

**Course Number:** 21935 - 21233 **Regulation and Competition Policies**

**Course Teacher:** Lela Dedić (lela.dedic@upf.edu)

**Course Dates:**

**Lectures:** Week 2-11, Thursday and Friday, 15.00-16.30,

**Tutorials:** Weeks 4, 6-10, Monday 14.30-16.00, 16.00-17.30, 17.30-19.00

Both of which will be taught by me

**Course Objective:** The main objective of this course is to give an overview of the most important concepts in modern Competition Policy and Regulation; to understand the underlying and to develop a critical view of the developments today in the USA and more importantly, the European Union.

In the lectures we will focus mainly on theoretical competition policy and regulation models from Industrial Organization, as developed in the EU and the USA, and of course their practical business application, presenting also some real life cases of severe penalties for companies for non-competitive behavior. Since all of these theories and developments have their basis in the empirical methods in this field, our tutorials will aim at getting acquainted with those methods and their application. Emphasis will be given on real-life cases and practices to give you useful knowledge for your entry in the business world.

Our common goal is to understand the logic behind the different theories and first and foremost their implication in real life situations with which you will have to deal as young professionals in the business world.

**Prerequisites:** Industrial Organization and Introduction to Econometrics

**Office Hours:** as agreed with individual students via Email; please do not hesitate to pose any question you might find puzzling at any time.

**Useful Textbooks:**

**Motta, M. (2004).** Competition policy: Theory and Practice. Cambridge University Press.

**Davis, P., & Garcés, E. (2009).** Quantitative Techniques for Competition and Antitrust Analysis. Princeton University Press.

**Viscusi, W. K., Harrington, J. E., & Vernon, J. M. (2005).** Economics of Regulation and Antitrust. MIT Press Books.

**Tirole, J. (1988).** The Theory of Industrial Organization: Jean Tirole. MIT press.

**Belleflamme, P., & Peitz, M. (2010).** Industrial Organization: Markets and Strategies. Cambridge University Press

**Articles (ordered as required in lectures in time):**

**Stucke, Maurice E. (2013):** Is competition always good? Journal Antitrust Enforcement (2013) 1 (1): 162-197 (to be found at <http://antitrust.oxfordjournals.org/content/1/1/162.full.pdf+html>)

**Kovacic, William E. (2008):** Competition Policy in the European Union and the United States: Convergence or Divergence? Bates White Fifth Annual Antitrust Conference, Washington (can be found at [http://www.ftc.gov/sites/default/files/documents/public\\_statements/competition-policy-european-union-and-united-states-convergence-or-divergence/080602bateswhite.pdf](http://www.ftc.gov/sites/default/files/documents/public_statements/competition-policy-european-union-and-united-states-convergence-or-divergence/080602bateswhite.pdf))

**Waterson, Michael (2001):** The role of consumers in competition and competition policy, (<http://www2.warwick.ac.uk/fac/soc/economics/research/workingpapers/2008/twerp607.pdf>), Warwick economic research papers, University of Warwick, UK

**Foster J., McChesney R., Jonna J. (2011):** Monopoly and Competition in Twenty-First Century Capitalism, Monthly Review, Volume 62, Issue 11 (April 2011) ( <http://monthlyreview.org/2011/04/01/monopoly-and-competition-in-twenty-first-century-capitalism/>)

**Volodymyr Bilotkach V., Polk A. (2011):** The Assessment of Market Power of Airports, Berlin School of Economics and Law ([http://www.hwr-berlin.de/fileadmin/profpages/polk/Bilotkach\\_Polk-Market\\_Power\\_of\\_Airports.pdf](http://www.hwr-berlin.de/fileadmin/profpages/polk/Bilotkach_Polk-Market_Power_of_Airports.pdf))

**Ivaldi M. et al (2003):** The economics of tacit collusion, Final Report for DG Competition, Toulouse ([http://ec.europa.eu/competition/mergers/studies\\_reports/the\\_economics\\_of\\_tacit\\_collusion\\_en.pdf](http://ec.europa.eu/competition/mergers/studies_reports/the_economics_of_tacit_collusion_en.pdf))

**Motta, M. (2007)** Cartels in the European Union: Economics, Law, Practice, Barcelona Graduate School of Economics ([http://www.barcelonagse.eu/tmp/pdf/motta\\_cartelseulaw.pdf](http://www.barcelonagse.eu/tmp/pdf/motta_cartelseulaw.pdf))

