

School of Accounting and Commercial Law

COML 304 COMPETITION LAW

Trimester One 2007

COURSE OUTLINE

Contact Details

Course Co-ordinator: Associate Professor Yvonne van Roy (Course Co-ordinator)
Room RH 605
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Office hours: Wednesday 2-4pm

Lecturer: Mr David Carter
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Course Administrator: Jan May
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Office hours: Monday-Friday 8.30am-5pm

Class Times and Room Numbers

Lectures: Monday, Thursday, Friday 12.40-1.30pm in GB LT 3

Tutorials/Workshops: There will be no compulsory tutorials. However, there will be four non-compulsory workshops to assist with exam study, two before the terms test, and two before the final exam. These will be held at the following times and locations:

Workshops before Terms Test:

1)	Thursday 15 March	1.40-2.30	RLWY 129
	Friday 16 March	1.40-2.30	RLWY 314
2)	Thursday 29 March	1.40-2.30	RLWY 129
	Friday 30 March	1.40-2.30	RLWY 314

Workshops before Final Exam:

1) Thursday 10 May	1.40-2.30	RLWY 129
Friday 11 May	1.40-2.30	RLWY 314
2) Thursday 31 May	1.40-2.30	RLWY 129
Friday 1 June	1.40-2.30	RLWY 314

Final Examination:

In exam period 4-29 June 2007 (exact time to be advised). The exam will be completely open-book (i.e. students may bring anything they wish into the exam room).

Course Objectives

Aims of the Course:

The aims of this course are to investigate the policy of competition law, including the underlying economic theory and related issues of public welfare, and to make a detailed study of competition legislation in New Zealand, predominantly the Commerce Act 1986 (although the regulatory regimes in telecommunications and electricity will also be considered). There will be some discussion of overseas legislation, in particular the Australian Trade Practices Act 1974.

Course Objectives:

Students passing this course should be able to:

- 1) Explain the social and economic objectives underlying competition law in New Zealand, and to appreciate some of the different views concerning these.
- 2) Understand how the regime for control under the Commerce Act operates (and to some degree also, the Australian Trade Practices Act) and the various regulatory regimes.
- 3) Know how to apply the provisions of the Commerce Act to fact situations.
- 4) Critically assess the judge's reasoning in cases, with respect to the words and underlying policies of the Commerce Act.
- 5) Understand the concerns underlying changes to the Act, and to critically analyse the effectiveness of these changes.

Relationship between Assessment Tasks and the Course Objectives:

The Terms Test will begin to assess objectives 2 and 3; and the Research Essay and the Final Examination will assess all 5 objectives.

Course Content

The course content will follow, as near as possible, the following schedule:

Schedule of Lectures

Monday, Thursday, Friday 12.40 – 1.30pm (Rm GBLT 3)		
Feb 26	YvR	1) Introduction to the course, to the Commerce Act
March 1	YvR	2) Objects clause s1A, Role of the CC, Overview
March 2	DC	3) Economics & Competition Law
March 5	DC	4) Economics & Competition Law
March 8	DC	5) Economics & Competition Law
March 9	YvR	6) ARA case – introduction to ss 27 & 29
March 12	YvR	7) s27 issues – contracts, arrangements, understandings, s2(8) & (9) <i>Nicholas Enterprises, Morphet Arms, Giltrap, Ophthalmologists</i>
March 15	YvR	8) s27 issues – s3(5), purpose s2(5), effect, likely effect <i>Port Nelson, Tui Foods</i> (tutorial at 1.40, RLWY 129)
March 16	DC	9) s27 issues – Relevant Market (tutorial at 1.40, RLWY 314)
March 19	DC	10) s27 issues – Competition, Substantially Lessening
March 22	DC	11) s37-RPM
March 23	DC	12) s37-RPM
March 26	DC	13) Remedies – ss80, 81, 82, 89 etc
March 29	YvR	14) s30 price fixing – introduction, <i>Caltex</i> (tutorial at 1.40, RLWY 129)
March 30	YvR	15) <i>Email, Giltrap</i> , s30 issues (tutorial at 1.40, RLWY 314)
April 2	YvR	16) ss31, 32, 33
April 5		TERMS TEST
April 6		EASTER (Good Friday)
April 9 – April 20, Mid Trimester Break		
April 23	DC	18) Sector-Specific Regulation
April 26	DC	19) Sector-Specific Regulation
April 27	DC	20) Sector-Specific Regulation
April 30	DC	21) Sector-Specific Regulation
May 3	DC	22) Sector-Specific Regulation
May 4	DC	23) Authorisation, Public Benefit
May 7	DC	24) Business Acquisitions
May 10	DC	25) Business Acquisitions (tutorial at 1.40, RLWY 129)
May 11	DC	26) Control of Oligopolies – difficulties with ss27 & 36 (tutorial at 1.40, RLWY 314)
May 14	YvR	27) Scope of the Act – ss4, 5, 6, 7; Exceptions s44
May 17	YvR	28) Exceptions, ss45, 43 <i>Apple Fields</i>
May 18	YvR	29) s29 Exclusionary provisions, issues etc
May 21	YvR	30) s29 – <i>Tui Foods, News Ltd, South Sydney, Eastern Express, Rural Press</i>
May 24	YvR	31) s36 – introduction, issues, <i>Queensland Wire</i>
May 25	YvR	32) s36 – substantial degree of power – <i>Boral, Melway, QW</i> ; Research Essay Due
May 28	YvR	33) s36 – taking advantage of – <i>Melway, Boral, Rural Press, PAWA, c/w Telecom v Clear & Carter Holt</i>
May 31	YvR	34) s36 <i>Melway, Rural Press, Safeway</i> (tutorial at 1.40, RLWY 129)
June 1	YvR	35) s36 – predatory pricing – <i>Boral, Carter Holt etc</i> (tutorial at 1.40, RLWY 314)

