1. Introduction to Price Fixing: Legal and Economic Foundations

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December 14, 2024

Topics

- What is (horizontal) price fixing?
- Economics of price-fixing cartels
  - Incentives for price fixing
  - Single-period cartel game and the Prisoner's Dilemma
  - Repeated cartel games and the Folk Theorem
- Problems of cartel formation and operation
- Public policy against price fixing
- Some institutional background

What Is Price Fixing?

What is price fixing?

- *Socony-Vacuum* definition
  - Views price fixing broadly as "[a] combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity."[1]
  - No need for explicit agreement on price level
- Uses
  - Originally defined in the context of seller horizontal price fixing
  - Applied to buyer horizontal price fixing
  - Adopted by courts in vertical price fixing (resale price maintenance)
    - Although later rejected as an appropriate analogy[2]

[1] United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 223 (1940).
[2] State Oil Co. v. Kahn, 522 U.S. 3 (1997) (maximum resale price maintenance); Leegin Creative Leather Prods, Inc. v. PSKS, Inc., 551 U.S. 877 (2007) (minimum resale price maintenance).

The Economics of Price Fixing

Gains from cartelization

- Monopoly rents
  - The difference in profits between the monopoly and competitive equilibria is called the *monopoly rent*
    - In economic terms, a *rent* is the return due to some scarcity in supply
  - Monopolies earn profits above the competitive level because:
    - They restrict their output and so create an artificial scarcity in supply,
    - Causing *inframarginal customers*—that is, those who value the product at levels above the competitive price—to bid up the market-clearing price
      - This is sometimes called "riding up the demand curve"

The idea that firms restrict output in order to create an artificial scarcity in supply and thereby increase the market-clearing price is fundamental to many theories of anticompetitive harm in antitrust law.

How do cartels increase prices?

- Cartels increase prices by either or both of—
  - Reducing the incentives or ability of customers to shift purchases cartel members, usually by:
    - Reducing or eliminating the price differentials among otherwise competing cartel members
    - Allocating customers to specific cartel members

Technically, this reduces the elasticity of the residual demand curve for each cartel member, which causes each member's equilibrium price to increase.

  - Making "side payments" to members that do not gain (or not gain enough) directly from increases in their own profits from those members that do gain

This is how one-shot bid rigging works. One member is selected to bid on the contract at a supracompetitive price, all of the over members bid at a higher price (or do not bid at all), and the selected member compensates the other members for their cooperation.

Conditions for cartel success

- Necessary conditions for cartel success
  - Cartel members must control the bulk of production in the market
    - Otherwise, non-cartel incumbent firms could expand production levels and return market to the competitive equilibrium
    - For the same reason, there must barriers to entry into the market high enough to prevent new firms from entering and restoring a competitive level of output
  - No countervailing buyer power that could force firms to return to competitive pricing
  - The cartel rents must exceed—
    - The costs of organizing and maintaining the cartel, plus
    - The expected costs from possible government and private enforcement actions
      - Since sanctions are substantial, this condition requires cartel members to believe that there is only a low probability of enforcement action
- Incentive compatibility
  - But even if all of these conditions are satisfied, is cartel coordination compatible with each firm's profit-maximizing incentives if the cartel agreement cannot be legally enforced?

Single-period cartel game

- Price fixing "prisoner's dilemma" in single period game
  - Two symmetrical firms

Firm 1 \ Firm 2	Monopoly	Competitive
Monopoly	45, 45	0, 50
Competitive	50, 0	25, 25

Firms split monopoly profits of 90

Competitive firm takes total competitive profits of 50 against firm charging monopoly price

Firms split competitive profits of 50

Key result: Charging the competitive price is the *dominant strategy* for each firms, regardless of what strategy the other firm chooses. But mutual monopoly strategies earn each firm higher profits.

Multiperiod cartel game

- Multiperiod games
  - Firms seek to maximize profits over the course of the entire game, not a single period as in a one-shot Prisoner's Dilemma
  - Assume an infinitely repeated game
    - Payoff matrix is the present discounted values of the profit streams over the life of the game
      - Remember that the present value (PV) of a perpetual annuity that pays out an amount P every period with a discount rate of r is:

$$PV_{\text{perpetual annuity}} = \frac{P}{r}$$

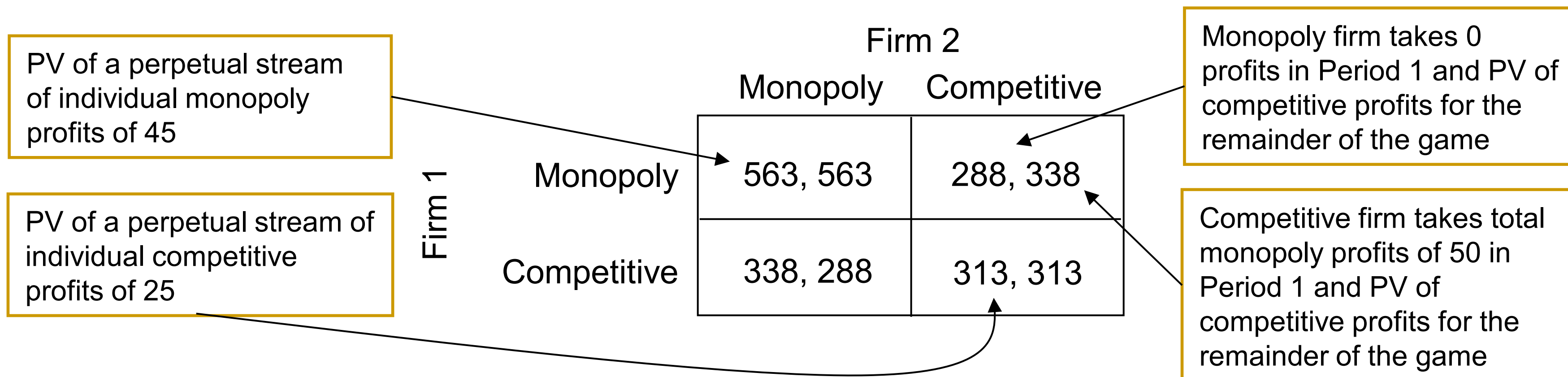
    - Assume r = 8%
  - Query: Does Firm 1 cooperate in period 1?
    - Assume firms play "tit-for-tat": Firms cooperate until one deflects, then the other deflects for the remainder of the game
      - So firms cooperate until one deflects, then both deflect for the remainder of the game

Multiperiod cartel game

- "Tit for tat" infinitely repeated game
  - Recall single period game (from earlier slide)