**Short online articles and data on Facebook – Whatsapp Merger:**

<http://www.forbes.com/sites/benkepes/2014/02/19/breaking-facebook-buying-whatsapp-19b-in-cash-and-stock/>

[http://ec.europa.eu/competition/mergers/cases/additional\\_data/m7217\\_368\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/additional_data/m7217_368_3.pdf)

<http://www.pcadvisor.co.uk/news/social-networks/3502888/why-did-facebook-buy-whatsapp/>

<http://online.wsj.com/articles/facebook-seeks-eu-antitrust-review-of-whatsapp-deal-1401269230>

<http://nypost.com/2014/04/11/facebook-whatsapp-deal-cleared-by-regulators/>

[http://en.wikipedia.org/wiki/List\\_of\\_mergers\\_and\\_acquisitions\\_by\\_Facebook](http://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Facebook)

<http://www.jetlaw.org/2014/09/10/facebook-whatsapp-merger-potentially-vulnerable-overseas/>

**Motta, M. (1999)** EC Merger Policy and the Airtours Case, European University Institute, Florence ([http://people.exeter.ac.uk/maf206/motta\\_1999.pdf](http://people.exeter.ac.uk/maf206/motta_1999.pdf))

ECJ: GE/Honeywell merger ban stands, but Commission made errors

(<http://www.euractiv.com/competition/ecj-gehoneywell-merger-ban-stands-commission-errors/article-150887> )

**Swedish Competition Authority (2008):** The Pros and Cons of Vertical Restraints

[http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/Pros&Cons/rap\\_pros\\_and\\_cons\\_vertical\\_restraints.pdf](http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/Pros&Cons/rap_pros_and_cons_vertical_restraints.pdf)

**Lafontaine, F. and Slade M. (2005):** Exclusive Contracts and Vertical Restraints, Journal of Economic Literature, L42 – L81

[http://pages.stern.nyu.edu/~rslee/teaching/io/papers.vertical/Lafontaine%20Slade%20\(2007%20handbook%20antitrust\)%20-%20Exclusive%20Contracts%20and%20Vertical%20Restraints.pdf](http://pages.stern.nyu.edu/~rslee/teaching/io/papers.vertical/Lafontaine%20Slade%20(2007%20handbook%20antitrust)%20-%20Exclusive%20Contracts%20and%20Vertical%20Restraints.pdf)

**Telser, L. (1965):** Abusive Trade Practices : An Economic Analysis, Law and Contemporary Problems, 30(3), pp.488 ([http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3066&context=lcp&seiredir=1&referer=http%3A%2F%2Fscholar.google.be%2Fscholar\\_url%3Fhl%3Dsl%26q%3Dhttp%3A%2F%2Fscholarship.law.duke.edu%2Fcgi%2Fviewcontent.cgi%253Farticle%253D3066%2526context%253Dlcp%26sa%3DX%26scisig%3DAAGBfm1dN0m7oASoel2-Yp7QpMtmLEHTgA%26oi%3Dscholarr%26ei%3DTPwVVPtTK6SQ7Aa\\_m4HQCA%26ved%3D0CB0QgAMoATAA#search=%22http%3A%2F%2Fscholarship.law.duke.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D3066%26context%3Dlcp%22](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3066&context=lcp&seiredir=1&referer=http%3A%2F%2Fscholar.google.be%2Fscholar_url%3Fhl%3Dsl%26q%3Dhttp%3A%2F%2Fscholarship.law.duke.edu%2Fcgi%2Fviewcontent.cgi%253Farticle%253D3066%2526context%253Dlcp%26sa%3DX%26scisig%3DAAGBfm1dN0m7oASoel2-Yp7QpMtmLEHTgA%26oi%3Dscholarr%26ei%3DTPwVVPtTK6SQ7Aa_m4HQCA%26ved%3D0CB0QgAMoATAA#search=%22http%3A%2F%2Fscholarship.law.duke.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D3066%26context%3Dlcp%22))

**Melamed D. and Rubinfeld D. (2007):** U.S. v. Microsoft: Lessons Learned and Issues Raised, Foundation Press

[http://www.law.berkeley.edu/faculty/rubinfeldd/Profile/publications/Antitrust\\_stories\\_Microsoft.pdf](http://www.law.berkeley.edu/faculty/rubinfeldd/Profile/publications/Antitrust_stories_Microsoft.pdf)

