

COMPETITION LAW & ECONOMICS

SYLLABUS

EMLE 2022/2023
Rotterdam, 2nd term

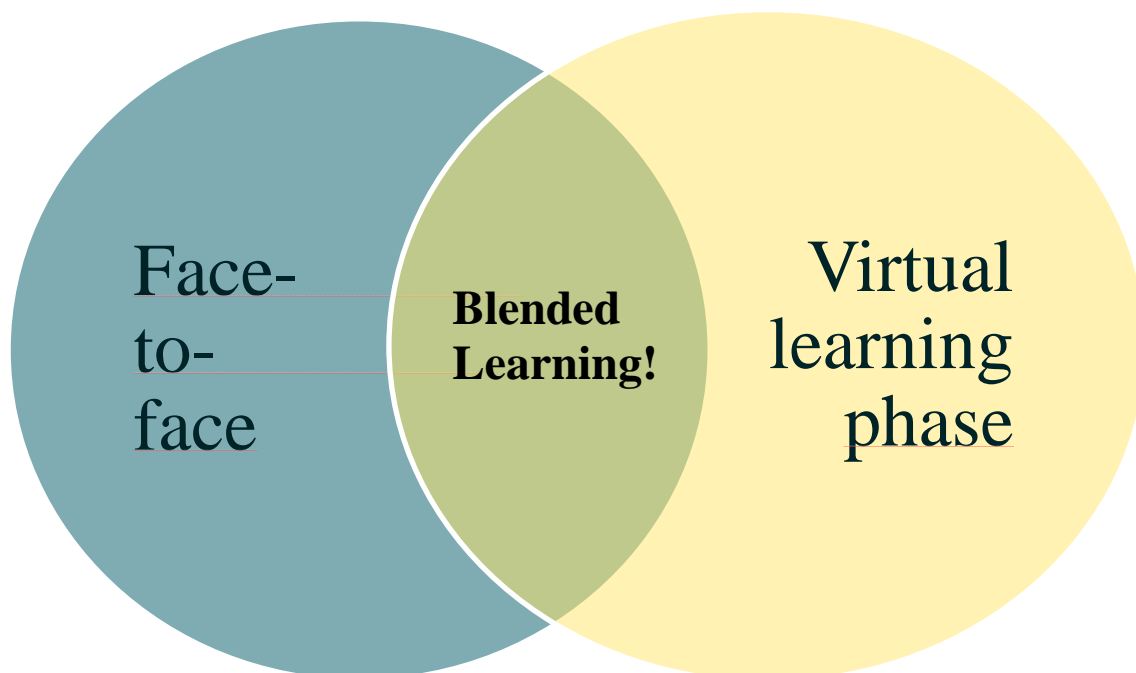
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GOALS

The course aims at showing how economic arguments may be used to decide real-life cases within the limits of the existing legal framework. Also, the course will teach students to critically assess the current rules of competition law from an economic perspective. It has a strong focus on European competition law but includes specific examples of US American antitrust law. Emphasis is put on the challenges that digital markets pose.

APPROACH

The course will be taught in the blended learning format. This means that virtual learning phases and face-to-face teaching are integrated and alternated.



Why?

