

PhD Course in November 2011:

## Economics of competition law enforcement

This is a course jointly organized by Department of Economics, University of Bergen (UoB) and Department of Economics, Norwegian School of Economics (NHH). It will be held at Bergen Center for Competition Law and Economics (BECCLE), a center jointly owned by NHH and UoB. The course is supported by the National Research Council (“Nasjonalt fagråd”).

Teacher: Professor Dr. Maarten Pieter Schinkel  
Department of Economics, University of Amsterdam and ACLE

When: Monday November 14 10:15-12:00 and 14:15-16:00  
Tuesday November 15 10:15-12:00 and 14:15-16:00  
Wednesday November 16 10:15-12:00 and 14:15-16:00  
Thursday November 17 \* 10:15-11:30

Where: Parkveien 20 (BECCLE)

*\*This particular lecture will be given by Professor Massimo Motta from Universitat Pompeu Fabra on competition policy (seminar at Department of Economics at Norwegian School of Economics). This lecture will be held at 9<sup>th</sup> floor in ‘Høyblokken’ at NHH (Helleveien 30).*

In this course you will learn about the economics of competition law and its enforcement. For details about the course, see the following pages.

To get credits for this course, you have to (i) follow the lectures and (ii) write referee report for two papers you have been given. If you have a course approval, you will receive 4 ECTS for this course.

If you plan to attend, please remember to register for the course, since your registration must be accepted in advance. Participants not from Bergen can apply to NHH for reimbursement of travel and boarding expenses (subject to a total budget constraint). Non-NHH PhD students should send in a completed form where they apply for visiting status (“hospitant status”) for “Economics of competition law enforcement”. The form can be found at:

<http://www.nhh.no/no/studentsider/skjema.aspx>.

If you have any questions concerning participation or other administrative issues, please contact Dagny Kristiansen, Department of Economics, NHH, Helleveien 30, N-5045 Bergen, Norway – Fax (+47) 55 95 95 43, email: [dagny.kristiansen@nhh.no](mailto:dagny.kristiansen@nhh.no).

To get credit (4 ECTS) for the course, the student should hand in and get approved referee reports on two papers. You can propose papers for refereeing, and if not we will pick the papers you have to referee. If you have questions concerning credit or other issues related to the content of the course, please contact Lars Sjørgard, email: [lars.sorgard@nhh.no](mailto:lars.sorgard@nhh.no) or Tommy Staahl Gabrielsen, email: [tommy.gabrielsen@econ.uib.no](mailto:tommy.gabrielsen@econ.uib.no).

Detailed course plan Monday Nov 14 – Wednesday Nov 16:



UNIVERSITEIT VAN AMSTERDAM  
*Amsterdam Center for Law & Economics*

## **Economics of Competition Law Enforcement**

PhD Course

Prof. Dr. Maarten Pieter Schinkel  
University of Amsterdam, Department of Economics and ACLE  
Amsterdam, September 2011

### **Course Description**

This course introduces into the economics of competition law and its enforcement. Most western economies – and increasingly also other countries world wide – have competition laws to control cartels, monopolization strategies, the abuse of dominance, large mergers and state aid for effects that are detrimental to competition. To assure a continued compliance with these laws in all business transactions is an important corporate responsibility. This is not always straightforward. It is often hotly debated what novel business strategies may potentially raise competition concerns. Increasingly, economic analysis is turned to for answers – sometimes referred to as “the more economic approach” to competition law. Economics also plays an increasingly important role in the shaping of tools of enforcement, such as leniency programs, detection, determination of fines and settlements, and alternative sanctions.

This course offers insight into the main processes of competition law enforcement. On a basic coverage of mainstream industrial organization theory and competition law, we study analytical tools to understand and fight anticompetitive behavior. Discussed are, amongst other things, cartel behavior, types of monopolization, determinants of corporate and criminal sanctions, leniency programs, settlements and antitrust damages claims. In this context, issues of internal organization, corporate governance and incentive compensation are known to be essential. Principles on crime and punishment from the area of law and economics can be applied to the competition law enforcement process.

This course will enable students to familiarize themselves with the core principles of competition law enforcement in Europe, and in particular the use of economics therein. It aims to raise awareness of the common good of our legal systems for a proper functioning of markets.

Prof. Dr. Maarten Pieter Schinkel  
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## Classes

November 14: 10.15-12.00 and 14.15-16.00

November 15: 10.15-12.00 and 14.15-16.00

November 16: 10.15-12.00 and 14.15-16.00

## Course Schedule

### 1. Competition Law and Economics

We start with a self-contained introduction to the course, covering basics of European competition law, industrial organization and the economics of law enforcement.

#### References:

Jones, A. and B. Sufrin, *EU Competition Law*, fourth edition, Oxford University Press, Oxford, 2011, Chapter 1: Introduction to Competition Law and Chapter 2: The European Union and its Competition Law and Institutions

Schinkel, M.P., "Forensic Economics in Competition Law Enforcement," *Journal of Competition Law and Economics*, 4(1), 2008, 1-30

### 2. Cartel Enforcement

In this class, a number of possibilities for coordinated attempts amongst firms that should be competing to instead conspire to subvert competition are considered. These anticompetitive acts may range from overt collusion in cartels agreements, to more sophisticated forms of secret or tacit arrangements. Apart from conspiracies to raise prices and reduce output, typically these schemes include methods to keep the potential competition from new entrants out of the market (artificial barriers to entry). However, the difficulties to preserve the internal stability of cartels need to be recognized and analyzed as well. Evidence - including undercover footage shot by the FBI of secret cartel meetings - reveals how real conspiracies to collude are. We study instruments by which competition authorities attempt to destabilize and discover cartels.

