

Commerce 4FX3

The Business Economics of Competition Law/Policy

Fall 2024 Course Outline

**Finance and Business Economics
DeGroot School of Business
McMaster University**

COURSE OBJECTIVE

Competition policy is much in the news today, ranging from the recently completed Rogers Shaw merger to potential actions against platform firms such as Google, Facebook and Amazon. The Canadian government has recently given the Canadian Competition Bureau enhanced authority and powers. All students in economics and the DeGroot School of Business would be well served by understanding the economics of this front-page activity because the path taken by competition policy authorities will affect our economy and firms where students may end up employed. We will be examining the critical aspects of these laws and a number of cases in the US, Canada and Europe concentrating on the economics but also analyzing the public policy implications. We will have competition lawyers and economists from Canada, the US and Europe zooming in to help our understanding.

INSTRUCTOR AND CONTACT INFORMATION

Professor Leonard Waverman
Finance and Business Economics
waverl@mcmaster.ca

Class Location: PGCLL M25
Office: DSB
Office Hours: Tues 10:30 - 12:00
Tel: (905) 525-9140 x27438

COURSE ELEMENTS

Credit Value: 3	Leadership: Yes	IT skills: No	Global view: Yes
A2L: Yes	Ethics: No	Numeracy: Yes	Written skills: No
Participation: Yes	Innovation: Yes	Group work: Yes	Oral skills: Yes
Evidence-based: Yes	Experiential: No	Final Exam: Yes	Guest speaker(s): Yes

COURSE DESCRIPTION

Competition law/policy is the regulation of certain ‘anti-competitive’ business activities by the government. These policies have a long history, beginning in Canada in 1889 several years before the US enacted its own version of ‘anti-trust’ policy. Competition policy deals with the interactions among firms and basically sets ground rules on how to compete, forbidding ways of dealing with competitors, buyers and suppliers.

These rules go back in time: Adam Smith in the Wealth of Nations in 1776 stated:

“People of the same trade seldom meet together even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.”

This was not the first instance of ‘conspiracies against the public’. In ancient Rome there was a rule that prohibited wheat from selling for a price other than ‘that is formed in the market’!

For students who are about to enter the workforce, having some knowledge of what types of interfirm behavior are allowed and what behavior could be investigated by the government is important. These pro competitive rules have had ebbs and flows across the 125 years since Canada first began this type of government regulation. We are now in a period of enhanced scrutiny of mergers and not just those between rivals, but importantly of ‘big’ firms that we call ‘platforms’ such as Google, Facebook and Amazon. And there’s even a recent case by the French government against another emerging platform - NVIDIA. It’s very important for commerce, business, and economic students to understand what drives these changes in public policy and the extent to which these rules, as they change, may affect the marketplace or the areas of business that they wish to engage in.

Pre-requisite: Intermediate microeconomics

Open to undergrads and masters’ students in economics and business who have the pre-requisite. Maximum 20.

25% of the grade is a case presentation in class. The students will be organized into five person teams, and each team will be asked to make a 15-minute presentation via Zoom of that case, There is an in-class final exam worth 45% with different exams for undergrad and masters level students. Masters students will answer 2 of 3 questions in the two hour exam. The week’s two lectures are divided as follows: Tuesday 12:30 – 2:30 is a two hour in person class, the one-hour session on Thursdays is online only. Attendance is mandatory, is

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LEARNING OUTCOMES

Upon successful completion of this course, students will be able to complete the following key tasks:

- Understand the essence of competition/anti-trust policy and their economic/policy drivers.
- Understand the empirical economics methodologies used in competition policy.
- Understand the competition law aspects of some of the decisions that your firm may undertake

COURSE MATERIALS AND READINGS

Reading list only see below in the week-by-week timetable.

COURSE OVERVIEW AND ASSESSMENT

There are seven major categories of interfirm interactions that we will examine.

