SYLLABUS:

GLOBAL COMPETITION LAW & POLICY

Law J/G 726-09

(Spring 2017)

John D. Graubert

This course examines the spread of antitrust policies and enforcement mechanisms around the world, and the challenges of reconciling the legal, political and economic interests of individual nations with the needs and realities of a globalized economy. We will consider case studies from the US, EU, Asia and elsewhere, together with policy documents and international agreements. The course focuses on merger control and abuse of dominance (monopolization) but will also touch on cartel enforcement, private litigation, and related matters.

Grading is based on a paper, and an assessment of class participation. For students using this course to satisfy their J.D. upperclass writing requirement the paper must be a minimum of 6,000 words (approximately 25 pages) and otherwise comply with applicable Law Center policies. For students not seeking to satisfy this requirement, the paper must be a minimum of 4,800 words (approximately 20 pages) and otherwise comply with Law Center policies.

Reading assignments refer to the xeroxed course materials available on the Law Center system (e.g., “CM at ____”).

Class 1 (January 19): Introduction: competition regulation in the post-globalization world. While referring to supposedly objective and non-political economic principles, competition law unavoidably exists in a political context and reflects a range of varying economic philosophies that change over time. The political economy of global competition philosophies (and that of international business in general) in the immediate future is, to put it mildly, uncertain. What will competition law look like in a Brexit/Trump world?
Class 2 (January 26): The basic statutes: procedural aspects of merger regulation: A brief review of the main US and EU competition laws, and an introduction to the procedural details of pre-merger notification and review.


Class 3 (February 2): Substantive aspects of merger regulation: A review of US and EU merger review policy, and consideration of a merger review system incorporating other policy considerations.


Class 4 (February 9): Monopolization and abuse of dominance (Part I): Among the most difficult challenges for any competition agency, but particularly those in developing countries, is dealing with unilateral dominant firm behavior. The temptation is great to use competition policy to respond to complaints of “unfair pricing” or “excessive bargaining strength” whether or not such issues result from competitive problems. Competition enforcers must articulate standards for separating truly anticompetitive exercises of market power from legitimate competitive behavior.

Readings: CM at 130-148 (Deviation in Dominance: Why is Your Client A Monopolist There but Not Here; Summary of 6/12/14 EU General Court affirmance in Intel; Intel Case Highlights Differing Antitrust Approaches in EU; Geradin, The Opinion of AG Wahl in Intel; a remarkable effort.

**** SUBMIT PAPER TOPICS ****
Class 5 (February 16): Monopolization and abuse of dominance (Part II): Continued discussion of special problems in unilateral conduct, focusing on Google, Lundbeck/Actavis, and Huawei.

Readings: CM at 149-178 (Brankin, Ugarte & Kimmel, Huawei; Injunctions and Standard Essential Patents - Is Exclusion a Foregone Conclusion?; European Commission press release on Google Statements of Objections; Kent Walker, Improving Quality Isn’t Anticompetitive; Athanasiadou, Lundbeck v. Commission)

Class 6 (March 2): Cartels:


*** DETAILED OUTLINE OF PAPER DUE ***

Class 7 (March 9): Special considerations for developing and transition economies: After many years in which the U.S., and then the EU, were the principal sources of global competition regulation, over the past several decades more than 100 countries have established new competition regulation regimes. The establishment of new competition regimes presents ongoing challenges of “convergence” both of substantive standards and the transparency, due process protection and procedural fairness of the new systems.


Class 8 (March 23): When Systems Collide: The growth of private litigation in multiple jurisdictions increasingly presents questions about foreign sovereign immunity and jurisdictional issues. We will focus on recent decisions and guidance addressing extraterritorial jurisdiction and sovereign compulsion.
Readings: CM at 227-314 (Decisions in Motorola Mobility and in re: Vitamin C Litigation; proposed revisions to DOJ/FTC Guidelines for International Enforcement and Cooperation).

Class 9 (March 30): China

Readings: CM at 315-332 (Anti-Monopoly Law of the People’s Republic of China; Jim O’Connell, Rabbit, Revised -- Antitrust Enforcement in China Antitrust Magazine (Spring 2014)).

Class 10 (April 6): India

Readings: CM at 333-348 (Eleanor Fox, India: The Long Road to a Full-Function Competition Law, 21 Antitrust No. 2 (Spring 2007); Vinod Dhall, Competition Law in India, 21 Antitrust No. 2 (Spring 2007); The Fight over Fines)

*** FIRST DRAFT OF PAPER DUE ***

Class 11 (April 13): The role of international institutions and regional cooperation: Can (or should) competition policy be developed on a bilateral or multilateral basis? Potentially relevant international institutions include the World Bank, IMF, WTO, ICN, OECD, USAID, and UNCTAD. These institutions, as well as regional cooperation mechanisms, can influence the evolution of competition systems and provide technical assistance.

Class 12 (April 20): Class discussion of student papers

Class 13 (April 27): Class discussion of student papers

May 1: May graduates’ papers due

May 16: All papers due