**Whinston, M. (2001):** Exclusivity and Tying in U.S. v. Microsoft: What We Know, and Don't Know, Journal of Economic Perspectives, Vol. 15, No. 2, pages 63–80

<http://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.15.2.63>

**Rosenblatt et Al. (2013):** Post Danmark: predatory pricing in the European Union, The European Antitrust Review ([www.lw.com/thoughtLeadership/predatory-pricing-in-eu](http://www.lw.com/thoughtLeadership/predatory-pricing-in-eu))

**Lidgard H. (2010):** Refusal to Supply or to License, Swedish Network for European Studies

[http://www.kkv.se/upload/Filer/Forskare-studenter/projekt/2008/proj100\\_2008\\_1.pdf](http://www.kkv.se/upload/Filer/Forskare-studenter/projekt/2008/proj100_2008_1.pdf)

**Evans D. and Salinger M. (2005):** Why do Firms Bundle and Tie? Evidence from Competitive Markets and Implications for Tying Law, Yale Journal on Regulation, Volume 22, Number 1

[http://www.justice.gov/atr/public/hearings/single\\_firm/comments/219224\\_d.pdf](http://www.justice.gov/atr/public/hearings/single_firm/comments/219224_d.pdf)

**World Bank (2002):** Reforming infrastructure: Privatization, Regulation, and Competition, Chapter 1, The New Paradigm for Network Utilities ([http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2004/06/16/000012009\\_20040616143838/additional/310436360\\_20050007115600.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2004/06/16/000012009_20040616143838/additional/310436360_20050007115600.pdf))

**Newbery D. (1997):** Privatisation and Liberalisation of Network Utilities, University of Cambridge, Department of Applied Economics

<http://www.econ.cam.ac.uk/people/emeritus/dmgn/files/istanbul.pdf>

**OECD (2001):** Restructuring Public Utilities for Competition, OECD Reports,

<http://www.oecd.org/competition/sectors/19635977.pdf>

**Jeon, D. (2005):** A Simple Access Pricing Rule to Achieve the Ramsey Outcome for Interconnected Networks, UPF (<http://econ.upf.edu/docs/papers/downloads/808.pdf>)

**Federico G. and Vives X. (2008):** Competition and Regulation in the Spanish Gas and Electricity Markets, Reports of the Public-Private Sector Research Center, , Business School, University of Navarra ([http://www.iese.edu/en/files/energy%20report\\_Eng\\_tcm4-27082.pdf](http://www.iese.edu/en/files/energy%20report_Eng_tcm4-27082.pdf))

**Newbury P. (2013):** Creative Destruction and the Natural Monopoly 'Death Spiral': Can Electricity Distribution Utilities Survive the Incumbent's Curse?, Paper presented at the 35th DRUID Celebration Conference 2013, Barcelona, Spain ([http://druid8.sit.aau.dk/acc\\_papers/4fskc5m7do7gvbixnxsrkntuced5.pdf](http://druid8.sit.aau.dk/acc_papers/4fskc5m7do7gvbixnxsrkntuced5.pdf))

### **EU legislation:**

Commission Notice on the definition of the relevant market for the purpose of Community Competition Law OJ C372/5, 1997 ([http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX\\_SESSIONID=pvNxJJmVVCvmMJ9RfcGGcBwgXXDfjYxTw2Mp6716CxQPhM7V9KPX!-1321917289?uri=CELEX:31997Y1209\(01\)\)](http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=pvNxJJmVVCvmMJ9RfcGGcBwgXXDfjYxTw2Mp6716CxQPhM7V9KPX!-1321917289?uri=CELEX:31997Y1209(01))))

Commision notice of 10 May 2010: Guidelines on vertical restraints [SEC (2010) 411] <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010SC0411&from=EN>

### **Case law:**

Continental Can v Commission C-6/72 [1973] ECR 215 (<http://curia.europa.eu/juris/showPdf.jsf?jsessionid=9ea7d0f130de3d70200aafa04547816193be375d9d7e.e34KaxiLc3eQc40LaxqMbN4Ob3iMe0?text=&docid=88341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=131312>)

A. Ahlström Osakeyhtiö and others v Commission of the European Communities, Joined cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, ECLI:EU:C:1993:120 (Wood Pulp II case) ([http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61985CJ0089\(01\)\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61985CJ0089(01))))

**Basic Outline of Course Schedule** (it can be changed subject to interest of students on specific topics)

**PART I: Introductory foundations and basic concepts to be used in the class**

**Week 1** (Lectures on 25<sup>th</sup> and 26<sup>th</sup> September 2014): **Introduction to Competition Policy**

- History of Competition Policy in USA and EU
- The definition of competition policy
- The objectives of competition policy
- How is the Competition Policy legally dealt with in the EU
- The key differences between the EU and USA
- The downsides of Competition Policy

**Literature:**

Motta (2004), Ch.1

Stucke (2013): Is competition always good?