- First, how one firm should communicate actions or intentions to other firms. This is usually thought of in terms of pricing. Society requires individual firm pricing, and not meeting in a room consulting and coordinating either prices or supply or investments with others. This is interfirm behavior or what economists call “parallel behavior”. There are two types of ‘parallel’ behavior: explicit collusion (firms explicitly agree on prices) and tacit collusion - independent maximization practices which lead to identical prices (think of 3 gasoline stations on the same corner).
- The second category is where a single firm has the ‘market power’ to act without sufficient competitive constraints. In Canada and Europe this is called Dominant firm behavior and, in the USA, Monopolization.
- A third category that we will examine is the relationship among firms in a chain of production. How should a grocery store act with its suppliers? Can a firm impose retail selling prices or limit who can

repair the TV or xerox machine? These are called vertical relationships.

- The fourth way firms interact is in buying rivals or suppliers. This issue was on the front page of Canadian newspapers because of the Rogers acquisition of Shaw and also because of RBC's acquisition of HSBC. How do we deal with mergers as a society? What mergers should be looked at? And how do we look at them?
- A growing issue is one of 'platform' firms – the FANGs: Facebook, Amazon, Netflix, Google. For example, Google has information on consumers and products and its advertising business depends on this data. Here we see major differences in various parts of the world and how they deal with these platform firms: Europe versus North America. Who is right?
- A sixth major issue is the impact of the structure of the market on innovation. Innovation is the key to economic growth. How do competition agencies handle, for example acquisitions with a focus on innovation. See US Federal Trade Commission in preventing Meta (Facebook) from acquiring virtual reality firm Within, Feb 1, 2023. <https://www.ftc.gov/legal-library/browse/cases-proceedings/221-0040-metazuckerbergwithin-matter>
- An emerging issue we will deal with, and the 7th is the impacts of AI on firm behavior and interfirm behavior. Today we have rules against, for example bid rigging (a group of firms agreeing on price). These kinds of agreements, of which there are surprisingly many (some are much more informal) are illegal. But what about AI or Chat GPT? What if the algorithms that two competing firms use decide that it's better to collude than compete? First how do we know? And second what do we do about it and who is at fault, the CEO or the programmer?

Your intermediate micro theory used simple models to investigate behaviour. The real world requires that we take these models into real situations like Rogers- Shaw or RBC -HSBC and evaluate the extent of current competition and what those mergers might or might not mean for future competition. These are not easy at all to do Thus, we must move into the world of data and the means in which we can judge behavior using these data. As a side note, these exercises will show you ideas that are valuable wherever you go in your future career.

We examine a number of important cases that have been decided in the past. We analyze several important Canadian cases on pricing, vertical arrangements, interfirm behavior, mergers and platforms. I will add in some cases where I have been the economics expert.

We will have several guests helping us on our journey. These include prestigious competition policy lawyers from Toronto. Thanks to zoom and Microsoft Teams we will be bringing in very well-known economists from the London School of Economics, and Berkeley to talk to us about how we go about estimating these models of behavior and other key topics. We will end with a guest economist from Paris who was also a member of the French Civil Supreme Court and is the chair of the OECD Competition Policy Committee on what is keep keeping regulators and him awake now - the impending role of AI and interfirm behavior.

The full timetable is given below.

To refresh yourselves go over Chapter 12 in Pindyck and Rubinfeld Microeconomics, Ninth Edition, Pearson

Summer Reading

- 1) [Canadian Govt. The Future of Competition Policy in Canada 2022](#)
- 2) [Antitrust: What Went Wrong and How to Fix It \(berkeley.edu\)](#) (pdf)
Professor Carl Shapiro Summer 2022
- 3) <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>
- 4) <https://www.nytimes-com.cdn.ampproject.org/c/s/www.nytimes.com/2021/04/20/technology/global-tipping-point-tech.amp.html>
- 5) <https://www.yalelawjournal.org/note/amazons-antitrust-paradox> Prof Lina Khan This is the paper that started the attack on platform firms, and she is now head of the Federal Trade Commission

COURSE DELIVERABLES

- | | | |
|----|---|-----|
| 1) | In class participation

This is an in-person course. | 30% |
| 2) | Students will be placed in groups of five and allowed to choose one of classes 5-10 for preparing and presenting a fifteen-minute assessment of the economics of one of the cases in that class. | 25% |
| 3) | Final Exam in class 75 minutes essay analyzing one case out of three not presented or discussed in class. One case will be a merger case; one will be a case on platform firms, one will be another area of the course. | 45% |

COMMUNICATION AND FEEDBACK

Students who wish to correspond with instructors or TAs directly via email must send messages that originate from their official McMaster University email account. This protects the confidentiality and sensitivity of information as well as confirms the identity of the student. Emails regarding course issues should NOT be sent to the Area Administrative Assistants. All students must receive feedback regarding their progress prior to the final date by which a student may cancel the course without failure by default.

