

**S Y L L A B U S**

**COMPETITION LAW – LAWS 2169 03**

**DALHOUSIE LAW SCHOOL**

**FALL 2010**

**INSTRUCTOR:**

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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 hour lecture will be held per week on Thursdays from 1:00 p.m. to 3:00 p.m. As we commute from Toronto, some occasional adjustment may be necessary to enable us to catch the last flight back on Thursdays. **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, we expect to be able to hold office hours on Thursdays in which one of us is due to lecture from noon to 1:00 p.m. in **a location to be announced**. Please e-mail in advance, however, to set up an appointment. However, and in any event, we are always available by telephone and email. If you wish, you may phone Subrata at Heenan Blaikie toll free at 888-339-6336 and ask for extension 6830 or Michael at 416-360-5919.

**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**

*Competition Act* – office consolidation available online: <http://laws.justice.gc.ca/PDF/Statute/C/C-34.pdf> (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.)

*Competition Tribunal Act* – office consolidation available online: <http://laws.justice.gc.ca/PDF/Statute/C/C-36.4.pdf>

The required book is the *2010 Competition Act and Commentary* (LexisNexis).

The recommended (not mandatory) text is the CBA book, *Fundamentals of Competition Law*, 2d ed. (the “Text”). The 2<sup>nd</sup> edition should be available in early September 2010. The 1<sup>st</sup> edition, in the library, is now largely out of date. Suggested readings are from the Text.

The supplementary materials for this class are largely available online, usually on the Bureau’s website ([www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca)). **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).

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](http://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\\_Selection\\_Materials/Regulations\\_Handbook/index.php](http://law.dal.ca/Current_Students/Course_Selection_Materials/Regulations_Handbook/index.php) or
3. 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**

Students seeking special accommodation with regard to course evaluation, such as exam deferral and extensions to deadlines, should consult with Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes as soon as possible, and before an exam is scheduled to be written or an assignment is due. Requests for special accommodation for reasons such as illness or personal circumstances will require an application to the Law School Studies Committee. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes if they require more information about the Studies Committee process. Students wishing to discuss arrangements for classroom assistance should see Professor Wildeman, the law faculty advisor to students with disabilities.

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require academic accommodation for the writing of tests, quizzes and exams should make their request to the Office of Student Accessibility & Accommodation (OSAA) prior to or at the outset of each academic term (with the exception of X/Y courses). Please see [www.studentaccessibility.dal.ca](http://www.studentaccessibility.dal.ca) for more information and to obtain Form A – Request for Accommodation. Students may also contact the Office of Student Accessibility & Accommodation directly at 494-2836, and they may contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information.

**Schedule**

<b>Date</b>	<b>Topic</b>	<b>Basic Readings (may be subject to change)</b>
September 9	Introduction (SB & MO) <ul style="list-style-type: none"><li>• Course overview</li><li>• Evolution of Canadian competition policy</li><li>• Overview of the <i>Competition Act</i>: actors, structure and scope of application</li><li>• Purposes of Canadian competition policy</li><li>• Competition/antitrust research sources/techniques</li><li>• U.S. Department of Justice Cartel Video/”The Informant”</li></ul>	Act, Section 1.1  Text, Chapter 1

**DRAFT – FOR DISCUSSION PURPOSES ONLY**

Date	Topic	Basic Readings (may be subject to change)
September 16	<p>Enforcement (MO)</p> <ul style="list-style-type: none"><li>• Agency Enforcement Priorities</li><li>• Investigations &amp; Inquiries Under the Act</li><li>• Confidentiality</li><li>• Information Sharing</li><li>• Interim Orders</li><li>• Consent Agreements</li><li>• Immunity/Whistleblowing</li><li>• Compliance</li></ul>	<p>Act, Sections 9-23, 33-36</p> <p>Text, Chapter 2 and 15</p> <p><b>Presentation assignments:</b></p> <p>(a) <i>Bureau Immunity Bulletin (2010) and FAQ (2010):</i> <a href="http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/h_02000e.html">http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/h_02000e.html</a> *</p> <p>(b) <i>Sentencing and Leniency Bulletin (draft)</i></p> <p><b>Optional additional readings</b></p> <p><i>Communication of Confidential Information Bulletin *</i> <i>Information Bulletin on Sections 15 and 16 of the Competition Act *</i> <i>Interception of Private Communications and the Competition Act *</i> <i>Conformity Continuum Information Bulletin*</i> <i>Corporate Compliance Programs Bulletin (2008)*</i></p>