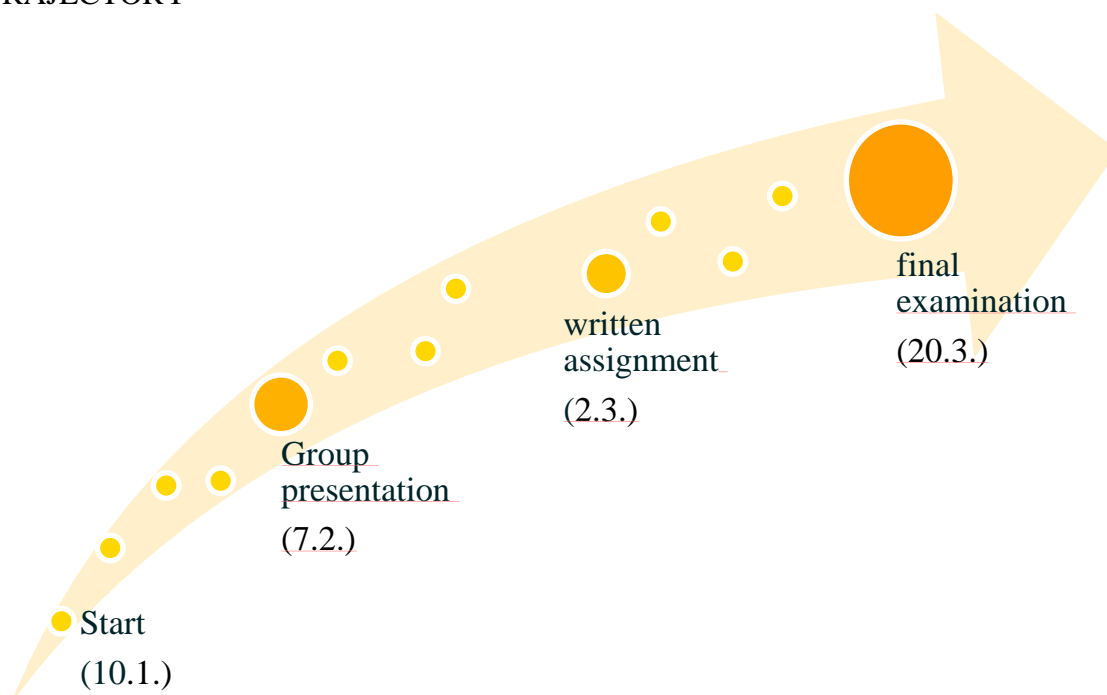
Blended learning is an important predictor of academic success, satisfaction and retention rates.¹ It allows students to form stronger mental connections.

We will **engage everyone**, in class and at home if sessions are hybrid!

Materials can be found on **canvas**. The course consists of **10 units**.

Start collecting your points...

TRAJECTORY



Throughout the course a maximum of 100 points can be obtained:

- across the course you can gather up to 15 points in small assignments
- you can gain up to 10 points for the written assignment
- you can gain up to 15 points for the group presentation
- you can gain up to 60 points in the final exam

¹ Pye, G., Holt, D., Salzman S. et al. (2015) Engaging diverse student audiences in contemporary blended learning environments in Australian higher business education: Implications for design and practice, *Australasian Journal of Information Systems* 19: 1–20.

MAIN LITERATURE

Textbooks:

Van den Bergh, R. (2017), *Comparative Competition Law and Economics*, Edward Elgar.

Niels, G./Jenkins, H. and Kavanagh, J. (2016), *Economics for Competition Lawyers*, 2nd ed, Oxford University Press.

Motta, M. (2004), *Competition Policy – Theory and Practice*, Cambridge University Press, available as an e-book at <https://eur.on.worldcat.org/oclc/927145593>. **This reading refers to the old numbering of the European provisions: Art. 81 EC is the equivalent of Art. 101 TFEU and Art. 82 EC is the equivalent of Art. 102 TFEU*

OFFICE HOURS

Please consult me via email. Short questions can be discussed after each class.

USEFUL INFORMATION

- The **assignments** will be made available on canvas.
- **Slides** will be shared on canvas before class.
- The **literature** will be uploaded on canvas in as far as the copyright rules allow. This means that for some of the readings you will have to organise a scan or copy from the library. The readings you need for assignment 1-3 will be made available online.
- Please find the **schedule** of our interactive sessions below.

SCHEDULE

Before the start:

Contribute to the **welcome round** so we can get to know each other a little bit already (you find it under ‘Discussions’ on canvas).

Unit 1: Introduction (10 January – 9.00-10-45; Sanders building L0-12)

Learning goals:

- ✓ Getting familiar with the course approach
- ✓ The basics of EU competition law and US antitrust law
- ✓ Getting a “feeling” for competition

**No reading! Repeat insights from microeconomics if necessary and start already with reading and assignments for unit 2 and 3. They become available as of 1st January.*



Unit 2: The Goals of Competition Law (17 January – 9.00-10-45; Sanders building L0-12)

Learning goals:

- ✓ Reviving knowledge from microeconomics
- ✓ Consumer vs. total surplus vs. other goals
- ✓ Static vs. dynamic efficiency concepts
- ✓ Major schools in competition law

Literature:

- Van den Bergh, R. (2017), *Comparative Competition Law and Economics*, Chapter 2 [**due to copyright reasons only p. 13-29 uploaded on canvas, but the whole chapter is relevant*], sections 3.2 and 3.3
- Motta, M. (2004), *Competition Policy – Theory and Practice*, pp. 7-9, 15, 17-23, available as an e-book at <https://eur.on.worldcat.org/oclc/927145593>
- Kaplow, L. (2011), *On the choice of welfare standards in competition law*, Harvard John M. Olin Discussion Paper Series, No. 693, section 1 and 2.1 and 2.2., available at http://www.law.harvard.edu/programs/olin_center/papers/pdf/Kaplow_693.pdf
or
- Farrell, J./ Katz, M.J. (2006), *The Economics of Welfare Standards in Antitrust*, UC Berkeley: Competition Policy Center, section III, available at <https://escholarship.org/uc/item/1tw2d426>