Readings

The readings relevant to each topic area will be set out in handouts made available as the course progress. There will be set material to be read in preparation for most lectures. You should make a practice of bringing your relevant materials book and/or legislation (as appropriate) to lectures.

Set texts:

The Commerce Act 1986 (incorporating all amendments).
Competition Law Materials (2007) – vols I & II.

Recommended Reading:

There are a number of useful reference books on Competition Law held in the Law Library (some on Closed Reserve (C/R)). These include:

- (NZ) Adhar, R, (ed) *Competition Law and Policy in New Zealand* (C/R, Law Library)
- Brookers, *Gault on Commercial Law* – Chapters on the Commerce Act by Y van Roy, L Hampton, M Berry (& others)
- Hampton, L F, Chapter VI (“Competition Law”) of *Butterworths Commercial Law in New Zealand* by Farrar and Borrowdale
- Van Roy, Y, *Guidebook to New Zealand Competition Laws* (2nd Edn, CCH, 1991) (Note that this precedes the 2001 amendment)
- (Aust) Taperell, G Q, Vermeesch, R B and Harland, D J, *Trade Practices and Consumer Protection* (C/R, Law Library)
- Miller, R V, *Annotated Trade Practices Act* (C/R, Law Library)
- Heydon, *Trade Practices Law* (Loose-leaf service) (Law Library)
- Corones, S G, *Restrictive Trade Practices Law* (C/R, Law Library)
- Ransom and Pengilly, *Restrictive Trade Practices: Judgements, Materials and Policy* (C/R, Law Library)
- Australian Trade Practices Reports* (CCH) (Law Library)

Note that the Periodicals Section of the Commerce Library holds copies of the Discussion Papers relating to the various Amendments to the Commerce Act. Also, various reports and policies of the Commerce Commission may be found on its website (www.comcom.govt.nz), including:

- The Mergers and Acquisitions Guidelines
- The Leniency Policy (under heading “The Commission”)
- The Co-operation Policy (under heading “The Commission”)

Helpful also is the ACCC website: www.accc.gov.au

Assessment Requirements

The items of assessment for this course are, a terms test, a research essay, and a final examination. Students must do **all three** items of assessment. However, the marks for these items of assessment will be totalled in whichever of the following three ways is most favourable to the student.

EITHER	Terms Test	100 marks
	Research Essay	150 marks
	Final Exam	<u>250 marks</u>
	TOTAL	<u>500 marks</u>

OR	Terms Test	100 marks
	Final Exam	<u>400 marks</u>
	TOTAL	<u>500 marks</u>

(In this case the mark for the Research Essay will not count)

OR	Research Essay	150 marks
	Final Exam	<u>350 marks</u>
	TOTAL	<u>500 marks</u>

(In this case the mark for the Terms Test will not count)

The **Terms Test** will be held on **Thursday 5th April, 12.40pm – 1.30pm (location to be advised).**

The **Research Essay** is **2000 words (max), due Friday 25th May (see attached information).**

The **Final Examination** is in **June.**

ESSAY TOPICS

(due Friday 25th May, 2007): You may choose either topic A or topic B

TOPIC A

Discuss critically the following statement:

“There is a fine line in competition law between protecting the consumer and protecting competitors. At times, this line is blurred. At times, this line is invisible.”

TOPIC B

Suppose that in July last year Volkswagen (a German car manufacturer) sent a number of circulars and letters to its authorised dealers in New Zealand and Australia (i.e. dealers with which Volkswagen had existing distributor agreements). In these circulars and letters Volkswagen requested that its dealers restrain from granting discounts to their customers in respect of the Volkswagen Passat model, or that any discounts granted be limited. Suppose also that while most dealers complied with this request, one was concerned and brought it to the attention of the Commerce Commission.

Required:

Discuss what the Commerce Commission would need to be able to show in order to succeed in a case of resale price maintenance (under s37), and in a case of price fixing (under s27, via s30).

(Note: You will find it helpful to address the following in your essay:

- Are all parties caught by the scope of the Commerce Act?
- Who would the Commerce Commission take action against under s37? Consider each of the elements of the relevant part/s of s37 and apply to the facts. What would need to be shown in order for the Commission to be successful under s37? Identify and discuss any areas of difficulty for the Commission.
- Who would the Commerce Commission take action against under s27 (via s30)? Consider each of the elements of s30 and apply to the facts. What would need to be shown in order for the Commission to be successful under s27 (via s30)? Do any of the exemptions or deeming provisions apply, and if so, how? Identify and discuss any areas of difficulty for the Commission.
- Remember to include any relevant cases in your discussion.)

