

International Economics

Academic year 2019 - 2020

Competition Law and Economics

EI093 - Spring - 6 ECTS

Friday 14:00 – 16:00, S3

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. Topics addressed include: collusion, cartels, exchanges of information, other horizontal agreements (including patent settlements involving reverse payments) vertical agreements, abuse of dominance (including tying, bundling, rebates and injunctions) and mergers. 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

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Office hours : Monday 14 :00-16 :00

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Introduction

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:

Belleflamme, P. and M. Peitz, *Industrial Organization, Markets and Strategies*, Cambridge University Press, 2015 (more technical)
Cabral, L. 2018, *An introduction to Industrial Organization*, MIT Press (less technical)

For specific topics, I will use the following texts:

Motta Massimo, *Competition Policy. Theory and practice*, Cambridge University Press, 2004
Fumagalli, C., M. Motta, and C. Calcagno, *Exclusionary practices, The Economics of Monopolization and abuse of dominance*, Cambridge University Press, 2018
Niels, Jenkins and Kavanagh, *Economics for competition lawyers*, Oxford University Press, 2016 (less technical)

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 constituencies involved and the institutions (the Commission and the Courts)
- The objectives of competition policy in the EU
- Relationship to national competition laws.
- A comparison with the US legal and institutional background

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>.

2. Market power and market definition (March 6)

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

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,
http://ec.europa.eu/competition/mergers/legislation/notices_on_substance.html#relevant

4. Unilateral effects in mergers (March 13)

- 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 - [Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements](#)

Cases Presentation and discussion

Ryanair/Aer Lingus (2007)

UPS/TNT (2012)

Universal/EMI (2012)

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

4. Collusion and cartels (March 20)

- 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, Official Journal of the European Union, C11/1, 14/1/2011. 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

5. Coordinated effects in mergers (March 27)

- Factors conducive to coordination.
- Collusion and the distribution of assets
- Parallel accommodating conduct

Reading: Marc Ivaldi, Bruno Jullien, Patrick Rey, Paul Seabright, Jean Tirole; The Economics of Horizontal Mergers: Unilateral and Coordinated Effects, IDEI, Toulouse, Part C, March / November 2003

Garces-Tolon, E., D. Neven and P. Seabright, (2009), The ups and downs of the doctrine of collective dominance; using game theory for merger policy, in Cases in European Competition Policy, CUP, B Lyons ed.

Additional reading:

US horizontal merger guidelines, 2010, <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>
Harrington, J., (2013), Evaluating mergers for coordinated effects and the role of «parallel accommodating conduct», 78 Antitrust Law Journal No. 3

Advanced material:

Jenny, Compte and Rey, Capacity constraints, mergers and collusion, European Economic Review, January 2002, 1-29

Kühn, Kai-Uwe and Van Reenen, John (2009), Capacity constraints and irreversible investments: defending against collective dominance in UPM Kymmene/Norske Skog/Haindl. in Cases in European Competition Policy, CUP, B Lyons ed.

Case presentation and discussion

Airtours (2000)
ABF/GBI (2008)
Hutchinson 3G Italy/Wind (2016)
Inbev/SAB Miller (2016)
US: US vs H&R Block, FTV vs CCC Holdings

6. Vertical agreements (April 3)

- Types of distribution arrangements (integrated distribution, commercial agency, exclusive distribution, exclusive purchasing, selective distribution, franchising)
- Complements and market power
- A taxonomy of vertical contracts
- 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

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

Lagnese-Igloo , Case IV/34.072 – official journal L 183/19 (26.7.93)

CFI Case 7/93, Langnese-Iglo, 1995 ECR II-1539.

Pierre Fabre (2011)

GSK, Geoblocking

US: Leegin vs PSKS, Kwoka et al., chapter 14

8. Vertical agreements – price parity (April 24)

Hvidt, 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

Case presentation and discussion

Hotel booking, e-books (2012)

US Case: Amex

8. Tying and bundling (May 1)

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

Relevant case

EU : Microsoft Media Player and Browsers

US: Microsoft Internet explorer

9. Non horizontal mergers (May 8)

- Input and customer foreclosure
- Restoring monopoly power
- Information and coordination

Reading: Church, J., (2007), Background note on vertical mergers, OECD Policy roundtable, <https://www.oecd.org/competition/mergers/39891031.pdf>

Additional reading

Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:265:0006:0025:en:PDF>

Advanced material:

Ordover, J., G. Saloner and S. Salop, Equilibrium vertical foreclosure, (1990), American Economic Review, 80(1), 127-142

Inderst, R. and T. Valletti, (2011), Incentives for input foreclosure, European Economic Review, 55 (6), 820-831

Choi, J.P., (2008), Mergers with bundling in complementary markets, Journal of Industrial Economics, 56 (3)

Case presentation and discussion

EU: Google/double click, TomTom/Teleatlas, Arianespace/ASL

US: ATT/Time Warner

Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings

[Official Journal C 265 of 18/10/2008](#)

10. Exclusive dealing (May 15)

Reading : Fumagalli et al., , Exclusionary practices, chapter 3

Advanced material;

Segal, I. and M. Whinston, (2000), Naked exclusion, a comment, American Economic Review, 90(1)

Abito, J.M. and J. Wright, (2008), Exclusive dealing with imperfect downstream competition, International Journal of Industrial organization, 26, 227-246

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

EU : Langnese-Igloo,

US : Dentsply, Kwoka et al., chapter 16

11. Rebates (May 22)

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

Relevant cases

EU : Intel, Tomra, Qualcomm

US : Meritor, Eisai

11. Current issues; the Google cases – (May 29)

Readings

Padilla, J., Search engines and search neutrality, a primer, mimeo

Yun, J., (2018), Understanding google's search platform and the implications for antitrust analysis, *Journal of Competition Law & Economics*, 14(2), 311–329

Salinger, M. and R. Levinson, (2014), The role of Economic Analysis in the FTC's Google investigation, *The Review of Industrial Organization*, 2014

Ratliff, J. and D. Rubinfeld, (2014), Is there a market for organic search engine results and can their manipulation give rise to antitrust liability, *Journal of Competition Law and Economics*, pp. 1-25, May

Statement of the Federal Trade Commission Regarding Google's search practices, FTC file number 111-0163, January 3 2013.

Dolmans, M., (2014), The EU Google Commitments An Effective Remedy In Search Of A Problem, mimeo