Kovacik (2008): Competition Policy in the EU and the US: Convergence or divergence?

**Week 2** (Lectures on 2<sup>nd</sup> and 3<sup>rd</sup> October 2014): **Basic concepts of Competition Policy**

- The necessary conditions for market formation and success
- The Competition Policy implications for consumers
- Market power: Allocative efficiency, productive efficiency, dynamic efficiency
- Monopolistic situation
- Additional Public Policies

**Literature:**

Motta (2004), Ch.2

Waterson (2001): The role of consumers in competition and competition policy

Foster, McChesney, Jonna (2011): Monopoly and Competition in Twenty-First Century Capitalism

**PART II: Regulation of conduct of market participants**

**Week 3** (Lectures on 9<sup>th</sup> and 10<sup>th</sup> October 2014): **Market definition in theory and practice**

- Product market definition, geographic market definition
- European Commission on the definition of relevant market

- Case law (only Continental Can obligatory, others for your reference, useful tips for reading judgments will be given at the first seminar):
  - o Continental Can v Commission C-6/72 [1973] ECR 215
  - o Hoffmann-La Roche v Commission C-85/76 [1979] ECR 461
  - o Sockel GmbH v The Body Shop International plc [2000] UKCLR 262
  - o United Brands Co v Commission Case 27/76 [1978] 1 CMLR 429
  - o 1998 Football World Cup 2000/12 (2000) OJ I5/55
  - o British Airways 2000/74 (2000) OJ L30/1
- Two different approaches to the assessment of market power

#### **Literature:**

Motta (2004), Ch.3

Continental Can v Commission C-6/72 [1973] ECR 215

Commission Notice on the definition of the relevant market for the purpose of Community Competition Law

Volodymyr Bilotkach V., Polk A.: The Assessment of Market Power of Airports

#### **Week 4** (Lectures on 16<sup>th</sup> and 17<sup>th</sup> October 2014): **Cartels and Horizontal Agreements**

- Facilitating factors for cartels
- Horizontal Agreements
- What is the appropriate approach: ex ante or ex post?
- Allowed conduct vs. forbidden conduct: how to prove?
- Joint ventures and horizontal agreements in general
- Parallel behavior and Wood Pulp II

#### **Literature:**

Motta (2004), Ch.4

Ivaldi M. et al (2003): The economics of tacit collusion

Motta, M. (2007) Cartels in the European Union: Economics, Law, Practice

Wood Pulp II case

#### **Week 5** (Lectures on 23<sup>rd</sup> and 24<sup>th</sup> October 2014): **Horizontal Mergers**

- Unilateral effects of Horizontal Mergers
- Pro-collusive effects of Horizontal Mergers

- Efficiency gains from Mergers and Efficiency Offence
- Merger remedies
- Merger policy in the EU
- Case studies (GE - Honeywell, Facebook – Whatsapp)

**Literature:**

- Motta (2004), Ch.5
- Facebook – Whatsapp Merger:
  - o <http://www.forbes.com/sites/benkepes/2014/02/19/breaking-facebook-buying-whatsapp-19b-in-cash-and-stock/>
  - o [http://ec.europa.eu/competition/mergers/cases/additional\\_data/m7217\\_368\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/additional_data/m7217_368_3.pdf)
  - o <http://www.pcadvisor.co.uk/news/social-networks/3502888/why-did-facebook-buy-whatsapp/>
  - o <http://online.wsj.com/articles/facebook-seeks-eu-antitrust-review-of-whatsapp-deal-1401269230>
  - o <http://nypost.com/2014/04/11/facebook-whatsapp-deal-cleared-by-regulators/>
  - o [http://en.wikipedia.org/wiki/List\\_of\\_mergers\\_and\\_acquisitions\\_by\\_Facebook](http://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Facebook)
  - o <http://www.jetlaw.org/2014/09/10/facebook-whatsapp-merger-potentially-vulnerable-overseas/>
- Motta, M. (1999): EC Merger Policy and the Airtours Case
- ECJ: GE/Honeywell merger ban stands, but Commission made errors

