

**Georgetown University Law Center  
Merger Antitrust Law  
Fall 2025**

**Professor Dale Collins  
Tuesdays and Thursdays, 3:30 pm – 5:30 pm**

**INTRODUCTION AND “RULES OF THE ROAD”**

**First class: Tuesday, August 26**

Welcome to the course! I appreciate that you may only be shopping at this point, so I thought I would tell you a few things about how I intend to approach the course. This memorandum also includes the “rules of the road” for the course, including classroom policies, homework assignments, and grading. The schedule of topics for each class, subject to revision throughout the course, is a separate document.

**Course description**

This four-credit course explores the process of raising, defending against, and ultimately resolving antitrust issues that arise in mergers and acquisitions within the U.S. system.

This is an “applied” course in that it approaches the subject as a sophisticated practitioner would. What we will cover is state-of-the-art in merger antitrust analysis. Unlike the typical law school course, which is structured around the doctrinal elements of the law and utilizes case excerpts to illustrate these elements, we will organize the course around case studies of recent mergers and acquisitions. These transactions range from simple negotiated acquisitions to hard-fought contested takeovers. Some of these case studies will include:

- TransDigm’s acquisition of Takata’s passenger restraint systems business
- Sanford Health’s attempt to acquire the Mid Dakota Clinic
- The contested takeover battle by Hertz and Avis Budget for Dollar Thrifty
- H&R Block’s attempt to acquire TaxACT
- U.S. Sugar’s acquisition of Imperial Sugar
- Kroger’s attempt to acquire Albertsons
- Staples’ attempt to acquire Office Depot
- Sysco’s attempt to acquire U.S. Foods
- Steris’ acquisition of Synergy Health
- Facebook’s acquisition of Instagram and WhatsApp
- Microsoft’s acquisition of Activision
- Comcast’s acquisition of NBCUniversal
- Coca-Cola’s acquisition of Coca-Cola Enterprises
- UnitedHealth’s acquisition of Change Healthcare
- AT&T’s acquisition of Time Warner
- Meta’s acquisition of Within
- Illumina’s acquisition of Grail
- Sealy Tempur’s acquisition of Mattress Firm

If an interesting merger arises during the course, we may add it to the discussion.

In addition to the case studies, we will examine the merger guidelines issued jointly by the Antitrust Division of the Department of Justice and the Federal Trade Commission, which contain essential information about the techniques and standards the federal enforcement agencies use in exercising their prosecutorial discretion in investigating and challenging mergers. While they lack the force of law, the merger guidelines also have heavily influenced the courts. The merger guidelines have been revised periodically. The Biden administration significantly revised the merger guidelines near the end of the term.<sup>1</sup> However, since earlier versions influenced much of modern antitrust precedent and are still in effect as a matter of case law, we will examine the relevant portions of those earlier versions as well.

In each case study, we will examine the antitrust problems presented by the transaction. Depending on the case study, we will address:

- Evolving modes of merger antitrust analysis
- Predicting antitrust problems and identifying possible defenses and solutions at the earliest stages of a deal, when information is scarce
- Performing a detailed merger antitrust analysis when information becomes more available
- Navigating the DOJ/FTC merger review process
- Constructing a challenge to oppose a merger
- Preparing the formal defense of a transaction
- Anticipating and structuring consent decree settlements
- Litigating merger antitrust cases (including “litigating the fix”)
- Negotiating provisions in merger agreements to allocate antitrust risk between the merging parties

In addition to substantive law, merger antitrust law relies heavily on economics and economists. Section 7 of the Clayton Act, the provision in federal law that governs the antitrust legality of mergers, prohibits mergers and acquisitions whose effect “may be substantially to lessen competition, or to tend to create a monopoly.”<sup>2</sup> Since the 1980s, merger antitrust law has evaluated transactions under Section 7 by examining the markets in which the merging firms operate and comparing, on a forward-looking basis, the competitive outcomes in these markets with and without the merger. Because most mergers are investigated and challenged before closing, there is rarely direct evidence of a transaction’s actual effects. Instead, the parties, the investigating agencies, and the court must make predictions about the merger’s potential impact. Economics plays a crucial role in predicting the competitive effects of a merger, and economists are central to investigations and litigation.

