

- 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	Voir ci-dessous	8
Master en droit	Cours: 4 ph	Voir ci-dessous	8
Master of Law 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 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-minutes oral exam based on resolution of hypothetical case, with 15-minutes preparation time. The students shall and may rely only on the binder "Compilation of legislation", in printed form, and notes drafted during the 15-minutes preparation. They are allowed to highlight, annotate or use stickers as 'bookmarks' in the legislation. Annotations shall consist in max. 5 words (no list of conditions) or in cross-references to other provisions. Except for the legislation bundle, the exam is 'closed book'. Computers, mobile phones and other electronic devices, as well as watches, are forbidden during the exam. Possession of an electronic device (even switched off) during the exam is considered as cheating. The Law School and University regulations relating to fraud at exams apply. Additional logistical information is provided in the course syllabus.

Modalités de rattrapage

In case of failure, the retake is an oral exam as well.

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 :

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- Identify the main business practices that may distort competition
- Examine substantive and procedural issues both from the point of view of undertakings and from the perspective of competition authorities
- Explain the basic concepts, scope and key rules of competition law
- 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
- Indicate which authorities are in charge of a specific case (institutional framework) and outline the main steps of the administrative investigation (antitrust procedural enforcement)
- 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
- Apply the relevant provisions of Swiss and/or EU competition law (legislation, policy documents, soft law, decisions and case-law) to solve fact patterns in a legally sound and structured manner, and identify the uncertainties in the law
- Defend a well-founded legal opinion in a discussion with colleagues from different disciplines (in particular economists) and/or different legal cultures
- Analyse interaction between various competition rules (EU/CH/US) and between competition law and other areas of business law

Compétences transférables

- Apply knowledge to new societal and technological changes
- Communicate in English and in French, including through interaction with native speakers
- Work in an international context and in a multi-layered legal framework, discuss with colleagues from different disciplines and/or different cultures
- Synthesise a large amount of information within a short time frame and deliver accurate solutions