		Firm 2	
		Monopoly	Competitive
Firm 1	Monopoly	45, 45	0, 50
	Competitive	50, 0	25, 25

  - Infinitely repeated game (given strategy played in period 1)



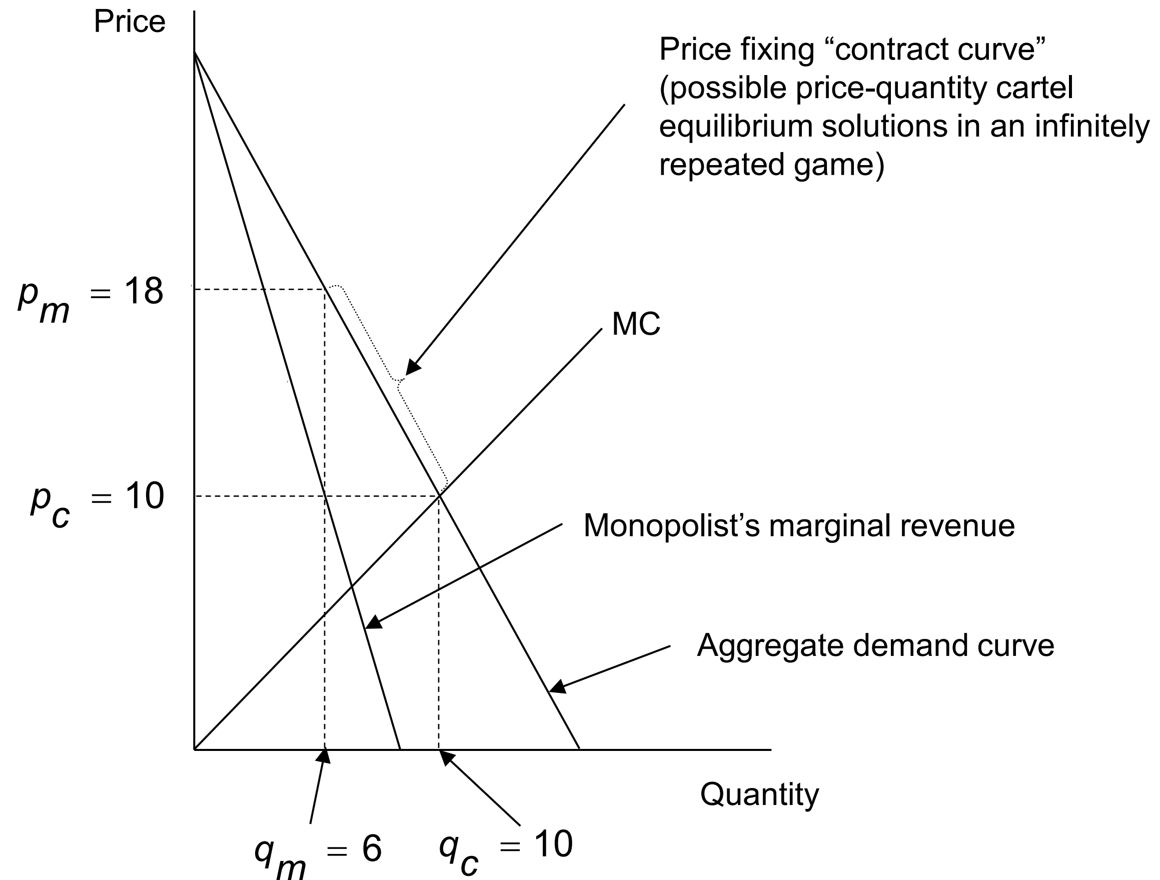
		Firm 2	
		Monopoly	Competitive
Firm 1	Monopoly	563, 563	288, 338
	Competitive	338, 288	313, 313

Repeated cartel games

- Repeated games
  - Firms seek to maximize profits over the course of the entire game, not a single period as in a one-shot Prisoner's Dilemma
- Infinitely repeated games
  - *Folk Theorem:* In an infinitely repeated game with homogenous products, any common pricing strategy ($p_1 = p_2$) between the competitive price and the monopoly price can be supported in equilibrium
  - *Key result*: The single-period Prisoner's Dilemma problem disappears
- Repeated games with uncertain end points
  - Approximate infinitely repeated games where
    - The probability mass of ending is sufficiently far out, and
    - Players have sufficiently low discount rates, so that distant profits have significant present discounted value

There are many variants of the Folk Theorem. In this version, the game does not permit price discrimination, so that all firms have to choose the same price

Economics of price fixing



Economics of price fixing

- Take-aways
  - Cartel strategies can be equilibrium strategies for firms
    - Indeed, there are an infinite number of such strategies on the cartel "contract curve" between the competitive price and the monopoly price
    - BUT not all price pairs are equilibrium solutions
      - For example, in a symmetric game between two firms selling nondifferentiated products, the firms have to choose the same price
  - Cartel can still suffer from Prisoner Dilemma problems when:
    - A firm believes that the game might end in the "near" future, or
    - A firm believes that some other firm believes that the game might end in the "near" future and therefore will defect
- Resulting questions
  - How does a cartel "pick" an initial cartel strategy from the infinite number of cartel equilibria?
  - How do cartel members minimize the Prisoner's Dilemma problem?

Problems of
Cartel Formation and Operation

Initializing a cartel

- Cartel members must "pick" a common cartel strategy
  - In a simple model, must specify p and qi for each firm i in the cartel
  - More realistically, the cartel strategy may be a simple behavioral rule:
    - Raise price by 10%
    - Reduce production levels by 10%
    - Limits on discounting off of list price
    - Do not "poach" each other's customers or territories (i.e., market allocations)

Initializing a cartel

- The cartel solution must allocate the resulting cartel profits in a mutually satisfactory way among cartel members
  - *Key constraint*: A firm will participate in a cartel if and only to the extent the firm believes that participation is in the firm's individual self-interest
  - Firms not satisfied with their cartel profit allocation are likely to either:
    - Not agree to the cartel solution in the first place, or
    - Join the cartel but cheat on the cartel price
  - Simple behavioral rules can be attractive
    - Easily understood and followed
    - Tend to preserve pre-existing market shares (and allocate cartel profits accordingly, which the cartel members are likely to see as "fair")
    - But are unlikely to capture full monopoly rents
- This bargaining problem ultimately may not yield a cartel agreement

“Enforcing” a cartel

- A cartel agreement will not be effective unless the members stick to it
  - “No honor among thieves”
- Cheating on the cartel rule
  - A firm cheats if it charges lower prices or produces higher output than it is allowed under the rules of the cartel
  - Cheating is destabilizing to the cartel
    - Cheating drives up aggregate production, and so depresses the market-clearing price to the detriment of other cartel members who comply with the cartel rule
    - If a firm believes that another cartel member is cheating (or will cheat), then that firm has an increased incentive to cheat rather than get burned

