

SYLLABUS

COMPETITION LAW – LAWS 2169 03

DALHOUSIE LAW SCHOOL

FALL 2009

INSTRUCTOR: **Subrata Bhattacharjee**
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General Description

Competition law (or antitrust law, as it is known in the United States) in its modern form is economic law with the object of providing a regulatory framework for the operation of markets. This course considers the scope and application of competition law in Canada.

Accordingly, this course will focus upon the Canadian *Competition Act* (the “Act”), which governs mergers, pricing, distribution and other trade practices in Canada. By the end of this course, you will be familiar with the legal, policy and economic underpinnings of the Canadian competition regime.

Course Format

A two and a half hour lecture will be held per week on Wednesdays from 2:00 p.m. to 4:00 p.m. As I commute from Toronto, some occasional adjustment may be necessary to enable me to catch the last flight back on Wednesdays. **Please note that some classes will be conducted by videoconference. The class will also have the benefit of some guest lecturers from the competition bar and, as available, the Bureau.** This will be discussed in class.

Travel schedule permitting, I expect to be able to hold office hours on Wednesdays in which I am due to lecture from 1:00 p.m. to 2:00 p.m. in **a location to be announced**. Please e-mail me in advance, however, to set up an appointment. However, and in any event, I am always available by telephone and email. If you wish, you may phone Heenan Blaikie toll free at 888-339-6336 and ask for extension 6830.

Evaluation

Grades will consist of the following components:

- (a) A written paper in conformity with the major paper requirements of the law school on a competition law related topic – 80%;
- (b) A presentation and class participation - 20% (10% presentation; 10% overall participation).

Students will be required to give one 10-15 minute oral presentation on an assigned topic arising out of the lecture. Given the number of students enrolled, each class (starting from the **September 16th** lecture) will generally include two student presentations. The presentation will constitute 10% of the overall evaluation and is intended to be a brief overview of a particular case, bulletin or statutory provision that is relevant to that day's lecture. Presenting students should be prepared to field general questions about the material they have reviewed, both from the instructor and from the class. Visual aids, written materials or other presentation materials are not necessary, but would be appreciated if you think them helpful.

Pursuant to the school's major paper requirements, please note that all papers submitted are to be a minimum of 25 pages in length and, ideally, should not exceed 35 pages. All papers are due on **the last day of class. No exceptions will be made and this time will not be extended.** Please refer to the major paper requirements for an outline of the applicable assessment factors.

Materials

Please note that the Competition Act was amended as of March 12, 2009, and you are therefore asked to refer to online sources for the most recent version of the legislation. The recommended text (albeit now outdated) is the CBA Fundamentals of Competition Law Handbook (the “Text”). Suggested readings are from the Text.

The supplementary materials for this class are largely available online, usually on the Bureau’s website (www.competitionbureau.com). **Where assigned materials in this syllabus are available on the Bureau site, they are noted with an asterisk.** Some materials may be placed on reserve. In the interest of reducing your costs, you are asked to obtain the listed materials (largely on the website) and review them prior to class.

Reference Materials

Trebilcock et al, *The Law & Economics of Canadian Competition Policy* (Toronto: University of Toronto Press, 2002).

Affleck, D. and McCracken, W., *Canadian Competition Law* (Toronto: Carswell, 1990) (on reserve)

Addy, G. and Vanveen, W., *Competition Law Service* (Toronto: Canada Law Book, 1999) (on reserve)

Bodrug, J. and Goldman, C., *Competition Law of Canada* (New York: Juris Publishing, 1998) (on reserve)

Policy on Plagiarism

All students in this course must read

1. The University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the plagiarism.dal.ca website, and
2. The Law School policy on plagiarism, as set out in the law school regulations (available in hard copy from the Associate Dean’s office and online at http://law.dal.ca/current_students/course_selectin_materials/regulations_handbook/ or

The Orientation Handbook (provided to all first year students and available online).

Any paper or assignment submitted by a student at Dalhousie Law School may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Students with Special Needs/Requests for Accommodation

Professor Pothier is the faculty advisor to students with disabilities. Students wishing to discuss in-class accommodation or in-class study assistance needs should see Professor Pothier.

Students seeking special accommodation with regard to any aspect of course evaluation (including exam deferrals and extensions to deadlines) must make an application to the Studies Committee. Academic regulations require such requests to be made as soon possible and, in any event, no later than the date on which the exam is to be written or the paper or other assignment is to be submitted. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information about requests for accommodation and about the Studies Committee process.

