College of Europe
Collège d'Europe
Brugge | Natolin

ECTS CARD

STUDY PROGRAMME

EUROPEAN ECONOMIC STUDIES

ACADEMIC YEAR

2025 - 2026

SEMESTER

2

COURSE TITLE

EU COMPETITION CASE STUDIES

COURSE PROFESSOR

INGRID VANDENBORRE & DAMIEN NEVEN

COURSE ASSISTANT

DMYTRO KAZAKOV

NATURE OF COURSE (COMPULSORY, ELECTIVE)

ELECTIVE

LANGUAGE OF INSTRUCTION

ENGLISH

ECTS CREDITS

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1. COURSE OBJECTIVES

This seminar / course focuses on competition enforcement from both legal and economic perspectives. The objective of the course is to train students in applying the legal framework and the economic analysis that is relevant to different areas of enforcement and discuss the interplay between them, through the discussions of recent cases.

2. LEARNING OUTCOMES

By the end of the course, the student should

- Have a critical understanding of the current case law in the selected areas of enforcement (in particular from a normative perspective in relation to fundamental legal principles and the objectives of enforcement).
- Be able to identify the economic principle and models that can be applied in different areas of enforcement and understand their limits in the context of the existing legal framework.
- Be able to identify the evidence that is relevant to inform particular theories of harm and how different pieces of evidence can be integrated.

3. COURSE CONTENTS

1. **Introduction** (Friday, January 9th)
   - The Statutes (Art 101, 102, Merger regulation, the DMA) and secondary legislation
   - The institutions and procedural framework; standard of proof, per se vs rule of reason vs truncated rule of reason, Regulation 1/2003
   - Objectives of enforcement
   - Market power and market definition (Notice on market definition Feb 2024)

   Readings:
   - Kovacic, W. and C. Shapiro, (2000) Antitrust policy: a century of economic and legal thinking, Journal of Economic Perspectives, 14(1) 43-60
   - Amato, G., (1998), Antitrust and the bounds of power, Hart Publishing
   - Salop, Steven C., An Enquiry Meet for the Case: Decision Theory, Presumptions, and Evidentiary Burdens in Formulating Antitrust Legal Standards (November 6, 2017). Available at https://ssrn.com/abstract=3068157 or http://dx.doi.org/10.2139/ssrn.
   - A. de Streel, EU Digital Markets Act: changing the four 'regulators' of the digital society Journal of Antitrust Enforcement, 2024, 12, 221–224 https://doi.org/10.1093/jaenfo/jnae017
   - A. Fletcher, et al., The Effective Use of Economics in the EU Digital Markets Act, Journal of Competition Law & Economics, Volume 20, Issue 1-2, March-June 2024, Pages 1–19, https://doi.org/10.1093/joclec/nhad018

2. **Exploitative abuse** (Saturday, January 10th)

   Cases:
   - Aspen,
   - Pfyzer/Flynn
     - Court of Appeal (2024)
     - CMA Non-Confidential Decision (2022)
     - Court of Appeal (2020)
     - Court of Tribunal (2018)
     - CMA Initial Non- Confidential Decision (2016)

   Readings:
   - Ingrid Vandenborre, Georgios Zacharodimos, Caroline Janssens, EU Law of Competition and Trade in the Pharmaceutical Sector: Chapter on Excessive Pricing, Elgar Competition Law and Practice, Second edition
   - Peter Davis and Vivek Mani, 2018, The Law and Economics of Excessive and Unfair Pricing: A Review and a Proposal, The Antitrust Bulletin, 2018, Vol. 63(4) 399-430, DOI: 10.1177/0003603X18807804

3. **Self-preferencing** (Friday, January 23rd)
   Cases:
   - Google shopping (Commission decision)
   - Judgment of the General Court
   - Judgment of the Court of Justice
   - Google Android Auto
   - Refusal to deal cases - Bronner, Slovak Telekom

   Readings:
   - Guidance paper on the enforcement of Art 102 and Draft Guidelines (2024)
   - Christian Ahlborn, Gerwin Van Gerven and William Leslie, (2021), Bronner revisited: Google Shopping and the Resurrection of Discrimination Under Article 102 TFEU, Journal of European Competition Law & Practice, 2022, Vol. 13, No. 2
   - Chillin'Competition blog, September 2024
   - M. Motta, (2023), Self-preferencing and foreclosure in digital markets: Theories of harm for abuse cases, International Journal of Industrial Organization, 90, https://doi.org/10.1016/j.ijindorg.2023.102974

4. **Unilateral effects and efficiency in mergers** (Saturday, January 24th)
   Cases:
   - Hutchinson 3G UK/Telefonica UK, case M.7612 – and Case T-399/16, Judgment of the General Court, 28 May 2020 and C-376/20 P, Judgment of the Court 13 July 2023
   - CMA decision, December 2024 and earlier telecom cases
   - Naspers/Just Eat Takeaway

