

JONATHAN B. BAKER

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**FIELDS OF
SPECIALIZATION**

antitrust law; regulatory law, economics and policy; industrial organization economics

PROFESSIONAL POSITIONS

Washington College of Law, American University

Professor of Law, September 2002 to present

Associate Professor of Law, January 1999 to August 2002

University Faculty Award for Outstanding Scholarship, Research, and

Other Professional Accomplishments, April 2004

Egon Guttman Casebook Award, April 2004

European Commission, Competition Directorate-General

Visitor, June 2005 to July 2005

Federal Trade Commission

Director, Bureau of Economics, April 1995 to December 1998

Award for Distinguished Service, October 1998

Consultant (on merger policy), 2002 to May 2004

Council of Economic Advisers, Executive Office of the President

Senior Economist, June 1993 to April 1995

(regulation, industrial organization and law)

Antitrust Division, U.S. Department of Justice

Special Assistant to the Deputy Assistant Attorney

General for Economics, May 1991 to June 1993

Director of Litigation Studies, Economic Analysis Group,

September 1990 to June 1993

Georgetown University Law Center

Adjunct Professor of Law, September 1990 to June 1995

Duke University School of Law

Olin Lecturing Fellow (visiting professor), August 1992 to December 1992

The Amos Tuck School of Business Administration, Dartmouth College

Assistant Professor of Business Administration, September 1986 to August 1990

leave of absence: September 1990 to July 1992

Federal Trade Commission

Attorney Advisor to the Acting Chairman and Office of the Commissioner,

October 1985 to July 1986

Foley & Lardner (Washington, D.C.)

Attorney, June 1982 to September 1985

EDUCATION

Ph.D. in economics, Stanford University, 1986
J.D., Harvard University, 1982
M.A. in economics, Stanford University, 1978
A.B., magna cum laude, Harvard University, 1977

PUBLICATIONS

- Reinvigorating Horizontal Merger Enforcement
in Robert Pitofsky, ed., Where the Chicago School Overshot the Mark: Effect of Conservative Economic Analysis on U.S. Antitrust (2008) (forthcoming)
(with Carl Shapiro)
- Economic Evidence in Antitrust: Defining Markets and Measuring Market Power
in Paolo Buccirossi, ed., Handbook of Antitrust Economics (2008)
(forthcoming) (with Timothy F. Bresnahan)
- Beyond Schumpeter Vs. Arrow: How Antitrust Fosters Innovation
Antitrust Law Journal
vol. 74, pp. 575-602, 2007
- A Turning Point in Merger Enforcement: *Federal Trade Commission v. Staples*
in Daniel A. Crane & Eleanor M. Fox, eds., Antitrust Stories (2007)
(with Robert Pitofsky)
- Market Definition: An Analytical Overview
Antitrust Law Journal
vol. 74, pp. 129-73, 2007
- Empirical Methods in Merger Analysis:
Econometric Analysis of Pricing in *FTC v. Staples*
International Journal of the Economics of Business
vol. 13, pp. 265-79, 2006
(with Orley Ashenfelter, David Ashmore, Suzanne Gleason & Daniel S. Hosken)
reprinted in George Norman, ed., Recent Developments in Monopoly and Competition Policy, 2008 (forthcoming)
- Competition Policy as a Political Bargain
Antitrust Law Journal
vol. 73, pp. 483-530, 2006
- My Summer Vacation at the European Commission
Antitrust Source
September 2005 (available at <http://www.abanet.org/antitrust/source/>)
- Two Modern Antitrust Moments: A Comment on Fenton and Kwoka
Antitrust Law Journal
vol. 72, pp.1029-37, 2005
- Roundtable Discussion: Unilateral Effects after *Oracle*
Antitrust
vol. 19, pp. 8-19, Spring 2005
(Moderator)

Why Did the Antitrust Agencies Embrace Unilateral Effects?