Instructors may solicit feedback via an informal course review with students by Week #4 to allow time for modifications in curriculum delivery.

REQUESTING RELIEF FOR MISSED ACADEMIC WORK

In the event of an absence for medical or other reasons, students should review and follow the Academic Regulation in the Undergraduate Calendar [“Requests for Relief for Missed Academic Term Work”](#) and the link below:

<http://ug.degroot.mcmaster.ca/forms-and-resources/missed-course-work-policy/>

* Non-Commerce students must follow the Missed Course Work protocols outlined by their home faculty and Program Office.

ACADEMIC INTEGRITY

You are expected to exhibit honesty and use ethical behaviour in all aspects of the learning process. Academic credentials you earn are rooted in principles of honesty and academic integrity. **It is your responsibility to understand what constitutes academic dishonesty.**

Academic dishonesty is to knowingly act or fail to act in a way that results or could result in unearned academic credit or advantage. This behaviour can result in serious consequences, e.g., the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: “Grade of F assigned for academic dishonesty”), and/or suspension or expulsion from the university.

For information on the various types of academic dishonesty please refer to the [Academic Integrity](https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/) Policy, located at <https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/>

The following illustrates only three forms of academic dishonesty:

- plagiarism, e.g., the submission of work that is not one’s own or for which other credit has been obtained.
- improper collaboration in group work.
- copying or using unauthorized aids in tests and examinations.

AUTHENTICITY/PLAGIARISM DETECTION

Some courses may use a web-based service (Turnitin.com) to reveal authenticity and ownership of student submitted work. For courses using such software, students will be expected to submit their work electronically either directly to Turnitin.com or via an online learning platform (e.g., A2L, etc.) using plagiarism detection (a service supported by Turnitin.com) so it can be checked for academic dishonesty.

Students who do not wish their work to be submitted through plagiarism detection software must inform the instructor before the assignment is due. No penalty will be assigned to a student who does not submit work to the plagiarism detection software.

All submitted work is subject to normal verification that standards of academic integrity have been upheld (e.g.,

on-line search, other software, etc.). For more details about McMaster's use of Turnitin.com please go to www.mcmaster.ca/academicintegrity.

COURSES WITH AN ON-LINE ELEMENT

Some courses may use on-line elements (e.g., email, Avenue to Learn (A2L), web pages, TopHat, MS Teams, etc.). Students should be aware that, when they access the electronic components of a course using these elements, private information such as first and last names, usernames for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course.

The available information is dependent on the technology used. Continuation in a course that uses on-line elements will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure, please discuss this with the course instructor.

ONLINE PROCTORING

Some courses may use online proctoring software for tests and exams. This software may require students to turn on their video camera, present identification, monitor and record their computer activities, and/or lock/restrict their browser or other applications/software during tests or exams. This software may be required to be installed before the test/exam begins.

CONDUCT EXPECTATIONS

As a McMaster student, you have the right to experience, and the responsibility to demonstrate, respectful and dignified interactions within all of our living, learning and working communities. These expectations are described in the [Code of Student Rights & Responsibilities](#) (the "Code"). All students share the responsibility of maintaining a positive environment for the academic and personal growth of all McMaster community members, **whether in person or online**.

It is essential that students be mindful of their interactions online, as the Code remains in effect in virtual learning environments. The Code applies to any interactions that adversely affect, disrupt, or interfere with reasonable participation in University activities. Student disruptions or behaviours that interfere with university functions on online platforms (e.g. use of Avenue 2 Learn, WebEx or Zoom for delivery), will be taken very seriously and will be investigated. Outcomes may include restriction or removal of the involved students' access to these platforms.

