Universidad de Navarra

Competition Law (MUDE)
Guía docente 2026-27

INTRODUCTION

- Nombre de la asignatura: Competition Law.

- **Módulo:** Derecho de empresa.

- **Materia:** Derecho mercantil.

- **Titulación, Facultad**: Máster en Derecho de Empresa, Facultad de Derecho.

- **Duración**: 20 horas.

- **Número de créditos ECTS**: 2

- **Número de sesiones:** 16

- **Profesores que la imparten:** Antonio Creus, Gerard Pérez Olmo, Ana Valiente

- Plan de estudios: Máster Universitario en Derecho de Empresa. 2012

- **Tipo de asignatura**: obligatoria.

- **Idioma en que se imparte**: inglés

- **Horario de la asignatura**: Ver apartado “Programa”

LEARNING OUTCOMES

OBJECTIVE

The objective of this program is to cover both theory and some practice of European and Spanish Competition Law. It aims for the student to be able to acquire a Competition Law knowledge for the professional development by acquiring a degree of knowledge on the use of the logic and the instrument of the subject.

COMPETENCIAS

Competencias Básicas. Establecidas en todos los Programas Máster de España

CB6 - Poseer y comprender conocimientos que aporten una base u oportunidad de ser originales en el desarrollo y/o aplicación de ideas, a menudo en un contexto de investigación.

CB7 - Que los estudiantes sepan aplicar los conocimientos adquiridos y su capacidad de resolución de problemas en entornos nuevos o poco conocidos dentro de contextos más amplios (o multidisciplinares) relacionados con su área de estudio.

CB8 - Que los estudiantes sean capaces de integrar conocimientos y enfrentarse a la complejidad de formular juicios a partir de una información que, siendo incompleta o limitada, incluya reflexiones sobre las responsabilidades sociales y éticas vinculadas a la aplicación de sus conocimientos y juicios.

CB9 - Que los estudiantes sepan comunicar sus conclusiones y los conocimientos y razones últimas que las sustentan a públicos especializados y no especializados de un modo claro y sin ambigüedades.

CB10 - Que los estudiantes posean las habilidades de aprendizaje que les permitan continuar estudiando de un modo que habrá de ser en gran medida autodirigido o autónomo.

Competencias Generales.

CG 1 - Demostrar conocimientos técnicos para el ejercicio de la profesión de asesor jurídico de empresas.

CG 2 - Conocer las áreas del Derecho relacionadas con la vida de la empresa, sus implicaciones y relaciones mutuas para proporcionar un asesoramiento eficaz a los clientes.

Competencias Específicas.

CE 1 - Orientar profesionalmente a otras personas en los sectores relacionados con la contratación mercantil, el Derecho civil patrimonial, el Derecho penal económico y el Derecho de sociedades.

CE 4 - Entender la creación, fusión y extinción de empresas teniendo en cuenta los requerimientos exigidos para cada una de estas operaciones.

CE 5 - Conocer el marco de funcionamiento de la profesión del asesor jurídico de empresas desde una perspectiva multidisciplinar e integradora de las diferentes disciplinas jurídicas e instrumentales.

CE 15 – Conocer el funcionamiento del registro de patentes y marcas y el marco legislativo que afecta a la propiedad intelectual e industrial.

CE 16 – Conocer el marco jurídico de actuación de la defensa de la competencia y los principios generales de la competencia desleal.

CE 17 – Conocer el mercado bursátil y su ámbito de actuación tanto en operaciones societarias como en aquellas relacionadas con la transmisión de títulos y valores.

PROGRAM

Session 1.

General introduction to Competition Law. The importance in present times of Competition Law. International impact and interaction with other legal areas –civil, comercial, administrative, criminal and labour law- and economy. Overview of Competition law, undertakings agreements and competition law, abuse of dominant position, merger control and state aid. How to obtain the relevant materials on competition law, websites.

Session 2.

Competition Law Overview: economic fundamentals, legal provisions and bodies entrusted with its applications, mainly in the EU and Spain. Who is in charge of competition law application. Sectors liberalization. Direct applicability of EU rules.

EU Council Regulation (EC) 1/2003. Spanish Competition Act 15/2007. Spanish Competition Autonomous Regions Act 1/2002. Regional regulation.