George Mason University Law Review,
vol. 12, no. 1, pp. 31-38, Fall 2003

The Case for Antitrust Enforcement

Journal of Economic Perspectives

vol. 17, pp. 27-50, Fall 2003

(and Comment, Journal of Economic Perspectives, vol. 19, p.243, Fall 2003)

reprinted in George Norman, ed., Recent Developments in Monopoly and
Competition Policy, 2008 (forthcoming)

Responding to Developments in Economics and the Courts: Entry in the Merger
Guidelines

Antitrust Law Journal

vol. 71, pp. 189-206, 2003

Efficiencies and High Concentration: Heinz Proposes to Acquire Beech-Nut (2001)

in John E. Kwoka, Jr. and Lawrence J. White, eds., The Antitrust Revolution (4th
ed. 2004), pp. 150-69

Competitive Price Discrimination: The Exercise of Market Power Without
Anticompetitive Effects (Comment on Klein and Wiley)

Antitrust Law Journal

vol. 70, pp. 643-54, 2003

Economist's Roundtable

Antitrust

vol. 17, pp. 8-18, Spring 2003

(Moderator)

Antitrust Law in Perspective: Cases, Concepts and Problems in Competition Policy

Thomson West, American Casebook Series (1st ed. 2002)

(2nd ed. 2008 forthcoming)

(with Andrew I. Gavil and William E. Kovacic)

Mavericks, Mergers, and Exclusion: Proving Coordinated Competitive Effects Under the
Antitrust Laws

New York University Law Review

vol. 77, pp. 135-203, April 2002

reprinted in Benjamin Klein & Andres V. Lerner, eds.,

Economics of Antitrust Law, 2008 (forthcoming)

Horizontal Merger Analysis Grows Up: A Review of Chapter 5 of Richard Posner's
Antitrust Law (2d ed. 2001)

The Antitrust Source, January 2002

New Horizons in Cartel Detection

George Washington Law Review

vol. 70, pp. 824-28, October/December 2001

Ill-Gotten Gains: Toothless Settlement Lets Microsoft Keep Rewards of Monopolization
Legal Times, November 12, 2001, p. 51
(with Andrew I. Gavil)

Should Concentration be Dropped from the Merger Guidelines?
in ABA Antitrust Section Task Force Report
Perspectives on Fundamental Antitrust Theory
pp. 339-54, July 2001
reprinted in University of West Los Angeles Law Review
vol. 33, pp. 3-16, 2001
(with Steven C. Salop)

A Preface to Post-Chicago Antitrust
in Roger van den Bergh, Roberto Pardolesi and Antonio Cucinotta, eds.,
Post Chicago Developments in Antitrust Analysis, 2002, pp. 60-75

Can Antitrust Keep Up? Competition Policy in High-Tech Markets
Brookings Review, Winter 2001, pp. 16-19

Editor's Note: Antitrust at the Millennium (Part II)
Antitrust Law Journal
vol. 68, no.3, pp. 621-24, 2001

Stepping Out in an Old *Brown Shoe*: In Qualified Praise of
Submarkets
Antitrust Law Journal
vol. 68, no. 1, pp. 203-218, 2000

Editor's Note: Antitrust at the Millennium (Part I)
Antitrust Law Journal
vol. 68, no.1, pp. 1-3, 2000

Empirical Methods in Antitrust Litigation:
Review and Critique
American Law and Economics Review
vol. 1, no. 1/2, pp. 386-435, 1999
(with Daniel L. Rubinfeld)

Law Leans Toward Joel Klein
Legal Times, October 25, 1999, p. 40

Entry and Competition in the U.S. Airline Industry: Issues and Opportunities
Special Report 255, Transportation Research Board,
National Research Council, July 1999
(with other members of the Committee for a Study of Competition in the U.S.
Airline Industry)

Promoting Innovation Competition Through the
Aspen/Kodak Rule
George Mason University Law Review,
vol. 7, no. 3, pp. 495-521, Spring 1999

