

LAW 259: European Union Competition Law
Spring 2022
Thursday 6:05-8:05pm

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This course will provide students with a comprehensive knowledge of European Union competition law and policy.

- Students will be able to demonstrate superior knowledge of all aspects of European competition law compared to U.S. peers, both in law school and beyond. In addition, while taught primarily from a U.S./EU comparative perspective, students will also be able to identify the influence of European competition law around the globe.
- Students will be particularly proficient in discussing the areas of transatlantic differences, including single firm conduct and non-horizontal mergers.
- There is a significant focus on enforcement actions against technology companies, and we will spend two weeks discussing proposed digital regulations. The goal is for students to be able to describe the approaches and underlying European values toward technology, and apply those frameworks to cases and proposed initiatives in the U.S.
- Students will have an opportunity to apply the course information and skills to real world situations, which we will prepare for through a group class hypothetical. In addition, through case study presentations, students will practice communicating detailed, technical knowledge about this subject orally.

Readings: The textbook for the course is Fox and Gerard, *EU Competition Law* (Elgar, 2017) (“Fox”), available for purchase at the bookstore. There are only short selections in the required textbook, and most reading materials will consist of articles, excerpts of cases, and briefings I have prepared. The majority of the readings are online, the remainder I will give out in class or email as handouts.

Class: We will meet on Thursday from 6:05pm to 8:05pm. The course will meet 13 times. For two of the classes, students will present a comparative case study. The presentation should last about 30 minutes, followed by discussion.

Office Hours: I will be available for meetings from 4:30pm until 6pm on the days we have class. I am also available other times, please contact me via email to arrange.

Grading: You will present case studies (Microsoft and Google Android) in class, which will count for 25 percent of your grade. The final (take home) exam will account for 75 percent of your grade, subject to a discretionary class participation adjustment of a third of a grade in either direction.

Final Exam: You will have 72 hours to complete the final exam, and you may take it at any time during the exam period. You may use any of the readings assigned in class, your notes, and the PowerPoint slides I distribute for each class.

READING ASSIGNMENTS (as of 12/10/21)

Introduction to European Competition Law and European Institutions

January 20 Required reading: Fox, Chapter 1, pp 1-32

Horizontal Restraints

January 27 Required reading: Fox, Chapter 3 pages 69-78, 81-88, 91-93

Additional reading: [guidelines and notices](#) as needed; [AG opinion on by object](#).

February 3 Reverse payments cases

Required reading: slides, *Servier* [press release](#), *Cephalon* [summary opinion](#)

Additional reading: Budapest Bank, [case](#) and [opinion](#)

Vertical Restraints

February 10 **Vertical restraints with a focus on e-commerce**

Required reading: Fox, Chapter 4 pages 123-126, 132-135, 152-156; [Competition Policy Brief](#) (2018)

Additional reading: [guidelines and notices](#) as needed; [Slaughter & May note](#) for general practical background or Wijckmans Vertical Restrictions and Competition Law: an overview of EU and national case law (handout)

February 17* Vertical restraints continued. In addition to reading for Feb 11, please read Fox pages 128-132, [Summary of GSK Spanish price ceiling](#); press release for [GSK Aeve](#), and a summary of the Coty judgment (full judgment [here](#))

February 24 Update on VBER, hypothetical on vertical restraints (handout)
[VBER update](#)

Abuse of a Dominant Position

March 3 **Introduction to Article 102, Abuse of Dominance**

Required reading: Fox, Chapter 5 pages 159-163, 171-172, 184-186, 193-210, 223-228; introduction to 102 (handout), [ABA Dominance Divergence Task Force Report](#), pages 17-58.

March 10 **Single Firm Conduct Technology Cases**

Required reading: selections from U.S. and EU Microsoft decisions

European Commission's infringement decision (2004), summary [here](#). (Or a more detailed version of excerpts [here](#)) (CFI decision [here](#), in case of interest.)
United States v. Microsoft, 253 F.3d 34 (D.C. Cir. 2001). [Excerpts](#); [High-level summary](#).

March 24 **Single Firm Conduct Technology Cases cont'd**
Required reading: Selections from Google Shopping and Google Android decision, and FTC's Facebook complaint and German Bundeskartellamt's Facebook decision.

Tech Regulation

March 31 **Digital initiatives in the Europe**
Required reading: Schnitzer, et al. International Coherence in Digital Platform Regulation: An Economic Perspective on the US and EU Proposals. Available [here](#).

Additional reading: Digital Markets Act (link to current test will be circulated in early March). See also 2021 UK consultation on digital markets reform, [here](#).

Mergers and Acquisitions

April 7 **Horizontal mergers and international cooperation**
Required reading: Fox, Chapter 6 pages 234-239, 244-258, 260-265.
Additional reading: [EU guidelines and notices](#)

April 14 **Vertical and conglomerate mergers**
Required reading: Fox, Chapter 6 pages 265-269; Broadcom/Brocade discussion, pages 7-25 in the [ICN report on vertical mergers](#). For discussion of the conglomerate effects, see the [EC decision](#). Discuss Google/Fitbit, selections from [decision](#).

April 21 **Review**

* I will reschedule the February 17 class to another day that works for the class.