ACADEMIC ACCOMMODATION OF STUDENTS WITH DISABILITIES

Students with disabilities who require academic accommodation must contact [Student Accessibility Services \(SAS\)](#) at 905-525-9140 ext. 28652 or sas@mcmaster.ca to make arrangements with a Program Coordinator. For further information, consult McMaster University's [Academic Accommodation of Students with Disabilities](#) policy.

ACADEMIC ACCOMMODATION FOR RELIGIOUS, INDIGENOUS OR SPIRITUAL OBSERVANCES (RISO)

Students requiring academic accommodation based on religious, indigenous or spiritual observances should follow the procedures set out in the [RISO](#) policy. Students should submit their request to their Faculty Office ***normally within 10 working days*** of the beginning of term in which they anticipate a need for accommodation or to the Registrar's Office prior to their examinations. Students should also contact their instructors as soon as possible to make alternative arrangements for classes, assignments, and tests.

COPYRIGHT AND RECORDING

Students are advised that lectures, demonstrations, performances, and any other course material provided by an instructor include copyright protected works. The Copyright Act and copyright law protect every original literary, dramatic, musical and artistic work, **including lectures** by University instructors.

The recording of lectures, tutorials, or other methods of instruction may occur during a course. Recording may be done by either the instructor for the purpose of authorized distribution, or by a student for the purpose of personal study. Students should be aware that their voice and/or image may be recorded by others during the class. Please speak with the instructor if this is a concern for you.

EXTREME CIRCUMSTANCES

The University reserves the right to change the dates and deadlines for any or all courses in extreme circumstances (e.g., severe weather, labour disruptions, etc.). Changes will be communicated through regular McMaster communication channels, such as McMaster Daily News, A2L and/or McMaster email.

RESEARCH USING HUMAN SUBJECTS

All researchers conducting research that involves human participants, their records or their biological material are required to receive approval from one of McMaster's Research Ethics Boards before (a) they can recruit participants and (b) collect or access their data. Failure to comply with relevant policies is a research misconduct matter. Contact these boards for further information about your requirements and the application process.

McMaster Research Ethics Board (General board): <https://reo.mcmaster.ca/>

Hamilton Integrated Research Ethics Board (Medical board): <http://www.hireb.ca/>

ACKNOWLEDGEMENT OF COURSE POLICIES

Your enrolment in 4FX3

will be considered to be an implicit acknowledgement of the course policies outlined above, or of any other that may be announced during lecture and/or on A2L. **It is your responsibility to read this course outline, to familiarize yourself with the course policies and to act accordingly.**

Lack of awareness of the course policies **cannot be invoked** at any point during this course for failure to meet them. It is your responsibility to ask for clarification on any policies that you do not understand.

COURSE SCHEDULE

1. Tuesday September 3 12:30- 2:20 PGCLL M25 and Thursday Sept 5 Online

Introduction to the course.

Outline of introductory Lecture

- a. 'Competition Law/Policy' is economic regulation by governments of the ways in which firms are permitted to compete with other firms. We begin by discussing what motivated governments to set this up and how it has changed over the years.
- b. Then, we go over the course outline to familiarize yourselves with the content we examine.
- c. Then, I take a recent case that you've seen played out in the news and on TV – the Rogers acquisition of Shaw and we discuss the case and the business economics. In this process we begin to learn some essentials of the ways in which antitrust authorities examine perceived 'anticompetitive' arrangements – in this case a potential merger.

Read Wired: The early days of antitrust:

<https://link.wired.com/view/5be9f44e3f92a404692f4ebei991.r7/02795bf6>

Read : President Biden Executive Order July 9 2021 <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

Read: Lamoreaux Journal of Economic Perspectives Summer 2019 <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.33.3.94>

- Rogers/Shaw

<https://www.canada.ca/en/competition-bureau/news/2023/01/statement-from-the-commissioner-of-competition-on-the-federal-court-of-appeals-decision-regarding-the-rogers-shaw-merger.html>

To refresh yourselves go over Chapter 12 in Pindyck and Rubinfeld Microeconomics, Ninth Edition.

On Thursday Sept 5, I would like your opinion, online, as to whether or not you agree with the approval of the Rogers takeover of Shaw. Does the sale of Freedom Mobile to Videotron significantly increase competition in cell phone services?

