COMPARATIVE AND INTERNATIONAL ANTITRUST

FALL, 2002

Course Description and Purpose

This seminar will consider competition law and policy in a global economy. It will examine the contribution of national law and enforcement as well as the variety of international enforcement and harmonization proposals that are under consideration at the present time. The seminar will essentially ask fundamental questions about antitrust and globalization. Has a persuasive case been made that the level of intervention on antitrust issues should move from national capitals to international fora? Alternatively, should at least part of national antitrust move in an international direction? The seminar will first establish a solid background on how antitrust is enforced at the national level. We will compare antitrust intervention in the two most developed national systems (EC and US) and then will move on to examine (a) whether gains from cooperation exist in the new globalized arena; (b) if so, where and (c) what should be the form of cooperation. Specifically, the seminar examines competition law and policy enforcement at the national level through a comparison of approaches in the U.S., the EC and selected other jurisdictions with respect to key areas of enforcement such as horizontal cartels, vertical distribution restraints, abuse of dominance/monopolization and competitor collaborations. The latter part of the seminar will consider bilateral, multilateral and other international arrangements in place or under consideration at the present time. The seminar will require students to read cases, guidelines, hypothetical and essays. The class will meet once a week for two hours.

Background knowledge in US antitrust or EC competition law and policy are a prerequisite.

Students are expected to participate in classroom discussion. There will be a take home final examination.

Instructors:
The course will be co-taught over one semester by; Merit E. Janow, Professor in the Practice of International Trade SIPA, Columbia University; and Petros C. Mavroidis, Professor Law, Un. of Neuchâtel and Visiting Professor of Law, Columbia Law School.

The course will be taught every Monday at 9:00 am.

Contact Information: Professor Janow (212) 854-1724 email: mj60@columbia.edu
Professor Petros Mavroidis: TBD ; pmavro@law.columbia.edu
Course Outline

WEEK ONE: 9/9 The Purpose of Antitrust/Competition Policy

The first class will examine the purposes of antitrust or competition policy: e.g., to keep the competitive process going (proxies for intervention), the limits of antitrust (e.g., government ownership and regulation), the EC approach: antitrust regulation as means to integrate markets.

Readings

Trade Regulation pp1-26; 142-150; 2001 Supplement, 1-2


Policy statements:
-- Statement by Mario Monti, Competition Policy for the 21st Century
-- A. Douglas Melamed, Promoting Sound Antitrust Enforcement in the Global Economy

WEEK TWO: 9/16 Institutional Framework

The antitrust process: the institutional framework in the EC and the US (e.g., enforcement agencies, the use of courts, private and state enforcement; civil and criminal laws).

Readings

Trade Regulation: Chapter 2; 2001 Supplement 3.


WEEK THREE: 9/23 US Treatment of Vertical Restraints

Guest Speaker: Professor Harvey Goldschmid

Selected Excerpts from from Dr. Miles, Monsanto, GTE Sylvannia; State Oil Co. v. Khan; Toys R. Us (All can be found in Chapter 7 of Trade Regulation or the 2001 Supplement)

WEEK FOUR 9/30 Horizontal Cartels in EC and US law.
US and EC treatment of cartel behaviour (e.g., price fixing, volume, customer and market allocation and bid rigging); treatment around the world of the same. Challenges to enforcement of transnational cases.

**US Readings**

**Trade Regulation**: pp. 246-59; 265-77; 355-60; 2001 Supplement, 8-33, 58-73.

**Final Report of the International Competition Policy Advisory Committee**, [hereinafter ICPAC] Chapter 4

**EC Readings**


OECD Recommendation on Hardcore Cartels

*Also, Section A on the Attached Sheet of Readings.*

**WEEK FIVE: 10/7**

**EC** Vertical Restraints in EC law.

Treatment of distribution, franchising, purchasing and other arrangements for the sale or purchase of goods or services between companies operating at different levels of the production or distribution chain, EC and then US treatment (see week 5). Examination of the old and new EC approach to block exemptions.

