

EUROPEAN AND GLOBAL COMPETITION POLICY SEMINAR

Instructor

Dr. Giovanna Massarotto

Structure

14 sessions

Description

Through the study of the foundations of the European competition policy, this seminar lays out the role of competition law in shaping the European economy. The class will cover key differences and similarities between the U.S. and EU competition regimes and examine how these different approaches have been implemented in other jurisdictions. Competitive markets represent cornerstones for the continued strengthening of the EU-US economic and trade relationship. This seminar will focus on the technology sector, from the computer industry to the *Big Tech* antitrust debate in the digital economy, which is international in scope. Topics including algorithmic collusion and the potential to use computational tools, such as AI and blockchain, in the antitrust enforcement action will be discussed and debated.

Guest speakers will be invited to share their experiences and exchange insights.

Every class will be highly interactive – demanding active learning, active listening, and the ability to both respond and formulate questions.

Course Objectives

By the end of the course, participants should expect to:

- Understand the role of competition policy in the European economy.
- Evaluate EU Competition law and U.S. antitrust law critically.
- Analyze different competition approaches via case studies.
- Identify competition law principles that are recognized globally.
- Discuss current competition law as it applies to digital platforms and tech companies.
- Explore the role of competition law in innovation and new-market development.

Evaluation Methods

Attendance is required. Please do not come to class, if you are sick. Email me and we will speak about how you can keep up with the material and class discussion.

Participation (30%).

Students will be expected to have read the assigned chapters, readings, and cases before each class. Class preparedness and participation are essential. If something in the assigned reading is not understandable, students are encouraged to ask for an explanation. Students will be provided with a PowerPoint handout. The participation grade will reflect preparation for each class, as well as an assignment, which includes a presentation. Students will be asked to develop a team project related to a competition law jurisdiction different from Europe and the U.S. and present their work/analysis from Week 7 to 13. Each project and presentation should develop and evaluate the selected competition law jurisdiction critically bringing up considerations raised during the class discussion. For example, why has the country introduced

a competition law, what are the objectives, and does the competition law regime resemble more the European civil law or the U.S. common law approach? What is the role of economics and competition in that specific jurisdiction? If possible, it should include a case also decided in Europe or in both the U.S. and Europe by emphasizing the similarities and differences. Students will be assigned to a team and are required to select the jurisdiction they will analyze by **Week 4**. If different teams want to analyze the same jurisdiction, they should discuss how to coordinate their project and presentations to avoid overlaps.

Writing Assignment (70%)

The written exam will consist of a paper (around 25 pages in length), which will require explanation and critical reasoning on a competition law case covered publicly. Students will be asked to reflect upon and include readings and discussions covered in class and demonstrate careful research of the relevant law and scholarly literature, including law journal articles. Cases will be suggested, although you may choose any antitrust case. Cases tried or ongoing in multiple jurisdictions are favored. You should let the class know your choice as soon as possible and no later than Week 8, so we avoid multiple students covering the same case. You are encouraged to discuss the case and your approach with your instructor. The paper is due by December 23, 2025.

Artificial Intelligence Policy. You may use AI tools to assist in the creation of your written work in this course subject to the general principle that **all work submitted by you must be your work product alone**. Specifically:

- You may use AI tools to help you brainstorm about topics or refine your topic ideas;
- You may use AI tools to assist you in your research;
- You may use AI tools to help you edit a draft that you have written for clarity or length;
- You may not use AI tools to create “first drafts” or other blocks of textual material.

You must cite any use of a generative AI tool, and include clear and specific details about the tool, its version, the developers or the organization responsible for it, and any pertinent parameters or settings that influenced the generation. Here's a sample format and an example:

Format:

[AI tool name] ([Version, if available]). Developed by [Developers/Organization Name]. Retrieved [Date], from [URL or source if applicable]. [Specific parameters/settings if necessary].