2. Tuesday Sept 10 and Thursday Sept 12 12:30-2:20 PGCLL M25 and Thursday Sept 12 Online

The Changing WHY, What and How of Competition Law/Policy

In this lecture, we first examine the Canadian law and the behavior of the Canadian Competition Bureau. As you may have been reading in the newspapers, this law has been significantly altered very recently. Some, including the current Commissioner Mathew Boswell saw serious deficiencies in the law. Some of these alleged deficiencies have to do with the way the law was phrased, or the way it was interpreted. Some of these deficiencies have been raised by the current head of the Federal Trade Commission in the USA. Dr.Lina Khan as well as in Europe, where the platform firms, namely Google, Facebook and Apple are under attack and where new laws have been introduced in place to deal with their behaviour.

Guest : Jonathan Bitran , Blakes, MBA Rotman

Then we consider how government agencies go about examining such cases? First, what does simple economics tell us about how to deal with such issues? We begin by reminding ourselves of the two extremes in basic economics: monopoly and perfect competition. The vast middle between these two extreme characterizations is in fact where most actual firms and industries compete-imperfect competition. Recall that there are no hard and fast rules to state that situation A is 'competitive' and situation B is 'anti-competitive'. Nor are lawyers and judges professional economists, therefore decision making in these cases is perhaps more of an art than a science.

That is, we turn to the key issues in any competition case: What is the antitrust **market** being investigated? In your theory courses, a market was simple, say apples, or chairs or toothpaste. Think about this for a moment. **If a market is defined as the area in product and geographic space where price is determined**, what is the market for apples: is it Hamilton or Ontario or bigger or smaller? What about the market for gasoline?

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- a. What is the antitrust **market** being investigated? In your theory courses, a market was simple, say apples, or chairs or toothpaste. Think about this for a moment. **If a market is defined as the area in product and geographic space where price is determined**, what is the market for apples: is it Hamilton or Ontario or bigger or smaller? What about the market for gasoline?
- b. Who are the **suppliers and purchasers** in that market?
 - i. How many any suppliers are there?
 - ii. Are there 'entry barriers'?
 - iii. What are their Market shares?
 - iv. Is information about each firm's activities well known?
 - v. Under what conditions could others enter?
 - vi. Who are the purchasers – are there many or few,
 - vii. Are the purchasers large relative to the suppliers?
- c. Over what **time frame** should our analysis be done?
- d. If there is anti-competitive behaviour, what are **appropriate penalties or remedies**?

See potential new acquisitions https://www.cnn.com/2024/07/14/google-wiz-cybersecurity-deal-largest-ever.html?_source=iosappshare%7Ccom.apple.UIKit.activity.Mail

[:https://www.cnn.com/2024/05/14/wiz-cnn-disruptor-50.html?_source=iosappshare%7Ccom.apple.UIKit.activity.Mail](https://www.cnn.com/2024/05/14/wiz-cnn-disruptor-50.html?_source=iosappshare%7Ccom.apple.UIKit.activity.Mail)

Reading:

https://ec.europa.eu/competition/mergers/studies_reports/the_economics_of_tacit_collusion_en.pdf

Parts 8.1 to 8.3

This paper by Marc Ivaldi, Bruno Julien, Patrick Rey, Paul Seabright and Jean Tirole is a classic see: <https://www.youtube.com/watch?v=xmf0wyOQ-E>

Example Grocery stores see: <https://www.cbc.ca/news/business/competition-bureau-grocery-1.6627144>

3. Tuesday Sept 17 and Thursday Sept 19

Global Competition Policy and The Economics Continued

How do government agencies go about examining such cases? First, what does simple economics tell us about how to deal with such issues? We begin by reminding ourselves of the two extremes in basic economics: monopoly and perfect competition. The vast middle between these two extreme characterizations is in fact where most actual firms and industries compete- imperfect competition. Recall that there are no hard and fast rules to state that situation A is 'competitive' and situation B is 'anti-competitive'. Nor are lawyers and judges professional economists, therefore decision making in these cases is perhaps more of an art than a science.