#### References:

Carlton, D.W. and J.M. Perloff, *Modern Industrial Organization*, fourth edition, Pearson, Boston, 2005, Chapter 5: Cartels

Whinston, M.D., "Price Fixing," in: *Lectures on Antitrust Economics*, MIT Press, 2006

Commission of the European Communities, Commission notice on immunity from fines and reduction of fines in cartel cases, *Official Journal C 298*, 8.12.2006, p. 17-

### 3. Abuses of Dominance

This class introduces several ways in which a firm with a strong position on a market can abuse its dominance. Emphasis is not so much on excessive dominance can be abused to raise prices and profits at the expense of consumers. Moreover, abuse could appear in disguise, for example in the form of an artificial barrier to potential market entry, or pre-empting innovative initiatives that have the potential to develop viable competitive products. Dominance in one market can also be carried over to other markets. A number of examples of such abuses will be identified and analyzed.

#### References:

Jones, A. and B. Sufrin, *EU Competition Law*, fourth edition, Oxford University Press, Oxford,

2011, Chapter 7: Conduct which can be an Abuse

Bishop, S. and M. Walker (2009), *The Economics of EC Competition Law*, third edition, Sweet & Maxwell, 2009, Chapter 6: Article 82

Russo, F., M.P. Schinkel, A.M. Günster and M. Carree, *European Commission Decisions on Competition: Economic Analysis in Antitrust and Merger Cases*, Cambridge University Press, Cambridge, 2010, Chapter 3: Abuse of Dominance

Commission for the European Communities, 2006 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003. *Official Journal C 210*, 1.09.2006, p. 2-5

#### **4. Concentration Control**

In this class, horizontal merger control is central. Merger control grew as a separate and big business out of the prohibition of abuse of dominance. Its aim is to prevent the build up of large concentrations through (partial) mergers and (hostile) acquisitions. Merger guidelines specify under which conditions mergers need to be notified and approved by the EC before they can be consummated. The economic theory of mergers offers insight into what type of mergers indeed carry the danger of subsequent anticompetitive effects. It also stresses the beneficial effects of mergers, in particular synergies and efficiencies. Often firms will only have an incentive to merge if the pro-competitive effects of the merger are larger than the anticompetitive effects. For the determination of what classifies as a high degree of concentration in the market, economics offers several measures, of which the HHI is the measure most frequently used in merger control. Various insights and methods will be discussed during this session.

#### **References:**

Bishop, S. and M. Walker (2009), *The Economics of EC Competition Law*, third edition, Sweet & Maxwell, 2009, Chapter 7: Economics of Horizontal Mergers and Chapter 8: The Economics of Non-Horizontal Mergers

Goppelsroeder, M., M.P. Schinkel and J. Tuinstra, "Quantifying the Scope for Efficiency Defense in Merger Control: The Werden-Froeb-Index", *Journal of Industrial Economics*, 2008, 778-808

U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines*, Issued: August 19, 2010

#### **5. Private Enforcement**

For a number of years, the European Commission actively encourages private parties that believe to have been damaged by anticompetitive acts of their (direct or indirect) suppliers to seek reparation of that damages in civil litigation. In the US, plaintiffs in private antitrust damages cases are often successful in recovering substantial sums of damages money. The risk of damages litigation is believed to be a strong deterrent to companies not to violate the antitrust laws. In Europe, a number of legal and institutional hurdles are to be taken, before it will be convenient for private parties to indeed sue for antitrust damages. The Commission works together with National Member States to help victims take these hurdles, and slowly we start observing emerging antitrust settlements and litigation. Future case law will have to address a number of fundamental issues on the calculation of damages.

#### **References:**

Commission for the European Communities, White Paper on Damages Actions for Breach of the EC antitrust rules COM(2008) 165, 2.4.2008

Davis, P. and E. Garces, *Quantitative Techniques for Competition and Antitrust Analysis*, Princeton University Press, Princeton, 2010, Chapter 7: Damage Estimation  
Oxera, *Towards non-binding guidance for courts: Study prepared for the European Commission*, December 2009

## **6. Market Oversight Games**

Big business plays cat & mouse with market regulators. Market participants try to avoid the competitive pressures that the regulators are working to keep up. Only if the latter play these games at least as cleverly as the former can we reap all the fruits of competition. A case in point is the European Commission's ongoing struggle with VISA and MasterCard. Also in the deployment of their enforcement instruments, competition authorities must be keenly aware that they face strategic opponents that will do whatever is in their power to outmaneuver market oversight. As a recent example of this may serve the European Commission's negotiation procedure. In this class, we look back at various topics covered in this course from this perspective.

### **References:**

Gal, M., "The Ecology of Antitrust Preconditions for Competition Law Enforcement in Developing Countries," in: *Competition, Competitiveness Development*, UNCTAD, June 2004

Schinkel, M.P. , "Bargaining in the Shadow of the European Settlement Procedure for Cartels," *The Antitrust Bulletin*, forthcoming 2011

Commission Notice on the Conduct of Settlement Procedures in View of the Adoption of Decisions Pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in Cartel Cases, 2008 O.J. (C 167), 1-6