Pandemic H1N1 Influenza Advisory in relation to Academic Continuity

In the event of an escalation of the pandemic H1N1 influenza virus, the University may need to authorize Academic Units to change elements of class schedules and/or evaluation plans as outlined in course syllabi. Any change is intended to support the primary goal of reducing the risk of spreading a pandemic influenza among students, faculty and staff.

Although it is difficult to predict the severity of the pandemic, the University is committed to minimizing the impact on student's academic progress. Therefore, every effort will be made to provide students with options for continued learning and for continued fair evaluations.

Changes may include but are not limited to:

- Adjustments to course assignments;

- Changes to the dates of exams;
- Arrangements for alternative evaluations for students affected by H1N1 influenza virus;
- Adjustments to work terms;
- Modification of marks awarded for participation;
- Adjustments to attendance policies.

Any alternative plan made in individual courses may be superseded by University-wide or Government measures to reduce the spread of the pandemic H1N1 influenza virus.

Schedule

Date	Topic	Basic Readings (may be subject to change)
September 9	<p>Introduction</p> <ul style="list-style-type: none"> • Course overview • Evolution of Canadian competition policy • Overview of the <i>Competition Act</i>: actors, structure and scope of application • Regulated conduct exemption and other exemptions • Purposes of Canadian competition policy • Competition/antitrust research sources/techniques • U.S. Department of Justice Cartel Video 	<p>Act, Section 1.1</p> <p>Text, Chapter 1</p>
September 16	<p>Antitrust Economics</p> <ul style="list-style-type: none"> • Role of Economics in Competition/Antitrust Analysis • Basic Explanations/Behavioral Assumptions • Market Power • Market Definition • Developments/Trends (Chicago, post-Chicago, etc.) 	<p>Act, Section 1.1</p> <p>Adams & Brock, <i>Antitrust Economics on Trial</i>, Princeton (University Press: Princeton, 1991), pages 3-42 (on reserve at Law Library)</p> <p>Text, Chapter 2</p>

Date	Topic	Basic Readings (may be subject to change)
September 23	<p>Mergers I</p> <ul style="list-style-type: none"> • Merger case study • Notification & the merger review- process • Other related merger review regimes – sector specific, <u>Investment Canada Act</u> <p>Paper Workshop</p> <ul style="list-style-type: none"> • Students to consider possible paper topics & discuss with instructor • Research Techniques 	<p>Act, Part IX</p> <p>Notifiable Transaction Regulations*</p> <p>(a) TBD (b) TBD</p>
September 30	<p>Mergers II – Guest Lecturer – James Musgrove, Lang Michener LLP, Toronto, Ontario</p> <ul style="list-style-type: none"> • Definition of “Merger”/Types of Mergers • The “SLC” Test • Market Definition & Market Shares • Anti-Competitive Effects: Unilateral and Co-ordinated Effects • The Importance of Entry • The Efficiency Defence 	<p>Act, Sections 91-124</p> <p>Text, Chapter 11</p> <p><i>Merger Enforcement Guidelines (September 2004)*</i></p> <p>Presentation assignments:</p> <p>(a) Technical Backgrounder: Acquisition of Maytag by Whirlpool (www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02113e.html)*</p> <p>(b) <i>Information Bulletin on Merger Remedies in Canada*</i></p>

Date	Topic	Basic Readings (may be subject to change)
October 7	<p>Private Actions and Access to Competition Tribunal - Guest Lecturer – Jon Smithen, Heenan Blaikie LLP</p> <ul style="list-style-type: none"> • Jurisdiction • Section 36 • Class Actions • Injunctive Relief • Access to the Bureau’s File • Private Applications to the Competition Tribunal 	<p>Act, Sections 33 – 36, 103.1–104, 105-107</p> <p>Text, Chapters 14 & 17</p> <p>Presentation Assignments:</p> <p>(a) <i>Barcode Systems Inc. v. Symbol Technologies Canada ULC</i>, 2004 FCA 339</p> <p>(b) <i>Canada v. Bayer Inc.</i> (2003), 63 O.R. (3d) 22 (C.A.); add’l reasons at (2003), 2003, Carswell Ontario 1205 (Ont. C.A.), leave to appeal refused (2003), 65 O.R. (3d) xvii (S.C.C.)</p>
October 14	<p>Enforcement</p> <ul style="list-style-type: none"> • Agency Enforcement Priorities • Investigations & Inquiries Under the Act • Confidentiality • Information Sharing • Interim Orders • Consent Agreements • Immunity/Whistleblowing • Compliance 	<p>Act, Sections 9-23, 33-36</p> <p>Text, Chapter 15</p> <p>Presentation assignments:</p> <p>•</p> <p>(a) <i>Conformity Continuum Information Bulletin*</i></p> <p>(b) <i>Corporate Compliance Programs Bulletin*</i></p> <p>(c) <i>Bureau Immunity Bulletin (2007) and FAQ:</i> http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/h_02000e.html *</p>