Guest : (via Zoom) Cal Goldman former Commissioner of Canadian Competition Bureau; former Vice-chair of the OECD Competition Committee; former chair and co-chair of

numerous American Bar Association committees on competition and on foreign investment. Member Bi-national Panels Roster Canada Us Mexico Agreement; co-editor of Foreign Investments Regulation Review as well as Competition Law of Canada

Read: Boyer Ross and Winter CJE, 2017

https://www-jstor-org.libaccess.lib.mcmaster.ca/stable/pdf/45172466.pdf?refregid=fastly-default%3A5b749b62915210456d2e2549611a3d30&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initial-url=search-results&acceptTC=1

Do Read

<https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/promotion-and-advocacy/regulatory-adviceinterventions-competition-bureau/examining-canadian-competition-act-digital-era>

Do See: US Dept of Justice and FTC Joint letter to Canada March 31, 2023

https://www.ftc.gov/system/files/ftc_gov/pdf/USFTC-USDOJ-joint-comment-to-Canada-Consultation-Paper.pdf

4. Tuesday Sept 24 and Thursday Sept 26

How to deal with data and modelling.

- Guest Prof Mark Schankerman LSE

Read: Bresnahan <https://www.sciencedirect.com/science/article/abs/pii/S1573448X89020054>

In today's lecture. We take a diversion looking at economists' models (such as were given in your intermediate micro course) and ask ourselves, how would we discover which of these are actually operable in reality, in an industry or in behaviors that we are investigating. What are the data requirements? And how do we gain an understanding of what is actually going on in the industry?

This is a terrific review of "how to "derive industry behavior from simple data. It is written in understandable English and of course calculus. Skim only, get the main ideas. You are not examined on econometrics!

Professor Schankerman is a world recognized expert in many areas, principally patents but also in modelling with data.

5. Tuesday October 1 and Thursday October 3

Single Firm Dominance – Monopolization and Abuse of Dominance

- Guest: John Pecman ex Commissioner of Competition Policy AND Mac grad in economics

Key issues: What is the market which is monopolized and why; short run versus long run issues

see George Stigler 1969 <https://www.econlib.org/library/Enc/Monopoly.html>

- Petit (pages 1-11)
https://cadmus.eui.eu/bitstream/handle/1814/74347/RSC%202022_14_Petit%20Understanding%20Market%20Power.pdf?sequence=1
- Hazlitt <https://link.springer.com/article/10.1007/s10602-022-09391-9>
- USA versus Google January 31 2023 <https://www.justice.gov/opa/pr/justice-department-sues-google-monopolizing-digital-advertising-technologies>
- Toronto Real Estate Board, 2018.
<https://www.nortonrosefulbright.com/en/knowledge/publications/538d7d95/the-end-supreme-court-dismisses-trebs-application-for-leave-to-appeal-in-abuse-of-dominance-case>

- Vancouver airport case

<https://www.canlii.org/en/ca/cact/doc/2019/2019cact6/2019cact6.html?autocompleteStr=The%2520Commissioner%2520of%2520Competition%2520v.%2520Vancouver%2520Airport%2520Authority&autocompletePos=9>

Today. We are looking at single firm behavior or dominance / monopolization. Again, the antitrust market is critical. We understand from lectures one and two that most firms face a downward sloped demand curve giving them some power over price and behaviors. When does this power allow the firm to become Dominant in the market?

6. Tuesday October 8 and Thursday October 10

Mergers: Key issues – market definition again; vertical, horizontal types

- Guest: Neil Campbell QC McMillans Toronto very senior and sought after comp policy lawyer

<https://www.theguardian.com/environment/ng-interactive/2021/jul/14/food-monopoly-meals-profits-data-investigation>
<https://www.theguardian.com/environment/ng-interactive/2021/jul/14/food-monopoly-meals-profits-data-investigation>

Read <https://www.nber.org/papers/w29175> Asker and Nocke on mergers. Pages 36-42

- Superior Propane (2003) and the former efficiencies defense

See https://www.mccarthy.ca/en/insights/articles/competition-bureau-wins-secure-tervita-challenge-efficiencies-defencefails?utm_source=vuture&utm_medium=email&utm_campaign=competition%20bureau%20wins%20secure-tervita%20challenge%20as%20efficiencies%20defence%20fails