“Enforcing” a cartel

- If cartel is to succeed, important to deter cheating
  - Even in an infinitely repeated game, each cartel member has an incentive to cheat if:
    - Cheating cannot be detected, or
    - No adverse consequences to the firm from cheating on the cartel rule
  - Deterrence requires
    - A means of monitoring compliance with the cartel rule
    - A means of punishing those firms that cheat

“Enforcing” a cartel

- To deter cheating, cartel members must be able to detect cheating
  - Observable prices, production levels, or market shares can make detection easy
    - Readily observable variables are likely to inform the selection of the cartel rule (i.e., pick cartel strategies where compliance can be monitored)
    - This is true even if the resulting cartel rule does not achieve the maximum cartel profits (that is, the monopoly profit)
  - When variables are not easily observable, cartel rule may require members to report on operations.
    - But are the reports reliable?

“Enforcing” a cartel

- Punishment
  - Moral suasion
    - Tends to be ineffective[1]
  - Targeting defector with price war
    - Effective because narrowly focused at the cheating firm and so preserves much of the cartel rents for the other members
    - But requires
      - Ability to identify the cheating firm
      - Ability to target the cheating firm’s customers
      - No arbitrage between the cheating firm’s low-paying customers and the other firms’ high-paying customers
  - “Grim trigger” strategy
    - Whenever cheating is first detected, all cartel members return to the competitive price and stay there
    - This is a severe but often effective strategy, since it promises a complete end to cooperation

[1] For a good example, see United States v. Beaver, 515 F.3d 730 (7th Cir. 2008).

Price-Fixing Mechanisms

Price-fixing mechanisms

- United States v. Trans-Missouri Freight Ass’n[1]
  - Formed to establish "reasonable rates" on members' competitive freight traffic between the Missouri River and the West Coast
  - Association to set rates for all competitive traffic in region
  - Regular monthly meetings in which each member must be represented
  - Members must give 5 days' notice before meeting on any proposed rate reduction
  - All rate changes to be voted on by membership at regular meeting; members bound by vote
  - Exceptions
    - For meeting outside competition (subject to review for good faith)
    - On notice given at a regular meeting, a member could change in 10 days to a different rate specified in the notice
  - Association chairman to publish rates
  - Members may withdraw on 30 days notice

[1] 166 U.S. 290 (1897).

Price-fixing mechanisms

- United States v. Addyston Pipe & Steel Co.[1]
  - Six cast-iron pipe manufacturers—accounting for a majority of U.S. cast iron pipe sales—formed the Southern Associated Pipe Works covering 36 states and territories
  - Originally divided market and paid association 10% "bonus" on work
    - Job rates set by 5-member supramajority vote
    - Bonus dividends paid pro rata by capacity
    - Arrangement in effect only for a few months before it failed
  - When bonus system failed to raise prices, formed "auction pool“
  - In both cases association orchestrated fraudulent "competing bids"

[1] 85 F. 271 (6th Cir. 1898), *mod. and aff'd*, 175 U.S. 211 (1899).

Price-fixing mechanisms

- American Column & Lumber Co. v. United States[1]
  - Information exchange through trade association of detailed individual member statistics on sales made (including price and identity of purchaser), price lists, production, and inventories
  - Trade association meetings served as a forum for discussions of prices, production, trade statistics, and trade practices
  - In particular, used as forum to discuss restrictions in production in order to maintain prices at war levels

[1] 257 U.S. 377 (1921).

Price-fixing mechanisms

- Sugar Institute v. United States[1]
  - Agreement to adhere to previously announced prices and terms of sale, even though advance price announcements are perfectly lawful and even though the particular prices and terms were not themselves fixed by private agreement.

[1] 297 U.S. 553 (1936).

Price-fixing mechanisms

- United States v. Socony-Vacuum Oil Co.[1]
  - Agreement among competitors to engage in a program of buying surplus gasoline on the spot market in order to prevent prices from falling sharply constitutes price fixing, even though there was no direct agreement on the actual prices to be maintained.

[1] 310 U.S. 150, 223 (1940).

Price-fixing mechanisms

- FTC v. Cement Institute[1]
  - Agreement among competitors to use a specific method of quoting prices
    - In this case, multiple basing point pricing

[1] 333 U.S. 683 (1948).

Price-fixing mechanisms

- Plymouth Dealers' Ass'n of No. Cal. v. United States[1]
  - Agreement among competitors to use common fixed list price constituted per se illegal horizontal price-fixing despite independently negotiated departures from the list prices

[1] , 279 F.2d 128, 132 (9th Cir.1960).

Price-fixing mechanisms

- National Society of Professional Engineers v. United States[1]
  - Agreement among competing firms of professional engineers to refuse to discuss prices with potential customers until after negotiations have resulted in the initial selection of an engineer

[1] 435 U.S. 679 (1978).

Price-fixing mechanisms

- Catalano, Inc. v. Target Sales, Inc.[1]
  - Agreement among competitor-beer wholesalers to refuse to sell unless the retailer makes payment in cash either in advance or on delivery—effectively eliminating short-term credit—constitutes price fixing, even if wholesalers are free to set other attributes of price.
  - Widely read to make agreements regarding any attribute of price a form of price fixing

[1] 446 U.S. 643 (1980) (per curiam).

Price-fixing mechanisms

- Gelboim v. Bank of American Corp.[1]
  - *Held*, the complaint stated a claim of per se illegal horizontal price fixing under *Catalano* where the complaint alleged—
    - The defendant-banks competed with one another in the sale of financial instruments
    - The price of many financial instruments were indexed by various formulae to the U.S. Dollar LIBOR (the London Interbank Offered Rate)
    - The U.S. Dollar LIBOR was set daily based on the responses of a panel of the 16 defendant banks as to rate each bank said it could borrow overnight from another bank in a reasonable market size just prior to 11 a.m.
      - Each bank submitted a rate, the highest four and lowest four rates were discarded, and the LIBOR was set equal to the average of the remaining eight banks
    - The defendant banks conspired to depress the LIBOR rate by coordinating their responses in order to—
      - increase profits in the sale of LIBOR-based financial instruments, and
      - project financial health (in the wake of the 2007 financial crisis)[2]

[1] 823 F.3d 759 (2016).
[2] *Id*. at 770 ("LIBOR forms a component of the return from various LIBOR-denominated financial instruments, and the fixing of a component of price violates the antitrust laws.").

