

Interdisciplinary Programs International Economics

Academic year 2024-2025

Competition Law and Economics

MINT110 - Spring - 6 ECTS

Friday 10h15 - 12h00

Course Description

This seminar course focuses on competition enforcement from both legal and economic perspectives. The objective of the course is to provide an introduction to the economic analysis and the legal framework that is relevant to different areas of enforcement and discuss the interplay between them, in part through the discussions of recent cases. Extracts from textbooks and selected readings will be assigned. Students will be expected to participate actively in class and present some cases. This course is accessible to both economics students as well as students from other disciplines. Alternative readings are proposed for students with different backgrounds

> PROFESSOR

[Damien Neven](#)

[Office hours](#)

> ASSISTANT

[Office hours](#)

IMPORTANT

Regular attendance is compulsory, and any absence must be promptly communicated to the teacher. In the event of missing more than two sessions, students are expected to provide well-documented justifications for unforeseeable circumstances (e.g. illness, accident, death of a relative), directly to the Direction of Studies. Failure to justify absences beyond two sessions will result in the assignment of code N.

Students are also reminded of the following legal rules:

The teacher owns the **copyright** on the material they created for this course. As such, any reproduction or distribution of this document, in whole or in part, as well as of any other material created by the teacher for the course, is prohibited unless permission is granted by the author.

Recording (as video or audio) a course without the consent of the teacher and other participants is strictly forbidden.

Syllabus

The course is meant to provide an overview of current competition enforcement in the EU from both a legal and economic perspective. A comprehensive handout will be distributed ahead of each class (which is accessible for all students).

Each student will be asked to make a presentation during the class on a particular decision or Court judgement. Some initial background material will be provided for each case but additional research is

expected. The presentation (which will be supported by a PP, distributed in advance) should present the facts of the case and provide a critical review of the decisions from both an economic and legal perspective.

Readings

As background in industrial organization, a number of textbooks can be used:

Cabral, L. 2018, An introduction to Industrial Organization, *MIT Press*

Belleflamme, P. and M. Peitz, Industrial Organization, Markets and Strategies, *Cambridge University Press*, 2015 (for econ students)

For specific topics, I will use the following texts:

Niels, Jenkins and Kavanagh, Economics for competition lawyers, Oxford University Press, 2016

Motta Massimo, Competition Policy. Theory and practice, *Cambridge University Press*, 2004 (for econ students)

Fumagalli, C., M. Motta, and C. Calcagno, Exclusionary practices, The Economics of Monopolization and abuse of dominance, *Cambridge University Press*, 2018 (for econ students)

For background material and cases in the US, I will use the following texts:

Hovenkamp, H., Principles of Antitrust, West Academic Publishing, 2017

Kwoka J. and L White, 2014, The Antitrust Revolution, Economics, Competition and Policy, Oxford University Press, Sixth edition and Seventh edition (2019)

Syllabus

1. The legal and institutional background (Feb 21 and February 28)

- The main instruments (Art 101 / 102) and the Merger regulation
- The objectives of competition policy in the EU
- A comparison with the US legal and institutional background
- The constituencies involved and the institutions (the Commission and the Courts)
- Relationship to national competition laws.
- The new instruments : ex ante regulation of platforms
- Has competition become weaker?

Additional reading

Kovacic, B., P. Mavroidis and D. Neven, Merger control procedures and institutions. A comparison of the EU and US practice, *Antitrust Bulletin*, 2015

Kovacic, W. and C. Shapiro, (2000) Antitrust policy: a century of economic and legal thinking, *Journal of Economic Perspectives*, 14(1) 43-60

Amato, G., (1998), Antitrust and the bounds of power, Hart Publishing

Salop, Steven C., An Enquiry Meet for the Case: Decision Theory, Presumptions, and Evidentiary Burdens in Formulating Antitrust Legal Standards (November 6, 2017). Available at SSRN: <https://ssrn.com/abstract=3068157> or <http://dx.doi.org/10.2139/ssrn>.

