

Competition Law and Economics

Second Term 2021-2022

European Master in Law and Economics (EMLE)

University of Hamburg

By Désirée Klingler

Course outline:

This course is about the economics of competition law and policy. We will study different economic theories and models to analyze the effectiveness of antitrust regulation and enforcement. We will learn how economic and data analysis can help detect anticompetitive behavior and enforce competition law. We will discuss recent court cases, like Amazon and Google, as well as recent competition policies, such as the Digital Markets Act. The course is informed by court decisions and policies from the European Union and the United States.

Contact information:

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Course material: on OpenOlat

Course policy:

This course will be held via Zoom. Students are expected to login to the class on time and are encouraged to turn on the video camera during class. The course material has been uploaded to OpenOlat and the slides will be available to the students *after* each class.

Grading:

Class participation (individual): 10%

Case presentation (group): 20%

Case paper (group): 20%

Final exam (individual): 50%

Guest speakers:

I plan on inviting guest speakers to talk about a recent competition law topic. Confirmed are:

- Andreas Heinemann, President of the Swiss Competition Authority (WeKo) and Law Professor at the University of Zurich – talking on algorithmic coordination
- Song Ma, Associate Professor of Finance at Yale School of Management – talking about killer acquisitions

Class participation:

Class participation (and preparation) counts for a significant fraction of your grade. I want each student to engage and share his/her views, so that we can have an informed discussion and learn about each other's perspectives and approaches (legal, economic, political). I will cold-call on students on the assigned reading material.

Case presentation and case paper:

Within groups of four people, you will present a recent court case of your choice in class, and write a short paper on the same case, presenting both sides (authority and company). The group assignments are uploaded to OpenOlat.

For the presentation and paper, each group selects a recent or upcoming court case in the EU, U.S., or another jurisdiction of their choice. Examples of recent antitrust cases are Google Search, Google Fitbit, Amazon MFN, Uber, Apple chips, Apple Search, Qualcomm, or Epic Games.

In the presentation and paper, the groups should present both sides: the competition authority (or private plaintiff) and the company. For the presentation and paper, the groups should elaborate on:

- (1) What is the theory of *harm*? (why and how has a conduct violated competition law)
- (2) What is the main *legal* question of the antitrust case? Which *pillar* of antitrust law was violated (cartel, monopolization, merger control)?
- (3) What are the main *economic* questions in the antitrust case? How did the authorities apply economics and *data analysis* in the case? (e.g., market definition, market power, anticompetitive effects, efficiencies, incentives)
- (4) How *should* the authorities make use of economics to better solve the case? (critically analyze the previous question based on theories you learnt in class)
- (5) How *should* the case be best enforced? (e.g., structural vs. behavioral remedies, private vs. public enforcement)

The group will communicate the chosen case (please indicate first, second and third choice) to me by January 11. Group presentations will start on January 25. The group presentation should take **15 minutes**, consist of no more than **five slides** (excluding title page), and leave 10 minutes for questions. The group paper should be no more than **six A4 pages** (12-point Times New Roman, 1.5 line spacing, including footnotes, but excluding graphs and bibliography), and spend an equal amount of space on each side (government/plaintiff and company). The group will hand in the presentation one week before they present and the paper by February 4 (at the end of the course). In all communications and documents, please indicate your group number.

Final exam:

The final exam will take place on March 14. The exam is planned to take place in person and is closed book. In case the exam needs to be held online (due to COVID), the exam will be open book. The final exam will take three hours and consist of (1) five multiple choice questions, (2) five knowledge questions, (3) three short essays, and (4) two case studies. We will look at sample questions during class.

Reference literature:

This course is based on journal articles. For more in-depth background readings see:

- Viscusi, Harrington and Sappington, *Economics of Regulation and Antitrust*, 2018.
- Van Den Bergh, *Comparative Competition Law and Economics*, 2017.
- Motta, *Competition Policy: Theory and Practice*, 2004.

Recent projects:

For interested students, check out the Thurman Arnold Project at Yale [Digital Platforms](#).

SYLLABUS

1. **Goals of Competition Law and Economic Efficiency** (January 4)
 - Lianos 2013, Some Reflections on the Question of the Goals of EU Competition Law (Introduction and Part II, pp. 1-41)
 - Moeschel 2007, U.S. versus EU Antitrust Law (Chapter 3)
 - Ash, Chen & Naidu 2020, Ideas Have Consequences (Introduction and Results)
 - Hovenkamp 2020, Consumer Welfare Principle Imperiled? (Introduction, parts II.A, III)
2. **Cartels, JVs, and Common Ownership** (January 6)
 - US v. Trans-Missouri Freight, 1897 (pp. 292-5, 307-13)
 - US v. Indiana Federation of Dentists, 1986 (pp. 7-13)
 - Antitrust, Covid and Collaboration: [EC Comfort Letters](#), [Collusion in U.S. Labor Markets](#)
 - JV between Johnson & Johnson and Achillion, 2015
 - Heinemann 2016, Computer Cartels
 - Azar, Schmalz & Tecu 2018, The Anticompetitive Effects of Common Ownership (Introduction, Section 6, Tables 1 and 2)
3. **Cartels and Data Analytics** (January 11)
 - Igami & Sugaya 2018, Measuring the Incentive to Collude: The Vitamin Cartels (Introduction, Part 2.1 and Part 3, Part 4, no need to understand all equations)
 - Green and Porter 1984, Non-Cooperative Collusion (pp. 87-91 and Conclusion)
 - Swiss Highway Paving Cartel case 2008 (see Graph 2, *optional*: pp. 85-112, or pp. 50-82)
 - Harrington 2006, Behavioral Screening and Detection of Cartels (pp. 1-12)
 - Have a look at the UK CMA [Screening for Cartels tool](#)