   Readings:
   - Horizontal merger guidelines
   - Review of the merger guidelines
   - Draghi report on European competitiveness, see Chapter on Telecoms
   - Bernd Langeheine et al, 2020, Mobile telecommunications mergers in the EU – Remedies revisited, Concurrences, N°1
   - L Agguzoni et al, Ex-post Analysis of Mobile Telecom Mergers: The Case of Austria and The Netherlands, De Economist (2018) 166:63–87, https://doi.org/10.1007/s10645-017-9308-5

5. **Vertical and distribution agreements** (Friday, January 30th)

Cases:
- Booking.com (MFN clauses), French decision, Swedish decision (Konkurrensverket, 15 April 2016, Ref. No. 596/2013), Swedish first instance court (Stockholms Tingsra¨tt, 20 July 2018, PMT 13013-16 – booking), Swedish appeal court
- ECN competition brief, The French, Italian and Swedish Competition Authorities
- Accept the Commitments Offered by Booking.com
- Booking preliminary ruling 2024
- Pierre Fabre (2011), ECJ
- Coty (2017), Case C-230/16

Readings:
- Guidelines on vertical agreements (2022)
- Hvidd, M., Vertical agreements between suppliers and retailers that specify a relative price relationship between competition products or competing retailers, OECD hearing of across platforms parity agreements, 2015, http://www.oecd.org/daf/competition/competition-cross-platform-parity.htm
- Boik, A. and D. Corts, (2016), The Effects of Platform Most-Favored-Nation Clauses on Competition and Entry, Journal of Law and Economics, vol 59, 109-
- De los Santo, B. and M. Wildenbeestz, (2017), E-book Pricing and Vertical Restraints, E-book pricing and vertical restraints, Quantitative Marketing and Economics
- M. Hunold et al, Evaluation of best price clauses in online hotel bookings, International Journal of Industrial Organization, Volume 61, November 2018, Pages 542-571, https://doi.org/10.1016/j.ijindorg.2018.03.008
- A. Mantavoni et al The Dynamics of Online Hotel Prices and the EU Booking.Com Case, NET Institute Working Paper No. 17-04
- Mark-Oliver Mackenrodt, 2019, Price and Condition Parity Clauses in Contracts Between Hotel Booking Platforms and Hotels, International review of intellectual property and competition law, (2019) 50:1131–1143

6. **Killer acquisitions** (Saturday, January 31st)

Cases:
- Illumina/Grail and Case C-625/22 P, Judgment of the Court of Justice of the European Union, 6 September 2024
- Adobe/Figma

Readings:
- Colleen Cunningham, Florian Ederer, and Song Ma, 2021, Killer Acquisitions, Journal of Political Economy, 129(3), https://doi.org/10.1086/712506
- Justus Haucap, Alexander Rasch, Joel Stiebale, 2017, How mergers affect innovation: Theory and evidence, International Journal of Industrial Organization, 63, 283-325, https://doi.org/10.1016/j.ijindorg.2018.10.003
- Carl Shapiro, Competition and Innovation Did Arrow Hit the Bull's Eye? (2012) in The Rate and Direction of Inventive Activity Revisited, Josh Lerner and Scott Stern editors), University of Chicago Press, http://www.nber.org/books/lern11-1

7. **Digital ecosystems** (Friday, February 20th)
Cases:
- Google Android (Commission decision, General Court judgment)
- Apple App store practices (music streaming), Commission decision
- US. Google LLC, Case No. 20-cv-3010 (APM) – Judgment District of Columbia

Readings:
- Pierre Régibeau and Katharine E. Rockett, (2024) Competition policy for conglomerates, platforms, and eco-systems, Oxford Review of Economic Policy, 2024, 40, 818–833
- https://doi.org/10.1093/oxrep/grae046
- Jay Pil Choi and Doh-Shin Jeon, A Leverage Theory of Tying in Two-Sided Markets with Nonnegative Price Constraints, American Economic Journal: Microeconomics 2021, 13(1): 283–337
- Alexandre de Cornière, Greg Taylor, On the economics of the Google Android case, VOX EU 15 August 2018
- Federico Etro & Cristina Caffarra (2017) On the economics of the Android case, European Competition Journal, 13:2-3, 282-313, DOI: 10.1080/17441056.2017.1386957
- Jacques Crémer et al, 2023, Fairness and Contestability in the Digital Markets Act, 40 Yale Law Journal on Regulation

8. **Conglomerate mergers and minority interest** (Saturday, February 21st)
Cases:
- Commission decision Etraveli/Bookings , CMA decision
- Microsoft/Activision – EC Decision, CMA Initial Decision (April 2023) and CMA Final Decision (October 2023)
- Amazon/Deliveroo

Readings:
- Non horizontal merger guidelines
- Eliana Garces, Olga Kozlova Guglielmi, Devin Reilly, (2024). Ecosystem Theories of Harm in Merger Enforcement: Current Direction and Open Questions, Journal of European Competition Law & Practice, 2024, 15(4), 272–277, https://doi.org/10.1093/jeclap/lpae024

9. **Rebates** (Friday, March 13th)
Cases:
- Intel, Commission decision, General court judgment, Court of Justice judgment, General Court (Renvoi)
- Qualcomm (Apple rebates contingent on exclusivity). Commission decision, Court judgment