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Read: <https://www.oecd.org/daf/competition/economic-analysis-in-merger-investigations-2020.pdf>

Lecture six concerns the antitrust or competition policy rules on when firms are allowed to merge or are prevented from merging. If we are concerned about dominance or collusion, then we need to be concerned about mergers which may either enhance single firm power or the potential for collusion. We look at the law, and under try to understand the economics behind it. Canada was quite unique in the world by having a merger law which is called a 'total surplus' law rather than a 'consumers surplus law' involving mergers. This is called 'efficiency defense'. Merging firms could argue that the 'efficiencies' from their merger will exceed the potential loss for consumers or buyers of the product in terms of any potential price increase. Although this part of the law has only been used twice successfully, it had attracted a great deal of concern. And in many cases, it was a substantial part of the case and involved a lot of resources from both the Bureau and the firms. This efficiency defense was recently removed and substantial changes made in the law which were briefly discussed Sept 10.

7. Tuesday October 22 and Tuesday October 24

Markets and Innovation

- Guest Professor David Teece Thomas W. Tusher Professor in Global Business at Haas School of Business Berkeley, Clarion Fellow (pre-Noble)

Read Teece, Pisano and Shuen Dynamic Capabilities

[https://onlinelibrary.wiley.com/doi/pdf/10.1002/\(SICI\)1097-0266\(199708\)18:7%3C509::AID-SMJ882%3E3.0.CO;2-Z](https://onlinelibrary.wiley.com/doi/pdf/10.1002/(SICI)1097-0266(199708)18:7%3C509::AID-SMJ882%3E3.0.CO;2-Z)

- [IP Rights](#)
- [See Canada Competition Bureau IP Enforcement Guidelines https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/intellectual-property-enforcement-guidelines](https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/intellectual-property-enforcement-guidelines)

Read parts 1 and 11: Federico, Morton and Shapiro 2020

<https://www.journals.uchicago.edu/doi/10.1086/705642>

Lecture 7 asks whether Competition policy focuses sufficiently on innovation. Professor David Teece has been one of the leaders over many years, stating that antitrust law is static and not sufficiently dynamic. We will be looking at the theory of Innovation: Is there more innovation under monopoly or under perfect competition? And what concerns exist under current static antitrust law?

8. Tuesday October 29 and Thursday October 31

Collusion : Interfirm behavior cases

Key issues : what defines '[agreement](#)' to act collectively; what are characteristics of industries that 'facilitate' collusion and a definition of barriers to entry

Read: Asker and Nocke NBER August 2021 <https://www.nber.org/papers/w29175>, part 2.1

- [Bid rigging \(a criminal offense in Canada\)](#)
- [Conscious parallelism 1](#)
- [Conscious parallelism 2](#)

More recent cases

- March 27 2023 <https://www.wsj.com/articles/drug-middlemen-accused-of-price-fixing-by-ohio-attorney-general-6aaafee6>
- March 6, 2023, Perfumes and fragrances <https://www.wsj.com/articles/uk-swiss-regulators-probe-fragrance-market-c6590527>

Question: do perfumes and fragrances have the characteristics of markets that can have successful collusion? If not, is the theory incorrect?

Today, we examine cases revolving around collusion among firms in an industry. Again, it is very important is to define the industry or markets that firms are operating in. We have to analyze firm behavior, the evidence and the prosecutions' views and the firms' responses.

9. Tuesday November 5 and Thursday Nov 7

Vertical behaviour: what firms can or cannot do.

Key issues: market power? monopsony power (buyer power)?

