

## 13.21: Antitrust Legislation

### Learning Objectives

- Explain the goal of antitrust legislation
- Summarize the provisions of the Sherman Act
- Summarize the provisions of the Federal Trade Commission Act
- Summarize the provisions of the Clayton Act

The Federal Trade Commission's website explains the intended outcome of antitrust legislation as follows:

Free and open markets are the foundation of a vibrant economy. Aggressive competition among sellers in an open marketplace gives consumers — both individuals and businesses — the benefits of lower prices, higher quality products and services, more choices, and greater innovation.<sup>[1]</sup>

The goal of antitrust legislation is to create and maintain a competitive market that yields the price, quality, choice and innovation benefits mentioned. The mission of the FTC and related agencies such as the U.S. Department of Justice (DOJ) Antitrust Division is to enforce the antitrust laws and, by extension, the rules of the competitive marketplace.

### Practice Question

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Here is an overview of the three core federal antitrust laws.

### Sherman Act

As summarized on the Ourdocuments site, the Sherman Antitrust Act of 1890 was the first federal act to outlaw monopolistic business practices.<sup>[2]</sup> As stated on the Federal Trade Commission website, “The Sherman Act outlaws ‘every contract, combination, or conspiracy in restraint of trade,’ and any ‘monopolization, attempted monopolization, or conspiracy or combination to monopolize.’”<sup>[3]</sup>

For example, the act authorized the federal government to dissolve trusts that concentrated ownership in the hands of a few trustees and effectively restrained trade or commerce. A 1895 Supreme Court decision limited the extent of the law, ruling that the law prohibited only unreasonable restraints of trade. This limitation did not deter the government from pursuing and winning a number of high-profile cases based on the Sherman Act, including a prosecution of Microsoft pursued by the Justice Department and 19 states. In an opinion reported in The New York Times, Judge Jackson wrote “the court concludes that Microsoft maintained its monopoly power by anticompetitive means and attempted to monopolize the Web browser market . . . unlawfully tying its Web browser to its operating system.”<sup>[4]</sup>

### Practice Question

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### Federal Trade Commission Act

The [Federal Trade Commission Act](#) is a federal consumer protection statute that created the Federal Trade Commission (FTC), an agency charged with developing and enforcing standards for commerce. To elaborate, the Commission has the authority to:

- Prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce
- Seek monetary redress and other relief for conduct injurious to consumers
- Prescribe rules defining with specificity acts or practices that are unfair or deceptive and establish requirements designed to prevent such acts or practices
- Gather and compile information and conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce.

The FTC's Bureau of Consumer Protection educates consumers and businesses about their rights and responsibilities, investigates consumer complaints and litigates cases involving deceptive trade practices and other violations of consumer protection statutes.<sup>[5]</sup>

### ? Practice Question

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## Clayton Act

Passed by Congress and signed into law in 1914, the Clayton Antitrust Act was designed to clarify and strengthen the Sherman Act. Further, the FTC site notes that the Act “addresses specific practices that the Sherman Act does not clearly prohibit, such as mergers and interlocking directorates (that is, the same person making business decisions for competing companies).”<sup>[6]</sup> In addition to banning price discrimination and anti-competitive mergers and acquisitions, the Clayton Act established the legality of strikes, boycotts and labor unions.<sup>[7]</sup>

In addition to these federal statutes, most states have antitrust laws that are enforced by state attorneys general or private plaintiffs. Many of these statutes are based on the federal antitrust laws.

### ? Practice Question

<https://assessments.lumenlearning.co...essments/14357>

1. "Guide to Antitrust Laws." Federal Trade Commission. April 08, 2019. Accessed June 12, 2019. <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws>. ↵
2. "Sherman Anti-Trust Act (1890)." Our Documents. Accessed June 12, 2019. <https://www.ourdocuments.gov/doc.php?flash=false&doc=51>. ↵
3. "Guide to Antitrust Laws." Federal Trade Commission. April 08, 2019. Accessed June 12, 2019. <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws>. ↵
4. Brinkley, Joel. "U.S. Judge Says Microsoft Violated Antitrust Laws with Predatory Behavior." The New York Times. April 04, 2000. Accessed June 12, 2019. <https://www.nytimes.com/2000/04/04/business/us-vs-microsoft-overview-us-judge-says-microsoft-violated-antitrust-laws-with.html>. ↵
5. "Bureau of Consumer Protection." Federal Trade Commission. September 23, 2016. Accessed June 12, 2019. <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection>. ↵
6. "Guide to Antitrust Laws." Federal Trade Commission. April 08, 2019. Accessed June 12, 2019. <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws>. ↵
7. "The Clayton Antitrust Act." US House of Representatives: History, Art & Archives. Accessed June 12, 2019. <https://history.house.gov/HistoricalHighlight/Detail/15032424979>. ↵

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