

**Law 252.3 Sec. 1 – International Antitrust Law
Spring 2024**

Instructor Information

Instructors: Joel Sanders and Michael Tubach
Email: JoelSanders@law.berkeley.edu; MTubach@omm.com
Phone: 415-200-9900 (Sanders); 415-984-8876 (Tubach)
Office: Café Zeb
Office Hours: The hour after class.

Course Information

Meetings: Thursdays from 8:00 to 9:50 A.M.
Location: Law 113
Prerequisites or Co-requisites: Antitrust Law (252.2) or some antitrust/competition law experience helpful but not required
Credit Hours: 2

Textbook/Course Materials

All readings will be posted on bCourses.

bCourses

Materials for each class will be posted 7-14 days in advance. Please check bCourses weekly for updated reading material.

Course Description

The course will compare the approaches of various regimes (including, for example, the U.S., European Union, China, Korea, Japan, and Brazil) to specific antitrust/competition law issues, with a specific focus on the practical realities of global antitrust/competition law. The course will cover issues involving client advice, criminal investigations, civil and administrative investigations, civil litigation, and dealings with competition authorities. Specific topics will include cartels, dominance (abuse of monopoly power), mergers, the intersection between intellectual property and antitrust, extraterritoriality and comity, big data, vertical restraints, and private damages actions. Reading assignments will include academic writings, other articles, cases, speeches, and government agency statements. The course will include role playing opportunities and written assessments based on “real world” skills (e.g., client memoranda and white papers).

Learning Outcomes

We expect students in the course to achieve the following Berkeley Law Learning Outcomes:

(a) Knowledge and understanding of policy objectives informing different international competition and antitrust regimes:

- Understand interplay between economics and competition policy goals
- Understand role of consumer and competitor protection in competition/antitrust law
- Understand the different mechanisms of administrative, criminal, and civil enforcement regimes

(b) Legal analysis and reasoning, problem-solving, and written and oral communication in the practical context in which international competition/antitrust questions arise; and

(c) Develop professional skills needed to practice before or with international competition/antitrust authorities:

- Be comfortable presenting information to competition/antitrust authorities, including through role playing and case studies
- Be able to write client memorandum addressing rules, policies and regulations of multiple competition/antitrust regimes
- Be able to draft white paper to competition/antitrust enforcement agency that addresses current competition law issue

Assignments/Exams/Experiential Exercises/Papers/Projects/Grading

We will evaluate students in the following areas:

Your grade will be based on an approximately 1,250-word mid-term written assignment (a memorandum to a client about a hypothetical legal problem) (30%), a short (five-minute) class presentation or demonstration about a particular case or topic covered in the course (10%), a maximum 2,000-word take-home final examination (a “white paper” on a current competition law issue to be completed in a floating six hours during the exam period) (50%), and class participation, including as an active listener and contributor (10%).

Course Policies

Each student should participate in class as an active listener and contributor. We will call on students in some classes but prefer if students volunteer. Class attendance is mandatory. We understand that students may need to miss class on occasion because of illness, emergency, or interviews. Repeated unexcused absence may lead to a lower grade.

Course Schedule

Class Date	Topic	Reading Assignment/Other Assignment	Relevant Learning Outcome: After completing the class date, students will be able to:
1/11/24 Week 1	Introduction to International Antitrust/Competition Law	Reading packet containing introductory articles on antitrust/competition law.	Understand legal, economic and policy rationales that underlie the antitrust and competition law regimes in various jurisdictions.
1/18/24 Week 2	Cartels/Collusion Between Competitors	Reading packet containing case study materials.	Analyze various competition regimes’ approaches to cartel enforcement through a case study. Evaluate application of different anti-cartel laws to

			information sharing among competitors.
1/25/24 Week 3	Vertical Restraints	Reading packet containing case law, article, and enforcer policy statements on resale price maintenance.	Understand different approaches to and rationales underlying prohibitions on vertical restraints.
2/1/24 Week 4	Private Damage Actions	Reading packet containing materials on private damages actions in various countries and case study materials. <i>Two leading lawyers who regularly litigate private damages claims, and are active in cutting edge questions of global litigation and settlements, will be guest speakers for this class.</i>	Understand issues raised by private enforcement of competition laws. Argue in favor of or in opposition to expansion of private damages enforcement. Understand and evaluate policy rationales and issues underlying private recovery models, including questions of collective action, credit for self-reporting, and role of passing-on defense. Assess questions of settlement as civil damages enforcement becomes a “global” question.
2/8/24 Week 5	Cartels/Collusion Between Competitors	Reading packet containing materials on various international cartel leniency policies and leniency strategy.	Understand various competition authorities’ approaches to international cartel enforcement. Analyze strategic questions related to cartel enforcement, including how to deter cartel activity and how to incentivize self-reporting of illegal conduct.
2/15/24 Week 6	Competition in Labor Markets	Reading packet containing articles and case law regarding recent enforcement actions and cases involving the	Understand different approaches to enforcement of competition laws in labor markets.

		enforcement of competition laws in labor markets, including no-poach agreements, wage agreements, and information exchanges, and treatment of labor markets in other aspects of competition law.	
2/22/24 Week 7	Extraterritoriality/Comity	Reading packet containing case materials, speeches, and academic articles regarding extraterritoriality and comity <i>Note: Mid-term paper will be assigned on February 22 and will be due on March 7.</i>	Understand application of extraterritoriality and comity principles to international competition law matters. Understand policy issues and problems created by expanded global enforcement of competition laws.
2/29/24 Week 8	Dominance/Monopoly	Reading packet containing materials that provide an overview of different approaches to regulation of dominant firms and monopolies.	Recognize the types of conduct that may be prohibited for dominant firms. Understand different approaches to single-firm conduct by various competition law regimes.
3/7/24 Week 9	Dominance/Monopoly	Reading packet containing Google case study and other materials.	Understand different approaches to dominance and monopoly power. Present information about specific jurisdiction's approach to dominance. Understand policy considerations underlying various approaches to dominance and monopoly.
3/14/24 Week 10	Digital markets	Reading packet containing Facebook case study and other materials relating to competition and privacy	Understand policy issues and problems arising from the collection of large quantities of data about consumers.