Regulation 2022/1925 of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)

Pierre Larouche and Alexandre de Streel, (2021), The European Digital Markets Act: A Revolution Grounded on Traditions, Journal of European Competition Law & Practice, 2021, Vol. 12, No. 7 ,

2. Market power and market definition (March 7)

- What is market power ?
- Sources of market power
- The definition of the relevant market
- Market shares, market power and barriers to entry
- Dominance
- Ecosystems

Niels, Jenkins and Kavanagh, chapter 2 and 3 or
Hovenkamp, chapter 3
Motta, chapter 3 (more technical)

Additional reading:

Commission notice on the definition of the relevant market, February 2024
https://competition-policy.ec.europa.eu/document/26c374a4-dd03-4a91-a938-0c73ce2dce6a_en

3. Unilateral effects in mergers (March 15) – 3 hours

- GUPPI, IPR
- Merger simulations

Reading: Motta, chapter 5, 5.2 and 5.4

Additional reading

Farrell and Shapiro, (2010), Antitrust evaluation of horizontal mergers: An economic alternative to market definition, Berkeley Electronic Journal of Theoretical Economics: Policies and Perspectives, 10(1).

Or Niels, Jenkins and Kavanagh, 7.4-7.5 (less technical)

US horizontal merger guidelines, 2010, <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>
EU guidelines on horizontal agreements, 2011 –

Draft merger guidelines for public comments – July 2023
https://www.ftc.gov/system/files/ftc_gov/pdf/p859910draftmergerguidelines2023.pdf

Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, Official Journal C 031, 05/02/2004 P. 0005 - 0018

Cases Presentation and discussion

Hutchinson 3G UK/Telefonica UK, case M.7612 – and Case T-399/16, Judgment of the General Court, 28 May 2020 and C-376/20 P, Judgment of the Court 13 July 2023

Ryanair/Aer Lingus (2007)

UPS/TNT (2012)

Universal/EMI (2012)

US: Staples-Office depot, Kwoka et al., chapter 6

4. Collusion and cartels (March 21) – 3 hours

- Collusion in repeated game
- Information exchanges
- Calibration of fines, leniency programs

Reading; Motta, chapter 4, 4.1 to 4.4

Additional reading;

Hovenkamp, Chapter 4.

Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, (2006/C 210/02)

Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, June 1, 2023 Section on information exchange

Ezrachi A. and M. Stucke, Virtual Competition, the promise and perils of the algorithm-driven economy, Harvard University Press, 2016, Part

Case presentation and discussion

Wood Pulp, Case IV/29.725, L85/1, 26.3.85

ECJ Cases C-89, 104, 114, 116, 117 and 125 to 129/85, Ahlström and others v. Commission, 1993 ECR I-1575.

EC Trucks (2016)

US: The DRAM Antitrust litigation, Kwoka et al. chapter 8

(Please note that there is no class on April 4th, April 11th (Good Friday) and April 18th (Easter Holiday))

5. Competition enforcement and sustainability (April 25)

- Legitimate objectives
- Article 101(3)

Reading

Sustainability and competition policy, Concurrences N° 1-2023

OECD (2021), Environmental considerations in competition enforcement, OECD Competition Committee Discussion Paper, <https://www.oecd.org/daf/competition/environmental-considerations-in-competition-enforcement.htm>

Loozen, E., (2019), Strict competition enforcement and welfare: A constitutional perspective on Art. 101 TFEU and sustainability, Common Market Law Review, 56, 1265–1302.

M.P Schinkel, Y. Spiegel, (2017) Can collusion promote sustainable consumption and production, International Journal of Industrial Organization, 53, 371-

Cases Presentation and discussion

Dutch agreement on coal fired power plant

6. Vertical agreements (Mai 2) – 3 hours

- Types of distribution arrangements (integrated distribution, commercial agency, exclusive distribution, exclusive purchasing, selective distribution, franchising)
- Complements and market power
- A taxonomy of vertical contracts
- New Guidelines on vertical agreements
- Vertical agreements in the digital sector
- Price parity
- Internet distribution

Rey, P., Vertical restraints – an economic perspective, report to the FNE, <http://www.fne.gob.cl/wp-content/uploads/2017/10/Patrick-Rey.-Vertical-Restraints.pdf>

Additional reading:

Commission Notice - Guidelines on Vertical Restraints (January 2010), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XC0519\(04\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XC0519(04)&from=EN)

Bennett, M., A. Fletcher, E. Giovannetti, and D. Stallibrass, Resale Price Maintenance: Explaining the Controversy, and Small Steps Towards a More Nuanced Policy, Fordham International Law Review, 2011