-  **Assignment 1** due 16.1. at 23:59 see canvas (up to 3 points)
-  **Assignment 2** due 16.1. at 23:59 see canvas (up to 2 points)

Unit 3: The Ubiquitous Notion of the Relevant Market & Market Power (19 January – 9.00-10-45; Sanders building L0-10)

Learning goals:

- ✓ Definition of the relevant market
- ✓ New challenges posed by two-sided markets
- ✓ Empirical methods to define markets

- ✓ Argumentation skills

Literature:

- Matthew J. Homewood, *EU Law Concentrate* (2018) Chapter 8 EU competition law: Article 102 TFEU, pp. 182-186.
- Motta, M. (2004), *Competition Policy – Theory and Practice*, paras 3.1-3.2.1.2, available as an e-book at <https://eur.on.worldcat.org/oclc/927145593>

- Van den Bergh, R. (2017), *Comparative Competition Law and Economics*, sections 4.2, 4.5-4.6
- Wismer, S. & Rasek, A. (2018), Market definition in multi-sided markets, Rethinking Antitrust Tools for Multi-Sided Platforms/OECD, pp. 55-58, 62-64, available at <https://www.oecd.org/daf/competition/Rethinking-antitrust-tools-for-multi-sided-platforms-2018.pdf>
- Niels, G./Jenkins, H. and Kavanagh, J. (2016), *Economics for Competition Lawyers*, paras 2.146-2.147 [p. 75] (two-sided platform markets)
- Niels, G./Jenkins, H. and Kavanagh, J. (2016), *Economics for Competition Lawyers*, paras 1.39-1.44 [p. 12-14] (why monopolies are ‘bad’)
or
- Motta, M. (2004), *Competition Policy – Theory and Practice*, paras 2.2.1, 2.2.2 and 2.3.2.1 (allocative inefficiency of monopoly), available as an e-book at <https://eur.on.worldcat.org/oclc/927145593>

Optional reading:

- Kaplow, L. (2013), *Market definition: impossible and counterproductive*, Antitrust Law Journal, 79(1), 361-380, available at <http://awa2015.concurrences.com/IMG/pdf/ssrn-id2402953.pdf>
- Röller, L.H. (2005) *Economic analysis and competition policy enforcement in Europe*, available at <https://ec.europa.eu/dgs/competition/economist/nma.pdf>



Assignment 3 due 18.1. at 23:59 (up to 5 points): short video assignment (3 min)

Unit 4: Market Power and its Abuse (24 January – 9.00-10.45; Sanders building L0-12)


Learning goals:

- ✓ Economic and legal approaches towards market power
- ✓ Classical cases of abuse
 - Tying and bundling
 - Predatory pricing
 - Discounts and rebates
 - Price discrimination
- ✓ Comparative analysis EU and US Law
- ✓ Double marginalisation
- ✓ Challenges in the data economy

Literature:

- Van den Bergh, R. (2017), *Comparative Competition Law and Economics*, sections 7.3-7.6
- Niels, G./Jenkins, H. and Kavanagh, J. (2016), *Economics for Competition Lawyers*, paras 6.11-6.14 [p. 273-274] (double marginalisation)

- Digital Markets Act **this is the interactive document; you can skip the recitals*
- You may want to re-read: Van den Bergh, R. (2017), *Comparative Competition Law and Economics*, 2.8 (contestable markets)

 **Assignment 4** start 19.1. – due 23.1. at 23:59 (up to 5 points): interactive document

Unit 5: Horizontal Agreements (31 January – 9.00-10.45; Sanders building L0-12)

Learning goals:

- ✓ Economic analysis of horizontal restraints
- ✓ Bertrand and Cournot competition (o Instruction video, see canvas)
- ✓ Comparative analysis EU and US Law
- ✓ Per se illegality and rule of reason
- ✓ Challenges in the data economy

Literature:

- Van den Bergh, R. (2017), *Comparative Competition Law and Economics*, Chapter 5
- Niels, G./Jenkins, H. and Kavanagh, J. (2016), *Economics for Competition Lawyers*, paras 7.89-7.94 [p. 330-332]
 - o Instruction video, see canvas