Price-fixing mechanisms

- Extends to horizontal division of markets
  - United States v. Topco Associates, Inc.[1]
    - Agreements among actual or potential competitors to allocate territories is tantamount to price fixing
    - NB: The defendants had never competed in the same market, but had simply agreed to allocate markets
  - Palmer v. BRG of Georgia, Inc.[2]
    - BRG and HBJ, the only two firms offering bar review courses in Georgia, agreed that
      - BRG would become a licensee of HBJ in Georgia, offer its courses under the HBJ trade name, and pay royalties to HBJ
      - HBJ would withdraw and not offer courses in Georgia as long as BRG remained its licensee
      - BRG agreed that it would not offer courses outside of Georgia

[1] 405 U.S. 596 (1972).
[2] 498 U.S. 46 (1990) (per curiam).

Public Policy Against Price Fixing

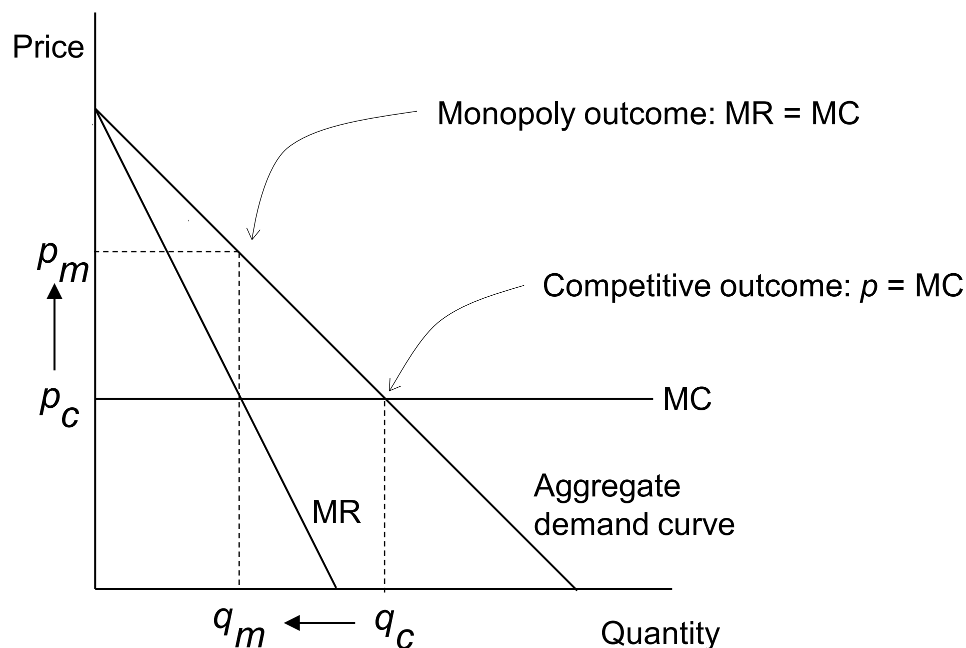
Public policy against price fixing

- Modern view on why monopolies are bad:
  - Increase price and decrease output
  - Shift wealth from consumers to producers
  - Create economic inefficiency ("deadweight loss")

  - May (or may not) have other socially adverse effects
    - Decrease product or service quality
    - Decrease the rate of technological innovation or product improvement
    - Decrease product choice

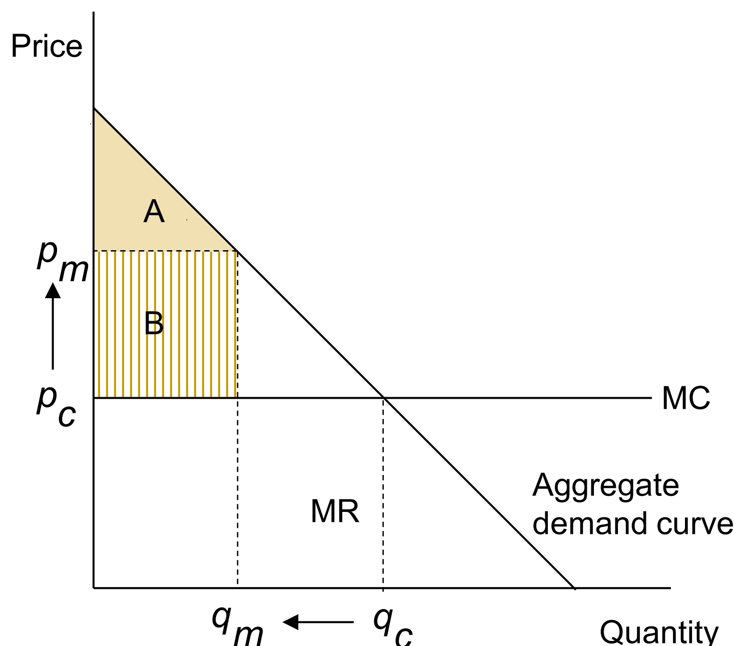
Public policy against price fixing

- Output decreases: $q_c \searrow q_m$
- Prices increase: $p_c \nearrow p_m$



Public policy against price fixing

- Shift in wealth from inframarginal consumers to producers*
  - Total wealth created ("surplus"): A + B
  - Sometimes called a "rent redistribution"

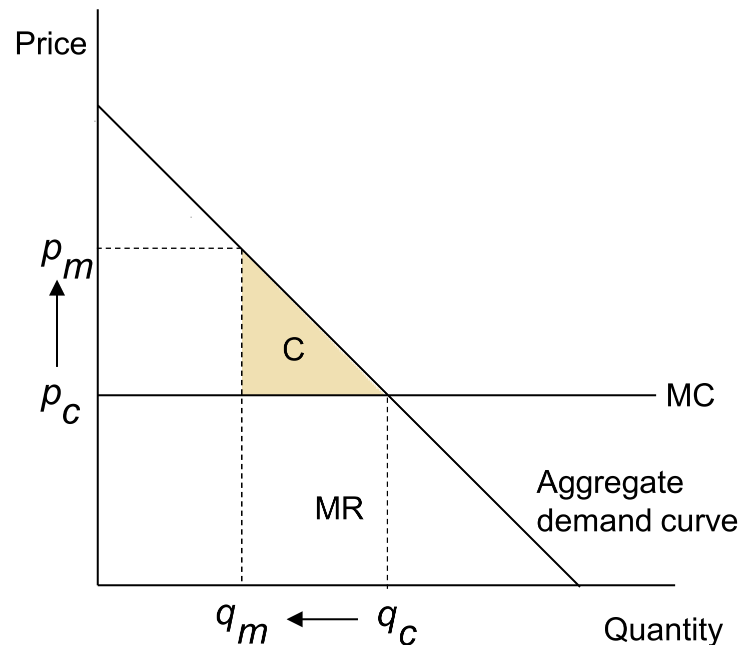


	Competitive	Monopoly
Consumers	A + B	A
Producers	0	B

* Inframarginal customers here means customers that would purchase at both the competitive price and the monopoly price