		issues in digital markets.	
3/21/24 Week 11	Intellectual Property and Competition	Reading packet containing materials on the intersection of intellectual property and competition law.	Identify policy issues related to intellectual property and competition. Analyze fact patterns related to intellectual property and competition, including standard essential patents, licensing, and exclusionary conduct, under different competition law regimes.
4/4/24 Week 12	Mergers	Reading packet containing materials on certain international mergers reviewed in multiple jurisdictions.	Understand factors considered by various competition enforcers when evaluating mergers or acquisitions. Understand different approaches to pre-merger notification requirements and second-stage investigations.
4/11/24 Week 13	Pharmaceuticals and regulated markets	Reading packet containing materials on issues unique to pharmaceutical industry and regulated markets. <i>An attorney who specializes in pharmaceutical matters will be a guest speaker for this class.</i>	Understand different approaches of various jurisdictions to unique problems posed by pharmaceutical and other regulated industries.
4/18/24 Week 14	Practical Realities of Global Investigations and Litigation	Limited or no reading assignment. Role-playing exercise in class based on hypothetical case.	Ability to advise clients on real-world strategic questions related to a global investigation. Ability to interact with competition authorities conducting an investigation.
4/25/24 Week 15	Review Session	No reading assignment.	
Exam week	Take-home Exam		

School Policies and Resources

1) A “credit hour” at Berkeley Law is an amount of work that reasonably approximates three to four hours of work per week for 15 weeks, including (a) classroom time, (b) time spent preparing for class, (c) time spent studying for, and taking, final exams, (d) time spent researching, writing, and revising papers and other written work, and (e) time spent preparing for and completing any other final project, presentation, or performance. For the purposes of these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You can expect to spend this amount of time per unit per week on in-class and out-of-class, course-related work as described above.

2) Students who need accommodations for disability or pregnancy or want to discuss implementation of their accommodations, including accommodated exams, should contact Chelsea Yuan, Director of Student Services, Accessible Education.

Student Services schedules all exams, including accommodated exams, as the law school is committed to anonymous grading. Professors do not have authority to reschedule exams.

3) The [Academic Honor Code](#) governs the conduct of all students during examinations and in all other academic and pre-professional activities at Berkeley Law. We expect students to adhere to this code scrupulously. If you have any questions about whether your conduct may violate the code, please contact your professor or the Dean of Students before you act. You may face severe consequences, including a failing grade in this class or removal from the program, and the Bar will receive notification of your conduct.

Note: If you suspect an Honor Code violation, please **do not** investigate the matter yourself. You should immediately contact the [Dean of Students, Annik Hirshen](#) to talk through your options.

4) [Berkeley Law Academic Skills Program](#). Every student admitted to Berkeley Law has the ability to succeed in law school and we are committed to fostering an academic environment in which all students can achieve their full potential. To schedule an individual appointment and for handouts on core law school skills and study strategies, free online study aids, information about practice exams and hypos, and much more, please visit and bookmark [the Academic Skills Program website](#).

5) [Student Technology Help](#). As a Berkeley Law student, you are entitled to general software support for your computer from the law school, and certain free software downloads from UC Berkeley, while enrolled. If you have issues with internet access or computer equipment required to participate in classes remotely, contact studentcomputing@law.berkeley.edu. Information, links, and instructions for many common computer/technical questions can be found in the [law library's online computing guide](#). For bCourses, Zoom, and technical support questions, please email studentcomputing@law.berkeley.edu or you can use the [Student Computing chat](#). In both cases, someone will respond to you during our regular business hours.

If you have research-related questions, please contact the reference librarians by filling out the [reference request form](#). You can also reach reference librarians during business hours by using the [law library's chat service](#).

6) If you are in need of economic, food, or housing support, you can find basic needs information [here](#). You may be eligible for money to buy groceries via [CalFresh](#) or our Food Assistance Program. If you need food immediately, please visit our [UC Berkeley Food Pantry](#).

7) The University of California is committed to creating and maintaining a community dedicated to the advancement, application, and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence and sexual harassment, retaliation, and other prohibited behavior (“Prohibited Conduct”) that violates the law and/or University policy. The University will respond promptly and effectively to reports of Prohibited Conduct and will take appropriate action to prevent, correct, and when necessary, to discipline behavior that violates this policy. For the complete UC Policy, definitions, compliance, and procedures, please access the [Sexual Violence and Sexual Harassment Policy](#).

Resources: If you have further questions or concerns about reporting behavior related to sexual harassment, sexual violence, and/or protected category discrimination, please contact the Office for the Prevention of Harassment and Discrimination (OPHD) by phone 510-643-7985 or email ask_ophd@berkeley.edu.

[Path to Care Center](#) Confidential Advocates provide affirming, empowering, and confidential support for those that have experienced gendered violence, including sexual harassment, emotional abuse, dating, and intimate partner violence, sexual assault, stalking, and sexual exploitation. Advocates bring a non-judgmental, caring approach to exploring all options, rights, and resources. They can be reached by phone at (510) 642-1988.