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<b>Date</b>	<b>Topic</b>	<b>Basic Readings (may be subject to change)</b>
September 23	Antitrust Economics (SB) <ul style="list-style-type: none"><li>• Role of Economics in Competition/Antitrust Analysis</li><li>• Basic Explanations/Behavioral Assumptions</li><li>• Market Power</li><li>• Market Definition</li><li>• Developments/Trends (Chicago, post-Chicago, etc.)</li></ul>	Act, Section 1.1  Adams & Brock, <i>Antitrust Economics on Trial</i> , Princeton (University Press: Princeton, 1991), pages 3-42 (on reserve at Law Library)  Text, Chapter 3
September 30	Horizontal Restraints I (MO) <ul style="list-style-type: none"><li>• Conspiracy</li><li>• Definition of a Competitor</li><li>• Ancillary Restraints</li><li>• Regulated Conduct Defence</li><li>• Bid Rigging</li></ul>	Act, Sections 45-49  Text, Chapter 4  <b>Presentation assignments:</b>  (a) <i>Competitor Collaboration Guidelines*</i> , parts 1 and 2, and part 4, examples 1-6 (b) <i>Technical Bulletin on “Regulated” Conduct*</i>

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October 7	<p>Marketing Practices – Guest Lecturer – John Salloum, Heenan Blaikie LLP, Toronto, Ontario</p> <ul style="list-style-type: none"> <li>• Civil and Reviewable Deceptive Marketing Provisions</li> <li>• Ordinary Price Provisions</li> <li>• Adequate/Proper Test Provisions</li> <li>• Deceptive Telemarketing</li> </ul>	<p>Act, Sections 52-60 and 74.01 <i>et seq.</i></p> <p>Text, Chapter 12</p> <p><i>Commissioner of Competition v. Sears Canada Inc.</i> 2005 Comp. Trib 2, 37 C.P.R. (4<sup>th</sup>) 65 (Comp. Trib.).</p> <p><b>Presentation assignments:</b></p> <p>(a) <i>Misleading Representations and Deceptive Marketing Practices; Choice of Criminal or Civil Track under the Competition Act Bulletin*</i></p> <p>(b) <i>Ordinary Price Claims Enforcement Guidelines *</i></p>
October 14	<p>Mergers I (SB)</p> <ul style="list-style-type: none"> <li>• Merger Case Study</li> <li>• Notification &amp; the Merger Review Process</li> <li>• Other Related Merger Review Regimes – Sector specific, <u>Investment Canada Act</u></li> </ul> <p>Paper Workshop</p> <ul style="list-style-type: none"> <li>• Students to Consider Possible Paper Topics &amp; Discuss with Instructor</li> <li>• Research Techniques</li> </ul>	<p>Act, Part IX</p> <p>Notifiable Transaction Regulations *</p> <p>Text, Chapter 10</p> <p>(a) <i>Merger Review Process Handbook (2009)</i></p> <p>(b) <i>Fees &amp; Service Standards Handbook (2010)*</i></p>