Accordingly, we will devote considerable time exploring the economic tools used in merger antitrust analysis and their application in investigations and in court. No prior knowledge of economics is required. The course is entirely self-contained, and we will cover everything you need to know. However, modern economics uses mathematics, and this course uses graphs and

---

<sup>1</sup> U.S. Dep’t of Justice & Fed. Trade Comm’n, [Merger Guidelines](#) (July 19, 2023) (“2023 Merger Guidelines”), superseding U.S. Dep’t of Justice & Fed. Trade Comm’n, [Horizontal Merger Guidelines](#) (Aug. 19, 2010) (“2010 Merger Guidelines”), and U.S. Dep’t of Justice & Fed. Trade Comm’n, [Vertical Merger Guidelines](#) (June 30, 2020) (“2020 Vertical Merger Guidelines”).

<sup>2</sup> 15 U.S.C. § 18.

algebra to explain the underlying economic concepts and derive the formulas used in merger antitrust analysis. If you can recall some high school algebra and are not afraid of mathematical notation, you should be fine. Rest assured, hundreds of law school students who went to law school because they hated math have successfully completed this course.<sup>3</sup>

Finally, as with economic regulation generally, antitrust is as much about the process as it is about substance, so we will spend a meaningful amount of time on the process of merger antitrust reviews, consent settlements, and litigation in addition to substantive rules and economics.

I should note that a course based on case studies will exhibit some redundancy. Because each case study involves applying many of the same core concepts to new factual settings, you will encounter key legal and economic principles repeatedly, though often in different guises. This repetition is by design: it reinforces fundamental ideas, deepens your understanding, and helps you learn how to adapt general concepts to the nuances of particular deals. You will also see some concepts reinforced through different formats—reading materials, class notes, homework assignments, and class discussions—all of which are designed to support different learning styles and promote mastery through layered engagement.

### **Goals of the course**

This high-end course will teach you the theory and practice of contemporary merger antitrust law. It is designed to equip you with the skills to immediately contribute to a sophisticated antitrust or M&A practice in a major law firm or antitrust enforcement agency. Even if you do not plan to specialize in antitrust or M&A law, the course will enhance your sophistication as you prepare to enter the practice of law. By the end of the course, you should be able to do the following:

1. Conduct a preliminary merger analysis to identify potential substantive issues, defenses, and remedies in typical transaction scenarios involving public companies, utilizing only publicly available information.
2. Explain the merger review process to a client, starting from the filing of an HSR premerger notification report, progressing through preliminary and second request investigations, and concluding with final arguments presented to the heads of the investigating agency. If the agency determines that the deal raises antitrust concerns, you will also be able to describe the challenges involved and the process of negotiating consent decree relief.
3. Understand and be able to apply the formal legal and economic theories of antitrust harm applicable to mergers and acquisitions and the principal defenses available to the merging parties.
4. Prepare a merger antitrust challenge (as part of the investigating staff) and a merger antitrust defense (as defense counsel) before the senior decision-making officials at the DOJ and FTC.
5. Anticipate and structure a consent decree remedy that is likely to be satisfactory (at least in principle) to the enforcement agencies in light of the investigating agency's expressed

---

<sup>3</sup> To be clear, you will have to apply in merger hypotheticals the formulas we develop, but you will not be have to derive any formulas on any exam question.

concerns about the transaction, and identify deficiencies in proposed remedies that the agencies are unlikely to accept.

6. Advise a client on the primary considerations and timing implications of litigating a merger antitrust case, including the standards for granting preliminary and permanent injunctive relief, the burdens of production and persuasion for litigating parties, and the strategic and tactical implications of these factors in the prosecution and defense of a merger antitrust case in court.
7. Describe to a client the legal and strategic significance of the antitrust-related provisions in an Agreement and Plan of Merger, including reps and warranties on antitrust-related consents and approvals, merger control and litigation conditions precedent, general efforts covenants, conduct of business covenants, merger control filing covenants, investigation and litigation cooperation covenants, risk-shifting covenants (including covenants to divest businesses or assets if necessary to avoid an agency challenge or settle a litigation), antitrust reverse termination fees, purchase price adjustments for divestitures, damages for breach of antitrust-related covenants, ticking fees, “take or pay” provisions, and termination provisions.