Guest Speaker: Andreas Heinemann, on Arithmetic Coordination (5pm CET)
Submission deadline for chosen antitrust chase by each group
4. **Cartel Enforcement and Behavioral Remedies** (January 13)
 - Miller 2009, Strategic Leniency and Cartel Enforcement (pp. 750-762)
 - DOJ Leniency FAQ, 2015 (Questions 1-5, pp. 2-9)
 - EU Guidelines on Leniency, 2006
 - Berrisch 2003, Privat Actions in EU Competition Law
5. **Horizontal and Vertical Mergers** (January 18)
 - U.S. Horizontal Merger Guidelines, 2010 (read)
 - EU Horizontal Merger Guidelines, 2004 (skim)
 - Moresi 2010, The Use of Upward Price Pressure Indices in Merger Analysis
 - Scott Morton, FB-WhatsApp merger (listen to podcast [Big Tech and Antitrust Policy](#))
6. **Empirics of Merger Simulation** (January 20)
 - Nevo 2000, Mergers with Differentiated Products: The Case of the Ready-to-Eat Cereal Industry (focus on Tables 5 and 6, skip equations if too difficult)
 - ABI/Grupo-Modelo complaint, 2013
 - Cunningham et al. 2020, Killer Acquisitions (Introduction, Table 2 and Figure 5)

Guest Speaker: Song Ma, on Killer Acquisitions (5pm CET)

7. Monopolization or Abuse of Market Power (January 25)

- Predatory pricing: French L'Epique case, 2015
- U.S. v. Microsoft complaint, 1998 (pp. 1-13, 41-42)
- Google cases in EU and U.S.:
 - o July 2016: [EC Google Advertising](#) (fine EUR1.49 billion)
 - o June 2017: [EC Google Shopping](#) (fine EUR2.42 billion)
 - o July 2018: [EC Google Android](#) (fine EUR4.34 billion)
 - o Oct. 2020: [DOJ Google Search](#) (complaint filed)
 - o June 2021: [EC Google Ad Tech](#) (investigations)
- Facebook cases in EU and U.S.:
 - o Feb. 2019: [Bundeskartellamt against Facebook Data Collection](#)
 - o Dec. 2020: [FTC sues Facebook](#)
 - o June 2021: [EC investigates Facebook Advertising](#)

Presentation Group 1 (Forex cartel) and Group 2 (Epic Games v Apple)

8. Exclusion and Monopsony (January 27)

- Pay for delay: FTC v. Actavis decision, 2013 (pp. 1-9, 14-20)
- Loyalty rebates: Eaton v. Meritor decision, 2008 (pp. 1-27)
- Exclusive dealing: FTC v. Qualcomm decision, 2020
- Lipsitz 2019, Enforceability of Non-Compete Agreements (pp. 1-21, Tables 2, 3, 4, 5)

Presentation Group 3 (Google Search) and Group 4 (FTC v Facebook)

9. Digital Platforms and MFNs (January 31)

- Baker & Chevalier 2013, Competitive Consequences of Most-Favored Nations Policies
- Lina Khan 2017, Amazon's Antitrust Paradox (pp. 746-754, 784-802)
- Klingler et al. 2020, [Amazon's Theory of Harm](#)
- Complaint against Amazon MFN, March 2020 (pp. 17-34)
- American Express opinion, 2010 (focus on dissent, p. 25 et seqq.)
- U.S. v. Apple Inc., eBooks case 2013 (pp. 1-102)

Presentation Group 5 (Amazon MFN) and Group 6 (Google Android)

10. Antitrust and Innovation (February 2)

- Gilbert & Melamed 2021, Innovation under Section 2 Sherman Act
- Scott Morton & Schnitzer 2021, Fairness and Contestability in the Digital Markets Act
- Graef 2019, Rethinking the Essential Facilities Doctrine for the EU Digital Economy
- *Optional:* Klingler & Scott Morton (Draft 2021), Biased Antitrust Education Market

Presentation Group 7 (Qualcomm) and Group 8 (FB/WhatsApp merger)

Paper due: [February 4, 2022](#)

Final exam: [March 14, 2022](#)