Date	Topic	Basic Readings (may be subject to change)
October 21	<p>Horizontal Restraints</p> <ul style="list-style-type: none"> • Conspiracy • Strategic Alliances/Joint Ventures • Bid Rigging 	<p>Act, Sections 45-49, 90.1 et seq.</p> <p>Presentation assignments:</p> <p>(a) & (b) Draft Competitor Collaboration Guidelines*</p>
October 28	<p>Abuse of Dominance – Guest Lecturer – Michael Osborne, Affleck Greene McMurtry LLP, Toronto, Ontario</p> <ul style="list-style-type: none"> • Concept of Dominance • Anti-Competitive Acts • Joint/Collective Dominance • Market Power Under Section 79 – “But For” Test • Essential Facilities 	<p>Act, Sections 78 and 79</p> <p>Text, Chapter 9</p> <p><i>Enforcement Guidelines on the Abuse of Dominance Provisions*</i></p> <p>Presentation assignments:</p> <p>(a) <i>Information Bulletin on the Abuse of Dominance Provisions as Applied to the Telecommunications Industry (September 26, 2006)*</i></p> <p>(b) <i>Commissioner of Competition v. Canada Pipe, 2006 FCA 233.*</i></p>

Date	Topic	Basic Readings (may be subject to change)
November 4	Marketing Practices – Guest Lecturer – John Salloum, Heenan Blaikie LLP, Toronto, Ontario <ul style="list-style-type: none"> • Civil and Reviewable Deceptive Marketing Provisions • Ordinary Price Provisions • Adequate/Proper Test Provisions • Deceptive Telemarketing 	Act, Sections 52-60 and 74.01 <i>et seq.</i> Text, Chapter 12 <i>Commissioner of Competition v. Sears Canada Inc.</i> (2005), 37 C.P.R. (4 th) 65 (Comp. Trib.). Presentation assignments: (a) <i>Misleading Representations and Deceptive Marketing Practices; Choice of Criminal or Civil Track under the Competition Act Bulletin*</i> (b) <i>Information Bulletin on Ordinary Price Claims*</i>
November 11	Remembrance Day (No Classes)	
November 18	Vertical Restraints & Pricing Practices <ul style="list-style-type: none"> • Economic Consequences of Vertical Restraints • Refusal to Deal • Tied Selling • Market Restriction and Exclusive Dealing • Price Maintenance 	Act, Sections 75, 76, 77 Text, Chapters 5, 6, 7 & 8 Presentation assignments: (a) <i>Canada (Dir. of Investigation & Research) v. Chrysler Canada Ltd.</i> (1989), 27 C.P.R. (3d) 1 (Comp. Trib.); aff'd (1991), 38 C.P.R. (3d) 25 (Fed. C.A.); leave to appeal to S.C.C. refused (1992), 41 C.P.R. (3d) v. [section 75]

Date	Topic	Basic Readings (may be subject to change)
November 25	Antitrust and Intellectual Property – Guest Lecturer – Jon Smithen, Heenan Blaikie LLP <ul style="list-style-type: none"> • The IP/Antitrust Interface • Conflict/Complementarity • Sources of IP Rights • Relevant Provisions of the Competition Act • Selected Issues 	Act, Sections 32 and 79(5) Text, Chapter 16 <i>Intellectual Property Enforcement Guidelines*</i> Presentation assignments: (a) <i>Director of Investigation & Research v. Warner Music Canada Ltd.</i> (1997), 78 C.P.R. (3d) 321 (b) <i>Eli Lilly and Company et al. v. Apotex Inc. et al.</i> , 2005 FCA 361
December 2	TBD	
December 9	Major Paper Due	

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