### **Course materials/course website**

There is no textbook for this course. You can download the materials for each week through the links on Canvas or the [Merger Antitrust Law \(2025\)](#) page on my website, [www.appliedantitrust.com](http://www.appliedantitrust.com). If you have a problem downloading something, let me know and I will email it to you.

Consistent with the course’s case study approach, the readings will consist mainly of press releases, investor presentations, SEC documents, merger agreements, complaints, consent decrees, and trial court and appellate opinions. Unlike a casebook, which just contains excerpts from cases, almost all the materials for this course will be in full text. For the most part, you will see what the practitioner sees, in the form the practitioner first sees it.

Because much of the material for this course will be in full text, there will be a significant amount of reading. I expect you to spend at least 4.5 hours reading the assigned materials and preparing for each class, and I will teach each class on that assumption. Before each class, I will distribute a memorandum (“reading guidance”) that prioritizes the reading and highlights the key topics we will discuss. If you follow the reading guidance, reach 4.5 hours without finishing the materials, and do not have the time or interest to continue, please stop reading. I will cover all the important points from the lower-priority materials in class. That said, the more you read, the more you will get out of the class and increase your sophistication as a practitioner.<sup>4</sup>

I try not to use class time to lecture on materials that you can absorb just as effectively on your own. Instead, our classroom time will focus on analyzing problems, exploring strategy and process, and developing your skills as a practitioner. In the reading guidance, I will endeavor to identify significant readings that are core to the course but that I do not plan to address systematically in class unless you raise questions. *As the course progresses, I will assume that you are familiar with these materials as if we had covered them in depth during class.* If any

---

<sup>4</sup> Some students in prior years have reported that even the materials marked for careful reading can take considerably more than 4.5 hours to complete. In considering whether to take the course, you should bear this in mind, taking into account your reading speed for legal materials and the degree to which you want to engage deeply with the issues.

aspect of the materials is unclear, I encourage you to raise questions in class or contact me directly.

I cannot stress enough that familiarity with the required reading will make the classes far more meaningful to you. But this does not mean you have to obsess over the materials. I will tell you in the reading guidance what to read carefully and what to skim to gain a sense of the material in the reading guidance. *Always read the reading guidance for each class before starting the materials.*

The materials in this course are not necessarily works of art. You undoubtedly will find some of them lacking, but what we will be reading are the actual documents that appeared in the case. I encourage you to approach the materials critically. I have found that I learned the most from what I believe were mistakes or missed opportunities, and from thinking about how I would have handled the matter differently.

### **“Class notes”**

To reduce the required reading, I will provide comprehensive PowerPoint presentations, which I refer to as “class notes.” These summarize the essential legal and economic background and concepts you need to know as we work through the case studies.

The term “class notes” is somewhat misleading. These materials contain what I would present in a traditional lecture on doctrine if there were no assigned reading. But because you can absorb them as, if not more, efficiently in written form, I will give them to you in advance and not cover them systematically in class. This allows us to shift our classroom focus from explaining doctrine to analyzing problems, exploring strategic options, discussing practical applications, and sharing “war stories.”

The PowerPoint presentations will be available on Canvas and AppliedAntitrust.com, along with the required and supplemental reading materials. The reading assignments for each class will include the class notes and the primary source materials. Unlike the primary sources, however, all the content in the class notes is already distilled to its core, so everything should be read carefully.

### **Non-graded homework problems**

You will be required to submit a written assignment before most classes. These assignments are generally designed to be completed in a short amount of time, though a few will require more substantial effort. With one exception (discussed below), the homework assignments will not be graded. *I will, however, track submissions, and failure to submit assignments will adversely affect your grade.*

These assignments are a central part of the course. They emulate the tasks you would encounter in a merger antitrust practice at a government agency or major law firm. They are also designed to reinforce your understanding of key concepts and methodologies. Finally, they help me identify areas where further clarification may be needed in class. Somewhat to my surprise, students in past classes have repeatedly told me how much they learned—and even enjoyed!—doing the homework assignments.