Course Material

ELEANOR M. FOX & DAMIEN GERARD, EU COMPETITION LAW: CASES, TEXTS AND CONTEXT (Elgar, 2023) (recommended textbook). Additional readings will often be assigned for each class—see the course schedule below. **Prof. Eleanor Fox** will be the guest speaker in Week 10.

Office hours

Office hours, whether virtual or in person, are by appointment. Please email me to schedule a meeting. You can reach me at gmassa@law.upenn.edu

Sessions
Week 1. The EU Competition Law and the creation of the European single market

Description. We will begin with a discussion on “*Competition as a Democratic Tool*” (see Canvas discussion). Week 1 will then focus on the origins and objectives of EU Competition Law, which served as a pillar in the foundation of the European Economic Community. This first week will also introduce the EU institutions and procedures, as well as Articles 101 and 102 of the TFEU, including a discussion on European market integration.

Readings: Speech by EVP Margrethe Vestager at the Open Markets Institute event “Fixing the Information Crisis Before It’s Too Late (For Democracy)” (Jun. 27, 2024), https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech_24_3516/SPEECH_24_3516_EN.pdf, ELEANOR M. FOX & DAMIEN GERARD, EU COMPETITION LAW: CASES, TEXT AND CONTEXT (Elgar, 2023). **Chapter 1. The Treaty, objectives and the Single Market (Sections A, C and D).**

Week 2. Art. 101 of the TFEU. Cartels and horizontal restraints

Description. Week 2 deals with cartels and horizontal restraints under Article 101 of the TFEU. Having introduced cartels and how they are related to competition, the class examines proof of cartels and issues of jurisdiction (world cartels and offshore cartels). It proceeds with the discussion of agreements among competitors in general by examining the distinction between ‘by object’ restrictions and ‘by effect’ restrictions.

Readings: ELEANOR M. FOX & DAMIEN GERARD, EU COMPETITION LAW: CASES, TEXT AND CONTEXT (2023). **Chapter 2. Cartels** (pages: 46-65, 80-90) and **Chapter 3 Horizontal restraints** (pages: 100-126); Wouter P. J. Wils, *The European Commission’s Cartel Settlement Procedure: An Assessment after Fifteen Years*, 3 [CONCURRENCES](#) (2024); European Commission, Whistleblowers and Informants, https://competition-policy.ec.europa.eu/index/whistleblower_en.

Week 3. Art. 101 of the TFEU and vertical restraints

Description. Week 3 covers Article 101(3) of the TFEU, which can exempt some restrictive agreements from prohibitions if objective economic benefits outweigh the negative effects of the agreement on competition. Block exemptions, including those governing specialization agreements and research and development, are also analyzed. The second part of the class deals with vertical restraints under Article 101 of the TFEU with a focus on Resale Price Maintenance Agreements (RPM).

Readings: ELEANOR M. FOX & DAMIEN GERARD, EU COMPETITION LAW: CASES, TEXT AND CONTEXT (Elgar, 2023). **Chapter 3. Horizontal restraints** (pages: 132 to 135, 151-160, 168-170) and **Chapter 4 Vertical restraints** (pages: 171-191, 201-213).

Week 4. A comparative analysis between art. 101 of the TFEU and Section 1 of the Sherman Act

Description. Week 4 is dedicated to a comparative analysis between art. 101 of the TFEU and Section 1 of the Sherman Act through case law: *i.* Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36 (1977); *ii.* Ohio v. American Express 585 U.S. (2018). The difference between the EU *by object* and *by effect* restrictions and the U.S. *per se* rule and *rule of reason* will also be examined.

Readings: an excerpt from the cases in the description will be provided.

Week 5. Art. 102 TFEU and abuses of dominance. Part I.

Description. Week 5 is devoted to the concept of dominance and abusive conduct in EU competition law. The analysis of abusive practices includes excessive pricing, unfair terms, and exclusive conduct, such as refusal to deal, exclusive dealing, tying and bundling.

