

*TULSA
INTRODUCTION TO EU ANTITRUST
LAW 2013*

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at-Law:

***COURSE GOALS, LEARNING
OBJECTIVES AND ASSESSMENT***

This one credit course provides an in-depth introduction to Arts 101 and 102 which are the two main Antitrust (or, as we say in Europe, “Competition Law”) provisions contained in the Treaty on the Functioning of the European Union (TFEU) and the institutional context within which they operate.

Art 101 prohibits anti-competitive arrangements among market actors (like cartels) and Art 102 prohibits the abuse of a dominant position (like unfair pricing).

This course aims to enable students to analyse and assess the legality of particular market strategies such price fixing, market sharing, discriminatory rebates and unfair pricing practices. Knowledge of EU Competition Law is vitally important for any company that does business within the European Union even if the company remains based or headquartered outside the EU.

You are not expected to have any prior knowledge of US Anti-trust Law.

On completion of this course, diligent students should be able:

- i) to express a sound understanding of the principles underpinning the development of EU Competition Law
- ii) to analyse primary and secondary sources of EU Competition law
- iii) to compile legal advice under Arts 101 and 102 to hypothetical litigants

The assessment is a two hour proctored examination in which students write answers which i) advise a hypothetical litigant and ii) express theoretical legal opinion on an aspect of EU Competition Law in a short essay format. The examination questions are not provided in advance to the students. During this proctored examination, students may have access to their own copy of the mandatory textbook and their own notes but will not have access to the internet. Students may not communicate with each other during the examination.

*TEXTBOOKS, BOOKS, JOURNALS AND OTHER
RESOURCES*

MANDATORY Course book Jones, A and Sufrin, B EU Competition Law: Text, Cases and Materials (4rd ed. OUP 2011)

SYLLABUS

Note that for each topic advance preparatory reading from the textbook is listed.

Topic 1. Introduction and overview.

Preparatory Reading Textbook: pp1-19, 94-102, 104-116.

To our first class please bring your favorite non-alcoholic drink to class. Kindly note that this drink is for a teaching exercise so make sure it is not already opened!

To provide a solid basis, a detailed overview of the substantive and institutional provisions of EU competition Law is given in the first and second classes. In these classes, the main ingredients of Art 101 and 102 are sketched and the EU institutional architecture is explained. Attention is paid to the extensive powers of investigation and adjudication of the European Commission under EU Regulation 1/2003 and the CJEU which comprise the ECJ and the General Court (formerly called the Court of First Instance) .

Topic 2. EU Context & Goals.

Preparatory Reading Textbook: pp36-54

In order to fully understand its concerns and ambitions, EU competition law needs to be located within its broader EU context. We will consider the extent to which competition policy ought to be used as an instrument to attain EU (rather than pure competition) goals. In this regard, the EU imperative of integrating national markets to create a single market is singularly important.

Q for students to debate in class discussion “economic analysis may provide the tools but the end to which the tools are used depend on the type of society the Community is trying to achieve”

Topic 3. Undertaking (Art 101 and 102)

Preparatory Reading pp118-126, 134 (eco entity) -141

The interpretation of “undertakings” is decisive because only they are the addressees of Arts 101 and 102.

Q for students to debate in class discussion- “what are the disadvantages of using a functional test to define an undertaking?”

Topic 4. Key concepts in Article 101(1)

Preparatory Reading Textbook pp141-7, 158-9.160-171 189-195, 227

‘Agreements’, ‘concerted practices’ and ‘decisions of associations’ are the three types of arrangements proscribed by Article 101. However, only arrangements whose ‘object or effect’ is anti-competitive come within its range.

Q for students to debate in class discussion: what is your view of the interpretative methodologies employed by the Commission and the Courts defining these concepts.

Topic 5. Article 101(3) Preparatory Reading Textbook pp 240-53

Article 101(3) allows certain arrangements which would otherwise be prohibited by Article 101(1).

Firstly, we examine the *substantive* conditions of this provision and identify its concern for competition and non-competition matters.

Q for students to debate in class discussion: how easy is it to adjudicate upon these Art 101(3) criteria?

Secondly, we analyse the *operational mechanics* under Regulation 1/2003 which radically altered its application.

In brief, the Regulation provides for national competition authorities (‘nca’) and national courts to apply the provision unlike previously, when only the Commission had this competence. The former model will

be juxtaposed with the current one by considering the mediation of tensions between the pursuit of pure competition and non-competition objectives.

Topic 6. Hard –core horizontal infringements

Preparatory Reading Textbook pp 783-818, 829-836

Here, we apply the information acquired in the preceding sections by examining cases of horizontal cartel-like practices. Classic instances include agreements to price fix and share markets or customers.

Q for students to debate in class
discussion: are you concerned by the approach that the EU institutions take to proving a violation?

Topic 7. Article 102- Introduction and defining the market

Preparatory Reading pp64-89, 259-62, 293-320

Article 102 is concerned with the improper exercise of market power. Classically, three steps are taken in order to establish its breach. Firstly, the relevant product/service and geographical market is defined. The application of the tests to establish the relevant market can be controversial. In addition, complex issues arise where more than one market is involved.

Q for students to debate in class discussion: **Is the approach to defining markets biased?**

Topic 8. Article 102- Establishing dominance

Preparatory Reading Textbook pp 283-93, 324-42

Secondly, dominance must be established. The various market factors, including size of market share are discussed

Q for students to debate in class discussion; **Does the definition of dominance hamper/penalize the efficient competitor?**

Topic 9 Article 102 Abuse

Preparatory Reading Textbook 358-72, 376-8, 392-407, 413-9, 425-53

The third element of Art 102 involves considering what conduct constitutes an 'abuse'.

We will debate specific cases to decide whether specific pricing practices (e.g. predatory pricing, discriminatory rebates) and non – pricing practice should be regarded as an 'abuse'. In this regard, perceptions of the appropriate goals and roles of competition law are crucial. How the interpretation and application of this Article encapsulates the debate surrounding the appropriate limits of private power and of public power.

Q for students to debate in class discussion: **Is one person's 'abuse' really only another person's tough market strategy?**

OTHER Textbooks on EU competition law that are available in library for consultation but not borrowing

Faull, J.& Nikpay, A.	<u>The EC Law of Competition</u>
Goyder, D.G.	<u>EC Competition law</u> (4 th ed. OUP 2003)
Kerse C.	<u>EC Antitrust Procedure</u>
Ritter & Braun	<u>EC Competition Law: A</u>
<u>Practitioner's Guide)</u>	
Van Bael & Bellis	<u>Competition Law of the EC</u>
Whish, R.	<u>Competition Law</u>

Journals

Common Market Law Review (CMLRev)

European Competition Law Review (ECLR)

European Law Review (ELRev)

Websites

<http://www.europa.eu.int//abc/obj/treaties/index.htm>

EC Treaty

<http://curia.eu.int/>

European

http://europa.eu.int/comm/competition/index_en.ht

[ml](#) EC Commission