**Week 6** (Lectures on 30<sup>th</sup> and 31<sup>st</sup> October 2014): **Vertical Restraints and Vertical Mergers**

- Intra-brand competition
- Inter-brand competition
- Leverage and foreclosure as anti-competitive effects
- Policy implications

**Literature:**

- Motta (2004), Ch.6
- Commission notice of 10 May 2010: Guidelines on vertical restraints [SEC (2010) 411]: only pages 8-22 and 96-127)
- Lafontaine, F. and Slade M. (2005): Exclusive Contracts and Vertical Restraints
- As additional learning tool, for your reference: The Pros and Cons of Vertical Restraints, Swedish Competition Authority (2008)

### **Week 7 (Lectures on 6<sup>th</sup> and 7<sup>th</sup> November 2014): Abusive Practices**

- Predatory Pricing
- Price Discrimination
- Non-price monopolization practices:
  - o Tying Arrangements
  - o Bundling
  - o Refusal to supply
- Exclusive Dealing
- US v Microsoft Case

#### **Literature:**

- Motta (2004), Ch.7
- Telser, L. (1965): Abusive Trade Practices – An Economic Analysis
- Melamed D. and Rubinfeld D. (2007): U.S. v. Microsoft: Lessons Learned and Issues Raised (please skip through the purely legal part; focus on economic implications and the story itself)
- Whinston, M. (2001): Exclusivity and Tying in U.S. v. Microsoft: What We Know, and Don't Know
- Rosenblatt et Al. (2013): Post Danmark: predatory pricing in the European Union
- Lidgard H. (2010): Refusal to Supply or to License
- Evans D. and Salinger M. (2005): Why do Firms Bundle and Tie?

### **PART III: Additional topics**

#### **Week 8 (Lectures on 20<sup>th</sup> and 21<sup>st</sup> November 2014): Natural monopoly and the changes in Competition Policies today**

- What is a natural monopoly and where it can be found
- Spanish natural monopolies
- What has changed in the last two decades
- Introduction to Network Utilities
- Main changes in Competition Policies today

#### **Literature:**

- Federico G. and Vives X. (2008): Competition and Regulation in the Spanish Gas and Electricity Markets
- Newbury P. (2013): Creative Destruction and the Natural Monopoly 'Death Spiral': Can Electricity Distribution Utilities Survive the Incumbent's Curse?
- For your reference only (will be summarized in the lectures) – Office of Competition and Consumer Protection Warsaw (2010): Changes in Competition Policy Over the Last Two Decades



**Week 9** (Lectures on 27<sup>th</sup> and 28<sup>th</sup> November 2014): **Liberalization and Economic Regulation of Network Utilities**

- Main Economic Characteristics of Network Utilities
- Network Utilities and Ownership: Competition and Liberalization
- Introducing Competition in Network Utilities
- Access Pricing Rules

**Literature:**

- World Bank (2002): Reforming infrastructure: Privatization, Regulation, and Competition, Chapter 1, The New Paradigm for Network Utilities
- Newbery D. (1997): Privatisation and Liberalisation of Network Utilities
- OECD (2001): Restructuring Public Utilities for Competition, OECD Reports (be brief; understand the concepts but do not read it in detail, for its scope is too broad)
- Jeon, D. (2005): A Simple Access Pricing Rule to Achieve the Ramsey Outcome for Interconnected Networks

**Week 10** (Lectures on 4<sup>th</sup> and 5<sup>th</sup> December 2014): **Recap sessions**

The last week will be dedicated to recap and any outstanding issues with a possible mock exam

**Course Evaluation:**

- 20% of the grade will be a practical assignment given to you at one of the tutorials on the topics seen up until that moment (in the beginning of November) that will have to be handed in
- Up to 10% additionally can be obtained with cooperation in lectures/tutorials; the braver you are, the more it pays off
- The remaining 80% will be accounted from the written exam taken in the beginning of December
- For an overall passing grade, the requirement of at least 5/10 in the exam is present

**General comments:**

The purpose of this class is to genuinely master the logics behind the Competition Policy and its Regulation in such a manner, that you can immediately use the knowledge obtained as you leave the University and enter the business world. All questions and remarks are welcome at any point in time, any special points of interest too. The functional knowledge obtained should serve you and not only to the exam, therefore any propositions or requests to deepen knowledge on specific topics or shorten some others is welcome.