Readings: ELEANOR M. FOX & DAMIEN GERARD, *EU COMPETITION LAW: CASES, TEXT AND CONTEXT* (Elgar, 2023). **Chapter 5. Abuses of dominance** (pages: 226-48, 257-60, 280-99, 319-321).

Week 6. Art. 102 TFEU and abuses of dominance. Part II.

Description. Week 6 focuses on price predation and price discrimination emphasizing the similarities and differences between the EU and U.S. approaches through case studies, including *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993). Other differences in approaching exclusive conduct between Europe and the U.S. antitrust law will be examined through case studies.

Readings: ELEANOR M. FOX & DAMIEN GERARD, *EU COMPETITION LAW: CASES, TEXT AND CONTEXT* (Elgar, 2023) **Chapter 5. Abuses of dominance** (pages: 241-43, 247-56, 296-319).

Week 7. The debate about the formalistic and economic approach in EU Competition Law and the differences with the U.S. Harvard and Chicago schools.

Student presentation

Description. Week 7 discusses the formal-based and economic-based approaches to enforcing art. 102 TFEU (ex art. 86 of the Treaty of Rome) and the main differences with U.S. Harvard and Chicago schools of antitrust analysis. In Europe, the initial form-based system that automatically prohibited some abusive practices gave way to the modern “more economic approach” to enforcing art. 102 TFEU. The issue is developed in the *Intel* case that will be discussed in class. Conversely, in the U.S. the distinction is traditionally between Harvard and Chicago schools of antitrust analysis. The key differences and similarities between the EU and U.S. antitrust analysis will be analyzed.

Readings: Valentine Korah, *Interpretation and Application of Article 86 of the Treaty of Rome: Abuse of a Dominant Position within the Common Market*, 53 NOTRE DAME L. 768- 790 (1978); Richard Whish, *Intel v. Commission: Keep Calm and Carry on!*, 6 J. COMPETITION L. & PRAC. 1, 2 (2014); Herbert Hovenkamp, *The Harvard and Chicago Schools and the Dominant Firm*, Faculty Scholarship at Penn Carey Law 1771 (2007) (from page 1 to 10).

Week 8. Merger Control.

Student presentation

Description. Week 8 is dedicated to merger control regulation and the economic analysis of mergers, which includes the analysis of competition-lessening effects, positive effects, market concentration, and barriers to entry. The discussion will proceed with the failing firm defense and mergers with an international dimension.

Readings: ELEANOR M. FOX & DAMIEN GERARD, EU COMPETITION LAW: CASES, TEXT AND CONTEXT (Elgar, 2023). **Chapter 6. Merger Control** (pages: 328-352; 382-386).

Week 9. Member States, National Competition Authorities (NCAs) and Regulation 1/2003.

Student presentation

Description. Week 9 covers the issue of state ownership, the privatization of state monopolies and market liberalization in Europe. The role of the European National Competition Authorities (NCAs) and Regulation 1/2003, which put in place the decentralized system of EU Competition law enforcement, is also analyzed.

Readings: ELEANOR M. FOX & DAMIEN GERARD, EU COMPETITION LAW: CASES, TEXT AND CONTEXT (Elgar, 2023). **Chapter 1. The Treaty, objectives and the Single Market (Section B)** and **Chapter 7. The State and competition (Section A, B and C).**

Week 10. How EU Competition law and U.S. antitrust law became models of reference for the rest of the world and the vision of ‘One World’.

Student presentation – **Guest Speaker:** Prof. Eleanor [Fox](#)

Description. Week 10 is devoted to the issue of the globalization of competition law and international organizations that aim to increase collaboration and dialogue among competition law systems worldwide. The discussion includes the role of the International Competition Network (ICN) and the Organization for Economic Cooperation and Development (OECD) Competition Division. The class ends with the discussion of Eleanor Fox’s article *The End of Antitrust Isolationism: The Vision of One World*.

