

SYLLABUS

Spring 2022 Global Antitrust Law Seminar

Professor Abbott (Tad) Lipsky
alipskyj@gmu.edu
703-303-3240

This seminar will provide a fundamental understanding of antitrust law as it has expanded into the global context. Antitrust policy, substance and the structure and operation of enforcement agencies and courts in various leading antitrust jurisdictions (Brazil, Canada, China, European Union, India and the U.S., among others) will be compared and contrasted, and key elements of antitrust enforcement in a diverse sample of the 130-plus jurisdictions with actively enforced antitrust regimes will be explored. “Hot topics” to be covered include calls for action against leading technology companies, international conflicts in the application of antitrust to intellectual property and standard-setting organizations, and controversy over the adequacy of antitrust procedures in various jurisdictions. Multijurisdictional investigations and cases – for price-fixing and similar cartel behavior, multinational merger clearance, and dominant-firm conduct – will be examined. Other topics will include how agencies in different jurisdictions coordinate and cooperate in investigations, cases, and development of international “best practices” through bilateral and multilateral agency relationships, and within multilateral enforcement-agency organizations (International Competition Network, OECD Competition Committee, APEC, COMESA and others). The course will include guest speakers who are respected leadership and staff of antitrust enforcement agencies, as well as leading private practitioners who handle complex international issues and cases.

Students who complete this course should attain the following Learning Objectives:

- To demonstrate awareness of the main historical events and trends of the global proliferation of antitrust and competition law from the US to more than 130 jurisdictions worldwide
- To identify the key substantive and procedural differences between the US antitrust laws and the laws of other leading jurisdictions, such as the EU and People’s Republic of China
- To understand the main circumstances in which the laws of different jurisdictions conflict in specific cases
- To demonstrate awareness of the main public international organizations and how they influence antitrust enforcement worldwide
- To demonstrate awareness of the specific mechanisms by which antitrust agencies in different jurisdictions cooperate in particular cases involving international cartels, monopolization and abuse-of-dominance cases, and mergers that affect multiple jurisdictions
- To understand the most important sources of conflict among the antitrust enforcement objectives of different jurisdictions in the specific context of cases involving high technology firms and industries

Reading: For each session links and/or citations have been provided to reading material. There is no assigned casebook. Additional readings will be listed as warranted. Participants will find it extremely

helpful to acquire some basic familiarity with the content of the International Competition Network website, <http://www.internationalcompetitionnetwork.org>, and the Competition Page of the website of the Organisation for Economic Co-operation and Development, <http://www.oecd.org/daf/competition/>

Grading: Grades will be based on a seminar paper. Papers should be at least 10 pages single-spaced. A student's overall grade may be adjusted one step upward or downward (for example, from an A up to an A+ or down to an A-) based on the student's participation during in-class discussions. Class attendance is critical.

Paper Deadlines:

March 8 — Paper topic
April 5 — Outline of paper
May 6 — Final paper

Schedule:

January 18

Introduction to International Antitrust and Outline of the Seminar's Content

January 25

How Antitrust Legislation Proliferated World-Wide: Emergence and Evolution

Reading:

Abbott B. Lipsky, Jr., *Managing Antitrust Compliance through the Continuing Surge in Global Enforcement*, 75 Antitrust L.J. 965 (2009), <https://www.lw.com/thoughtLeadership/managing-antitrust-compliance-during-global-enforcement>

Abbott B. Lipsky, Jr., *Overdeterrence, Non-Competition Policy Goals, and Inadequate Defense Rights – Identifying (and Fixing) Antitrust Constraints on International Trade*, 84 Antitrust L.J. 185 (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3981919

February 1

Patterns of Conflict: Overlapping Jurisdictions with Inconsistent Policy Objectives, Substantive Rules and Enforcement Procedures

Damien Geradin, *The Perils of Antitrust Proliferation - The Process of 'Decentralized Globalization' and the Risks of Over-Regulation of Competitive Behaviour* (2009), 10 Chicago J. Int'l L. 189 (2009). Available at SSRN: <https://ssrn.com/abstract=1327688> or <http://dx.doi.org/10.2139/ssrn.1327688>

