau of Corporations to regulate big business and on Feb. 19, he brought his first antitrust suit under the Sherman Act against J.P. Morgan's Northern Securities Corp.

During his time in office, Roosevelt would file suit against more than 40 large corporations.

In Northern Securities Co. v. United States, the Supreme court ruled that the Sherman Act could be applied to holding companies. The court stated that an arrangement putting two competing railroads under one larger company illegally restrained trade.

In 1909, William Howard Taft succeeded Roosevelt both as President and trust-buster. Under Taft, two historic antitrust cases would further shape the Sherman Act. In 1911, American Tobacco was declared an illegal monopoly and was broken up into separate companies. That same year, the court ruled that John D. Rockefeller's Standard Oil should be broken up into 33 companies.

But the court also qualified their ruling on Standard Oil, stressing that the Sherman Act outlawed only unreasonably anticompetitive restraints.

New Laws Arrive

While the Sherman Act helped the government break up many large trusts, it soon proved to be too open to interpretation. Furthermore, the act was often used to prosecute labor unions rather than trusts, an eventuality that flew in the face of the statute's protect-the-common-man spirit. It would take further legislation to ensure the protection of a competitive business climate in the 20th century.

During Woodrow Wilson's "New Freedom," Congress passed the Clayton Antitrust Act of 1914. Wilson wanted to create a law that would clearly prohibit certain specific business practices: price discrimination; tying together multiple products; corporate mergers; and interlocking directorates, trusts formed by companies with common members on their respective boards of directors. After passing the Clayton Act, Congress created the Federal Trade Commission to enforce antitrust law.

Sherman and Clayton, coupled with the Federal Trade Commission, make up the backbone of antitrust law in the U.S.

Handout #4: continued (Excerpted – From the FTC Primer)

The Federal Trade Commission and the Department of Justice are both responsible for investigating business practices and for halting anticompetitive activities. Particularly clear cut violations such as price-fixing by direct competitor can be prosecuted as felonies by the Justice Department.

The **Bureau of Competition of the Federal Trade Commission** (FTC) and the **Antitrust Division of the U.S. Department of Justice** (DOJ) share responsibility for enforcing laws that promote competition in the marketplace. Competition benefits consumers by keeping prices low and the quality of goods and services high.

The **FTC** is a consumer protection agency with two mandates under the FTC Act: to guard the marketplace from unfair methods of competition, and to prevent unfair or deceptive acts or practices that harm consumers. When the Commission succeeds in doing both its jobs, it protects consumer sovereignty -- the freedom to choose goods and services in an open marketplace at a price and quality that fit the consumer's needs -- and fosters opportunity for businesses by ensuring a level playing field among competitors. In pursuing its work, the FTC can file cases in both federal court and a special administrative forum.

Office of the Assistant Attorney General, United States Department of Justice (DOJ) The Division is supervised by an Assistant Attorney General (AAG), who is nominated by the President and confirmed by the Senate. The AAG is assisted by five Deputy Assistant Attorneys General who may be either career or non-career employees. Each section and field office reports to a particular Deputy Assistant Attorney General. The Director and Deputy Director of Operations, the Director of Criminal Enforcement, and the Economics Director of Enforcement have additional supervisory authority for their respective programs and are career employees. The Assistant Attorney General may be assisted by special counsel.

State Attorney General's Office- Virtually every State has its own antitrust law, which is enforced by the State Attorney General, usually through an Assistant Attorney General for Antitrust. The National Association of Attorneys General (NAAG) has an antitrust task force that coordinates the various states that happen to be interested in the same issue. For the most part, the States apply precedents of U.S. antitrust law, although there are minor substantive or procedural differences from State to State.