

LAW 259: European Union Competition Law

Spring 2023

Friday 13:50-15:50

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Overview

This course will survey the major areas of European Union (EU) competition law, with appropriate references to similarities and differences between U.S. and EU legal rules and structures. Students are required to have taken Antitrust I. (The best one-volume U.S. antitrust hornbook is Hovenkamp's Federal Antitrust Policy (2020 edition). Brief reviews of EU competition law topics and cases (with hyperlinks to various websites) are found at www.eucomplaw.com. See also the official website of the EU competition agency, the Directorate-General for Competition.

This course will provide students with a comprehensive knowledge of European Union competition law and policy. There will be three significant learning outcomes.

- 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 an additional week 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.

The textbook for the course is Eleanor M. Fox and Damien Gerard, *EU Competition Law* (1st ed. 2017) ("Fox"), available for purchase at the bookstore. The course will rely heavily on readings from this text, supplemented by additional materials hyperlinked in the syllabus, plus possible handouts in class.

In addition, to supplement the readings, Professor has kindly given this class access (as a special favor to me) to page proofs of the 2023 updated second version of this book (publication expected in late April 2023). Given the significant copyright protection concerns presented, you must not copy, scan, or distribute these page proofs in any way.

The class will meet 13 times. I expect students to be prepared for class, ready to discuss the assigned materials. (If a student is chronically unprepared without an adequate excuse, I may at my discretion lower his or her grade by one-third (e.g., B+ to B or A- to B+). Scalia Law School attendance regulations apply.

Your grade will be based entirely on an in-class three-and-one-half hour exam, scheduled for May 8 at 12:00 noon. Students may bring to the exam Fox, hyperlinked materials from the syllabus, any in-class handouts, and the page proofs to the not-yet-published 2023 version of Fox.

READING ASSIGNMENTS (as of 12/01/2022)

- Week 1 Overview of EU history and institutions, comparison of U.S., EU, and other competition laws (Fox, introduction plus chapter 1; Abbott, [The Globalization of Antitrust](#))
- Week 2 Horizontal restraints (Fox, chapters 2 (only skim) and 3; [2019 AG Opinion](#) on “Restriction by Object”; [article on hardcore cartels in the U.S. and Europe](#); [guidelines and notices](#) as needed) (I will lecture briefly on cartels, discussed in chapter 2, and devote bulk of class discussion to chapter 3 materials)
- Week 3 Horizontal restraints, continued (finish Fox, chapter 3)
- Week 4 Vertical restraints (Fox, chapter 4; [Slaughter & May note](#) and [EC explanatory note](#) on new vertical block exemption and guidelines)
- Week 5 Vertical restraints, continued (finish Fox, chapter 4)
- Week 6 Abuse of a dominant position (Fox, chapter 5; [ABA Dominance Divergence Task Force Report](#), pages 17-61)
- Week 7 Abuse of a dominant position, continued (finish Fox, chapter 5)
- Week 8 Digital platform regulatory issues (EC descriptive documents, including [EC 2022 summary](#), [additional descriptive materials](#), and [substantive Qs and As](#))
- Week 9 Merger control (Fox, chapter 6, materials on horizontal mergers; possible additional materials)
- Week 10 Merger control (Fox, chapter 6, materials on vertical mergers and conglomerate effects; possible additional materials)
- Week 11 Public enterprises, state privileges, and state action (Fox, chapter 7, parts A-D; additional materials)
- Week 12 State action (finish Fox, chapter 7, focus on part E.; additional materials)
- Week 13 Review