Public policy against price fixing

- "Deadweight loss" of surplus of marginal customers*
  - Surplus C just disappears from the economy
  - Creates "allocative inefficiency" because it does not exhaust all gains from trade



* Marginal customers here means customers that would purchase at the competitive price but not at the monopoly price

Public policy against price fixing

- Challenge for public policy
  - Create an environment that maximizes the probability that each firm will choose the competitive strategy
    - Make collusive agreements unenforceable as a matter of contract law
    - Make collusive agreements illegal as a matter of antitrust law
    - Find ways to increase the probability of detecting cartels in order to challenge them
      - "Reward" coconspirators that report violations to the enforcement agencies
    - Impose stiff punishments for price-fixing antitrust violations
      - Increase the level of sanctions to compensate for a low probability of detection, so as to keep the expected level of punishment high

Some Institutional Background

Overview

- Four antitrust statutes
- Five types of enforcement agents
- Four types of sanctions/relief
- Four types of proceedings

Four Antitrust Statutes

- The major provisions that define offenses
  - Sherman Act
    - Section 1 prohibits "contracts, combinations . . . and conspiracies in restraint of trade"
    - Section 2 prohibits monopolization, attempted monopolization, and conspiracies to monopolize
  - Clayton Act
    - Section 7 prohibits the acquisition of stock or assets whose effect "may be substantially to lessen competition, or to tend to create a monopoly"
  - Robinson-Patman Act
    - Section 2 prohibits certain discriminations in price
  - Federal Trade Commission Act
    - Section 5 prohibits "unfair methods of competition"
    - NB: Unlike other provisions, not included in the definition of "antitrust law" in Clayton Act § 1
      - This will be important when it comes to private actions

Five types of enforcement agents

1. Department of Justice (DOJ) Antitrust Division
2. Federal Trade Commission (FTC)
3. State Attorneys General
   - Injunctive relief actions on behalf of the state
   - Parens patriae actions
     - Representative actions brought by the state attorney general for damages sustained by citizens of the state
4. Individual private parties
   - Customers (and sometimes suppliers)
   - Competitors
   - Possibly others
5. Private class actions

For reasons that we will discuss, the DOJ and FTC are by far the most active enforcers of the merger antitrust laws. The State AGs and private parties rarely bring merger antitrust actions, although there are some notable exceptions.

Four types of sanctions/relief

1. Criminal fines/imprisonment
   - In practice, not applicable to mergers
     - By statute, available only for violations of Sherman Act §§ 1-2
     - By its terms, Clayton Act § 7 can be enforced only through civil injunctive relief actions
     - Only the DOJ can bring a criminal antitrust prosecution and the DOJ criminally prosecutes only "hardcore" antitrust violations (i.e., horizontal price fixing, horizontal market divisions, some horizontal group boycotts)
       - Mergers have never been pursued criminally

Four types of sanctions/relief

2. Injunctive relief
   - Types of injunctive relief
     - Temporary restraining orders (TROs)
     - Preliminary injunctions
     - Permanent injunctions
   - Can be used to—
     - Prevent the consummation of a merger that has not already been consummated
     - Unwind or force corrective divestitures or other actions of transactions that have been consummated to restore competition
   - Most merger challenges are preclosing and the most common form of adjudicated relief is a “blocking” injunction, which enjoins the consummation of the merger

Four types of sanctions/relief

3. Treble damages
   - Only available to parties injured as a result of antitrust violation
   - Mergers are usually challenged preconsummation—before they can cause any injuries that could predicate treble damages relief

[1] AMG Capital Mgmt., LLC v. FTC, No. 19-508, 141 S. Ct. 1341 (U.S. Apr. 22, 2021).
[2] *See, e.g.*, Consumer Protection and Recovery Act, H.R. 2668, 117th Cong. § 2 (2021) (reported by the H. Comm. on Energy and Commerce on June 10, 2021).

Four types of sanctions/relief

4. Monetary equitable relief
   - Both agencies occasionally have sought disgorgement of ill-gotten gains from an unlawful merger
     - Again, mergers are usually challenged preconsummation, and therefore before the merging parties could obtain any ill-gotten gains that could predicate disgorgement
     - In practice, only the FTC has sought disgorgement and then only in consummated mergers where the likelihood of private damage actions is low
     - Private plaintiffs—or, more accurately, plaintiff lawyers—do not want disgorgement in government cases, arguing that treble damages will give victims much greater relief
   - On April 22, 2021, the Supreme Court in *AMG* held that the FTC had no authority, nor did the courts have any power to grant at the FTC's request, monetary equitable relief[1]
     - There are efforts in Congress to give the FTC authority to seek disgorgement[2]
     - But these efforts have yet to result in a statutory change

[1] AMG Capital Mgmt., LLC v. FTC, No. 19-508, 141 S. Ct. 1341 (U.S. Apr. 22, 2021).
[2] *See, e.g.*, Consumer Protection and Recovery Act, H.R. 2668, 117th Cong. § 2 (2021) (reported by the H. Comm. on Energy and Commerce on June 10, 2021).

Four types of sanctions/relief

- No civil penalties
  - Unlike the European Union and some other jurisdictions, the federal antitrust statutes currently do not provide for civil penalties or fines for violating the antitrust laws
  - Legislation has been introduced to change this, although the idea of civil penalties has yet to gain much traction.[1]
    - Some examples
      - Competition and Antitrust Law Enforcement Reform Act of 2021, S. 225, 117th Cong. §§ 9-10 (2021) (providing for a maximum penalty of "15 percent of the total United States revenues of the person for the previous calendar year or 30 percent of the United States revenues of the person in any line of commerce affected or targeted by the unlawful conduct during the period of the unlawful conduct")
      - American Innovation and Choice Online Act, S. 2992, 117th Cong. § 3(c)(5)(B) (reported as amended to Senate Mar. 2, 2022) (providing for a maximum penalty of "15 percent of the total United States revenue of the person for the period of time the violation occurred")
    - There is a serious question of whether penalties with these maximums are criminal fines and not civil penalties, which would entitle defendants to full Fifth and Sixth Amendment protections