I encourage you to work collaboratively on the non-graded homework problems. You may consult classmates, work in groups, and use external resources, including online materials, just as

you would in practice. The objective is for you to engage with the problems and prepare for class discussions. However, you must individually write and submit your own answers.<sup>5</sup>

Homework assignments are due before the beginning of the class for which they are assigned. We will discuss the answers to most homework problems in class. Following that discussion, I will provide an “instructor’s answer.” If you disagree with any aspect of my response, I encourage you to challenge it. There is often more than one valid approach to problem-solving, especially in this area of law, and I do not claim that my way is the only correct way.

*The instructor’s answers are a core part of the course materials, and you will be responsible for knowing their content. I strongly encourage you to review them after each class.*

Finally, it is important to remember that lawyers typically act as advisors or advocates—not decision-makers. The ultimate decisions on most important questions are typically made by judges, investigating agencies, assigning partners, clients, or the counterparty to your client. Your conclusions must persuade someone else: a judge, an agency, a client, or opposing counsel. Therefore, much of your writing in practice will be aimed at persuading others to accept your conclusions or recommendations. My rule of thumb is that when you believe you have found the correct answer to a complex problem, you are only about 60 percent done. The remaining 40 percent is convincing the relevant decision-maker that your answer is the right one.<sup>6</sup> In writing your homework assignments, focus not only on the substance but on developing writing skills that will help you make compelling, linear arguments that others will adopt.

*Important:* Please email your answers to me at [wdc30@georgetown.edu](mailto:wdc30@georgetown.edu). The subject line should read “Merger Antitrust Law: Assignment for Class [Number],” which will help me manage the inflow. I have set up a rule in Outlook that looks to this subject line to sort the submissions into the appropriate email folder. If you do not use the correct subject line, you risk my thinking you failed to do the assignment.

## **Classroom policies**

*Preparation for class.* Preparation is essential to your success in this course. Following the reading guidance and completing the homework problems will significantly enhance your ability to engage with the materials and benefit from our class discussions. Students in past years have consistently reported that the case-based format—focused on analyzing real transactions—made the subject more engaging and accessible than traditional lecture formats, which simply repeat assigned readings.

---

<sup>5</sup> You will find an investment in the homework assignments can pay great dividends during the final exam. Not only is the exam open book, you can cut-and-paste “boilerplate” *you personally have prepared* directly into the exam answer. So if an exam question calls for the application of the unilateral effects theory of anticompetitive harm and one of the homework assignments required you to write a short memo explaining this theory, you can cut-and-paste that explanation into the exam answer. You will still have to apply the theory to the facts of the problems, but you will not have to spend any time in the exam composing an explanation of the theory.

<sup>6</sup> When I was in practice, I found that I often spent as much time trying to convince co-counsel for the other merging party that I had the right approach to defending the transaction than I did in actually defending the transaction before the investigating agency. You will find that the best prosecuting or defending strategies are rarely created through a committee approach or achieved through compromise with co-counsel. Rather, the best strategies come from someone with a clear vision of how to get the deal done and the ability to execute a plan. Your job will be to convince co-counsel—or if not them, then their client—that you are that person and that they should follow your lead.

The assigned materials and class notes will provide the necessary background, including the facts, institutional context, and relevant legal and economic rules. Class time, however, will focus on applying that foundation through analytical problem-solving, strategy, and real-world case dynamics.

To get the most out of the course, you should complete the assigned readings and homework thoroughly and come to class ready to contribute. Your active engagement will not only deepen your understanding but also enhance the quality of the discussion for everyone.

*Class attendance is mandatory.* Class attendance is required. Merely completing the readings and homework problems is not enough to master the material or prepare effectively for the exam. You must attend class in person to fully benefit from our discussions and stay current with the course's pace and focus. Multiple unexcused absences will have a negative impact on your grade.

*Class participation.* I typically do not cold-call students, so I rely on your initiative during class discussions. If you have a comment or a question—especially if something I've said seems unclear or incorrect—please speak up. My classes tend to move quickly, and it is easy to get lost if I have not explained something clearly. If you are confused, there's a good chance that at least half of your classmates are too. So ask questions. Doing so will help not only you, but the entire class as well.

