

12C011

3 ECTS

## Competition Policy Cases

### Overview and Objectives

The aim of this course is to introduce some of the key competition law cases as well as a review of the concepts and techniques used by the authorities or the tribunals to assess the competition issues at hand. The sample of cases include mergers and anti-competitive practices. This course focuses on the application of the economic theories and the empirical techniques studied earlier in the academic year to these cases. Many of the case in this course were decided by the European Commission, including some of the landmark cases that have also been before the European Courts. We will also look at competition cases in other jurisdictions (e.g. Germany, U.S, UK).

### Course Outline 2017-2018

The course outline is summarized in the table included below in this document. The course will consist of **12 classes**, each of which will cover one case to be presented by a group of students.

Professor	Durand	Durand	Durand	Claici	Claici	Claici
	1	2	3	4	5	6
A	FTC vs Actavis (Pay for delay)	Booking	Sainsbury's vs MasterCard**	STAR Alliance	Cemex / Holcim*	Google v Streetmap**
	[Section I of the Sherman Act]	[Article 101]	[Follow-on actions]	[Article 101]	[Merger, Coordinated effects only]	[Article 102]
B	Telefonica / E- Plus*	Dow / DuPont*	Liberty Global / Corelio / W&W*	UPS / TNT*	General Electric / ALSTOM*	Intel
	[Merger]	[Merger]	[Merger]	[Merger]	[Merger]	[Article 102]

\* In these student-led presentations, students who represent the competition authorities should assume that they are seeking to block the transaction or to clear it with significant remedies (even though the transaction in question was eventually approved without remedies).

\*\* In these cases, one set of students should represent the plaintiff (Sainsbury's/Streetmap), and the other the defendant (MasterCard/Google).

12C011

3 ECTS

## Competition Policy Cases

### Student Assessment

During this course students will present competition cases, representing the position of either the competition authority (or the plaintiff) or the position of the parties (or the defendant). Students will be assessed mainly on their performance when presenting cases. Student performance includes how they present the economic argument at issues, both orally and on the slides as well as their ability to answer questions.

**Important:** the presentation should be based on the available materials that is listed further below (typically the decision). Importantly, the students should focus on the most relevant economic aspects of the case (to be identified by the students), rather than on institutional or procedural details. For example, we are not interested in either the timeline of the investigation or about the identity of parties or their counsels. Instead, the students should present the theories of harm that the authority/plaintiff has put forward (if any) and their findings. In some cases, economists have developed quantitative analyses in support (or to rebut) the theories of harm at issue. The students are strongly encouraged to present these materials as well.

Each case will be presented by two sets of students. One group will present the case for the competition authority (e.g. the European Commission) and/or the plaintiff. This mean that this group will advocate for the position taken by the Commission or the plaintiff. Another group will represent the party or the defendant. This group will therefore defend the position of the party against the competition authority or the plaintiff. (For more instruction on case allocation please see below).

The key facts about each case should only be presented by the first group (who either represent the competition authority or the plaintiff) and should not be repeated in the other presentation. The key facts concern the essential features that are relevant to the economic assessment of the competition issues.

The grade of students will depend heavily on the quality and the relevance of the economic arguments they present. In addition, class participation and attendance during the entire course will also be taken into account for the final grade. Students are *required* to prepare slides for their presentations. It would also be good to provide the teachers with a printed copy of the slides at the start of the class.

A **short-written exam** covering all or most of the cases discussed during the course will also take place at the end of the course. Students are therefore expected to be familiar with all the cases presented during the course, and to closely follow the discussions taking place in class.

12C011

3 ECTS

## Competition Policy Cases

### Case Allocation

As indicated above, for each presentation there will be two sets of students. One set will represent the competition authority and/or the plaintiff. This set will present first. The other set will represent the party or the defendant.

Each case presentation (including discussion) will last **1h40**. Each case discussion will start with a **35-minute** presentation by the authority (or the plaintiff), followed by a **25-minute** presentation by the other side. A class discussion and a short summary by the Professor will then follow. Please ensure that you comply with this timing to leave enough time for an exchange with the other students, followed by comments and discussion by the professor, after the presentations

**Important:** each student will present 2 cases.

- For the A cases (see first row in the table above), one student will present for the authority/defendant and one student will present for the party/defendant.
- For the B cases (see second row in the table above), two students will present for the authority/defendant and one student will present for the party/defendant.

*Students are required to assign themselves to cases. Please contact the Professors asap if there are any difficulties or questions regarding the case allocation. Note that the Professors reserve the right to change the allocation.*

#### Rules that must be followed when selecting cases:

- Students are not allowed to represent twice the party/the defendant (it is fine to present twice for the authority/plaintiff)
- Students who present one case in a group of two students must present the second case alone.

12C011

## Competition Policy Cases

3 ECTS

### References

Students can base their presentations on any public material; this includes the decisions made by competition agencies and courts, but students are encouraged to look for comments and articles often available online. The internet links to the relevant public decisions for the cases are listed below.