Four types of federal antitrust proceedings

1. Criminal prosecutions in federal district court
   - Only used for “hardcore” antitrust violations (e.g., horizontal price fixing)
   - Not used in challenging mergers (as a matter of prosecutorial discretion)
2. Civil judicial adjudications in federal district court
3. FTC administrative adjudications
4. Agency administrative resolutions (consent decrees)
   a. DOJ: In federal district court
   b. FTC: In an FTC quasi-adjudicative proceeding

There also can be state court antitrust proceedings under state antitrust law, although these are infrequent—Most state merger challenges are brought in federal district court

Summary

	Forum	Criminal*	Injunctive Relief	Damages
DOJ	Federal court	Sherman Act §§ 1-2 (under federal law)	Sherman Act § 4 Clayton Act § 15	Clayton Act § 4A
FTC	Administrative court		Clayton Act § 11 FTC Act §§ 5, 13	
State AGs**	Federal court for federal and state claims	(under state law where available)	Clayton Act § 16	Clayton Act § 4C (on behalf of resident natural persons)
Private**	Federal court for federal and state claims		Clayton Act § 16	Clayton Act § 4

* As a matter of prosecutorial discretion, not used in merger antitrust enforcement

** States are considered "private persons" under Clayton Act § 16. States also can bring state antitrust claims (but not federal antitrust claims) in state court.

United States Department of Justice

- Overall

U.S. DEPARTMENT OF JUSTICE

ATTORNEY GENERAL

DEPUTY ATTORNEY GENERAL

SOLICITOR GENERAL
OFFICE OF THE SOLICITOR GENERAL

ASSOCIATE ATTORNEY GENERAL

OFFICE OF LEGISLATIVE AFFAIRS
OFFICE OF LEGAL COUNSEL
OFFICE OF LEGAL POLICY
OFFICE OF PUBLIC AFFAIRS
OFFICE OF TRIBAL JUSTICE
OFFICE OF THE EXECUTIVE SECRETARIAT

OFFICE OF JUSTICE PROGRAMS
COMMUNITY ORIENTED POLICING SERVICES (COPS)
CIVIL RIGHTS DIVISION
CIVIL DIVISION
EXECUTIVE OFFICE FOR U.S. TRUSTEES
OFFICE OF INFORMATION POLICY
ANTITRUST DIVISION
ENVIRONMENT & NATURAL RESOURCES DIVISION
OFFICE ON VIOLENCE AGAINST WOMEN
FOREIGN CLAIMS SETTLEMENT COMMISSION
TAX DIVISION
COMMUNITY RELATIONS SERVICE
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CRIMINAL DIVISION
DRUG ENFORCEMENT ADMINISTRATION
BUREAU OF PRISONS
EXECUTIVE OFFICE FOR U.S. ATTORNEYS
U.S. MARSHALS SERVICE
U.S. ATTORNEYS
INTERPOL WASHINGTON
BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES

NATIONAL SECURITY DIVISION
OFFICE OF PROFESSIONAL RESPONSIBILITY
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JUSTICE MANAGEMENT DIVISION
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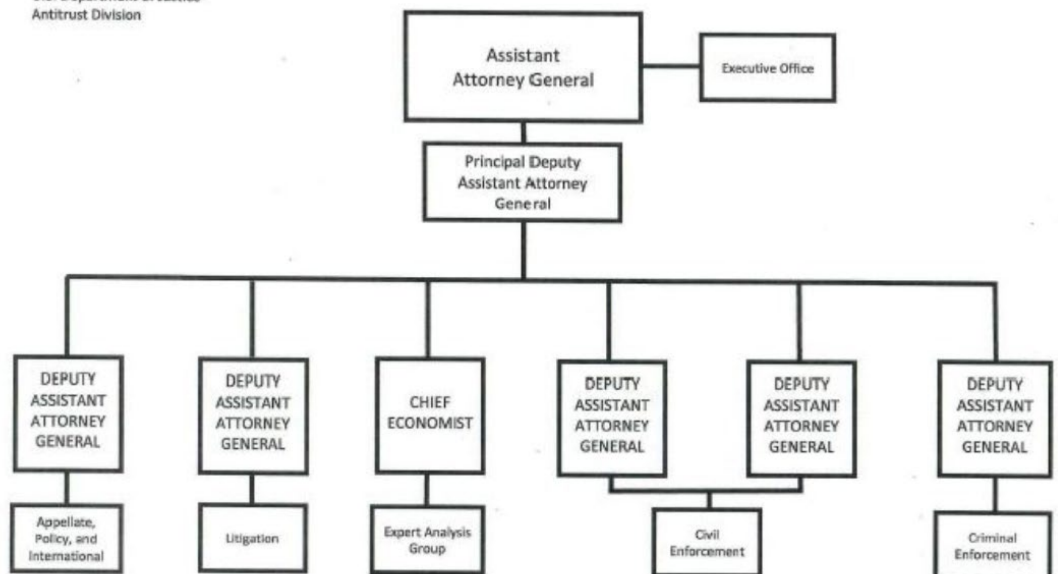
EXECUTIVE OFFICE FOR ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES
PROFESSIONAL RESPONSIBILITY ADVISORY OFFICE