Class participation is not required, and a lack of engagement will not negatively affect your grade. However, active engagement can positively impact your final grade and enrich both your own learning and the overall classroom experience.

*Class slides.* I almost always will use PowerPoint slides during our class sessions. The slides are more for my benefit than for yours. While some of the class slides may overlap with the materials in the class notes, I try to take a different approach in the class slides to reinforce or illustrate key ideas from a fresh perspective. I will post the class slides on Canvas and AppliedAntitrust.com after each class.<sup>7</sup>

*Laptop policy.* Laptops and other electronic devices may be used in class *only* to access the reading materials, class notes, and homework problems. If you wish to take notes, please do so by hand. The purpose of class is to engage in discussion, not to practice stenography. All classes will be video recorded, so if you want a transcript, you can create one after class using the recording.

I generally do not cold-call students, but I make an exception for those who appear to be using their laptops for email, checking sports scores, monitoring stock prices, or other distractions. And I can be a very aggressive Socratic examiner.<sup>8</sup>

---

<sup>7</sup> Students in past years have asked that I collect all of the class slides in a single searchable document. I will post a running cumulative deck on Canvas and AppliedAntitrust.com, which I will update after each class.

<sup>8</sup> There is compelling research on the detrimental effects of taking notes on laptops during class. For a summary, see, for example, Susan Dynarski, [Laptops Are Great. But Not During a Lecture or a Meeting](#), NYTimes.com, Nov. 22, 2017, and David Cole, [Opinion, Laptops vs. Learning](#), Wash. Post, Apr. 7, 2007. For something more formal, see, for example, Pam A. Mueller & Daniel M. Oppenheimer, [The Pen Is Mightier Than the Keyboard: Advantages of Longhand Over Laptop Note Taking](#), 25 Psychol. Sci. 1159 (2014); Colleen P. Murphy, Christopher J. Ryan & Yajni Warnapala, [Note-Taking Mode and Academic Performance in Two Law School Courses](#), 68 J. Leg. Ed. 207 (2019); Susan Payne Carter, Kyle Greenberg & Michael Walker, [The Impact of Computer Usage on Academic Performance: Evidence from a Randomized Trial at the United States Military Academy](#) (May 2016).

*Syllabus changes.* If there are changes, I will notify you by posting revisions to the class schedule on Canvas and AppliedAntitrust.com. The regular order can easily be thrown off if an interesting transaction is announced during the semester, and we take a day off the schedule to analyze it. If something comes up quickly, I will send you an email.

### **Grades, exams, and a graded homework assignment**

Your final grade will be based primarily on two components: a graded homework assignment (1/3 of the grade) and the final exam (2/3 of the grade).

The graded homework assignment will require you to write a memorandum of law analyzing a merger hypothetical. In effect, this assignment gives you an exam problem but without the pressure of a timed exam. Many students have found this assignment invaluable for consolidating their understanding of horizontal merger analysis and gaining a better understanding of how to prepare for the final exam. They also appreciate having one-third of the grade determined by an untimed assignment rather than relying entirely on the timed final exam.<sup>9</sup>

To help you prepare for the graded homework assignment, we will complete an ungraded homework assignment of the same form for Class 13 and analyze it in detail in Classes 13 and 14. The graded homework assignment will be posted on Friday, October 10, and due by midnight on Wednesday, October 22.

The final exam is a five-hour, open-book take-home exam. Like the graded homework assignment, it will ask you to write a memorandum of law analyzing a merger hypothetical. You may consult any written source, including without limitation, the reading materials, class notes, homework assignments, instructor's answers, class slides, cases, outlines (commercial or otherwise), books, treatises, the Internet, Westlaw, and Lexis-Nexis. However, during the exam, you may not use any artificial intelligence or large language model tools—including but not limited to ChatGPT, Claude, Microsoft Copilot, Google Gemini, and Perplexity.ai—to research, prepare, draft, or edit your answer. This prohibition includes AI features that may be built into word processors or other software you use during the exam.

The exam will be available throughout the take-home exam period (Thursday, December 4, through Friday, December 12). You may begin the exam at any time during this period, but once you start, you must complete it within five hours. Your answer must be submitted as a single Word document uploaded to Exam4.