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October 21	<p>Mergers II (James Musgrove)</p> <ul style="list-style-type: none"><li>• Definition of “Merger”/Types of Mergers</li><li>• The “SLC” Test</li><li>• Market Definition &amp; Market Shares</li><li>• Anti-Competitive Effects: Unilateral and Co-ordinated Effects</li><li>• The Importance of Entry</li><li>• The Efficiency Defence</li></ul>	<p>Act, Sections 91-124</p> <p>Text, Chapter 11</p> <p><i>Merger Enforcement Guidelines (September 2004)*</i></p> <p><b>Presentation assignments:</b></p> <p>(a) Technical Backgrounder: Acquisition of Maytag by Whirlpool (<a href="http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02113e.html">www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02113e.html</a>)*</p> <p>(b) <i>Information Bulletin on Merger Remedies in Canada*</i></p>
October 28	<p>Horizontal Restraints – II (SB)</p> <p>Paper Workshop</p> <ul style="list-style-type: none"><li>• <u>Students to Report on Progress and Present Finalized Outlines</u></li></ul>	<p>Act, Section 90.1</p> <p>Text, Chapter 5</p> <p><u>Presentation assignments:</u></p> <p>(a) Competitor Collaboration Guidelines, parts 3 and 4, examples 8-12*</p> <p>(b) TBD</p>

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Date	Topic	Basic Readings (may be subject to change)
November 4	<p>Abuse of Dominance (MO)</p> <ul style="list-style-type: none"> <li>• Concept of Dominance</li> <li>• Anti-Competitive Acts</li> <li>• Joint/Collective Dominance</li> <li>• Market Power Under Section 79 – “But For” Test</li> <li>• Essential Facilities</li> </ul>	<p>Act, Sections 78 and 79</p> <p>Text, Chapter 9</p> <p><i>Draft Updated Enforcement Guidelines on the Abuse of Dominance Provisions*</i></p> <p><b>Presentation assignments:</b></p> <p>(a) <i>Commissioner of Competition v. Canada Pipe, 2006 FCA 233.*</i></p> <p>(b) <i>Commissioner of Competition v. Canadian Real Estate Association – pleadings – Notice of Application, Response, Reply *</i></p>
November 11 (University Closed)		
November 18	<p>Private Actions and Access to Competition Tribunal - Guest Lecturer – Jon Smithen, Heenan Blaikie LLP</p> <ul style="list-style-type: none"> <li>• Jurisdiction</li> <li>• Section 36</li> <li>• Class Actions</li> <li>• Injunctive Relief</li> <li>• Access to the Bureau’s File</li> <li>• Private Applications to the Competition Tribunal</li> </ul>	<p>Act, Sections 33 – 36, 103.1–104, 105-107</p> <p>Text, Chapters 14 &amp; 17</p> <p><b>Presentation Assignments:</b></p> <p>(a) <i>Barcode Systems Inc. v. Symbol Technologies Canada ULC, 2004 FCA 339</i></p> <p>(b) <i>Pro-Sys Consultants Ltd. v. Infineon Technologies AG 2009, BCCA 503</i></p>

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<b>Date</b>	<b>Topic</b>	<b>Basic Readings (may be subject to change)</b>
November 25	Antitrust and Intellectual Property – Guest Lecturer – Jon Smithen, Heenan Blaikie LLP <ul style="list-style-type: none"><li>• The IP/Antitrust Interface</li><li>• Conflict/Complementarity</li><li>• Sources of IP Rights</li><li>• Relevant Provisions of the Competition Act</li><li>• Selected Issues</li></ul>	Act, Sections 32 and 79(5)  Text, Chapter 16  <i>Intellectual Property Enforcement Guidelines*</i>  <b>Presentation assignments:</b>  (a) <i>Director of Investigation &amp; 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	Vertical Restraints & Pricing Practices <ul style="list-style-type: none"><li>• Economic Consequences of Vertical Restraints</li><li>• Refusal to Deal</li><li>• Tied Selling</li><li>• Market Restriction and Exclusive Dealing</li><li>• Price Maintenance</li></ul>	Act, Sections 75, 76, 77  Text, Chapters 6, 7 & 8  <b>Presentation assignments:</b>  (a) <i>Nadeau Poultry Farm v. Groupe Westco Inc.</i> , 2009 Comp. Trib. 6
December 9	Major Paper Due	