United States Department of Justice

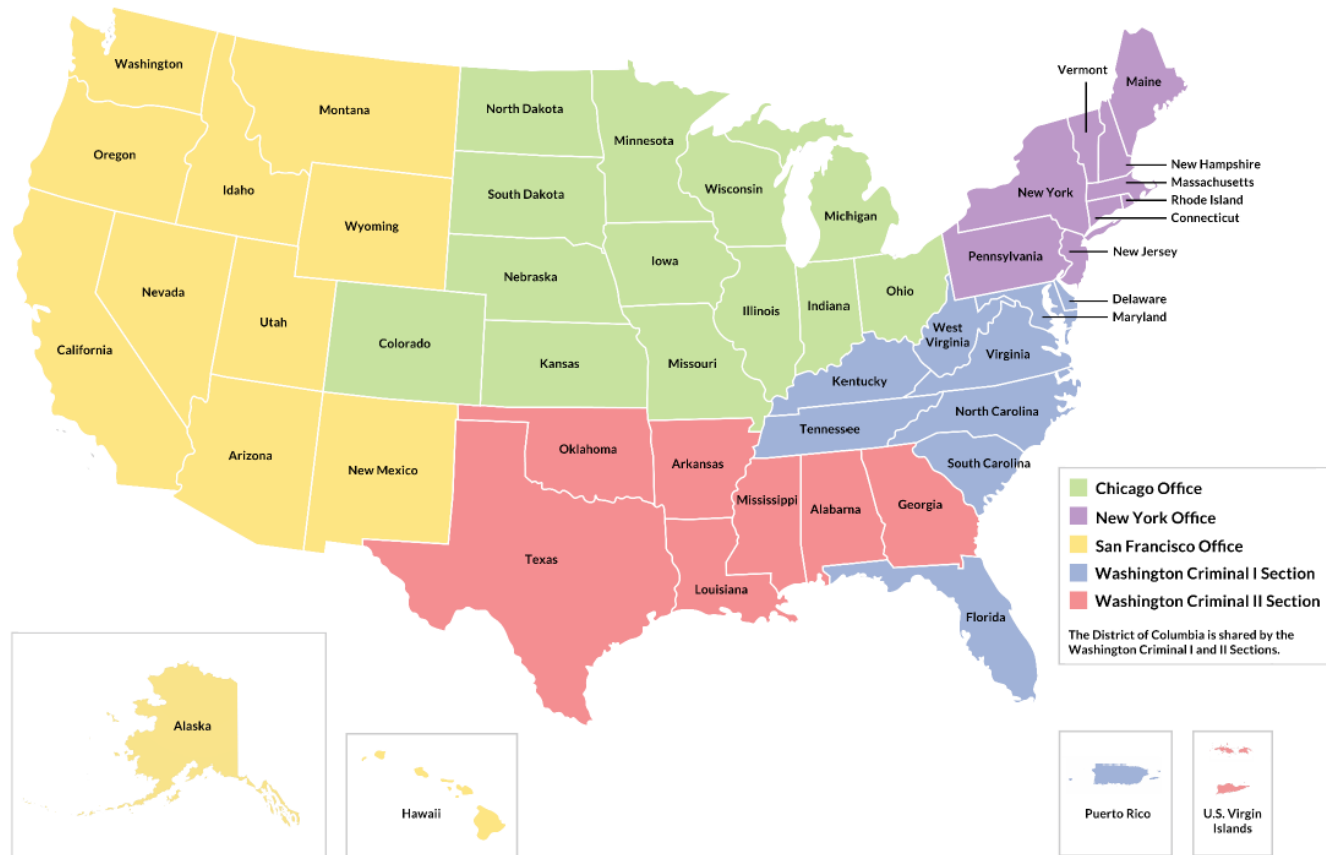
- Antitrust Division



Notes:
1. The ATD has a hierarchical structure.
2. The Assistant Attorney General (AAG) has “complaint authority” to file a complaint without seeking the approval of anyone else. No one else in the Division has complaint authority. As a result, the AAG is the ultimate and sole decision-maker on legal challenges brought by the ATD.
3. The AAG is nominated by the President and subject to confirmation by the Senate. No one else in the ATD requires Senate confirmation.
4. The AAG serves at the pleasure of the President and the Attorney General and may be removed by them without cause.

Government Organization

- Antitrust Division criminal office territories



United States Department of Justice

- Antitrust Division—AAG during the Biden administration

BRIEFING ROOM

President Biden Announces Jonathan Kanter for Assistant Attorney General for Antitrust

JULY 20, 2021 • STATEMENTS AND RELEASES

- Confirmed November 16, 2021
- Nominated July 20, 2021
- Founding Partner, Kanter Law Group (2020 – 2021)
- Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP (2016-2020)
- Partner, Cadwalader, Wickersham & Taft LLP (2007 – 2016)
- Associate, Fried Frank (2000 – 2007)
- Attorney, Federal Trade Commission (1998 – 2000)
- J.D. 1998, Washington University in St. Louis School of Law

United States Department of Justice

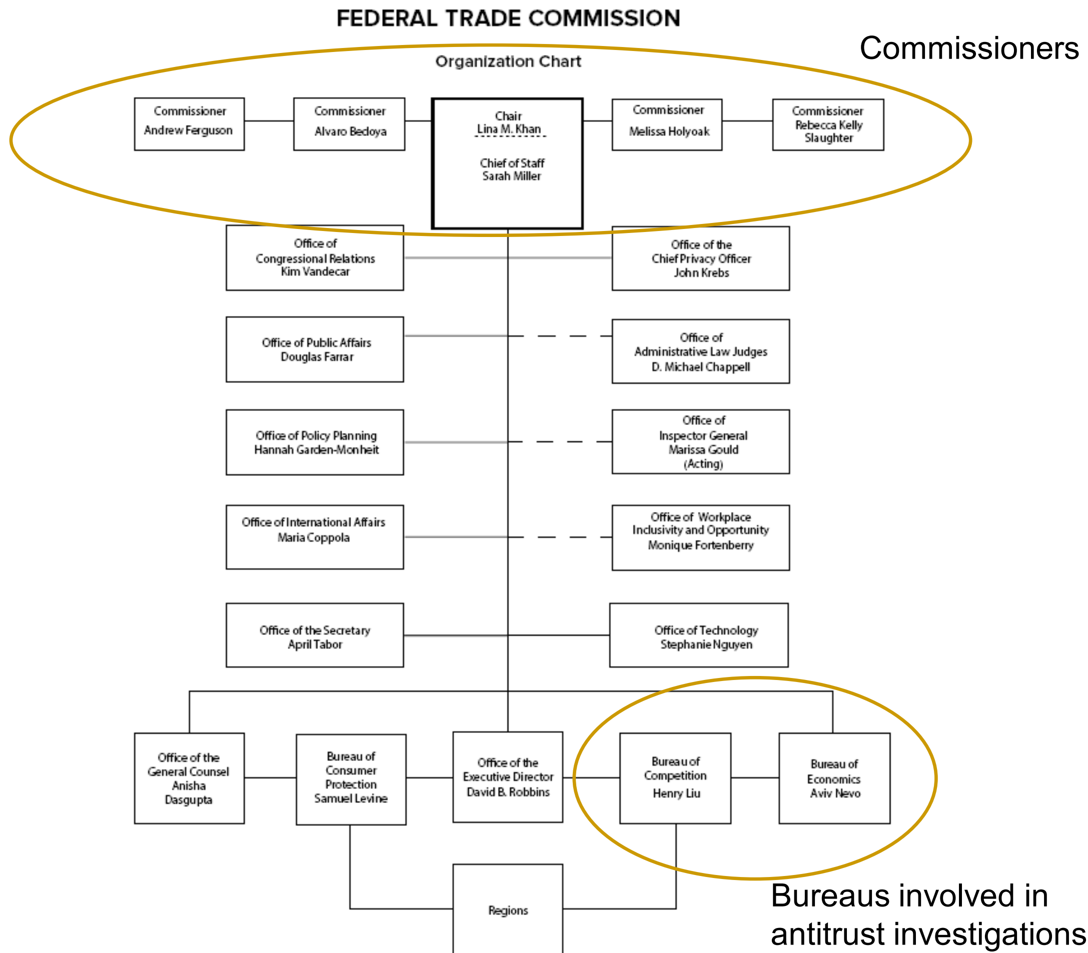
- Antitrust Division—Proposed AAG for the Trump administration

