

School of Accounting and Commercial Law

COML 304 COMPETITION LAW

Trimester One 2011

COURSE OUTLINE

Names and Contact Details

Course Coordinator & Lecturer: Associate Professor Yvonne van Roy RH 605 463 6762
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Office hours: Thursdays 11am-1pm

Course Administrator Ms Pinky Shah RH 708 463 5775

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Office hours: Monday-Friday 8.30am-5pm

Office is closed: 10.30-10.45am and 3.30-3.45pm

Trimester Dates

Teaching Period: Monday 28 February – Friday 3rd June

Study Period: Monday 6 June – Thursday 9 June

Examination Period: Friday 10 June – Saturday 2 July (inclusive)

Withdrawal from Course

1. Your fees will be refunded if you withdraw from this course on or before 11 March 2011.
2. The standard last date for withdrawal from this course is 14 May 2011. After this date, students forced to withdraw by circumstances beyond their control must apply for permission on an ‘*Application for Associate Dean’s Permission to Withdraw Late*’ including supporting documentation

The application form is available from either of the Faculty’s Student Customer Service Desks.

Class Times and Room Numbers

Lectures: Mondays and Wednesdays, 11.30am-12.20pm in GBLT1.

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

Workshops before Mid-Trimester Test:

Workshop 1

Wednesday 23 March, 12.40-1.30pm, RWW313

Wednesday 23 March, 1.40-2.30pm, RWW313

Monday 28 March, 12.40-1.30pm, RWW125

Monday 28 March, 1.40-2.30pm, RWW125

Workshop 2

Wednesday 6 April, 12.40-1.30pm, RWW313

Wednesday 6 April, 1.40-2.30pm, RWW313

Monday 11 April, 12.40-1.30pm, RWW125

Monday 11 April, 1.40-2.30pm, RWW125

Workshops before Final Exam:

Workshop 3

Monday 16 May, 12.40-1.30pm, RWW125

Monday 16 May, 1.40-2.30pm, RWW125

Wednesday 18 May, 12.40-1.30pm, RWW313

Wednesday 18 May, 1.40-2.30pm, RWW313

Workshop 4

Monday 30 May, 12.40-1.30pm, RWW125

Monday 30 May, 1.40-2.30pm, RWW125

Wednesday 1 June, 12.40-1.30pm, RWW313

Wednesday 1 June, 1.40-2.30pm, RWW313

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, recently renamed the Competition and Consumer Act 2010);
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

Week	Date	Lecture Topic	Workshops
1	28 Feb	1) Introduction to the course and the Commerce Act 1986	
	2 Mar	2) Object of the Act (s1A), role of the CC, overview	
2	7 Mar	3) Introduction to s27, ARA case	
	9 Mar	4) s27 issues – contracts, arrangements, understandings, s2(8) and 2(9)	
3	14 Mar	5) s27 issues – CAUs cont, s3(5), purpose s2(5), effect, likely effect	
	16 Mar	6) s27 issues – relevant market, competition	
4	21 Mar	7) s27 issues – substantially lessening competition, s3(2), s3(3); Review of s27	
	23 Mar	8) s30 Price fixing and Cartels	#1: 12.40-1.30pm RWW313 #1: 1.40-2.30pm RWW313
5	28 Mar	9) s30 Issues (cont), ss31, 32, 33 exceptions	#1: 12.40-1.30pm RWW125 #1: 1.40-2.30pm RWW125
	30 Mar	10) Proposal on Cartel Criminalisation	
6	4 Apr	11) s29 Exclusionary Provisions: Introduction	
	6 Apr	12) s29 issues (cont)	#2: 12.40-1.30pm RWW313 #2: 1.40-2.30pm RWW313
7	11 Apr	13) s37 Resale Price Maintenance	#2: 12.40-1.30pm RWW125 #2: 1.40-2.30pm RWW125
	13 Apr	14) MID-TRIMESTER TEST (compulsory)	
<i>16 April – 1 May (incl): MID-TRIMESTER BREAK</i>			
8	2 May	15) ss37 and 38, Resale Price Maintenance (cont)	
	4 May	16) s36 – Taking advantage of market power	
9	9 May	17) s36 – Substantial degree of power	
	11 May	18) s36 – “Taking advantage of” (market power)	
10	16 May	19) s36 – Predatory Pricing, Australian Provisions	#3: 12.40-1.30pm RWW125 #3: 1.40-2.30pm RWW125
	18 May	20) Scope of the Act, ss4, 5, 6, 7; Exceptions s44	#3: 12.40-1.30pm RWW313 #3: 1.40-2.30pm RWW313
11	23 May	21) Exceptions, ss45, 43 RESEARCH ESSAY DUE (compulsory)	
	25 May	22) Remedies, ss80, 81, 82, 89 (etc)	
12	30 May	23) Business acquisitions	#4: 12.40-1.30pm RWW125 #4: 1.40-2.30pm RWW125
	1 June	24) Business acquisitions (cont)	#4: 12.40-1.30pm RWW313 #4: 1.40-2.30pm RWW313

