

School of Accounting and Commercial Law

## COML 304 COMPETITION LAW

Trimester One 2009

### COURSE OUTLINE

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#### Names and Contact Details

Course Co-ordinator: Associate Professor Yvonne van Roy (Course Co-ordinator)  
Room RH 605  
Telephone: 463 6762  
Email: [Yvonne.vanRoy@vuw.ac.nz](mailto:Yvonne.vanRoy@vuw.ac.nz)  
Office hours: Wednesday 1 – 3pm

Lecturer: Mr David Carter  
Room RH 727  
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Course Administrator: Marina Dobrovolskaya  
Room RH 708  
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Email: [Marina.Dobrovolskaya@vuw.ac.nz](mailto:Marina.Dobrovolskaya@vuw.ac.nz)  
Office hours: Monday – Friday 8.30am – 5pm  
Office closed 10.30-10.45am and 3.30-3.45pm

#### Trimester Dates

The start and end dates for the first trimester 2009 is Monday 2 March to Wednesday 1 July 2009.

#### Class Times and Room Numbers

Lectures: Monday, Wednesday, Friday 10.30-11.20am in RH LT3

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) | Wednesday 25 March | 11.30 – 12.20 | RWW312 |
|    | Friday 27 March    | 11.30 – 12.20 | RWW312 |
| 2) | Wednesday 1 April  | 11.30 – 12.20 | RWW312 |
|    | Friday 3 April     | 11.30 – 12.20 | RWW312 |

Workshops before Final Exam:

|    |                  |               |        |
|----|------------------|---------------|--------|
| 3) | Wednesday 20 May | 11.30 – 12.20 | RWW312 |
|    | Friday 22 May    | 11.30 – 12.20 | RWW312 |
| 4) | Wednesday 3 June | 11.30 – 12.20 | RWW312 |
|    | Friday 5 June    | 11.30 – 12.20 | RWW312 |

Final Examination:

In exam period 12 June - 1 July 2009 (exact time to be advised). The exam will be completely open-book (i.e. students may bring anything they wish into the exam room).

**Withdrawal dates:** Information available via

<http://www.victoria.ac.nz/home/admisenrol/payments/withdrawalsrefunds.aspx>

**Course Learning Objectives**

By the end of this course, students should be able to:

- 1 explain the social and economic objectives underlying competition law in New Zealand, and analyse some of the different views concerning these;
- 2 describe the operation of the regime for control under the Commerce Act (and to some degree also, the Australian Trade Practices Act) and the various regulatory regimes;
- 3 apply the provisions of the Commerce Act to fact situations;
- 4 critically assess the reasoning of judges in competition law cases, with respect to the words and underlying policies of the Commerce Act;
- 5 identify the concerns underlying changes to the Act, and critically analyse the effectiveness of these changes.

## Course Content

### Schedule of Lectures

Monday, Wednesday, Friday 10.30 – 11.20am (Rm RH LT3)