**Readings**


Guidelines on Vertical Restraints (see attached sheet for URL)

**WEEK SIX: 10/14**

Merger notification and review in EC and US law (representative cases); substantive standards with a special
focus on MCI/Worldcom/Spring

Guest Speaker: Stephen Axinn

Worldcom/MCI (1998)
DOJ Complaint Worldcom/Spring (6/2000)

[All of the following materials are useful background readings. The instructors will identify some priority readings, in addition to the above, prior to class]


Volvo/Scania (Commission Decision)
M.1672 - VOLVO / SCANIA
Notified on 22.09.1999
NACE: DM 34.10
Prior notification published in the Official Journal C277 of 30.09.1999
Art. 6(1)(c) - 25.10.1999

AirTours (Commission Decision)

Section C; in attached readings

ICPAC Final Report, Chapter 2


Selected Readings from:Heinz-Beech-Nut (2001 Supplement 231-50); Boeing-McDonnell Douglas; GE/ Honeywell

WEEK SEVEN: 10/21 Abuse of dominance (monopolization) in EC and US law.
Guest Speaker, Eleanor Fox

What constitutes market power? What is seen as permissible and impermissible conduct of a firm with market power, US and EC comparisons.

Consideration of certain differences in substantive standards in US and EU cases; prospects for "soft" and "hard" harmonization or convergence.

Readings

US: Trade Regulation pp816-29, Supplement 130-202


See Also, Section D on attached sheet. 

WEEK EIGHT. 10/28 Merger Process 

Basic features of US & EU merger process, consequences of multijurisdictional review. Unreasonable burdens on merging parties? Process conflict? Is merger control out of control? What can be done about it, if anything? 

Readings
ICPAC Final Report, Chapter 3 
R. Whish & D. Wood, Merger Cases in the Real World, (OECD 1994) Excerpt 

WEEK NINE: 11/4 Transnational companies and the question of the exercise of jurisdiction in EC and US. 

Reasonableness and comity in practice (representative cases). Is allocation of jurisdiction in itself a problem? Are the traditional tools for allocation of jurisdiction sufficient to deal with emerging problems? 

Readings 


Selected US Cases: Hartford Fire Insurance Co. cf. pp. 10-12; 22-26 Justice Souter comment and Justice Scalia dissent; Nippon Fax Paper 

US DOJ International Enforcement Guidelines and fn 159; Repeal of FN 159 

A Customary International Law of Antitrust? Christies International
Week Ten 11/11 From Comity to Positive Comity: Cooperation in Enforcement

Examination of the structure and operation of bilateral antitrust cooperation agreements: what is covered and excluded, how are they operating in practice?

Readings


Merit E. Janow, "Unilateral and Bilateral International Approaches to Competition Policy: Drawing on the Trade Experience" (Brookings Institution, 1999)


Week ELEVEN 11/18 Next Steps at the International Level

Should cooperation take place within the existing regulatory diversity or should we move to a harmonized international antitrust code? The views of those in favor and the more skeptical views. Should competition policy come under the aegis of the WTO? An examination of the work of the WTO Group on Trade and Competition. Considering the new Global Forum.

Students Given Simulation Cases to Review

Readings


Merit E. Janow, "International Competition Policy and the WTO", The Uruguay Round and Beyond,
M.E. Janow, IBA Ditchley Report, *Business Law International*

M.E. Janow, “The Benefits of Competition Rules for Developing Countries” Presentation to World Trade Organization, Working Group on Trade and Competition Policy, April 2002

*Selected Speeches by US and EC Officials*

Mario Monti, ABA Spring Meeting 2001


*EU: Munich Group Report; 1995 EU Experts Report*

**Week TWELVE: 11/25**

"Special" problems of Antitrust in a Global Economy

How to determine and respond to market blocking private restraints of trade? Challenges for new competition systems in developing and transition economies. Designing appropriate competition policies--one size fits all?