February 8

Patterns of Cooperation: The New Relationships and Institutions of International Antitrust

Reading:

Randolph W. Tritell, *Meeting the Challenges of the Evolving International Antitrust Landscape*, 22 Geo. Mason L. Rev. 1269 (2015), https://www.ftc.gov/system/files/attachments/key-speeches-presentations/tritell_-_meeting_the_challenges_of_the_evolving_international_antitrust_landscape.pdf

February 15

Antitrust in Europe: From Document Clerks to Global Tech Czars

Maureen K. Ohlhausen, *U.S. – E.U. Convergence: Can We Bridge the Atlantic?*
<https://www.ftc.gov/public-statements/2016/09/us-eu-convergence-can-we-bridge-atlantic>

February 22

Antitrust in Asia: Market Rules for New Economies Replacing Ancient Empires

Anti-monopoly Law of the People's Republic of China;
<https://www.wipo.int/edocs/lexdocs/laws/en/cn/cn099en.pdf>

March 1

Multinational Merger Clearance

Readings:

International Competition Network, Recommended Practices for Merger Notification and Review Procedures,
<http://www.internationalcompetitionnetwork.org/uploads/library/doc1108.pdf>

International Competition Network, Recommended Practices for Merger Analysis,
<http://www.internationalcompetitionnetwork.org/uploads/library/doc1107.pdf>

March 8

International Cartel Cases

Readings:

ICN, Anti-Cartel Enforcement Manual, Chapter on International Cooperation and Information Sharing (2013), https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/CWG_ACEMInternationalCooperationInfoSharing.pdf

OECD, Recommendation of the OECD Council Concerning International Co-operation on Competition Investigations and Proceedings (2014),
<http://www.oecd.org/daf/competition/2014-rec-internat-coop-competition.pdf>

Motorola Mobility LLC v. AU Optronics Corp., 775 F.3d 816 (7th Cir. 2014)

United States v. Hui Hsiung, 778 F.3d 738 (9th Cir. 2014)

Lotes Co., Ltd. v. Hon Hai Precision Industry Co., 753 F.3d 395 (2d Cir. 2014)

March 22

The New Institutional Setting for Monopolization and Abuse of Dominance Cases

Reading:

“Why US Antitrust Law Should Not Emulate European Competition Policy”, Statement of Geoffrey A. Manne, President and Founder, International Center for Law & Economics on A Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and EU, Before the United States Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights Washington, D.C. December 19, 2018

<https://www.judiciary.senate.gov/imo/media/doc/Manne%20Testimony.pdf>

March 29

International Treatment of “Standard-Essential” Patents and “Fair, Reasonable and Non-Discriminatory” Royalties

Reading:

How Commissioner Vestager’s Mistaken Views on Standard-Essential Patents Illustrate Why President Trump Needs a Unified Policy on Antitrust and Innovation, 1 CRITERION JOURNAL ON INNOVATION 721 (2016). <https://www.criterioninnovation.com/articles/sidak-vestager-standard-essential-patents-antitrust-innovation-policy.pdf>

April 5

International Antitrust – The Relationship with International Trade

Reading:

Report of the International Competition Policy Experts Group,

https://www.uschamber.com/sites/default/files/icpeg_recommendations_and_report.pdf

April 12

Institutions and Procedures – The Quality of Decision Making in International Antitrust

Readings:

Abbott B. Lipsky, Jr. and Randolph Tritell, Best Practices for Antitrust Procedure: The Section of Antitrust Law Offers Its Model

https://www.americanbar.org/content/dam/aba/directories/antitrust/dec15_lipsky_tritell_12_11f.authcheckdam.pdf

ICN Guidance on Investigative Process, https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AEWG_Guidance_InvestigativeProcess.pdf

OECD, Procedural Fairness and Transparency Best Practice Roundtables, <http://www.oecd.org/daf/competition/abuse/proceduralfairnessandtransparency-2012.htm>

April 19

Concluding Themes