

Michigan Law Review

Volume 58 | Issue 1

1959

Oppenheim: Federal Antitrust Laws, Cases and Comments (Second Edition)

Carl H. Fulda
The Ohio State University

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Antitrust and Trade Regulation Commons](#), [Legal Education Commons](#), and the [Legal Writing and Research Commons](#)

Recommended Citation

Carl H. Fulda, *Oppenheim: Federal Antitrust Laws, Cases and Comments (Second Edition)*, 58 MICH. L. REV. 150 (1959).

Available at: <https://repository.law.umich.edu/mlr/vol58/iss1/21>

This Book Reviews is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

RECENT BOOKS

FEDERAL ANTITRUST LAWS, CASES AND COMMENTS (Second Edition). By *S. Chesterfield Oppenheim*, assisted by *Richard W. Pogue*. St. Paul: West Pub. Co. 1959. Pp. xxxv, 1188. \$15.

The new edition of Professor Oppenheim's casebook is an event of major importance, for both the teaching fraternity and the Bar. Eleven years have elapsed since publication of the original edition, a very long period in a field of such constant and dynamic growth as antitrust. Hence, the present revision was badly needed to bring the materials up to date for classroom use and, at the same time, make available for practitioners a new and complete reference work for guidance in every branch of this vast and vitally important area. It is hardly necessary to state that the new edition achieves both of these goals. Professor Oppenheim's preëminent position as a teacher and author in the field of trade regulation guarantees superior scholarship and superb performance in everything he undertakes.

The developments of the last decade are exhaustively treated without undue curtailment of the earlier cases. For instance, the subject of mergers became a topic of paramount urgency with the enactment of the so-called Anti-Merger Law of 1950, and this is reflected in three chapters of 154 pages consisting almost exclusively of new cases. Similarly significant innovations with regard to distribution are presented in the chapters on exclusive dealing and tying; indeed, the *Standard Station* case (337 U.S. 293) had not yet been decided when the earlier edition appeared.

Coverage of new cases must, of course, be expected. The present edition gives us much more than that. It embodies a reorganization of the materials which seems to me preferable to that of its predecessor. After an excellent introduction the author develops the problems of price fixing in all their ramifications, including a particularly helpful chapter entitled "Special Problems of Conspiracy." The next major topic is Section 2 of the Sherman Act, which is followed by the new chapter on Mergers. After that comes a long treatment of distribution problems. Patents and Copyrights, Foreign Commerce and Remedies terminate the procession. This organization is more logical than that of the 1948 edition on several accounts. For instance, it would seem to be more plausible to take up Misuse of Patents as a part of a separate chapter on "Patents and Antitrust" rather than combining the misuse doctrine with the cases on tying. Again, the decision to start with price-fixing rather than monopoly may make it easier for beginners to find their way into the heart of the subject; the new arrangement indicates that monopoly may be the result of successful conspiracies. Finally, the various chapters are now subdivided into numerous sections or sub-topics, and this technique greatly increases the usefulness of the book.

A second major feature of the new edition consists of reprints of several chapters from the 1955 *Report of the Attorney-General's National Com-*

mittee To Study the Antitrust Laws, which was prepared by Professor Oppenheim as Co-Chairman. Distinguished experts have differed about the recommendations of that Report, but everyone, to my knowledge, concedes that the Report itself represents a most skillful and lucid statement of existing law. Therefore, it is, at least in my experience, the answer to the students' prayer for a short text which facilitates understanding of particular cases and synthesis of the manifold problems encountered in the course. The reprints in the casebook will, therefore, be particularly welcome to instructors and students.

One minor point may be added. The chapter on Resale Price Maintenance is divided into three sections: an introductory text, the federal cases before the Miller-Tydings Amendment, and the federal cases after that amendment. The recent cases in the state supreme courts which have held their fair trade laws unconstitutional in whole or in part are mentioned in the introduction; presumably, they will appear in a new edition of the casebook on "Unfair Trade Practices." This division of the material is, of course, the result of Professor Oppenheim's over-all plan of treating the Federal Antitrust Laws in one volume and the common and statutory law on "Unfair Competition" in another; hence, in this context, it is impossible to quarrel with the logic of the arrangement. Yet, I would personally prefer discussing resale price maintenance as one unit composed of both federal and state ingredients; I have some doubt as to whether the full impact of resale price maintenance can be put across without a study of at least those state decisions which analyze the arguments pro and con with respect to this practice. Perhaps the reprint from the Attorney General's Report, which appears at the end of this chapter, is sufficient to complete the picture.

All told, the excellence of this new edition intensifies the clamor for a similar revision of the companion book on "Unfair Trade Practices" which includes the Robinson-Patman Act. That, too, is badly needed and, I hope, will not be delayed too long.

*Carl H. Fulda,
Professor of Law,
The Ohio State University*