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Scope of competition law application: particular sectors (agricultural, transport, insurance). Subjective application, the concept of undertaking, groups of companies and state-owned companies, Article 106 TFEU. Extraterritorial application. Relevant market definition. EU trade affected. Overview to the enforcement procedures.

Session 3.

Article 102 TFUE: Abuse of Dominant Position I

Elements of the abuse of dominant position. Market definition. Dominance. Joint dominance

Session 4.

Article 102 TFUE: Abuse of Dominant Position II

Different types of abuse and review of some cases

Session 5.

Article 101 TFEU: Horizontal Agreements I

Introduction to anticompetitive horizontal agreements. General notions about the concept of agreement under Competition law.

Prohibited hard-core cartels between competitors (price fixing, market sharing, bid rigging and others).

Session 6.

Article 101 TFEU: Horizontal Agreements II

Prohibited cartels (exchanges of confidential information between competitors) & introduction to article 101.3 exemption: legal cooperation between competitors.

Session 7.

Article 101 TFEU: Vertical Agreements I

Prohibited anticompetitive vertical restrictions (Resale price maintenance; restriction of passive sales in the EU, and others)

Session 8.

Article 101 TFEU: Vertical Agreements II and Conclusions

Legal vertical restrictions (e.g: selective distribution schemes) & Conclusions on horizontal and vertical agreements.

Session 9.

Private application I

Principles. Damages and liability. Competition law and damages. General application. Types of actions. Follow on actions. Directive 2014/104, and Spanish implementation. Disclosure. Solidarity. Immunity and leniency impact on damages actions.

Session 10.

Private application II.

Stand-alone actions. General application of damages principles. The particular case of damages caused by infringement of state aid rules.

Session 11.

Infringement Procedures I

EU infringement procedure: Historical references to the authorization procedures and changes in the current Council Regulation 1/2003. New guidelines on the application of Article 101 TFEU references to the "orientation letters". Infringement procedure: investigatory powers, right of defence, difference between procedural phases, fines (Commission notice), ending the infringement, time limit, prescription, potential appeals before the EUCJ. Notice on leniency.

Session 12.

Infringement Procedures II

Spanish infringement procedure: Investigatory powers, opening of the procedure, different phases until conclusion. Potential appeals.

Ordinary courts. Jurisdictional remit and possible outcomes: particularly in the commercial jurisdiction.

Session 13.

Merger Control I

Historical explanation of merger control, types of merger, ways to acquire individual control and joint control. Impact on competition of merger control. EU exclusive jurisdiction and member states jurisdiction. Referral of cases between EU and member states. I

Session 14.

Merger Control II

Merger control procedure in Spain and at EU Level. Notification, "gun jumping", phases of merger control, commitments, conditions and divestitures. Appeals.

Session 15.

State Aid – Analysis of concept of State aid and its control by the relevant authorities, focusing on the European perspective. Analysis of the provisions stemmed from the Treaty, secondary legislation and court rulings. Overview of the procedural rules regarding the application of State aid and the legal consequences for member states and undertakings.

Private application II.

Stand-alone actions. General application of damages principles. The particular case of damages caused by infringement of state aid rules.

Session 16.

Final test

EDUCATIONAL ACTIVITIES

Conforme a lo indicado en la Memoria del Máster en Derecho de empresa, las actividades formativas de esta asignatura son:

AF1 Clases presenciales expositivas
AF2 Clases prácticas presenciales
AF3 Estudio personal y en equipo
AF4 Tutorías
AF5 Evaluación

METHODOLOGY

The materials of the sessions will be made available through the ADI IT platform.

In case some material is not available it is expected from a post-graduate student to be able to find such a material (publicly available documents). Only if it cannot be traced you could contact one of the lecturers.

EU Competition law can be found in many different norms, ranging from fundamental treaties of the EU, such as the TFEU, to directives, regulations, and different instruments of “soft law”, therefore the appropriate websites to contrast the law in force are

(i) For antitrust and cartel:

https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation_en?prefLang=es

(ii) For merger control:

https://competition-policy.ec.europa.eu/mergers/legislation_en?prefLang=es

(iii) For state aid:

https://competition-policy.ec.europa.eu/state-aid/legislation_en?prefLang=es

Materials regarding Competition Law: restrictive agreements and abuse of dominant position

