



Competition Law in the Digital Economy

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October 8th – October 12th 2018 11am – 13pm

(Duration: 10 hours)

Course summary: Modern Competition Law emerged in the United States in 1890 as a form of dealing with one of the disruptive economic movements of the time: the concentration of economic power stemming from technological change (industrialization and mass production leading to economies of scale that favoured big enterprises) and made viable through legal innovations that allowed new business structures (trusts and then holding companies, allowing control of several legally-independent corporations). As Competition Law enters its second century, the legal and economic analytical paradigms that were shaped to a predominantly industrial and service-oriented economy are facing new challenges in adjusting to the new business environment of a digital economy. This course provides an introduction to some of those challenges, providing students with insights on some of the most recent academic research and the ongoing battle between two paradigms: the dominant efficiency-oriented paradigm (that views the growing concentration of market power in the hands of technological giants as inevitable and indeed desirable) and the so-called Brandesian movement (or, scornfully, “Hipster Antitrust”), that would reinvent Competition Law by reclaiming its early spirit against excessive concentration of economic power.

Course objectives:

- To provide an introduction to the specific characteristics of the digital economy (network effects, platform competition, ability to discriminate, relevance of intellectual property rights).
- To lead students to understand the legal and economic concepts that underpin competition law as it applies to the digital economy environment, in a dynamic and critical perspective that allows future study of these subjects;

Methodology: The course combines lectures with the discussion of selected papers and cases and decisions from the US and the EU, as well as from other jurisdictions. The case method will be used as an illustration of how the challenges of controlling market power in the digital economy are being dealt with under current competition rules, particularly the US and EU models. An interdisciplinary Law & Economics perspective will be used as a tool to understand how different legal cultures address the same types of competition restraints and establish a benchmark to appraise the effectiveness of those legal and institutional regimes.

Grading: Students will be required to read cases before class (approximately 30 pages reading per class). Grading will be based on class participation and a short paper (2500 words) on one of the topics addressed in the course. The paper should be delivered two weeks after completion of the course.

Course materials and required reading: these will be made available on the Moodle platform (elearning.ul.pt) at the latest two weeks before the beginning of the course. Students will be required to read the materials in advance and to prepare each class, including case discussions.

Classes

Day 1 – October 8th

- **The Digital Economy**

Day 2 – October 9th

- **The Objectives of Competition Law**
- **Collusion in the Digital Economy**

Day 3 – October 10th

- **Retailing in the Digital Economy**

Day 4 – October 11th

- **Abuse of Dominance in the Digital Economy**

Day 5 – October 12th

- **Merger Control in the Digital Economy**

Bibliography

- Ariel Ezrachi / Maurice E. Stucke, Virtual Competition, Harvard Univ. Press, Cambridge – Massachusetts, 2016.
- Mark R. Patterson, Antitrust Law in the New Economy, Harvard Univ. Press, Cambridge – Massachusetts, 2017.
- Maurice E. Stucke / Allen P. Grunes, Big Data and Competition Policy, Oxford Univ. Press, Oxford, 2016.

Please note that the course will provide access to research papers by these authors and others. Required reading will therefore be freely available online.