

- Faculté de droit
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Competition Law and Policy (4DR2180)

Filières concernées	Nombre d'heures	Validation	Crédits ECTS
Master bilingue en droit	Cours: 4 ph	Voir ci-dessous	8
Master en droit	Cours: 4 ph	Voir ci-dessous	8
Master of Arts en innovation, orientation Innovation et société	Cours: 4 ph	Voir ci-dessous	8
Master of Law en innovation	Cours: 4 ph	Voir ci-dessous	8
Master of Science en innovation	Cours: 4 ph	Voir ci-dessous	8

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

Période d'enseignement:

- Semestre Automne

Equipe enseignante

CLERC Evelyne, Professeur ordinaire

Contenu

In the global economy, competition law affects the business activity on a daily basis. Non-compliance may result in multi-million fines, voidness of an agreement as well as behavioural or structural remedies with significant impact for future business. The course focuses mostly on Swiss and EU competition laws. A brief comparative approach with US antitrust law might be taken occasionally, where instructive. The course uses an interdisciplinary method by integrating law and economics.

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 (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 often involves third-country jurisdictions, in particular the United States. 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-min 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. Computers, mobile phones and other electronic devices, as well as watches, are forbidden during the exams. Possession of an electronic device (even switched off) during the exam is considered as cheating.

Documentation

Syllabus, reader, textbook, course materials and additional information regarding the precise topics of the lectures and how to prepare for them are provided on the Moodle course website.

Forme de l'enseignement

The course includes both lectures and seminars dedicated to resolving practical cases. An active participation of the students to class discussions on the basis of prior readings of assigned materials and solving of case studies is required, in order to acquire the necessary legal skills to master competition law. A practical step-by-step toolkit will help students to analyse cases.

Objectifs d'apprentissage

Au terme de la formation l'étudiant-e doit être capable de :

- Identify the main business practices that may distort competition
- Explain the basic concepts, scope and key rules of competition law
- Discover the relevant provisions of Swiss and/or EU competition law (legislation, policy documents, soft law, decisions and case-law), select

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and apply these provisions to solve specific case studies and complex fact patterns in a legally sound and structured manner, and identify the uncertainties in the law

- Examine substantive and procedural issues both from the point of view of undertakings and from the perspective of competition authorities
- Evaluate critically the strengths and weaknesses of legal arguments to support a position and evaluate the consequences of a proposed solution
- Use economic principles and major policy concerns in the analysis of competition law problems
- Analyse interaction between various competition rules (EU/CH/US) and between competition law and other areas of business law
- Evaluate the implications of technological innovation in the recent developments of competition law and become aware of key discussions and novel issues in the field
- Discuss critically the legal and economic principles underpinning the control of anti-competitive practices, regulatory policies and institutional framework in a globalised world
- Present orally a selected topic or case study to peers in a clear, concise, correct and convincing manner
- Communicate in a well-founded legal discussion with colleagues from different disciplines (in particular economists) and/or different legal cultures regarding practical application of competition law
- Work constructively either on your own or in a team

Compétences transférables

- Provide a substantiated recommendation
- Apply knowledge to new situations