

School of Accounting and Commercial Law

COML 401 ADVANCED COMPETITION LAW

Trimester One 2011

COURSE OUTLINE

Names and Contact Details

Course Co-ordinator: Associate Professor Yvonne van Roy
& Lecturer Room RH 605
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Office hours: Thursday 11-1pm

Course Administrator: Danielle Van Resseghem
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Office hours: Monday-Friday, 8.30am-5pm
Office closed: 10.30-10.45am and 3.30-3.45pm

Trimester Dates

Teaching Period: Monday 28 February – Friday 3rd June

Withdrawal from Courses:

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

Thursday 1.40pm-4.30pm, RHG01.

Course Content

The course will consist of analysis and discussion of selected readings and cases involving relevant issues concerning competition law. The first three sessions will consist of a lecture (with some guided case discussion), the next five, a lecture plus a student-led discussion for which 2 or 3 students will have prepared a summary of pertinent points and relevant questions on the assigned case or article for the class to consider and discuss. The following topics should be covered in the lectures:

- 1) The economic underpinning and objectives of Competition Law, in particular The Commerce Act 1986
- 2) The scope of the Commerce Act, including exemptions/exceptions
- 3) Penalties, authorisations, clearances, and other powers
- 4) Anticompetitive Contracts, Arrangements or Understandings (section 27)
- 5) Price fixing arrangements (sections 30, 31-33)
- 6) Arrangements containing exclusionary provisions (section 29)
- 7) Abuse of market power (section 36)
- 8) Vertical restraints (EDCs, RPM etc).
- 9) Business acquisitions

In the last four sessions of the course students will present their research essays to the class.

Course Learning Objectives

The objective of this course is to investigate in depth selected topics relating to competition law – in particular the law as it relates to New Zealand.

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 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 also the proposals for amendment of the Commerce Act.
3. Critically analyse and coherently discuss the relevant literature and case law with respect to competition law issues in New Zealand and Australia.
4. Comment critically but constructively on the ideas and arguments put forward by others.
5. Undertake independent study on a chosen topic, and to put together a well-constructed, well-reasoned research essay, and to defend this in class discussion.

Relationship between Assessment Tasks and the Course Objectives:

The Final Test, Class Contribution and the Assessment and Presentation of Readings and Cases will assess objectives 1-4, and the Research Essay will assess all 5 objectives.

Expected Workload

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

Readings

Texts:

All students must have a copy of The Commerce Act 1986 (incorporating all amendments), and the COML 304 Course Materials (which contains much relevant material and cases). They will also be expected to access the Ministry of Economic Development's Discussion Document on Cartel Criminalisation at www.med.govt.nz/upload/70683/Cartel-Criminalisation.pdf

Recommended reading:

Brookers, *Gault on Commercial Law* – Chapter on the Commerce Act (Loose-leaf service).
Hampton, L.F., Chapter VI (“Competition Law”) of *Butterworths Commercial Law in New Zealand*, by Farrar and Borrowdale; 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)
Taperell, G, Vermeesch R, and Harland D, *Trade Practices and Consumer Protection*.
Miller, R, *Annotated Trade Practices Act*.
Corones, S, *Competition Law and Policy in Australia*.
Heydon, *Trade Practices Law* (Loose-leaf Service).
Elhauge and Geradin, *Global Competition Law and Economics*

Articles and cases will be given out in class from time to time, but students are expected to search for suitable articles and cases also. The following websites will be helpful:

www.med.govt.nz (Ministry of Economic Development)

www.comcom.govt.nz (Commerce Commission)

www.accc.gov.au (ACCC)

www.austlii.edu.au/au/cases/cth/federal_ct/ (Aust Federal Court Cases)

www.austlii.edu.au/au/cases/cth/HCA/ (Aust HCA cases)

www.austlii.edu.au/au/cases/cth/ACOMPT/ (Aust Competition Tribunal Cases)

Assessment Requirements

The items of assessment for this course include:

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| 1. Short written critique (500 words max) and presentation of selected article or case | 10 marks |
| 2. Summary and Presentation of Research Essay topic | 10 marks |
| 3. Research Essay (due Friday, June 3 rd , maximum 5000 words) | 45 marks |
| 4. Final Test (2 hrs, open book), date TBA | 35 marks |

To pass this course a student must:

- attend and satisfactorily contribute to 75% of sessions;
- complete and gain a satisfactory grade for items 1 – 3 above, and
- gain an overall pass mark over the four assessed items.

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.

Critique and Presentation of Selected Article/s and Summary and Presentation of Selected Case/s

Each student is required to make a presentation of at least one assigned article or case during the course. Students making such presentations are to prepare a brief summary and critique of the article **along with relevant questions for discussion** (max 500 words) and distribute it to other members of the class and to the lecturer on or before the Tuesday immediately preceding the relevant class. If the presentation is of a case, students should prepare a summary of the facts, the findings and the reasoning of the court, **along with relevant questions for discussion** (max 500 words). All students are expected to contribute to all class discussions. For effective discussion on the material in class, it is important that you read and understand the assigned material beforehand.

Research Essay

Each student is required to complete a research essay. This is a major project, focusing on some area of topical interest in competition law or policy (this year these will focus on the principal areas for current reform – where Australia has already made its reforms. The areas are Cartel behaviour and proposed criminalisation, and abuse of market power (including predatory pricing)). A list of suggested topics will be given out in class, but students may choose another (related) topic with the approval of the lecturer. The essay should be between 4000-5000 words long (maximum 5000 words). Students should choose their essay topic on or before Monday, March 21st. The due date for the first draft of the research essay is Friday, May 6th, and the due date for the final (completed) draft is Friday, June 3rd. Students will present a draft of their research essay to the class, along with relevant questions for discussion. This should be distributed to other members of the class and to the lecturer on or before the Tuesday immediately preceding the relevant class.

Penalties

Please try not to exceed the word limit for your Research Essay by more than 10%. This issue will be discussed (if relevant) when the first draft is submitted, and any penalty notified if necessary.

Mandatory Course Requirements

Students must do all four items of assessment.

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 during this course will be notified during classes, or left in pigeonholes on Level 7 foyer near lifts.

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/