**Competition law 2.**

**Course code: JOKV207XX0**

**ECTS: 6**

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**Summary**

The course introduces students to the principles, institutions and the law of EU and Hungarian competition law. Competition law is a centralized and well established field of EU law that allows student not only to learn how EU institutions function, but also how EU and national laws interact with each other. In addition to the prohibitions on cartels, abuse of dominance, control of mergers, students will get an insight into the control of state aid and the establishment of public monopolies. We will also look at how competition rules are enforced through administrative and civil law procedures. Whenever relevant, we will make comparisons with the U.S. legal system. The course will benefit not only those interested in antitrust, but also those who would like to understand the economic goals of the European integration process.

**Office Hours:** by appointment. I can also be reached by email at toth.tihamer@jak.ppke.hu

**Materials:** We will use selected texts and cases. Students will either get the internet links to these or get a copy in advance.

**Requirements and Grading:** This seminar meets once each week for 90 minutes. It is therefore important that you attend every meeting and come prepared to discuss the assigned readings.

Your final grade in this course will be comprised of (1) your research-and-writing project (30%), (2) your contributions to our discussions (50%) and (3) the result of an interim test (20%).

With respect to (1), you are expected to write an essay of approximately 3000 words on a topic discussed with the lecturer. Students can submit their essays before the last meeting via e-mail or in person. I am happy to see and comment outlines of the essays presented to me at the 6th-8th classes.

With respect to (2), your grade will be based on attendance and active participation, including occasional home and team-work. Missing more than two lectures will have a negative impact on the grade. Each of you is expected to be in a position to contribute to the discussions of the readings. Students are expected to give a 15-20 minute in-class presentation based on the assigned materials.

As to (3), you will write a short test proving your knowledge of the most important institutions and principles of EU competition law. This test is planned for the #5 meeting.

**Required readings:**

Pp 5-55: http://www.oecd.org/daf/competition/prosecutionandlawenforcement/35908641.pdf

TFEU Articles: 37, 101, 102, 106, 107, 108

Regulations: 1/2003, 33/2010

**Size of the seminar**: the seminar will start with 5 students, but with no more than 20.

**Course plan**

1. **An overview of EU and Hungarian competition rules and institutions**

* The aims of competition policy
* Sources and hierarchy of EU law: treaties, regulations, directives, the case law of EU courts, soft law instruments, useful websites
* The parallel existence of EU and national competition rules; “may affect trade between MSs”, supremacy and direct applicability
* Law making: the Parliament, the Council
* Public enforcement: the Commission, NCAs
* The judicature: EU and national review courts, national courts (litigations), the importance of preliminary rulings

1. **The scope of antitrust rules**

* The wording and structure of Articles 101 and 102 TFEU
* The definition of undertakings, intra economic unit restrictions, agency agreements
* Extraterritorial enforcement of competition rules
* Sectorial scope

*Suggested reading:*

Tihamér Tóth: The fall of agricultural cartel enforcement in Hungary; European Competition Law Review, 2013 34 E.C.L.R. issue 7 359-366 (*will be e-mailed*)

1. **Cartels**

* Definition, other forms of anti-competitive agreements
* Price setting, market sharing, public procurement cartels (Hungarian motorway construction bid rigging)
* The Marine Hoses cartel: international enforcement
* The Hungarian Mortgage termination case (information exchange)
* The Irish Beef case (collective capacity reduction)
* Cartel detection: dawn raids and the role of leniency applications

*Suggested readings:*

* <http://www.gvh.hu/en/resolutions/resolutions_of_the_competition_council/resolutions_2011/8455_hu_vj-742011873.html?query=bank>
* <http://ec.europa.eu/competition/publications/cpn/2009_2_12.pdf>
* http://www.law360.com/articles/446488/comparing-eu-marine-hose-cartel-case-to-us-enforcement
* <http://ec.europa.eu/competition/publications/cpn/2009_1_15.pdf>
* <http://ec.europa.eu/competition/publications/cpn/2009_1_17.pdf>
* <http://ec.europa.eu/competition/publications/cpn/2009_1_16.pdf>

1. **Vertical (distribution) agreements**

* The Consten and Grundig case, IP rights
* The Block exemption regulation
* RPM, resale restrictions and non-compete

*Suggested readings:*

Read about the scope, the market share threshold and black lists of the vertical BER!