Read: The Economics of Vertical Restraints in Digital Markets Daniel P. O'Brien pages 266-277

<https://deliverypdf.ssm.com/delivery.php?ID=192119095117089123121080122080068027037049067002004033093113121127111092093083095073055124012115006097026113091086067113018096018034038013029067067021018121117006080032014003066095007072114107007027120064010098124064099071067103118064026109091095083029 &EXT=pdf&INDEX=TRUE>

The antitrust laws in most countries specifically restrict firms which are dominant from undertaking certain behaviors or procedures which are not forbidden in competitive industries. For example, resale price maintenance. When can a firm prevent retailers from selling its products below certain prices? These are called vertical practices. For example, in the grocery industry these would include the practices of joint advertising of products, positioning of products on shelves, etcetera. Another example is. Nespresso. Can they prevent others from making the pods that fit their specific machine? The Question of course becomes who has the power in negotiations or market power? Are they the upstream firms or the downstream firms? Why would Nespresso want to limit other firm's abilities to produce pods for their machine?? Can't other firms just make competing machines with their own pods?

- Len Waverman Xerox and Independent Service Organizations Canada;

Canada case

<https://tspace.library.utoronto.ca/bitstream/1807/78224/1/Iacobucci%20%20tying%20and%20intellectual%20property.pdf> see pages 202 and 203

US case <https://law.justia.com/cases/federal/appellate-courts/F3/203/1322/474824/>

- Len Waverman Mattel (Barbie in France)

The only English reference I can find to this case is from an Indian analysis! See slides 20-25, but the analysis does show you the type of analysis used in most of these cases.

http://164.100.58.95/sites/default/files/presentation_document/peter_15may_20080522152546.pdf?download=1

10. Thursday November 12 and Thursday November 14

The Platform Firms - Key issues: What is the ‘market’? What are entry barriers in digital markets?

- Cases: Google. EU; US Department of Justice versus Google
- [Antitrust: Commission fines Google €2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison shoppi \(europa.eu\)](#)
- [Antitrust cases against Google by the European Union - Wikipedia](#)
- [UK policy read executive summary https://www.gov.uk/government/consultations/a-new-pro-competition-regime-for-digital-markets/consultation-document-html-version](https://www.gov.uk/government/consultations/a-new-pro-competition-regime-for-digital-markets/consultation-document-html-version)

This week we look in detail at the platform firms and the number of cases that have been recently launched particularly in Europe to try to reduce their ‘power’. What markets or markets do these platform firms operate in? And what is the source of any ‘market power’? We will have a free for all discussion about what we should be doing about this if anything.

11. Tuesday November 19 and Thursday November 21

Civil remedies, and class actions

Guests:

- Canada Michael Osborne partner Cozen O’Connor THE class action lawyer in Canada.

See *Antitrust ‘Antitrust Class Actions , A Tale of Two Countries* [Antitrust%20-%20A%20Tale%20of%20Two%20Countries%20\(2\)](#)

The United States and most recently, Canada, have added the ability for ‘injured’ firms and persons to have civil remedies for antitrust offenses. Are these remedies useful?? What are the benefits and potential abuses, and what is the current law?

<https://www.theguardian.com/environment/ng-interactive/2021/jul/14/food-monopoly-meals-profits-data-investigation>

<https://www.theguardian.com/environment/ng-interactive/2021/jul/14/food-monopoly-meals-profits-data-investigation>

12. Tuesday November 26 and Thursday November 28

The Impact of AI, Guest Prof Fred Jenny ESSEC OECD ex member Civil Supreme Court France (Cours de Cassation)

Read: https://www.ftc.gov/system/files/documents/public_statements/1286183/mcsweeny_and_odea_implications_of_algorithmic_pricing_antitrust_fall_2017_0.pdf

See <https://prospect.org/economy/2024-06-05-three-algorithms-in-a-room/>

In our final week we have a discourse on AI and competition policy. Remember the lectures we had on collusion and the theory behind those cases. What if there is no so-called actor involved. What we mean by this is that the CEO or VP 's of the firms do not get together in a closed room and negotiate prices or market sharing. Instead, pricing decisions of the firm are run by algorithms, so-called AI algorithms. These algorithms learn from trial and error that raising prices in response to rivals' price rise is profitable. Is this collusion? How do we know? There's no written evidence. There are no emails between CEO saying let's raise price next week. And who's at fault if anyone? Do we throw the programmers in jail? Do we find ChatGPT illegal?

13. Tuesday December 3

- **Final Exam** a 2 hour exam with one essay analyzing a case/issue not presented or discussed in class. One case will likely be a merger case; one will likely be a case on platform firms, one will be in another area of the course.