- Econometric Analysis in *FTC v. Staples*
Journal of Public Policy & Marketing
 vol. 18, no. 1., pp. 11-21, Spring 1999
- Policy Watch: Developments in Antitrust Economics
Journal of Economic Perspectives
 vol. 13, no. 1., pp. 181-94, Winter 1999
- From Open Access to Convergence Mergers: An Antitrust Perspective on the Transition to Electricity Competition
Power, vol. 3, no. 1, pp. 3-8, Winter 1998
 (with John C. Hilke)
- "Continuous" Regulatory Reform at the Federal Trade Commission
Administrative Law Review
 vol. 49, pp. 859-874, Fall 1997
- Contemporary Empirical Merger Analysis
George Mason University Law Review
 vol. 5, pp. 347-61, Spring 1997
- Unilateral Competitive Effects Theories in Merger Analysis
Antitrust
 vol. 11, no. 2, pp. 21-26, Spring 1997
- Product Differentiation Through Space and Time: Some Antitrust Policy Issues
The Antitrust Bulletin
 vol. 42, pp. 177-96, Spring 1997
- The Problem with *Baker Hughes* and *Syufy*: On the Role of Entry in Merger Analysis
Antitrust Law Journal
 vol. 65, pp. 353-74, Winter 1997
- Identifying Horizontal Price Fixing
 in the Electronic Marketplace
Antitrust Law Journal
 vol. 65, pp. 41-55, Fall 1996
- Vertical Restraints with Horizontal Consequences: Competitive Effects of "Most-Favored-Customer" Clauses
Antitrust Law Journal
 vol. 64, pp. 517-34, Spring 1996
- Fringe Firms and Incentives to Innovate
Antitrust Law Journal
 vol. 63, pp. 621-41, Winter 1995
- Predatory Pricing After *Brooke Group*: An Economic Perspective
Antitrust Law Journal
 vol. 62, pp. 585-603, Spring 1994
 reprinted in Andrew Gavil, ed., An Antitrust Anthology, 1996

Two Sherman Act Section 1 Dilemmas: Parallel Pricing, the Oligopoly Problem, and Contemporary Economic Theory

The Antitrust Bulletin, vol. 38, pp. 143-219

Spring 1993

reprinted in Benjamin Klein & Andres V. Lerner, eds.,

Economics of Antitrust Law, 2008 (forthcoming)

Empirical Methods of Identifying and Measuring Market Power

Antitrust Law Journal

vol. 61, pp. 3-16, Summer 1992

(with Timothy F. Bresnahan)

reprinted in Benjamin Klein & Andres V. Lerner, eds.,

Economics of Antitrust Law, 2008 (forthcoming)

Entry Analysis Under the 1992 Horizontal Merger Guidelines

Antitrust Law Journal

vol. 61, pp. 139-46, Summer 1992

(with Janusz A. Ordover)

Per Se Rules in the Antitrust Analysis of Horizontal Restraints

The Antitrust Bulletin

vol. 36, pp. 733-43, Winter 1991

Identifying Cartel Policing Under Uncertainty:

The U.S. Steel Industry 1933-1939

Journal of Law and Economics

vol. 32:2, pt. 2, pp. S47-S76, October 1989

Recent Developments in Economics that Challenge Chicago School Views

Antitrust Law Journal

vol. 58:2, pp. 645-655, 1989

Book Review

Larner & Meehan, eds., Economics and Antitrust Policy

The Antitrust Bulletin

vol. 34, pp. 919-930, Winter 1989

The Antitrust Analysis of Hospital Mergers and the Transformation of the Hospital Industry

Law and Contemporary Problems

vol. 51:2, pp. 93-164, Spring 1988

Vertical Restraints Among Hospitals, Physicians, and Health Insurers that Raise Rivals' Costs