#### Durand Cases

##### **Durand 1.A. Actavis: “pay for delay?”**

US Supreme Court decision

[http://www.supremecourt.gov/opinions/12pdf/12-416\\_m5n0.pdf](http://www.supremecourt.gov/opinions/12pdf/12-416_m5n0.pdf)

Amici Curia supporting the FTC

[http://www.americanbar.org/content/dam/aba/publications/supreme\\_court\\_preview/briefs-v2/12-416\\_pet\\_amcu\\_118-prof-et-al.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-416_pet_amcu_118-prof-et-al.authcheckdam.pdf)

Amici Curia against the FTC

<http://sblog.s3.amazonaws.com/wp-content/uploads/2013/03/12-416-bsac-Antitrust-Economists.pdf>

US Court of Appeals, Eleventh Circuit, decision

[https://scholar.google.be/scholar\\_case?case=17968051947013153328&hl=en&as\\_sdt=2006](https://scholar.google.be/scholar_case?case=17968051947013153328&hl=en&as_sdt=2006)

##### **Durand 1.B. Telefonica / E-Plus**

Commission decision:

[http://ec.europa.eu/competition/mergers/cases/decisions/m7018\\_6053\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m7018_6053_3.pdf)

(Please read Annex A and B carefully The presentation should focus on the quantitative analysis.)

##### **Durand 2.A. Booking.com**

Bundeskartellamt decision:

[http://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Entscheidungen/Kartellverbot/B9-121-13.pdf?\\_\\_blob=publicationFile&v=2](http://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Entscheidungen/Kartellverbot/B9-121-13.pdf?__blob=publicationFile&v=2)

(Students will discuss the Bundeskartellamt decision. The KKV decision below is provided as useful background)

KKV (Swedish Competition Authority) decision:

[http://www.konkurrensverket.se/globalassets/english/news/13\\_596\\_bookingdotcom\\_eng.pdf](http://www.konkurrensverket.se/globalassets/english/news/13_596_bookingdotcom_eng.pdf)

##### **Durand 2.B. Dow/DuPont**

Commission decision:

[http://ec.europa.eu/competition/mergers/cases/decisions/m7932\\_13668\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m7932_13668_3.pdf)

(Please focus on the impact of the merger on innovation - see Annex 4 in particular.)

EC policy brief:

<http://ec.europa.eu/competition/publications/cmb/2017/kdal17002enn.pdf>

RBB Briefs:

<https://www.rbbecon.com/downloads/2017/07/RBB-Brief-54.pdf>

##### **Durand 3.A. Sainsbury’s vs Mastercard**

Competition Appeal Tribunal:

[http://www.catribunal.org.uk/files/1241\\_Sainsburys\\_Judgment\\_CAT\\_11\\_140716.pdf](http://www.catribunal.org.uk/files/1241_Sainsburys_Judgment_CAT_11_140716.pdf)

(Please focus only on the damage estimation and also on the reasoning used by the Tribunal to assess the extent to which Sainsbury’s passed on the overcharge)

##### **Durand 3.B. Liberty Global/Corelio/W&W/De Vijver**

Commission decision:

[http://ec.europa.eu/competition/mergers/cases/decisions/m7194\\_20150224\\_20600\\_4264271\\_EN.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m7194_20150224_20600_4264271_EN.pdf)

(Please read Annex A carefully)

12C011

## Competition Policy Cases

3 ECTS

### Claici Cases

#### **Claici 4.A. STAR Alliance**

Commission decision:

[http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39595](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39595)

(Please read Commitments Decision and Final Commitments)

#### **Claici 4.B. UPS/TNT**

Commission decision:

[http://ec.europa.eu/competition/mergers/cases/decisions/m6570\\_20130130\\_20610\\_4241141\\_EN.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m6570_20130130_20610_4241141_EN.pdf)

(Students can skip the analysis country-by-country.)

General Court judgement:

<http://curia.europa.eu/juris/document/document.jsf?docid=158470&doclang=EN>

#### **Claici 5.A. Cemex/Holcim**

Commission decision:

[http://ec.europa.eu/competition/mergers/cases/decisions/m7054\\_20140909\\_20682\\_4001455\\_EN.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m7054_20140909_20682_4001455_EN.pdf)

(Please focus your review only on the coordinated effects analysis in the Decision.)

#### **Claici 5.B. GE/Alstom**

Commission decision:

[http://ec.europa.eu/competition/mergers/cases/decisions/m7278\\_6808\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m7278_6808_3.pdf)

(Please focus largely on Annex I – the economic analysis if bidding data.)

#### **Claici 6.A. Google v Streetmap**

High Court decision, 2016

[http://www.bailii.org/cgi-](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Ch/2016/253.html&query=google&method=boolean)

[bin/markup.cgi?doc=/ew/cases/EWHC/Ch/2016/253.html&query=google&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Ch/2016/253.html&query=google&method=boolean)

#### **Claici 6.B. Intel**

Commission decision:

[http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/37990/37990\\_3581\\_18.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/37990/37990_3581_18.pdf)

(Please focus largely on the evidence concerning discounts to Dell.)

General Court judgment:

<http://curia.europa.eu/juris/liste.jsf?num=T-286/09>

(for PDF format click "Eur-Lex")

Judgement of the European Court of Justice:

<http://curia.europa.eu/juris/celex.jsf?celex=62014CJ0413&lang1=en&type=TXT&ancre=>