Optional reading:

- ACM (2020), *Draft guidelines sustainability agreements – opportunities within competition law*, pp. 10-18, available at <https://www.acm.nl/sites/default/files/documents/2020-07/sustainability-agreements%5B1%5D.pdf>
- Motta, M. (2004), *Competition Policy – Theory and Practice*, chapter 8 ‘A toolkit: game theory and imperfect competition models’, available as an e-book at <https://eur.on.worldcat.org/oclc/927145593>
- Inderst, R./Thomas, S. (2020 working paper), *Prospective welfare analysis – extending willingness-to-pay assessment to embrace sustainability*, now published in *Journal of Competition Law & Economics*, available at https://www.wiwi.uni-frankfurt.de/fileadmin/user_upload/dateien_abteilungen/abt_fin/Dokumente/PDFs/Allgemeine_Dokumente/Inderst_Downloads/Neuere_Arbeiten_seit2015/Inderst_Thomas_Prospective_WTP_and_Environment_25_09_2020_SSRN.pdf

Unit 6 & 7: Vertical Agreements (7 February – 9.00-10.45; Sanders building L0-12 & 13.00-14.45; Mandeville Building T3-06)

Learning goals:

- ✓ Economic analysis of vertical restraints
- ✓ Particularities in the data economy

- ✓ Presentation skills

Literature:

- Van den Bergh, R. (2017), *Comparative Competition Law and Economics*, sections 6.2 and 6.4

Optional reading:

- Niels, G./Jenkins, H. and Kavanagh, J. (2016), *Economics for Competition Lawyers*, chapter 6



Assignment 5 start 24.1. – due 5.2. at 23:59: ppt slides for presentation; due 10.2. at 23:59: final set of ppt slides (in total up to 15 points): Group presentation and discussion **you need to look for literature beyond the required reading for unit 6/7*

Guest lecture, invited by Prof. Philipsen and Prof. Weber:

Mr. Snoep, Director of Dutch Competition Authority ACM

8 February, 15:00 - 16:45, Polak 1-21

Unit 8: Merger Control (14 February, 9.00-10.45, Sanders building L0-12)

Learning goals:

- ✓ Economic analysis of merger control
- ✓ Comparative analysis EU and US Law
- ✓ Balancing different goals in current cases
- ✓ Data challenges and tipping markets

Literature:

- Van den Bergh, R. (2017), *Comparative Competition Law and Economics*, Chapter 9

Unit 9: Enforcement of Competition Law I (21 February – 9.00-10-45; Sanders building L0-12)

Learning goals:

- ✓ Private enforcement
- ✓ Public enforcement
- ✓ Deterrence and compensation goals

Literature:

- Van den Bergh, R. (2017), *Comparative Competition Law and Economics*, sections 8.2-8.4
- European Union (2006) - Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, Official Journal C 210, 1.09.2006, p. 2-5 available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:210:0002:0005:en:PDF>
- Niels, G./Jenkins, H. and Kavanagh, J. (2016), *Economics for Competition Lawyers*, paras 8.88-8.108 [p. 393-399]

Unit 10: Enforcement of Competition Law II (23 February – 9.00-10-45; Sanders building L0-12)

Learning goals:

- ✓ Damage quantification
- ✓ Why an interdisciplinary approach is indispensable
- ✓ Writing skills


Literature:

- Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance OJ L 349, 5.12.2014, p. 1–19 available at <https://eur-lex.europa.eu/eli/dir/2014/104/oj> **please read Art. 3, 5, 12-17 carefully*
- RBB Economics/Cuatrecasas (2016), Study on the Passing-on of Overcharges, study for the European Commission, pp. 9-16, 30-34 available at <https://ec.europa.eu/competition/publications/reports/KD0216916ENN.pdf>

Optional reading:

- Judgement of 17.6.1968 Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968)

- Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977)
- Niels, G./Jenkins, H. and Kavanagh, J. (2016), *Economics for Competition Lawyers*, chapter 9
- UK Supreme Court judgment of 11.12.2020, Mastercard Incorporated and others (Appellants) v Walter Hugh Merricks CBE (Respondent), [2020] UKSC 51

 **Assignment 6** start 14.2. - due 2.3. at 23:59: written assignment (up to 10 points)

Exam: 20.3.2022; 9:30-11:30, M-hall block 01; duration: 2 hours; Points: up to 60