Readings: Eleanor M. Fox, *The End of Antitrust Isolationism: The Vision of One World*, 1 University of Chicago Legal Forum 221-223, 237-240 (1992); Douglas H. Ginsburg, *International Antitrust: 2000 and Beyond*, 68 ANTITRUST L. J. 571-576 (2000).

Week 11 and Week 12. Competition law and the technology sector

Student presentation

Description. Weeks 11 and 12 deal with the enforcement of competition law in the technology sector through cases that have been decided in both the EU and U.S., including *Microsoft* and *Intel* cases. The enforcement of competition principles in network industries, which are characterized by network effects, will be examined and discussed. The class will emphasize how competition affects technological progress by examining the computer industry and the digital economy, including mergers (Facebook/WhatsApp). It will cover how competition policy interacts with other regulations in the tech sector (e.g., privacy).

Readings: An excerpt from the cases in the description will be provided.

Week 11. Daniel L. Rubinfeld, *Antitrust Enforcement in Dynamic Network Industries*, 43 ANTITRUST BULL. 861-872 (1998); ELEANOR M. FOX & DAMIEN GERARD, EU COMPETITION LAW: CASES, TEXT AND CONTEXT (Elgar, 2023) (pages: 263-268, 288-91); Giovanna [Massarotto](#), *Driving Innovation with Antitrust*, PROMARKET (Apr. 10, 2024).

Week 12. Jacques Crémer, Yves-Alexandre de Montjoye, Heike Schweitzer, *Competition Policy for the Digital Era*, EU Commission Final Report 1-11 (2019),

<https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>.

ELEANOR M. FOX & DAMIEN GERARD, EU COMPETITION LAW: CASES, TEXT AND CONTEXT (Elgar, 2023) (pages: 270-79).

Week 13. The *Big Tech* antitrust debate and the European Digital Markets Act (DMA)

Description. Week 12 covers the antitrust turn toward ex ante regulation in the context of digital platforms. Google, Amazon, Facebook (Meta), Microsoft, ByteDance and Apple, known as *Big Tech*, are in the crosshairs of legislators worldwide for possible monopolization of digital platforms. Politicians on both sides of the Atlantic are calling on antitrust authorities to address potential market concentration within digital platforms. However, the lengthy nature of antitrust proceedings and the uncertainty of their outcomes have led to questions about the effectiveness of the ex post, case-by-case antitrust approach. After years of investigations against Google, Amazon, Meta, and Apple, the focus of EU and U.S. legislators has considered shifting to ex ante regulation, imposing remedies on digital companies by default simply because they are large. The European Digital Markets Act (DMA), enacted in September 2022, and the U.S. antitrust bills are symbolic examples of this trend.

Readings: EU Commission, *The Digital Markets Act: ensuring fair and open digital markets*, [The Digital Markets Act: ensuring fair and open digital markets \(europa.eu\)](#); Giovanna Massarotto, *Regulating Tech Titans*, 16 U.C. IRVINE L. REV. 43 (2026); ELEANOR M. FOX & DAMIEN GERARD, EU COMPETITION LAW: CASES, TEXT AND CONTEXT (Elgar, 2023) (pages: 325-26).

Week 14. The Future of European and Global Competition Policy in Emerging Technologies (e.g., AI, blockchain)

AI and blockchain technologies are disrupting markets. This week will focus on the use of emerging technologies, including AI, to engage in anticompetitive conduct more effectively (e.g., algorithmic collusion), as well as the use of AI and blockchain to revitalize antitrust enforcement.

Readings: Giovanna [Massarotto](#), *What is Algorithmic Bias and Why Antitrust Agencies Should Care?*, CPI ANTITRUST CHRONICLE JUN. 2023; Giovanna [Massarotto](#), *Defining AI Collusion Depends on Consumer Harm and Algorithms*, BLOOMBERG LAW (Oct. 3, 2024); Giovanna [Massarotto](#), *Can Computational Tools Revitalize Antitrust Enforcement?* PROMARKET (Jun. 13, 2023).

THIS SYLLABUS IS SUBJECT TO CHANGE