|  |     |  |
|--|-----|--|
| March 2                                    | YvR | 1) Introduction to the course and the Commerce Act 1986.   |
| March 4                                    | YvR | 2) Object of the Act (s1A), role of the CC, overview.  |
| March 6                                    | YvR | 3) Introduction to s27, ARA case.  |
| March 9                                    | YvR | 4) S27 issues – contracts, arrangements, understandings, ss2(8) and 2(9).  |
| March 11                                   | YvR | 5) S27 issues – CAUs cont, s3(5), purpose s 2(5), effect, likely effect.   |
| March 13                                   | YvR | 6) S27 issues – further cases.   |
| March 16                                   | DC  | 7) Economics & Competition Law   |
| March 18                                   | DC  | 8) Economics & Competition Law   |
| March 20                                   | DC  | 9) Economics & Competition Law   |
| March 23                                   | YvR | 10) S27 issues – relevant market.  |
| March 25                                   | YvR | 11) s27 issues – substantially lessening competition; Review of s27.<br><b>(Workshop 1, 11.30 – 12.20, RWW312)</b> |
| March 27                                   | YvR | 12) S30 price fixing - introduction. <b>(Workshop 1, 11.30 – 12.20, RWW312)</b>                                    |
| March 30                                   | YvR | 13) S30 issues (cont).   |
| April 1                                    | YvR | 14) Ss31,32,33 exceptions. Intro to s29, exclusionary provisions.<br><b>(Workshop 2, 11.30 – 12.20, RWW312)</b>    |
| April 3                                    | YvR | 15) S29 issues (cont). <b>(Workshop 2, 11.30 – 12.20, RWW312)</b>  |
| April 6                                    | YvR | 16) S29 issues (cont).   |
| April 8                                    |     | 17) <b>TERMS TEST (Compulsory).</b>  |
| April 10                                   |     | <b>GOOD FRIDAY – NO LECTURE</b>  |
| <b>APRIL 13 – APRIL 26: MID-TERM BREAK</b> |     |  |
| April 27                                   | DC  | 18) Sector – specific regulation   |
| April 29                                   | DC  | 19) Sector – specific regulation   |
| May 1                                      | DC  | 20) Sector – specific regulation   |
| May 4                                      | DC  | 21) Sector – specific regulation   |
| May 6                                      | DC  | 22) Sector – specific regulation   |
| May 8                                      | YvR | 23) Resale Price Maintenance   |
| May 11                                     | YvR | 24) RPM issues (cont)  |
| May 13                                     | YvR | 25) Scope of the Act, ss4,5,6,7; Exceptions s44.   |
| May 15                                     | YvR | 26) Exceptions, ss45,43.   |
| May 18                                     | YvR | 27) Remedies, ss80,81,82,89 etc.   |
| May 20                                     | YvR | 28) Authorisations, Public benefit. <b>(Workshop 3, 11.30 – 12.20, RWW312)</b>                                     |
| May 22                                     | YvR | 29) S36 – Taking advantage of. Market power – intro.<br><b>(Workshop 3, 11.30 – 12.20, RWW312)</b>                 |
| May 25                                     | YvR | 30) S36 – Substantial degree of power. <b>RESEARCH ESSAY DUE (Compulsory)</b>                                      |
| May 27                                     | YvR | 31) S36 – Taking advantage of.   |
| May 29                                     | YvR | 32) S36 – predatory pricing, New Australian provisions.  |
| June 1                                     |     | <b>QUEEN’S BIRTHDAY – No Lecture.</b>  |
| June 3                                     | YvR | 33) Business acquisitions. <b>(Workshop 4, 11.30 – 12.20, RWW312)</b>  |
| June 5                                     | YvR | 34) Business acquisitions. <b>(Workshop 4, 11.30 – 12.20, RWW312)</b>  |

## Readings

The readings relevant to each topic area will be set out in handouts made available as the course progresses. 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 class.

### Set texts:

The Commerce Act 1986 (incorporating all amendments).  
Competition Law Materials (2009) – 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 (4<sup>th</sup> edn 2000), or Chapters 31 – 37 in *Butterworths Introduction to Commercial Law*, Academic Edition 2005.
- Van Roy, Y, *Guidebook to New Zealand Competition Laws* (2<sup>nd</sup> 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 Pengilley, *Restrictive Trade Practices: Judgements, Materials and Policy* (C/R, Law Library)
- Australian Trade Practices Reports* (CCH) (Law Library)
- (General) Elhauge and Geradin, *Global Competition Law and Economics*, Hart Publishing 2007.

Note that various reports and policies of the Commerce Commission may be found on its website ([www.comcom.govt.nz](http://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](http://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.

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

|           |            |                  |
|-----------|------------|------------------|
| <b>OR</b> | 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)

|           |                |                  |
|-----------|----------------|------------------|
| <b>OR</b> | 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 Wednesday 8 April, 10.30 – 11.20am (location to be advised). The test is an open book test. You may bring any material you wish into the test room.

The **Research Essay** is 2000 words (max), due Monday 25<sup>th</sup> May (see attached information).

