

Competition Law for New Business Models

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Goals:

This course is designed for Master students enrolled in the second year of Master “Economie du droit - Business, Law and economics”.

To fully benefit from this course, some basic knowledge of the methodology of economic analysis of law and of the microeconomic analysis of the functioning of the market are required.

Its primary goals are:

1. to introduce a new approach of market processes, distinct from the usual, neoclassical, approach,
2. to show that this new appraisal of the market opens new perspectives on the role of competition law,
3. to illustrate the previous points with the case of new business models typical of the digital economy.

An indirect goal is to invite students to assess more accurately the usefulness and limits of various strands of economic analysis. Something that should be useful for the writing of a master thesis.

Cooter, Robert and Thomas Ulen, *Law and Economics* (2d ed.), Reading, Mass. Addison-Wesley Inc.

1. COMPETING PARADIGMS IN ECONOMICS
 - Benefits and costs of an interdisciplinary approach
 - The competition between paradigms in economics and its impact on Law and Economics
 - Law, Economics and the knowledge problem

References:

- Hayek, *op.cit.*, Chapter 2
- Hayek, F.A. “The Use of Knowledge in Society”, *American Economic Review*, xxxv, No. 4 (September 1945), 519-30. Reprinted in Hayek, F.A., *Individualism and Economic Order*, The University of Chicago Press: Chicago and London, 1948.
- Cooter and Ulen, Chapter 1., *op. cit.*
- Stiglitz, Joseph “Market Socialism and Neoclassical Economics”, in Bardhan and Roemer; 1994, Oxford UP
- For fun: https://www.youtube.com/watch?v=gsJrZN_PYgA (on Lange model)

- “Fundamental theory of institutions: A lecture in honor of Leo Hurwicz” by Roger B. Myerson
- George Stigler (1961), “The Economics of Information,” *Journal of Political Economy*.

2. THE MARKET AS A DISCOVERY PROCESS

- Static v. Dynamic view of the market
- Different understanding of competition
- A brief history of competition law
- The impact of general equilibrium theorizing and the development of the Rule of Reason
- Is the Rule of reason reasonable? Competition as a discovery process

References:

- Kirzner, Israel "Entrepreneurial Discovery and the Competitive Market Process: An Austrian Approach", *Journal of Economic Literature*, Vol. 35, 60-85, 1997
- Kirzner, Israel *How the Market Works*, especially chapters 3 and 4, Institute of Economic Affairs (1997/2000) Downloadable at <https://iea.org.uk/publications/research/how-markets-work-disequilibrium-entrepreneurship-and-discovery>
- Kovacic, W.E. and Carl Shapiro "Antitrust Policy: A Century of Economic and Legal Thinking", *Journal of Economic Perspective*, Vol. 14, N.1, 2000
- Kirzner, Israel, “The Perils of Regulation: A market process Approach”, in *idem, Discovery and the Capitalist Process*, The University of Chicago Press: Chicago and London, 1985. 119-140
- Pierre Garelo, “Reflections on the Nature of Competition Law”, in *Internationalization of the Law and its Economic Analysis. Festschrift für Hans-Bernd Schäfer zum 65. Geburtstag*, Wiesbaden: Gabler 2008, 767 Seiten (editors : Thomas Eger, Jochen Bigus, Claus Ott and Georg von Wangenheim)
- Stefan Voigt, “The Economic Effects of Competition Policy – Cross-Country Evidence Using Four New Indicators” University of Kassel and ICER, Torino

3. LAW AS A SPONTANEOUS ORDER

- The concept of spontaneous order has strong links with the problematic of knowledge.
- The key idea is that there exists in parallel different types of order: spontaneous and created.
- Scholars have noticed the difference for quite some time, but it is often forgotten.
- It is important to understand what distinguishes the two orders (see the table)
- Spontaneous orders are more complex and, although relying on rules, can hardly be regulated.

References:

- F.A. Hayek, Chapter 2 in *Law, Legislation and Liberty*”
- *Normann Barry*, “The Tradition of Spontaneous Order”

4. UNDERSTANDING PLATFORM STRATEGIES BEFORE REGULATING THEM

- The importance of platform (and sharing economy) in the modern world
- Distinguishing what is new and what is old economics
- Showing the specificity of those “platform-powered eco-system”: specificity of pricing, importance of building trust, need to maintain a balance between the many sides.
- Illustration with the credit card regulation of the difficulties in applying usual tools (essential facility doctrine) to new business models.

References:

- Bourreau-Perrot, “Digital Platforms: Regulate Before it’s Too Late”
- Bentata-Bouzou, “Competition and market Structures of Digital Platforms”
- Marc Rysman, “The Economics of Two-sided market, *JPE*, 2009
- *Platform Strategies*, Reillier and Reillier, Routledge 2018
- Pierre Garello, Understanding Multilateral Interchange Fees (MIF), and Why It Would Be a Mistake to Regulate Them,

Other useful references :

Robert Lawson and Ryan Murphy (2016), “Does Antitrust Policy Promotes Competition?” *Applied Economics Letters*, 23:14, 1034-1036, DOI: 10.1080/13504851.2015.1130784

Voigt, Stefan (2006), « The Economic Effects of Competition Policy: Cross-Country Evidence Using Four New Indicators ». Available at SSRN: <https://ssrn.com/abstract=925794>. or <http://dx.doi.org/10.2139/ssrn.925794>

Jürgen Wandel (2015), “Competition and Antitrust Policy: An Austrian Economics Perspective,” Chapter 3 in *Progress in Economics Research*, vol. 30, Albert Tavidze (editor), Nova Science Publishers Inc., New-York, pp. 47-60.

Schneider, Henrique (2020): « European Union Antitrust Policy in the Digital Era – A history of misunderstanding and arbitrary enforcement », Issue Analysis 2020 N°8, Competitive Enterprise Institute.