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prices, greater choices, more
aws are tailored to the needs of the
profit educational organizations.
ctivity and private antitrust litigation
e. Senator Sherman (whose
laws) famously scoffed at the prospect

], but courts and enforcers have taken a more
aggressivetack in the modern era. This Note highlights the many circumstances in which antitrust issues

Section 2 of the Sherman Act states that it is illegal to “monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations.”[6]

The Antitrust Division of the U.S. Department of Justice can seek criminal or civil penalties, or injunctive relief, for violations of Sections 1 and 2 of the Sherman Act.[7] Additionally, private parties injured by violations may be entitled to treble damages, attorneys’ fees, court costs, and injunctive relief.[8]

administrators from similarly-situated educational institutions. Antitrust laws recognize that competition and services may sometimes be enhanced when competitors collaborate and share information. For example, when competitors set standards or share best practices, the activities often are benign and may serve to benefit consumers. However, when competitors interact in what could be deemed

In addition, the National Cooperative Research and Production Act of 1993

arguing that antitrust laws did not apply because the policy was not commercially motivated. Finding that the provision of housing could not be separated from the College's academic mission, the district court concluded that antitrust laws did not apply. The Second Circuit reversed and remanded the case, noting that the district court improperly ignored the allegation raised by the fraternities that the policy was intended to raise revenues. On remand, the trial court granted summary judgment to the College, finding that plaintiffs' definition of the relevant market as "the market for residential services for students matriculating at Hamilton College" was artificially narrow.[51] The trial court agreed with the College that the relevant market must encompass all colleges that are "reasonably interchangeable" with the College, and that plaintiff's proposed market definition was incorrect as a matter of law.

In *Hack v. President and Fellows of Yale College*,[52] several Orthodox Jews contested Yale's requirement that all freshmen live in coeducational dormitories by claiming, among other things, that the requirement was an attempted monopoly in violation of the Sherman Act. Because the plaintiffs did not allege that Yale had any market power in the local housing market, the Second Circuit found no violation of antitrust laws.[53]

I. Medical School/Hospital Issues (including the National Resident Matching Program)

Antitrust laws extend to the health care field, thereby implicating the business decisions of medical schools and university hospitals relating to mergers of health facilities, participation in joint ventures with other entities, and exclusive agreements with physicians or other hospitals. For example, one hospital may allege that a competing hospital has (ooTc 0 Tw ([)4o2o6)-.2(as)-812.2(as)-6.4es aTc 0 Tw 4]TJ 0 -1..1(es)-8thha

block or frustrate participation in a rating initiative, a school should obtain specialized antitrust guidance evaluating the nature of the plan and the mechanism by which it is to achieve its intended effect.

K. Jointly Establishing Admissions Protocols

Intercollegiate coordination of events in the academic calendar is in many ways a time-honored tradition. Agreements or conventions governing when applications must be submitted, when acceptances are issued, when aid applications must be received, when award letters are sent, and the like, have been routine and, in general, not subject to close antitrust scrutiny. However, events in recent years have raised antitrust questions. For example, an inter-school agreement among law schools establishing recruitment deadlines and protocols that law firms must accept in order to do on-

III. RISK REDUCTION

Antitrust risk most often arises from two "hot spots." Section 1 of the Sherman Act, which prohibits anticompetitive agreements, requires an agreement. Therefore, only multilateral conduct raises antitrust risk under this Section. Section 2 of the Sherman Act prohibits the unfair acquisition or use of monopoly power, and so the use of "clout" by an institution (or group of institutions) can present antitrust risk under this Section. Most compliance policies focus on these two sources of risk, educate individuals who might be in the higher risk zones as to the rules of the road to be followed, and designate a compliance officer to receive inquiries and obtain legal guidance where appropriate. Sample compliance policies are provided below, under Resources.

CONCLUSION:

While lawmakers in the early twentieth century may not have envisioned that antitrust laws would apply to educational institutions, the legal environment in which these institutions operate has changed substantially since that time. Government regulators have recently pursued more aggressive litigation and enforcement actions against these institutions, and this trend does not appear likely to subside. As a result, colleges and universities should remain mindful of how laws designed to regulate the commercial marketplace may apply to their activity on the host of issues outlined above. The practical suggestions included in this Note should help colleges and universities in assessing compliance risk and taking appropriate steps to mitigate that risk.

RESOURCES:

Compliance Policies

- Stanford University
- Tufts University
- University of Maryland Medical Center
- University of Pennsylvania
- University of Rochester Medical Center
- Vanderbilt University
- Wesleyan University
- Yale University

Research Tools

ENDNOTES:

[1] 21 Cong. Rec. 2658-59 (1890).
[2] In addition to these federal statutes, most states have antitrust laws that are enforced by state attorneys general or private plaintiffs. Many

[30] *See Todd v. Exxon Corp*

[51] *Hamilton Chapter of Alpha Delta Phi, Inc. v. Hamilton Coll., 106 F. Supp.2d 406. 412 (N.D.N.Y. 2000).*
[52] 237 F.3d 81, 82-83 (2d Cir. 2000).
[53] *Id*. at 85. *See also Delta Kappa Epsilon Alumni Corp. v. Colgate Univ*., No. 2005–1762, slip op. at 1 (N.Y. Sup. Ct. Mar. 7, 2006), *aff'd sub nom. Delta Kappa Epsilon (DKE) Alumni Corp. v. Colgate Univ*., 38 A.D.3d 1041 (2007) (rejecting plaintiff's argument that Colgate's housing policy, which required students to live in university-owned housing, constituted an unlawful monopoly; rejecting plaintiff's argument that the students were unfairly locked into Colgate housing, noting that the1(')3.1(s)-8(ar)-6.4(gu)t53.2(i)3.2y1.2n8toc3Br8 676.

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