American Journal of Law & Medicine

vol. 14, pp. 385-408, 1988

Private Information and the Deterrent Effect of Antitrust Damage Remedies

Journal of Law, Economics and Organization

vol. 4, pp. 385-408, 1988

- Estimating the Residual Demand Curve Facing a Single Firm
International Journal of Industrial Organization
 vol. 6, pp. 283-300, 1988
 (with Timothy F. Bresnahan)
 reprinted in Andrew N. Kleit, ed., Antitrust and Competition Policy, 2005
- Dramatization: The Merger Transaction -- Legal Evaluation
 (with other program faculty)
 Introduction and Fact Summary
 in National Institute: The Contested Merger
Antitrust Law Journal, vol. 56, pp. 603-637, 1988
- The Gray Market in Video, Consumer Welfare, and Public Policy: An Economic
 Analysis
 in E. Noam & J. Millonzi, eds.
The International Market in Film and Television Programs, 1993 (proceedings of
 a 1987 conference)
- Horizontal Mergers: Law and Policy
 American Bar Association Antitrust Section Monograph, 1986
 (with other members of Merger Standards Task Force)
- The Gains from Merger or Collusion in Product Differentiated Industries
Journal of Industrial Economics, vol. 33, pp. 427-444 1985
 reprinted in P. Geroski, L. Philips & A. Ulph, eds. Oligopoly, Competition and
 Welfare, 1985
 (with Timothy F. Bresnahan)
- Has the Contract Clause Counter-Revolution Halted? Rhetoric, Rights and Markets in
 Constitutional Analysis
Hastings Constitutional Law Quarterly, vol. 12, pp. 71-104, Fall 1984

**WORKING PAPERS, MANUSCRIPTS,
 AND SELECTED PRESENTATIONS**

- Competition and Prosperity: Prices, Progress and Politics
 Keynote Address
 Netherlands Competition Authority (NMa) Conference on Measuring the
 Economic Effects of Competition Law Enforcement
 October 2007
- Econometric Methods in *Staples*
 April 2004
 (with Orley Ashenfelter, David Ashmore, Suzanne Gleason, and Daniel S.
 Hosken)
 (available at <<http://ssrn.com/abstract=529144>>)
- Comments on Applying the Horizontal Merger Guidelines
 March 2004
 (available at <[http://www.ftc.gov/bc/mergerenforce/
 comments/bakerjon.pdf](http://www.ftc.gov/bc/mergerenforce/comments/bakerjon.pdf)>)

DOJ/FTC Merger Workshop
Panel on Coordinated Effects, February 18, 2004
Economists and Lawyers' Roundtable, February 19, 2004
(transcript available at <<http://www.ftc.gov/bc/mergerenforce/index.html>>)

Roundtable with Former Directors of the FTC Bureau of Economics
September 4, 2003
(transcript available at
<<http://www.ftc.gov/be/workshops/directorsconference/index.htm>>)

DOJ/FTC Hearings on Health Care and Competition Law and Policy
Panel on Most Favored Nations Clauses, May 7, 2003
(transcript available at <<http://www.ftc.gov/ogc/healthcarehearings/index.htm>>)

Comment on airline regulatory policy
in Louis Uchitelle, Looking for Ways to Make Deregulation Keep Its Promises
New York Times, July 28, 2002

Residual Demand Estimation: A Gatekeeper Regression for Analyzing the Unilateral
Competitive Effects of Mergers and Single Firm Market Power
Draft: July 2002

Roundtable Conference Participant, ABA Antitrust Section
Task Force Report, Perspectives on Fundamental Antitrust Theory, pp. 387-476,
July 2001

Roundtable Conference Participant, ABA Antitrust Section
Task Force Report, Perspectives on the Concepts of Time, Change, and
Materiality in Antitrust Enforcement, pp. 159-71, 207-372, July 2001

U.S. v. Microsoft Corporation, C-SPAN On-Line Chat, Online
Town Hall Meeting, February 26, 2001

