

EMLE
Competition Law and Economics
2nd term Ghent University

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Course goals:

Teach students the fundamental principles of competition law and the most recent developments in competition and antitrust practice, also through a critical assessment of the main cases. In this perspective, specific consideration is placed on how the economic insights are or might be employed to decide real-life cases in the different jurisdictions. A comparative analysis is thus offered to properly understand similarities and differences in the enforcement practice of authorities and courts, especially of those operating in the European Union and within the US framework. Attention is also devoted to the digital markets, to the Big Data phenomenon, and to the competition challenges posed by primary actors as Facebook, Google, WhatsApp and Amazon.

Course contents:

Competition theory and market structure; goals of competition policy; interface between competition law and sector-specific regulation. Market power; market definition. Restrictive agreements; rule of reason *v. per se* rules; the economics of collusion; horizontal cooperation; vertical restraints. Single-firm conduct; the economics of market power and abuse of dominance; excessive prices; predatory pricing; exclusive dealing and loyalty rebates; refusal to deal; margin squeeze; tying. Concentrations: unilateral and coordinated effects; efficiencies. Public and private enforcement of competition/antitrust rules.

Course schedule:

Class 1. Objectives of competition law: efficiency, (total and consumer) welfare, market integration, protection of the competitive process. Relation with other policy goals, such as economic growth and reduction of economic inequality. The potential conflict between economic and legal goals.

Class 2. Competition law and policy. Competition policy and economic development. Evolution of the competition theory and the main approaches to competition law: Chicago, Harvard, Ordoliberal School. Contestable market theory, the current state of the industrial organisation literature, behavioural economics. Substantive law: the EU and US regimes.

Class 3. Market power: economic and legal definitions. Product and geographic market. Demand and supply-side substitutability. The SSNIP test. Empirical and econometric tools. Barriers to entry. The main application problems and the markets characterized by free goods and/or services.

Class 4. Single-firm conduct. Abuse and monopolization. Types of abuses: exploitative and exclusionary practices. Excessive prices and price regulation. The general approaches to conducts which can be abuses: the EU and US perspectives. The assessment of dominant position, also in the digital markets. The intellectual property clash with antitrust: legal monopolies vs. economic monopolies. Predatory pricing: economic theories, deep-pocket models, reputational models, signaling models and behavioral approaches; the EU and US approaches; the *Amazon* case.

Class 5. The other types of behavior that can be abusive when practiced by firms enjoying market power. Refusal to deal and the essential facility doctrine: the economic insights; the EU and US approaches; the *Microsoft* case. Tying and Bundling: economic analysis and efficiency explanations; EU and US approaches; the *Google* case. Price discrimination: lessons from economic theory, first-second-third degree of price discrimination; the EU and US legal approaches; geographical price discrimination. Discounts and rebates: pro-competitive and anticompetitive effects; EU and US legal analysis; loyalty discounts, bundled discounts and hybrid discount schemes; the *Intel* case.

Class 6. Restrictive agreements: the economics of collusion. Restrictions of competition as the object or the effect of cooperation. Exemptions. Rule of reason and *per se* rules. Welfare effects of collusion. Conditions leading to collusion. Tacit collusion and price parallelism. Plus factors and facilitating practices. Horizontal restrictions: economic and legal approaches. Price-fixing, information exchanges. Comparison EU and US competition law. Block exemption regulations. Individual assessment. Information exchange.

Class 7. Main types of vertical restraints. Economic analysis: price and non-price restrictions. Vertical restraints under the EU and US laws. Block exemption. Individual assessment: the *E-books* case.

Class 8. Merger control. The economics of merger control: quantitative and qualitative analysis. Typologies of mergers: horizontal, vertical, conglomerate. Substantive tests in the US and EU. Structural parameters. Unilateral and coordinated effects. The procedure. Failing firm defence. Market shares and concentration levels. Commitments and other remedies. The *General Electric/Honeywell* case.

Class 9. Public and Private enforcement. The different measures. The EU and US regimes. The choice to impose fines. The economic effects of the sanctioning system and the optimal fine model. Deterrence and punishment. Judicial review. Other remedies: the commitments. Differences between the various legal domains. The private enforcement in the EU and US. The calculation of damages, class action schemes. The choice between public and private enforcement. A critical assessment.

Class 10. Moot court. Students are asked to present cases and take the roles of the different parties (competition authorities, defendant, courts).

Course material:

R. Van den Bergh, A. Giannaccari, P. Camesasca, *Comparative Competition Law and Economics*, Edward Elgar, 2017.

Supplementary reading will be suggested, also on the basis of the student's interests.