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:130:0001:0046:EN:PDF>

1. **Public enforcement of cartel rules: investigatory tools, due process, human rights and sanctions**

* The legal consequences of illegal cartel activity at EU and national levels
* The fining policy of the EU Commission
* Balancing investigatory powers and rights of undertakings
* The relevance of the European Court of Human Rights jurisprudence

*Suggested reading*:

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1759209>

pp1-15: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1937582>

1. **The role of private enforcement in Europe**

* EU Courts cases (Courage, Manfredi)
* The Directive promoting private damage actions
* The class action option

*Suggested readings:*

<http://ec.europa.eu/competition/antitrust/actionsdamages/documents.html>

1. **Are monopolies bad?**

* The existence vs. the abuse of dominant market position
* The definition of the relevant market, market power
* Competition on the merits vs. abuse
* Typical forms of abuses
* Tensions between EU and U.S. policies

*Suggested readings:*

<http://ec.europa.eu/competition/publications/cpn/2009_1_5.pdf>

<http://ec.europa.eu/competition/publications/cpn/2009_3_5.pdf>

Interchange fees: <http://europa.eu/rapid/press-release_SPEECH-13-660_en.htm>

1. **State created monopolies**

* Articles 37 and 106
* The public service exception

*Suggested readings:*

C-553/12 P Commission v DEI (Greek lignite case) and the Advocate General’s opinion of December 2013

**9-10. The control of concentrations**

* Mergers & acquisitions
* EU dimension, the notification and authorization process
* Harmful effects of concentrations, the SIEC test
* Remedies

*Suggested reading:*

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:095:0001:0048:EN:PDF>

**11-12. The control of state aid**

* Unique EU rules to protect the integration
* The definition of incompatible state aid
* Options for Member States to get state aid approved by the Commission
* The MALÉV case
* Managing the financial and economic crisis

*Suggested reading*

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443686/BIS-15-417-state-aid-the-basics-guide.pdf>

SGEI and state aid: <http://ec.europa.eu/competition/publications/cpn/2012_1_10_en.pdf>

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**Useful websites:**

* [**http://ec.europa.eu/competition/index\_en.html**](http://ec.europa.eu/competition/index_en.html)
* [**http://www.gvh.hu/en/**](http://www.gvh.hu/en/)
* [**http://www.internationalcompetitionnetwork.org/about/steering-group/outreach/icncurriculum.aspx**](http://www.internationalcompetitionnetwork.org/about/steering-group/outreach/icncurriculum.aspx)
* [**http://www.oecd.org/daf/competition/**](http://www.oecd.org/daf/competition/)
* [**http://chillingcompetition.com/**](http://chillingcompetition.com/)
* [**www.versenyjog.com**](http://www.versenyjog.com)

As promised, we will discuss the structures of Articles 101 and 102. Please read these paragraphs and try to discuss and answer these questions:

Do EU antitrust rules address the behavior of corporations only? What about natural persons (i.e. an artist, professional soccer player), public companies and corporations established (incorporated) in Asia?

What is the relationship between national and EU competition rules? Do they overlap? What's if there is a conflict (i.e. a business conduct is tolerated under Hungarian competition rules, but is illegal under EU law)?

Which of these scenarios can be covered by Article 101 (1)?

a) German and French mills agree not to ship their products to each others' territories

b) Ford and Mitsubishi establish a joint venture in Slovakia to build a new, more environmental friendly motor vehicle engine.

c) Suzuki's car distribution contracts include a clause according to which Hungarian car dealers are not allowed to sell more than 2% of their supplies to residents outside Hungary.

d) Water-melon producers in Hungary establish an association to discuss market developments, lobby for government regulation and represent the interests of their members.

Note the philosophy of Article 101: competitors should behave independently, without co-ordinating their market conduct.

Do you agree? Is co-operation not a better way to move forward? (Efficiency, other policy aims)

Chambers, associations of undertakings often claim to protect their members from unfair competition, i.e. price wars, demolishing price competition etc. Is this a legitimate objective? Where is the line between a cartel gathering and the functioning of these associations?

Competition policy is extremely price oriented. Do you agree with this? Are cheap prices what matter for consumers? Can you imagine situations where other objectives should prevail?

How strong do you think EU competition policy is? How can you ‘measure’ its strength? (i.e. resources, directorate, types of laws, press)