The **Final Examination** is in June. (Please note that students who enrol in courses with examinations are obliged to attend an examination at the University at any time during the formal examination period). The final examination is an open book exam. You may bring any material you wish into the exam room.

## ESSAY TOPICS

(Due Monday 25<sup>th</sup> May 2008): You may choose **either** topic A **or** topic B

### **Topic A**

Attached (see Appendix I) are the reasons for judgement in the recent decision of the Federal Court of Australia in ACCC v White Top Taxis Ltd. [2009] FCA88 (13 February 2009). You have been asked to give advice to parties who are contemplating carrying on similar conduct in New Zealand. In your advice you should include the following:

- 1) Explain briefly why the judge considered that White Top Taxis Ltd (and the other respondents) had contravened s45(2) of the Australian Trade Practices Act 1974.
- 2) If the conduct had occurred in New Zealand (instead of Australia), discuss whether the New Zealand High Court would decide that the conduct contravened s29 of the Commerce Act 1086. *(Please note that 40 – 50% of your essay should be allocated to this part of the topic).*
- 3) Discuss what would need to be shown in order for the court to decide that the conduct contravened s27 of the Commerce Act 1986.
- 4) Comment on whether the New Zealand Commerce Act 1986 is better able to deal with such conduct than the Australian Trade Practices Act 1974.

## **Topic B**

“Consumer or competitive protection – what is the point of competition law? Critically evaluate this with reference to economic theories of competition law”.

### **BASIC REQUIREMENTS FOR YOUR ESSAY**

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 p108 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
- (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 7<sup>th</sup> 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 on the ground floor (EA005). This counter is the first point of contact for:

- 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.victoria.ac.nz/home/about/policy/students.aspx](http://www.victoria.ac.nz/home/about/policy/students.aspx)

For information on the following topics, go to the Faculty's website [www.victoria.ac.nz/fca](http://www.victoria.ac.nz/fca) under Important Information for Students:

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

## **Academic Integrity and Plagiarism**

Academic integrity is about honesty – put simply it means *no cheating*. All members of the University community are responsible for upholding academic integrity, which means staff and students are expected to behave honestly, fairly and with respect for others at all times.

Plagiarism is a form of cheating which undermines academic integrity. The University defines plagiarism as follows:

*The presentation of the work of another person or other persons as if it were one's own, whether intended or not. This includes published or unpublished work, material on the Internet and the work of other students or staff.*

It is still plagiarism even if you re-structure the material or present it in your own style or words.

*Note: including the work of others will not be considered plagiarism as long as the work is acknowledged by appropriate referencing.*

Plagiarism is prohibited at Victoria and is not worth the risk. Any enrolled student found guilty of plagiarism will be subject to disciplinary procedures under the Statute on Student Conduct and may be penalised severely. Consequences of being found guilty of plagiarism can include:

- an oral or written warning
- cancellation of your mark for an assessment or a fail grade for the course
- suspension from the course or the University.

Find out more about plagiarism, and how to avoid it, on the University's website:

[www.victoria.ac.nz/home/studying/plagiarism.html](http://www.victoria.ac.nz/home/studying/plagiarism.html)

### **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](mailto:manaaki-pihipihinga-programme@vuw.ac.nz) or phone (04) 463 6015. To contact the Pacific Support Coordinator, email [pacific-support-coord@vuw.ac.nz](mailto:pacific-support-coord@vuw.ac.nz) or phone (04) 463 5842.



## Appendix I

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY

VTH 629 of 2008

BETWEEN:

AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION Applicant

AND:

WHITE TOP TAXIS LIMITED (ACN 050 026 009) First  
Respondent REX POWELL Second Respondent ALLAN  
BEMROSE Third Respondent ANTHONY MASON Fourth  
Respondent GEOFFREY GROVES Fifth Respondent

JUDGE:

FINKELSTEIN J

DATE:

13 FEBRUARY 2009

PLACE:

MELBOURNE

### REASONS FOR JUDGMENT

1. The Australian Competition and Consumer Commission (ACCC) alleges that the second to fifth