EUROPEAN AND GLOBAL COMPETITION POLICY SEMINAR

Semester: Fall
Credits: 3 credits
Meeting Time: Wednesday 1:00-3:00 pm

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.

There are no prerequisites for this course, although a basic understanding of or experience with antitrust law is beneficial. 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.

<u>Participation (30%).</u>
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.

<u>Writing Assignment (70%)</u>
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. I plan to schedule a 15-minute Zoom session with each of you to discuss your final assignment the first week of January.

Artificial Intelligence Policy. You may use generative AI as a limited research and writing-process assistant in this seminar. You remain responsible for the thesis, research judgment, organization, legal analysis, citations, and final text of your work. Unless an assignment says otherwise, you may use AI to brainstorm possible topics, identify counterarguments, test whether an outline is clear, ask for feedback on a draft you have already written, or generate questions you should consider as you revise. You may not submit unreviewed AI-generated text, use AI-generated citations without checking them, rely on AI summaries instead of reading the relevant sources, or allow AI to replace your own research and analysis. For each major paper milestone, I may ask you to submit process materials such as a topic memo, preliminary source list, thesis paragraph, outline, partial draft, research trail, or revision memo. If you use AI in connection with any submitted work, including a topic memo, presentation, outline, draft, or final paper, include an AI-use statement with the submission. The statement should identify the tool, the stage of work, and the purpose.

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.

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 Meaning of Competition in Europe and the creation of the European single market **Description.** We will begin with a discussion on "The Meaning of Competition" (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 Articles 101 and 102 of the TFEU, including a discussion on European market integration. **Readings:** Giovanna Massarotto, *Regulating Tech Titans*, 16 UC IRVINE LAW 43-49, 57-73 (2026). 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. The topic of algorithmic collusion will also be debated. **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); Giovanna Massarotto, *AI Agents and Collusion: The Two Faces of Agentic AI*, CPI ANTITRUST CHRONICLE (2026).
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. Horizonal 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. For a discussion on AI collusion in the U.S., *see*, Giovanna Massarotto, *Defining AI Collusion Depends on Consumer Harm and Algorithms*, BLOOMBERG LAW (Oct. 3, 2024), https://news.bloomberglaw.com/us-law-week/defining-ai-collusion-depends-on-consumer-harm-and-algorithms.

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, *e.g.*, U.S. v. EU Google cases. **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)**;** Giovanna Massarotto, *Algorithmic Remedies for Google's Data Monopoly* pages: 1-12 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5394028.
Week 7. The Digital Markets Act (DMA) and the Trend Toward Ex Ante Regulation **Description.** Week 7 covers the shift toward ex ante regulation in the context of digital platforms. Google, Amazon, Facebook (Meta), Microsoft, ByteDance, and Apple, commonly referred to as Big Tech, have come under increasing scrutiny from legislators worldwide over concerns about market power in digital markets. After years of antitrust investigations and enforcement actions against Google, Amazon, Meta, and Apple, policymakers in the EU and the United States have considered shifting toward ex ante regulation, imposing obligations and prohibitions on large digital companies based on their market position and other specified criteria. The European Union's Digital Markets Act (DMA), enacted in September 2022, and proposed U.S. antitrust legislation are prominent examples of this trend. **Guest Speaker:** Mr. Thomas Kramler (Head of Unit - DG Competition – Digital Platforms) Student presentation **Readings:** EU Commission, *The Digital Markets Act: Ensuring Fair and Open Digital Markets, https://digital-markets-act.ec.europa.eu/index_en*; Giovanna Massarotto, *Regulating Tech Titans* 16 UC IRVINE LAW 45-55 (2026); EU Comm. Press Release, Commission fines Google €890 million for breaches of the Digital Markets Act (Jul. 23, 2026), https://digital-markets-act.ec.europa.eu/commission-fines-google-eur890-million-breaches-digital-markets-act-2026-07-23_en.

Week 8. 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 8 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. 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 9. Merger Control.

Student presentation

Description. Week 9 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 10. Member States, National Competition Authorities (NCAs) and Regulation 1/2003.

Student presentation

Guest Speaker: Gabriella Romano, Officer at Italian Antitrust Authority (AGCM)

Description. Week 10 covers the role of the European National Competition Authorities (NCAs) and Regulation 1/2003, which established the decentralized system of EU Competition law enforcement.

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 11. 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'.

Guest Speaker: Prof. Eleanor Fox

Student presentation

Description. Week 11 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 12 and Week 13. Competition law and the technology sector

Student presentations

Description. Weeks 12 and 13 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. **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 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, *Can Computational Tools Revitalize Antitrust Enforcement?* PROMARKET (Jun. 13, 2023).

THIS SYLLABUS IS SUBJECT TO CHANGE