Abigail A. ("Gail") Slater

  - Announced December 6, 2024—awaiting formal nomination
  - Policy advisor for vice presidential candidate and later Vice President-elect JD Vance (2024 – present)
  - Vice President and General Counsel, Roku, Inc. (2022 – 2023)
  - Senior Vice President for Policy and Strategy, Fox Corporation (2019 – 2022)
  - Special Assistant to the President on Technology, Telecommunications, and Cybersecurity (2018 – 2019)
  - General Counsel, Internet Association (2014-2019)
  - Attorney Advisor to FTC Comm'r Julie Brill (2011 – 2014)
  - Staff Attorney, Federal Trade Commission (2004 – 2011)
  - Associate, Freshfields Bruckhaus Deringer (1997 – 2004)
  - M.Jur. University of Oxford
  - BCL 1993, LL.M 1997, University College Dublin

Government Organization

- Federal Trade Commission



Notes:

1. The FTC has a "collegial" structure, that is, the Commission cannot take enforcement action unless a majority of the Commissioners vote to do so. No single person can make an enforcement decision for the FTC.
2. The FTC Act provides for five Commissioners. Each Commissioner serves for a term of seven years (or fills out the remaining term of her predecessor). By law, no more than three Commissioners can be a member of the same political party.
3. Each Commissioner is nominated by the President and subject to confirmation by the Senate. No one else in the FTC is subject to Senate confirmation.
4. The President appoints the chairman of the Commission, who is responsible for chairing Commission meetings and for administering the staff of the FTC.
5. The FTC is an "independent agency," so that Commissioners do not serve at the pleasure of the President and can only be removed for cause.

Federal Trade Commission

- Five commissioners

Current Chair

Lina Khan, Chair (Democrat appointment)
Academic and former Hill staffer
Sworn in June 15, 2021
Term expires September 26, 2024

Rebecca Slaughter, Commissioner (Democrat appointment)
Hill staffer
Sworn in May 2, 2018
Term expires September 26, 2022 (renominated—Senate confirmation pending)

Alvaro Bedoya, Commissioner (Democratic appointment)
Academic—Director, Center on Privacy & Technology (Georgetown University Law Center)
Former Hill staffer
Sworn in May 16, 2022
Term expires September 26, 2026

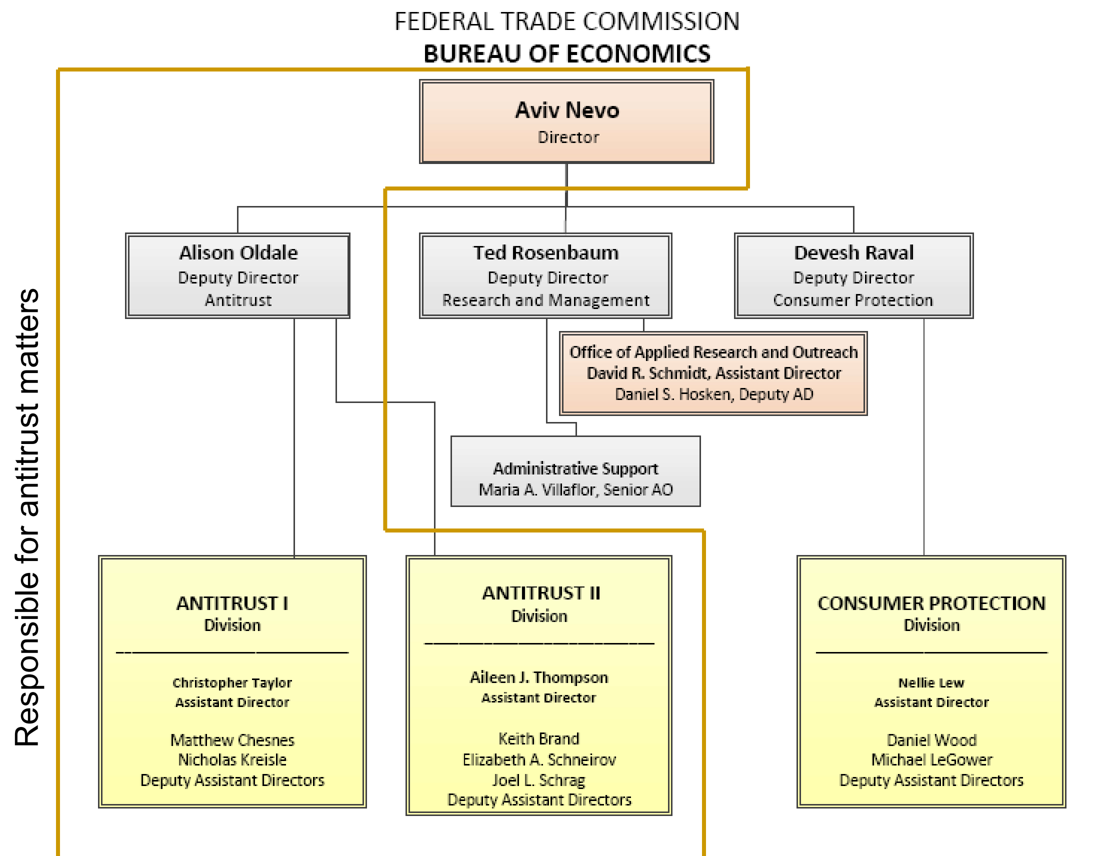
Melissa Holyoak (Republican appointment)
Solicitor General of Utah
Sworn in March 25, 2024
Term expires September 26, 2025

Incoming Chair

Andrew N. Ferguson (Republican appointment)
Solicitor General of the Commonwealth of Virginia and former Hill staffer
Sworn in April 2, 2024
Term expires September 26, 2030

Government Organization

- FTC Bureau of Competition



Notes:

1. The Bureau of Competition (BC) is the competition legal arm of the FTC and conducts antitrust investigations and legal challenges.
2. BC has a hierarchical structure.
3. The Director of the Bureau of Competition is appointed by the Commission and is the Commission's chief antitrust enforcement staff official.
4. The BC Director makes recommendations to the Commission on enforcement actions. As a matter of practice, the recommendations of other BC officials also go to the Commission.