

Silicon Valley Antitrust v.3 (Fall 2013)

Course outline

July 21, 2013

The syllabus will be evolving based on current events, but the outline below should give you some idea of the content and general direction for the Fall semester.

I will turn this into a properly hyperlinked syllabus in the next week or so, similar in format to this one: <http://www.hannokaiser.com/lawschool/2013-svat/2013-svat-syllabus.html>

1. Horizontal agreements in the technology space?

- *United States v. Apple, Inc. et al.* (“ebooks”), (July 10, 2013)
- *Cascades v. RPX et al.*, (2013)

2. The anticompetitive playbook in high-technology markets

- Anticompetitive strategies:
 - o Collusion
 - o Exclusion
 - o Leveraging
- In-depth analysis of the *U.S. v. Microsoft* case, which is still the foundational case for platform markets
- U.S. and EU law approaches

3. “Patent Assertion Entities” strategies and counter-strategies

- The PAE business model
- Analysis of pending PAE cases
- The impact of the Supreme Court’s *FTC v. Actavis* decision (June 17, 2013)
- Hold up (and/) or efficient market makers?

4. Antitrust and the “preservation of our democratic political and social institutions” in light of PRISM and suspicionless phone metadata collection

- Increasing technological mediation of social interaction and large-scale surveillance
- Antitrust’s concern with market structures that promote democratic values

- *Northern Pacific Railway Comp., v. U.S.*, 356 U.S. 1 (1958) and other post WWII antitrust cases

5. The Smartphone Wars

- The monopolist's toolkit: business strategies based on the abuse of market power
- Apple, Google, Samsung, Microsoft, etc.
- FRAND-encumbered standard-essential patents
- Global litigation strategies

6. Open and closed systems

- Gaming consoles: Xbox, PS3; mobile operating systems: Android, iOS, Windows on ARM, and Firefox OS; Facebook and Facebook credits, etc.
- The “political philosophy” of open systems
- The economics of platforms
 - o The players: system sponsors, users, contributors
 - o Platforms as “managed economies”
 - o “More is not always better” How platform rules emerge.
- Single platform aftermarkets
- Free and open software (FOSS) meets antitrust

7. Predatory innovation

- To what extent should governments police product design decisions?
- What about code? Does “cheap exclusion” change everything?