The graded homework assignment and the final exam will set your base grade. As noted above, upward adjustments may be made for class participation, while downward adjustments may be made for failing to submit homework assignments or unexcused absences from class.

### **Office hours and optional review sessions**

I am delighted to discuss questions, clarify concepts, delve into topics in greater detail, or engage in conversations more generally about law and law practice outside of class. While I do not have

---

<sup>9</sup> Occasionally, a student fails to submit a graded homework assignment. To avoid confusion later, if the failure is excused, the final exam will account for 100% of the student's grade. If unexcused, the student will receive an F on the assignment, which constitutes one-third of the overall grade and typically results in a somewhat more than a one-letter grade reduction for the course.



an office on campus and therefore do not have scheduled office hours, there are three ways we can connect:

1. *Before and after class*: I will be available for discussions both before and after class. I generally arrive outside the classroom at least 15 minutes early, so you are welcome to join me then. If you prefer a guaranteed time to talk before class without other students present, please let me know, and I can arrive as early as 3:00 pm. After class, I will stay to talk for as long as students would like.
2. *Zoom sessions*: In place of office hours, I am more than happy to arrange Zoom meetings for individual or group discussions.
3. *Email*: You can reach me directly via email with any questions you may have.

In addition, I will hold at least two optional review sessions during the course to provide additional support and clarify any lingering questions:

1. *Friday, October 24*: Review session on the graded homework assignment.
2. *Tuesday, December 2*: Final review session.

Please note that attendance at any review session is entirely optional, and if you attend, you are free to leave at any time. If there is sufficient demand, I can do optional review sessions on horizontal merger analysis, nonhorizontal merger analysis, and competition economics.

### **Course recording policy**

All classes and review sessions will be recorded on Panopto. Please refrain from recording classes, review sessions, office hours, or any other Zoom meetings related to the course.

### **Lunch and drinks**

I am delighted to take groups of students out to lunch at The Dubliner throughout the semester. These outings let us get to know each other better than we could through classes alone. There is no agenda for these sessions, and we can discuss the course, the practice of antitrust law, working in law firms or at enforcement agencies, clerkships, or any other topic you would like to explore. If you are interested, get a group of your classmates together, and we will find a time that works for all of us.

### **Feedback on the course (with or without anonymity)**

Your legal education is a substantial investment, and I want to ensure you receive maximum value from this course. I welcome your feedback on how to improve the course and enhance your learning experience. Whether it concerns the course structure, reading materials, class notes, lectures, homework assignments, or my presentation style, clarity, or effectiveness, I encourage you to share your thoughts.

You can reach out to me before or after class, via email, or on a private Zoom conference. Additionally, I have created a Google form, linked at the top of the “Home” page on the Canvas course website, which allows you to provide feedback anonymously if you prefer.

If at any point you believe that something I am asking you to do in the course—whether it involves the reading, homework problems, or the structure, content, or pace of class sessions—is not a good use of your time, I would appreciate it if you would let me know. I am aware that this

course places significant demands on your time, and your feedback is crucial in ensuring that the course remains focused, efficient, and valuable for you and future students.

### **Final thoughts**

We will be spending a lot of time together this semester, and I would like to get to know each of you. To get started, I have created a “Getting To Know You” Google form, which you can find at the top of the Canvas “Home” page for the course. The questionnaire should only take a few minutes to complete. I would appreciate it if you could respond before the start of class, even if you are only considering whether to take the course. Feel free to skip any question you prefer not to answer.

I have created another anonymous Google form for you to provide feedback on teaching styles you have experienced thus far in law school. This is an excellent opportunity to share your thoughts. While your responses will not alter the course content, I will strive to adapt my teaching style to better align with the preferences of the class.

Lastly, this course is a demanding one. If you encounter personal circumstances that prevent you from adequately preparing for class, completing homework assignments, attending class, or any other course requirement, please let me know and we will work out an arrangement that allows you to maximize your learning experience.

I look forward to seeing you in class on August 26.

Dale Collins

P.S. If, for some reason, you want to learn more about me, you can find my bio at [http://www.appliedantitrust.com/collins\\_bio.pdf](http://www.appliedantitrust.com/collins_bio.pdf).