Readings:
- OECD, 2016, Background paper on fidelity rebates
- Zenger, H., (2012), Loyalty rebates and the competitive process, Journal of Law and

Economics, 8(4), 717-768

- Salinger, M., (2017), All-units discounts by a dominant producer threatened by partial entry, Antitrust Law Journal, 81, 507-536
- Neven, (2015), A structural assessment of rebates contingent on exclusivity, Competition Law & Policy Debate, Vol 1 Issue 1, https://doi.org/10.4337/clpd.2015.01.09
- Patrick DeGraba and John Simpson, 2014, Loyalty discounts and theories of harm in the Intel investigations, Journal of Antitrust Enforcement, Vol. 2, No. 1 (2014), pp. 170–202 doi:10.1093/jaenfo/jnt011
- Chillin' competition, https://chillingcompetition.com/2022/07/11/case-t-235-18-qualcomm-v-european-commission-part-ii-substance/

10. Student presentations (Saturday, March 14th)

- Presentations (2 students per case) on Liothyronine tablets, Amazon/Deliveroo, Illumina Grail, e-books, UPS/TNT (tentative list that could be revised)

4. TEACHING METHOD

Contact hours: 30h.

The course will be taught as a seminar. Active oral participation is essential. The students will be asked in advance of the class to prepare critical in-depth presentations on selected case studies. Each student will make at least one presentation. Guidance will be provided in terms of the relevant material and questions to address and students making presentation will be expected to interact with the Professor / academic assistant ahead of the presentation. The purpose is to practice the application of economic principles and theory on real cases and develop a critical review of decisions and judgements from an economic perspective.

5. COURSE MATERIAL

As background in industrial organization, a number of textbooks can be used:

- Cabral, L. 2018, An introduction to Industrial Organization, MIT Press
- Belleflamme, P. and M. Peitz, Industrial Organization, Markets and Strategies, Cambridge University Press, 2015

For more specific topics, the following books are useful:

- Niels, Jenkins and Kavanagh, Economics for competition lawyers, Oxford University Press, 2016
- Motta Massimo, Competition Policy. Theory and practice, Cambridge University Press, 2004
- Fumagalli, C., M. Motta, and C. Calcagno, Exclusionary practices, The Economics of Monopolization and abuse of dominance, Cambridge University Press, 2018

For background material and cases in the US, the following texts are useful:

- Hovenkamp, H., Principles of Antitrust, West Academic Publishing, 2017
- Kwoka J. and L White, 2014, The Antitrust Revolution, Economics, Competition and Policy, Oxford University Press, Sixth edition and Seventh edition (2019)

For extensive discussions of the case law (but with a strong economics component) the following texts are useful

- Faull and Nikpay, 2014, The EU Law of Competition, Oxford University Press
- Fox and Gerard, 2017, EU competition law, cases, texts and context, Edward Elgar
- Ezrachi, 2021, EU Competition Law: An Analytical Guide to the Leading Cases,7th Edition, Bloomsbury Publishing PLC
- Wish and Bailey, 2021, Competition Law, 10th edition, Oxford University Press
- Bellamy and Child, 2019, European Union Law of Competition, 9th edition, Oxford University Press

The course outline will point to the relevant chapters. For each topic, a list of essential and optional readings (at different levels of technicality) will be provided. Extensive lecture notes will be distributed for each session.

6. EVALUATION

The final grade of the course is made of three components:

- Final **2-hours closed book written exam** (50% of the grade)
- Evaluation of the **presentation**(s) made in class (40% of the grade)
- **Class participation** (10% of the grade)

Students must answer all questions. The questions will be in the form of actual or hypothetical cases, requiring the students to apply economic theory covered in the course to problems/cases at hand.

Students who do not pass the course in the first examination session take the exam in the second examination session (resit), which according to the Study Regulations counts for 100% of the final course grade.

7. FURTHER SPECIFICATIONS

In this course, the use of generative artificial intelligence (genAI) is **strictly prohibited** at all stages of the work process on the in-class oral presentations. According to art. 38 of the Study Regulations, prohibited use means that *"all tasks related to an assignment, from planning, conceptualisation to research and writing, must be completed without any support of genAI."*

Failure to respect these rules will be considered academic misconduct and be sanctioned in line with the Study Regulations (Section 4.4.). The use of AI-powered tools for grammar checking or reference management is permitted.

Throughout the whole duration of the exam, all the mobile phones and other electronic devices (except the laptop which you take the exam on) need to be put in silent mode and be kept in your bag. If you want to take and upload pictures to the exam, e.g. graphs, please raise your hand and wait for an explicit authorisation of a supervisor. Any other unauthorised usage and/or possession of phones and/or other electronic devices throughout the entire duration of the exam (inside or outside of a classroom) will be considered as (attempted) cheating and lead to a mark of 0 (under Art. 30b of the Study Regulations).

For the detailed rules on the (digital written) examinations at the College of Europe, please refer to the provisions of the Study Regulations and *Dispositions particulières.* Students are responsible to have read and complied with the applicable rules.