Hvidd, M., Vertical agreements between suppliers and retailers that specify a relative price relationship between competition products or competing retailers, OECD hearing of across platforms parity agreements, 2015, <http://www.oecd.org/daf/competition/competition-cross-platform-parity.htm>

Boik, A. and D. Corts, (2016), The Effects of Platform Most-Favored-Nation Clauses on Competition and Entry, Journal of Law and Economics, vol 59, 109-

De los Santo, B. and M. Wildenbeestz, (2017), E-book Pricing and Vertical Restraints, mimeo

Advanced material:

Rey, P. and Tirole, A primer in foreclosure, Handbook of Industrial Organization, 2003
Rey, P and J. Stiglitz, (1995), The role of exclusive territories in Producers' competition, American Economic Review, vol 16(3), p 431-451

Case presentation and discussion

GSK, Geoblocking
Hotel booking, e-books (2012)
Pierre Fabre (2011)
Coty (2017), Case C-230/16,
GSK, Geoblocking
US: Leegin vs PSKS, Kwoka et al., chapter 14

8. Tying and bundling (May 9) - Microsoft

Reading: Kuhn, K-U, R. Stillman and C. Caffarra, (2005) Economic theories of budling and their policy implications in abuse cases, an assessment in light of the Microsoft case, European Competition Journal, March, 85-

Additional reading

Guidance paper on the Commission's priorities in the enforcement of Art 102

Advanced material:

Fumagalli et ., Exclusionary practices, Chapter 4

Whinston, M., (1990), Tying, foreclosure and exclusion, American Economic Review, 80, 837-859

Carlton, D. and M. Waldman, (2002), The strategic use of tying to preserve and create market power in evolving industries, Rand Journal of Economics, 33, 194-220

Rey, P. and Tirole, A primer in foreclosure, Handbook of Industrial Organization, 2003
Guidance paper on the Commission's priorities in the enforcement of Art 102

Case presentation and discussion

EU : Microsoft Media Player and Browsers
US: Microsoft Internet explorer

9. Platform- (May 16) – 3 hours

Google Android

Reading :

Condorelli, D. and Padilla, J., (2020), Harnessing platform envelopment in the digital world, *Journal of Competition Law and Economics*, 16(2), 143-187

Petit, Nicolas, (2020), Big Tech and the Digital Economy, Oxford University Press

Jay Pil Choi and Doh-Shin Jeon, A Leverage Theory of Tying in Two-Sided Markets with Nonnegative Price Constraints, American Economic Journal: Microeconomics 2021, 13(1): 283–337

Alexandre de Cornière, Greg Taylor, On the economics of the Google Android case, VOX EU
15 August 2018

Case presentation and discussion

Google Android, case AT 40099, Case T-604/18, Judgment of the General Court, September 2022,
Apple EU
Dutch Apple case
Epic

Google Shopping

- Essential and quasi-essential facilities?
- Abnormality

Readings

Christian Ahlborn, Gerwin VanGerven and William Leslie, (2021) Bronner revisited: Google Shopping and the Resurrection of Discrimination Under Article 102 TFEU, Journal of European Competition Law & Practice, 2022, Vol. 13, No. 2

Petit, Nicolas, (2020), Big Tech and the Digital Economy, Oxford University Press

Case presentation and discussion

Google Shopping, Case T -612/17, 2021,
Judgment of the Court (Grand Chamber), 10 September 2024, Case C-48/22 P,
Bronner, C7/97
Slovak Telekom,

10. Rebates (May 23)

Reading: Fidelity rebates, Background note by the secretariat, OECD, 2016

Additional reading:

Fumagalli et al., Exclusionary practices, Chapter 2

Guidance paper on the Commission's priorities in the enforcement of Art 102, Section IV

Advanced material;

Ide, E., J.-P. Montero and N. Figueroa, (2016), Discounts as a barrier to entry, American Economic Review, 106(7) 1849-1877

Salinger, M., All unit discounts by a dominant producer threatened by partial entry, (2017), Antitrust Law Journal, 81, 508-536

Case presentation and discussion

EU : Intel, Tomra, Qualcomm
US : Meritor, Eisai

