

- Faculté de droit
- www.unine.ch/droit

Competition Law and Policy (4DR2180)

Filières concernées	Nombre d'heures	Validation	Crédits ECTS
Master bilingue en droit	Cours: 4 ph	oral: 15 min	8
Master en droit	Cours: 4 ph	oral: 15 min	8

ph=période hebdomadaire, pg=période globale, j=jour, dj=demi-jour, h=heure, min=minute

Période d'enseignement:

- Semestre Automne

Equipe enseignante:

Prof. Evelyne Clerc.

Objectifs:

- identify the main business practices that may distort competition
- understand the use of economics in the analysis of legal problems
- be familiar with antitrust procedural enforcement and institutional framework
- apply EU/CH competition law (legislation, policy documents, decisions and case-law) to case-studies and complex fact patterns
- discuss critically the legal and economic principles underpinning the control of anti-competitive practices, regulatory policies and institutional framework.

Contenu:

This course examines competition law and policy in the global economy. We will predominantly compare Switzerland and European Union competition laws and enforcement practices.

The course addresses the main features of competition law: market power, cartels between rivals, anti-competitive clauses in vertical distribution agreements, unilateral abuse of a dominant position, and merger control. In addition, it assesses the interface between intellectual property rights and competition law, as well as the relationship between antitrust and sector-specific regulation. While contemporary competition law rests on insights gained from economics, it is not devoid of other (non-economic) policy considerations. All topics are examined in the light of the goals of competition law, of the economic approach and its limitations in the light of non-economic (political, social, environmental) considerations. Apart from substantive law, particular attention is devoted to enforcement by competition authorities: imposition of fines and criminal penalties against firms and individuals, considerations of due process rights in administrative and judicial procedures, as well as international cooperation between competition authorities in a multi-jurisdictional system. Alongside public enforcement, private litigation is increasingly important and, in the major cases, often involved third-country jurisdictions, in particular the United States. While focusing on EU/Swiss competition laws, we will also consider some important areas of convergence/divergence with US antitrust law and discuss the legal, economic, procedural and political reasons for those differences. All topics are examined in the light of significant recent case-law.

The last part of the course will consider the public procurement law regime: the entities and contracts covered, the award procedures, the selection of bidders and the award criteria. It will highlight the regulatory mechanisms under which the state intervenes as an actor in a market economy.

Forme de l'évaluation:

15-minutes oral exam based on resolution of hypothetical case, with preparation time. The exam is closed book, which means that students may only rely on legislation and notes drafted during preparation.

Documentation:

Syllabus, course materials and additional information regarding the precise topics of the lectures and how to prepare for them are provided on the Claroline course website (COMP).

Forme de l'enseignement:

Students are expected to read the assigned materials before each class, to make case presentations, to solve case studies and to participate actively in class discussions. A practical step-by-step toolkit will help students to analyse cases.