Panelist, Competition Policy in the World of B2B Electronic
Marketplaces
Federal Trade Commission, June 30, 2000

Symposium on "The Microsoft Verdict: The Next Phase"
American Prospect Online, April 6, 2000

Letter to the Editor (Reply to Steiner FTC:Watch Editorial)
FTC: Watch, December 20, 1999 (with Jeremy Bulow)

Market Power and the Cross-Industry Behavior of Prices Around a Business Cycle
Trough
Working Paper No. 221
Federal Trade Commission, December 1998
(with Peter A. Woodward)

Identifying the Firm-Specific Cost Pass-Through Rate
Working Paper No. 217, Federal Trade Commission, January 1998
(with Orley Ashenfelter, David Ashmore & Signe-Mary McKernan)

An Antitrust Seminar: A Candid Conversation on the Past, Present, and Future of Antitrust

panelist in a discussion sponsored by the New York State Bar Association, Antitrust Section, January 1997

"Hot Topics" at the Federal Trade Commission

presented at the American Bar Association, Section of Antitrust Law Spring Meeting, March 1996

Recent Developments in Antitrust Law and Economics

sponsored by the Antitrust, Trade Regulation and Consumer Affairs Section, District of Columbia Bar

Tacit Collusion	April 1992
Product Differentiation	March 1992
Entry	February 1992

Product Market Definition: Mergers Among Sellers of Branded Consumer Products
outline of presentation reprinted in The Antitrust Division and the FTC Speak on Current Developments in Federal Antitrust Enforcement and Consumer Protection, Practising Law Institute (No. B4-6985), 1991

Asymmetric Oligopoly Behavior in the Aluminum Industry Around a Business Cycle Trough

Working Paper No. 256, Amos Tuck School, August 1990
(with Thomas B. Johnston and Peter A. Woodward)

Raising Rivals' Wages in the Postwar Automobile Industry

Working Paper No. 248, Amos Tuck School, January 1990

The Evolution of Health Care Institutions: An Economic Approach

presented at the 1989 Health Law Teachers Conference, June 1989

When is Conservation Better than Generation?

Working Paper No. 223
Amos Tuck School, May 1988; revised October 1988

The Simple Empirics of Strategic Instruments

Working Paper No. 202, Amos Tuck School, May 1987

Why Price Correlations Don't Define Antitrust Markets:

On Econometric Algorithms for Market Definition

Working Paper No. 149
Federal Trade Commission, January 1987

Insurance Against Product Failure and Moral Hazard in the Consumption of Other Goods
in Ph.D. dissertation, Stanford University, June 1986

The Effect of a Shopping Mall on Regional Retail Sales: An Econometric Analysis

Working Paper No. 1255-01
The Urban Institute, August 1978

EDITORIAL

Editorial Chair, Antitrust Law Journal
July 2000 to August 2004

Editorial Board, Review of Industrial Organization
August 2002 to December 2003

Guest Editor, Symposium on Antitrust at the Millennium
Antitrust Law Journal
Part I, vol. 68, no. 1, 2000
Part II, vol. 68, no.3, 2001

Contributing Editor, Antitrust Law Journal
August 1999 to July 2000

Advisory Board, Antitrust Abstracts (SSRN)
Advisory Board, Telecommunications and Regulated Industries
Abstracts (SSRN)
October 1998 to present

Guest Editor, Symposium on Tacit Collusion
The Antitrust Bulletin, Spring 1993

OCCASIONAL REFEREE

American Economic Review	Management Science
American Law and Economics Review	National Science Foundation
Antitrust Law Journal	Quarterly Journal of Economics
Canadian Journal of Economics	RAND Journal of Economics
Journal of Industrial Economics	Review of Economics and Statistics
Journal of International Economics	Review of Industrial Organization
Journal of Law and Economics	

