

School of Accounting and Commercial Law

COML 304 COMPETITION LAW

Trimester One 2010

COURSE OUTLINE

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
Office hours: Thursday 1 – 3pm

Lecturer: Dr David Carter
Room RH 727
Telephone: 463 5233 ext 7009
Email: David.Carter@vuw.ac.nz
Office hours: Open door policy

Course Administrator: Marina Dobrovolskaya
Room RH 708
Telephone: 463 5775
Email: 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

Teaching Period: Monday 1st March – Friday 4th June 2010

Study Period: Monday 7th June – Thursday 10th June 2010

Examination Period: Friday 11th June – Wednesday 30th June 2010 (inclusive)

Withdrawal from Courses:

Information available via

Withdrawal dates: Late withdrawals with Associate Dean (Students) permission
(See Section 8: Withdrawals - from the Personal Courses of Study Statute)
<http://policy.vuw.ac.nz/Amphora!~~policy.vuw.ac.nz~POLICY~000000001743.pdf>

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

Class Times and Room Numbers

Lectures: Monday, Tuesday, Friday 12.40-1.30pm in GBLT4

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:

Workshop 1

Monday 29 March, 1.40-2.30pm, GBG07

Tuesday 30 March, 11.30-12.20pm, GBG05

Tuesday 30 March, 1.40-2.30pm, GBG05

Workshop 2

Monday 19 April, 1.40-2.30pm, GBG07

Tuesday 20 April, 11.30-12.20pm, GBG05

Tuesday 20 April, 1.40-2.30pm, GBG05

Workshops before Final Exam:

Workshop 3

Monday 17 May, 1.40-2.30pm, GBG07

Tuesday 18 May, 11.30-12.20pm, GBG05

Tuesday 18 May, 1.40-2.30pm, GBG05

Workshop 4

Monday 31 May, 1.40-2.30pm, GBG07

Tuesday 1 June, 11.30-12.20pm, GBG05

Tuesday 1 June, 1.40-2.30pm, GBG05

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 proposal changes), and critically analyse the effectiveness (or likely effectiveness) of these changes.

Course Content

Schedule of Lectures Monday, Tuesday, Friday 12.40 – 1.30pm (Room: GBLT4)

March 1	YvR	1) Introduction to the course and the Commerce Act 1986.
March 2	YvR	2) Object of the Act (s1A), role of the CC, overview.
March 5	YvR	3) Introduction to s27, ARA case.
March 8	YvR	4) S27 issues – contracts, arrangements, understandings, ss2(8) and 2(9).
March 9	YvR	5) S27 issues – CAUs cont, s3(5), purpose s 2(5), effect, likely effect.
March 12	YvR	6) S27 issues – further cases.
March 15	YvR	7) S27 issues – relevant market.
March 16	YvR	8) S27 issues – substantially lessening competition; Review of s27.
March 19	YvR	9) S30 Price Fixing – Introduction.
March 22	DC	10) Economics & Competition Law.
March 23	DC	11) Economics & Competition Law.
March 26	DC	12) Economics & Competition Law.
March 29	YvR	13) S30 issues (cont). Ss. 31, 32, 33 exceptions. (Workshop 1, 1.40-2.30pm, GBG07)
March 30	YvR	14) Proposal on Cartel Criminalisation. Intro to S29, (Workshop 1, 11.30-12.20 or 1.40-2.30pm, GBG05)
April 2		GOOD FRIDAY – NO LECTURE
		APRIL 5 – APRIL 18: MID-TERM BREAK
April 19	YvR	15) S29 issues (cont) (Workshop2,1.40-2.30pm,GBG07)
April 20	Visitor	16) Visiting speaker: Is the Commerce Act Really Necessary? (Workshop 2, 11.30-12.20 or 1.40-2.30pm, GBG05)
April 23		17) TERMS TEST (compulsory)
April 26	YvR	18) S29 issues (cont).
April 27	DC	19) Sector-specific regulation.
April 30	DC	20) Sector-specific regulation.
May 3	DC	21) Sector-specific regulation.
May 4	DC	22) Sector-specific regulation.
May 7	DC	23) Sector-specific regulation.
May 10	YvR	24) Resale Price Maintenance.
May 11	YvR	25) RPM issues (cont).
May 14	YvR	26) Scope of the Act, ss4, 5, 6, 7; Exceptions s44.
May 17	YvR	27) Exceptions, ss45, 43. (Workshop 3, 1.40-2.30pm, GBG07)
May 18	YvR	28) Remedies, ss80,81,82,89 etc. (Workshop 3, 11.30-12.20 or 1.40-2.30pm, GBG05)
May 21	YvR	29) Authorisations, Public Benefit.
May 24	YvR	30) S36 – Taking advantage of market power – intro. RESEARCH ESSAY DUE (Compulsory)
May 25	YvR	31) S36 – Substantial degree of power.
May 28	YvR	32) S36 – Taking advantage of.
May 31	YvR	33) S36 – Predatory Pricing, Australian provisions (Workshop 4, 1.40-2.30pm, GBG07)
June 1	YvR	34) Business acquisitions. (Workshop 4, 11.30-12.20 or 1.40 – 2.30pm, GBG05)
June 4	YvR	35) Business acquisitions.