BASIC REQUIREMENTS FOR YOUR ESSAY

(Note that marks will be deducted for failure to comply with these requirements.)

1. There should be an introduction and a conclusion, clearly headed as such.
2. Do not grossly exceed the word limit (10% tolerance is acceptable) - *after this point the work will not be marked.*
3. The due date will be strictly adhered to. However, if you consider you have a good reason for not meeting this deadline, please see the course co-ordinator as soon as you know you will have this problem. Otherwise, the penalty will be 5% per day (after the due date).
4. To reference the ideas or quotations from another work, use footnotes (for guidance, look at the way this is done in the chapters and articles included in the materials books), or use the APA system you were shown in FCOM 110. Remember to include the page reference, not just the title of the work being referenced. *Do not quote the course materials books as a reference – quote the original source of the work you are referencing.*
5. There should be a bibliography, listing the sources of information you have used for your essay; (note that a bibliography is not a substitute for referencing).
6. Provide a separate cover sheet that shows:

The Title
Your Name
The Course Code
7. Leave a 2 inch (5 cm) margin, to enable room for comments.
8. Write clearly or type your work.
9. Do not plagiarise (see p103 of the University Calendar for further information). Plagiarism is defined there as “the presentation of the work of another person or other persons as if it were one’s own work, whether intended or not. This includes published and unpublished work, material on the Internet and the work of other students and staff”. If you want to include a passage from another person’s work, use quotation marks at the beginning and end of the passage, then include the appropriate reference. If you want to include the ideas of another person, but not their exact words, you must include a reference to that person’s work (but no quotation marks are necessary).

Penalties

(See “Basic Requirements for Your Essay”, above).

Mandatory Course Requirements

All three items of assessment are mandatory, i.e. the Terms Test, the Research Essay and the Final Exam. *Note that you will receive a fail grade if you do not receive at least 40% over the Terms Test and Research Essay combined.*

Communication of Additional Information

Additional information concerning this course will be provided:

- (i) in lectures and posted on the Commercial Law course noticeboard on the Mezzanine Floor of the Rutherford House Building, and
- (ii) on the **Blackboard** web-based software. The login is at <http://blackboard.vuw.ac.nz>. Your initial username and password are your SCS username and Student ID, and
- (iii) you can obtain hard copies of course handouts from the Handouts Area (near the lift area on the 7th floor of Rutherford House).

Faculty of Commerce and Administration Offices

Railway West Wing (RWW) - FCA Student and Academic Services Office

The Faculty's Student and Academic Services Office is located on the ground and first floors of the Railway West Wing. The ground floor counter is the first point of contact for general enquiries and FCA forms. Student Administration Advisers are available to discuss course status and give further advice about FCA qualifications. To check for opening hours call the Student and Academic Services Office on (04) 463 5376.

Easterfield (EA) - FCA/Education/Law Kelburn Office

The Kelburn Campus Office for the Faculties of Commerce and Administration, Education and Law is situated in the Easterfield Building - it includes the ground floor reception desk (EA005) and offices 125a to 131 (Level 1). The office is available for the following:

- Duty tutors for student contact and advice.
- Information concerning administrative and academic matters.
- Forms for FCA Student and Academic Services (e.g. application for academic transcripts, requests for degree audit, COP requests).
- Examinations-related information during the examination period.

To check for opening hours call the Student and Academic Services Office on (04) 463 5376.

General University Policies and Statutes

Students should familiarise themselves with the University's policies and statutes, particularly the Assessment Statute, the Personal Courses of Study Statute, the Statute on Student Conduct and any statutes relating to the particular qualifications being studied; see the Victoria University Calendar or go to www.vuw.ac.nz/policy.

For information on the following topics, go to the Faculty's website www.vuw.ac.nz/fca under Important Information for Students:

- Academic Grievances
- Academic Integrity and Plagiarism
- Student and Staff Conduct
- Meeting the Needs of Students with Impairments
- Student Support

Manaaki Pihipihinga Programme

Manaaki Pihipihinga is an academic mentoring programme for undergraduate Māori and Pacific students in the Faculties of Commerce and Administration, and Humanities and Social Sciences. Sessions are held at the Kelburn and Pipitea Campuses in the Mentoring Rooms, 14

Kelburn Parade (back courtyard), Room 109D, and Room 210, Level 2, Railway West Wing. There is also a Pacific Support Coordinator who assists Pacific students by linking them to the services and support they need while studying at Victoria. Another feature of the programme is a support network for Postgraduate students with links to Postgraduate workshops and activities around Campus.

For further information, or to register with the programme, email manaaki-pihipihinga-programme@vuw.ac.nz or phone (04) 463 5233 ext. 8977. To contact the Pacific Support Coordinator, email pacific-support-coord@vuw.ac.nz or phone (04) 463 5842.