TESTIMONY

Hearing on Merger Enforcement, Panel on Treatment of Efficiencies
Antitrust Modernization Commission, November 17, 2005
(written statement and hearing transcript available at
<http://www.amc.gov/commission_hearings/merger_enforcement.htm>)

In re Mercedes-Benz Antitrust Litigation
June 2, 2005 (deposition testimony)
May 5, 2006 (pretrial motion testimony)

In re Evanston Northwestern Healthcare Corp.
January 25, 2005 (deposition testimony)
March 22, 2005 (trial testimony)

Federal Trade Commission v. H.J. Heinz Co.
September 8, 2000 (trial testimony)
August 2000 (deposition testimony)

United States v. Northwest Airlines, Inc.
May 2000 (deposition testimony)

Oversight Hearing on “The Antitrust Enforcement Agencies”
House Committee on the Judiciary, April 12, 2000
(antitrust and high technology industries)

United States v. Airline Tariff Publishing Co.
June 1993 (declaration estimating consumer injury from air fare coordination)

United States Sentencing Commission
October 11, 1988 (organizational sanctions)

CASES LITIGATED

In re Certain Alkaline Batteries
United States International Trade Commission
1983 to 1984 (challenge to gray market imports)
(represented Duracell with other attorneys)

Christian Schmidt Brewing Co. v. G. Heileman Brewing Co.
1984 to 1985 (antitrust suit to block Heileman-Pabst merger) (represented
Heileman with other attorneys)

TEACHING

Antitrust and Regulation

Antitrust Law (American)
Regulatory Law and Policy (or Economic Regulation) (American, Georgetown)
Advanced Antitrust (or Antitrust Law and Economics: Recent Developments)
(American, Duke, Georgetown)
Antitrust, Innovation and Intellectual Property (American)
Communications Law (American)
Business and Public Policy (or Business Environments) (Tuck)

Economics, Analytical Methods, and Law & Economics

Analytical Methods for Business Law (American)
Law and Economics (American)
Managerial Economics (microeconomics and industrial organization economics) (Tuck)
Problems in Managerial Economics (graduate level industrial org. economics) (Tuck)
Econometrics Seminar (Tuck)

Other Courses

Advanced Constitutional Law: Economic Clauses (American)
Contracts (American)

**ACTIVITIES AND
AFFILIATIONS**

American Antitrust Institute
Advisory Board, 2001 to present

American Bar Association Section of Antitrust Law
AALS Liaison Committee, Chair, 2003 to 2004
Advisory Board on Section Reserves, July 2007 to date
Antitrust Law Journal
Editorial Chair, July 2000 to July 2004
Contributing Editor, 1999 to 2000, 2007 to date
Council, August 2004 to July 2007
Economics Committee, Vice Chair, 1995 to 1999
Committee member, 1987 to present
Merger Standards Task Force, 1985 to 1986
Monograph Committee, 1992 to 1995
National Institute Committee, 1987
Program Co-Chair, Antitrust at the Millennium
September 2000 (jointly sponsored by Washington College of
Law, American University)
Sherman Act §2 Committee, Vice Chair
1992 to 1995
Task Force on Economic Evidence, Co-Chair
2005 to present
Task Force on Fundamental Theory, 2000 to 2001
Task Force Serving as Liaison to the
Modernization Commission, 2004 to 2007

American Bar Association Section of Administrative Law

American Economic Association

American Law & Economics Association
Area Organizer, Antitrust and Economic Regulation, 2002 and 2006

Association of American Law Schools
Antitrust and Economic Regulation Section
Chair, 2003
Executive Committee, 1999 to 2003

CRA International (formerly Charles River Associates)
Senior Consultant, July 2002 to present

Committee for a Study of Competition in the U.S. Airline Industry
Transportation Research Board, National Research Council, 1998 to 1999

COMPASS Prizes (for economic papers in competition policy)
Selection Committee, 2007

Member of the Bar, District of Columbia
December 1982 to present

January 2008