**Readings**


Business Competition Supervisory Commission of the Republic of Indonesia, Decision no: 01

Frederic Jenny, "Reflections" at WTO Regional Workshop on Competition Policy, economic Development and the Multilateral Trading System, July 6-8 2000 Phuket, Thailand

WTO Regional Workshop on Competition Policy, Economic Development and the Multilateral Trading System Feb 22-24, 2001 Capetown South Africa

**Weeks 13: 12/2**

Discussion with Experts.
## EC Additional Readings

### A. Horizontal Agreement

| TACA judgment | T-18/97, 28.02.2002 [on decision withdrawing benefit of block exemption]  
| TACA pending court cases | T-191/98; T-212/98; T-213/98; T-214/98 |


### B. Vertical Agreements


| Visa case: Art 19(3) notice | OJ C 226, 11.08.2001, p. 21-23  

### C. Mergers

| [COMP/M.1524 - Airtours/First Choice] | http://europa.eu.int/comm/competition/mergers/cases/index/by_nr_m30.html#m_1524 |

| GE/Honeywell case: decision | of 03.07.2001  
| [COMP/M.2222 GENERAL ELECTRIC/HONEYWELL] | http://europa.eu.int/comm/competition/mergers/cases/index/by_nr_m44.html#m_2220 |

| GE/Honeywell pending court cases | T-209/01 [Honeywell]; T-210/01 [GE] |

| Tetra Laval/Sidel pending court cases | T-5/02 [appeal against prohibition decision] and T-80/02 [appeal against divestiture decision] |

| BASF/Pantochim case: decision | of 11.07.2001  
| [COMP/M.2314 BASF/PANTOCHIM/EURODIOL] | http://europa.eu.int/comm/competition/mergers/cases/index/by_nr_m46.html#m_2314 |

### D Abuse of dominant position

| IMS case: interim decision | of 03.07.2001  
| [COMP/38.044 - National Data Corporation/IMS Global Services] | http://europa.eu.int/comm/competition/antitrust/cases/index/by_nr_76.html#i38_044 |

| IMS orders | T-184/01R1, 10.08.2001; T-184/01R2, 26.10.2001; C-481/01P(R), 11.04.2002 |
**Michelin case: decision**

of 20.06.2001, not yet published

[COMP/36.041 - PO/Michelin]

http://europa.eu.int/comm/competition/antitrust/cases/index/by_nr_72.html#i36_041 (press release)

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**E. Legislative Documents**

<table>
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<tr>
<th>Notice on commitments (remedies) in merger proceedings</th>
<th>OJ C 68, 02.03.2001, pages 3-11</th>
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<tr>
<td><a href="http://europa.eu.int/comm/competition/mergers/legislation/">http://europa.eu.int/comm/competition/mergers/legislation/</a></td>
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<th>E. Guidelines on fines</th>
<th>OJ C 9, 14.01.98</th>
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<td>[Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty]</td>
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<td><a href="http://europa.eu.int/comm/competition/antitrust/legislation/entente3_en.html#nature">http://europa.eu.int/comm/competition/antitrust/legislation/entente3_en.html#nature</a></td>
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<td>[Commission notice on Immunity from fines and reduction of fines in cartel cases]</td>
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<td><a href="http://europa.eu.int/comm/competition/antitrust/leniency/">http://europa.eu.int/comm/competition/antitrust/leniency/</a></td>
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**Useful References on the Web**

Global competition forum: IBA webpage on national authorities, international references:
http://www.globalforum.org

Commission Decisions: http://europa.eu.int/comm/competition/cases

Court of First Instance: http://www.curia.eu.int


WTO, Doha Declaration
http://www.wto.org/english/tratop_e/dda_e.htm


OECD Competition Policy and Law Division
http://www.oecd.org

UNCTAD Competition and Consumer Policies

ICN: http://internationalcompetitionnetwork.org