Course Delivery

This course has two lectures each week, with four non-compulsory tutorials scheduled prior to the Mid-Trimester Test and the Final Examination. (These tutorials are designed to assist with exam study.)

Expected Workload

The expected workload for this course is 150 hours, spent over the 12 teaching weeks, mid-trimester breaks, study week, and the examination period.

Readings

The readings relevant to each topic area will be set out in handouts made available on Blackboard 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 materials book and/or legislation (as appropriate) to class.

Set texts:

The Commerce Act 1986 (incorporating all amendments).
COML 304 Course Materials (2011)

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.
- Sumpter, M (*et al*), *New Zealand Competition Law and Policy* (CCH New Zealand Ltd 2010).
- 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 mid-trimester 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	Mid-Trimester Test	100 marks
	Research Essay	150 marks
	Final Exam	<u>250 marks</u>
	TOTAL	<u>500 marks</u>

OR	Mid-Trimester 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 Mid-Trimester Test will not count)

- **The Mid-Trimester Test will be held on Wednesday 13 April, 11.30am-12.20pm** (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 on Monday 23rd May by 5pm.**
See next page for more information.
- **The Final Examination is in June.**
The final examination will be for TWO hours and 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 on Monday 23rd May 2011 by 5pm)

Essay Topic

Suppose the facts in the recent New Zealand Case *Commerce Commission v Telecom Corporation of NZ Ltd* [2010]NZSC111 (p. 307 Course Materials Book) had taken place in Australia, and that the case had been heard under section 46 of the Australian Trade Practices Act 1974 (recently retitled The Competition and Consumer Act 2010). Discuss what the decision of the High Court of Australia would be, and why. Also discuss whether abuses of market power are better able to be caught by section 46 (Aust) or section 36 (NZ) and whether it is necessary for the legislation in both countries to be the same.

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. 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 pp. 95 & 99 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 formal examination period. The final examination for this course will be scheduled at some time during the period from Friday 10 June – Saturday 2 July 2011.

Penalties

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

Mandatory Course Requirements

All three items of assessment are mandatory, i.e. the Mid-Trimester 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 mid-Trimester 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 made 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 Blackboard. Login at <http://blackboard.vuw.ac.nz>, 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).

Use of Turnitin

Student work provided for assessment in this course may be checked for academic integrity by the electronic search engine <http://www.turnitin.com>. Turnitin is an on-line plagiarism prevention tool which compares submitted work with a very large database of existing material. At the discretion of the Head of School, handwritten work may be copy-typed by the School and subject to checking by Turnitin. Turnitin will retain a copy of submitted materials on behalf of the University for detection of future plagiarism, but access to the full text of submissions will not be made available to any other party.

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

Find key dates, explanations of grades and other useful information at

www.victoria.ac.nz/home/study

Find out about academic progress and restricted enrolment at

<http://www.victoria.ac.nz/home/study/academic-progress.aspx>

The University's statutes and policies are available at www.victoria.ac.nz/home/about/policy, except qualification statutes, which are available via the Calendar webpage at

<http://www.victoria.ac.nz/home/study/calendar.aspx> (See Section C).

Further information about the University's academic processes can be found on the website of the Assistant Vice-Chancellor (Academic) at

www.victoria.ac.nz/home/about_victoria/avcacademic/default.aspx

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/