Expected Workload

A total of 240 hours of work is expected from students in this course. That consists of 40 hours of classes (including workshops), twelve hours per week outside classes during teaching weeks spent reading, studying, and preparing your essay and completing your essay, and a further 56 hours revising during the mid-trimester break and study week.

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 class.

Set texts:

The Commerce Act 1986 (incorporating all amendments).
Competition Law Materials (2010) – 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 (4th edn 2000), or Chapters 31 – 37 in *Butterworths Introduction to Commercial Law*, Academic Edition 2005.

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 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), *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 Friday 23 April, 12.40 – 1.30pm (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 24th 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.

Note: Your assessed work may also be used for quality assurance purposes, such as to assess the level of achievement of learning objectives as required for accreditation and audit purposes. The findings may be used to inform changes aimed at improving the quality of FCA programmes. All material used for such processes will be treated as confidential, and the outcome will not affect your grade for the course.

Research Essay (Due Monday 24th May 2010)

Essay Topic

In January 2010 the Ministry of Economic Development issued a Discussion Document (“Cartel Criminalisation”) which invites submissions on various proposals for the criminalisation of cartel conduct. It sets out three possible approaches to criminalising cartel conduct – listed as option 1, 2, and 3. The table of contents, the Executive Summary and Questions for Submitters are attached to this Course Outline, but the remainder of the Discussion Document is available at www.med.govt.nz.upload/70683/Cartel-Criminalisation.pdf

Required:

Write a submission (as if to the Ministry of Economic Development) which addresses either

- a) Questions 1 – 6 and question 25 of the Questions for Submitters (“Detecting and deterring cartels”), or
- b) Question 25 and any 5 or 6 other questions from questions 7-24 of the Questions for submitters (“Defining the offence”).

Research Materials:

A number of research sources (including OECD, Canadian and Australian publications) are mentioned in the Discussion Document, including the following (those marked with an asterisk will be included in Volume II of your course materials).

- David King, “Criminalisation of Cartel Behaviour”, occasional paper available at www.med.govt.nz
- Information on the Australian provisions, including guideline to the ACCC approach to Cartel investigations, available at www.accc.gov.au , and www.accc.gov.au/cartels
- *Caron Beaton-Wells and Brent Fisse, “Criminalising Serious Cartel Conduct: Issues of Law and Policy (2008) 36 ABLR166.
- *Brent Fisse, “The Cartel Offence: Dishonesty?” (2007) 35 ABLR 235.
- Caron Beaten-Wells and Brent Fisse, “The Australian Criminal Cartel Regime: A Regime for New Zealand?” paper for the 19th Annual Workshop of the Competition Law and Policy Institute of New Zealand, Vol.1, 2008. (Available in Closed Reserve Commerce Library).
- *Part IV of the Australian Trade Practices Act 1974: Division 1 – Cartel Conduct (ss.4422RA – 4422RV).

BASIC REQUIREMENTS FOR YOUR ESSAY

1. You may chose to include an Executive Summary – otherwise 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. All ideas or quotations from another work must be referenced. You could either 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 or 111. 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 p.107 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).

Examinations

Students who enrol in courses with examinations are obliged to attend an examination at the University at any time during the forma examination period.

The final examination for this course will be scheduled at some time during the period from

Examination Period: Friday 11^h June – Wednesday 30th June 2010.

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.*

Class Representative

A class representative will be elected in the first class, and that person’s name and contact details will be available to VUWSA, the Course Coordinator and the class. The class representative provides a communication channel to liaise with the Course Coordinator on behalf of students.

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 7th floor of Rutherford House).

For the following important information follow the links provided:

Academic Integrity and Plagiarism

<http://www.victoria.ac.nz/home/study/plagiarism.aspx>

General University Policies and Statutes

<http://www.victoria.ac.nz/home/about/policy>

AVC (Academic) Website: information including: Conduct, Academic Grievances, Students with Impairments, Student Support

http://www.victoria.ac.nz/home/about_victoria/avcacademic/Publications.aspx

Faculty of Commerce and Administration Offices

<http://www.victoria.ac.nz/fca/studenthelp/>

Manaaki Pihipihinga Programme

http://www.victoria.ac.nz/st_services/mentoring/