European Union

· Treaty on the Functioning of the European Union (TFEU), Lisbon Treaty

· Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty

· Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty

· Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance

· Best Practices in proceedings concerning articles 101 and 102 TFEU

· Best Practices on submission of economic evidence

· Best practices on the disclosure of information in data rooms

· Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings

· Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004

· Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (De Minimis Notice)

· Internal Procedure DG Comp Manual

· Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty

· Commission notice on immunity from fines and reduction of fines in cartel cases

· Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases

· 2006 - Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003

· 2024 - Commission notice on the definition of the relevant market for the purposes of Community competition law

· Commission Notice on the co-operation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC

· Commission Notice on cooperation within the Network of Competition Authorities

· Commission Notice on informal guidance relating to novel questions concerning Articles 81 and 82 of the EC Treaty that arise in individual cases (guidance letters)

· Commission Notice - Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty

· Communication from the Commission - Notice - Guidelines on the application of Article 81(3) of the Treaty

· Communication from the Commission: Guidance on its enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings and Amendments to the Communication from the Commission - Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings ("Amending Communication") and Annex to the Amending Communication (Official Journal C/2023 116/01)

· Communication on quantifying harm in antitrust damages actions

· Commission Regulation EU 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices

· Commission notice - Guidelines on Vertical Restraints (2022)

· Commission Regulation 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector

· Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements (TTBER)

· Communication from the Commission — Guidelines on the application of Article 101 of the Treaty on the Functioning of the European Union to technology transfer agreements (Guidelines)

· Commission Regulation No 2023/1066 of 1 June 2023 on the application of Article 101(3) of the Treaty on the functioning of the European Union to categories of research and development agreements

· Commission Regulation No 2023/1067 of 1 June 2023 on the application of Article 101(3) of the Treaty to categories of specialisation agreements

· Communication from the Commission - Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (2023)

Spain

· Spanish Competition Act 15/2007

· Spanish Royal Decree 261/2008

· Spanish Competition Regional Coordination Act 1/2002

· Spanish CNMC incorporation Act 3/2013

· Spanish Royal Decree-Law 9/2017 implementation of Directive 2014/104

· CNMC Leniency Notice

· CNMC Transaction Settlement Notice

· CNMC Provisional guidelines on the method of setting fines

· CNMC Guide on Competition Compliance Programmes

Merger Control

European Union

· Council Regulation (EC) nº 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)

· Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004 (Text with EEA relevance) (the "Implementing Regulation") and its annexes (Form CO, Short Form CO, Form RS and Form RM).

· Commission Implementing Regulation (EU) 2024/2776 correcting Implementing Regulation (EU) 2023/914.

· Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings

· Commission Notice on a sim0plified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the Notice on Simplified Procedure")

· Commission Notice on Case Referral in respect of concentrations

· Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings

· Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings

· Commission Notice on remedies acceptable under the Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004

· Commission Notice on restrictions directly related and necessary to concentrations

· DG Competition Best Practices on the conduct of EC merger proceedings

· Best Practice Guidelines: The Commission's Model Texts for Divestiture Commitments and the Trustee Mandate under the EC Merger Regulation

· DG Competition Information note on Art. 6 (1) c 2nd sentence of Regulation 139/2004 (abandonment of concentrations)

· (Access to file, market definition, terms of hearing officer, best practices of submission of economic evidence, and disclosure of information on data room as per Restrictive agreements)

Spain

· Spanish Competition Act 15/2007 (consolidated version) (last amended by RDL 5/2023)

· Spanish Royal Decree 261/2008

· CNMC provisional guidelines on handling of merger control operations according to Act 15/2007

· CNMC best practices on cooperation between NCAs

· CNMC notice on short merger notification form

State Aid

European Union

· Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union

· Commission Regulation (EU) 2015/2282 of 27 November 2015 amending Regulation (EC) 794 /2004 as regards the notification forms and information sheets

· Council Regulation 994/98 of 7 May 1998, amended by Council Regulation No 733/2013 of 22 July 2013, enables the Commission to adopt so-called Block Exemption Regulations for State aid. With these regulations, the Commission can declare specific categories of State aid compatible with the Treaty if they fulfil certain conditions, thus exempting them from the requirement of prior notification and Commission approval

· Commission Notice on a Best Practices Code on the conduct of State aid control proceedings

· Commission Notice on the determination of the applicable rules for the assessment of unlawful State aid

· Commission Notice on the recovery of unlawful and incompatible State aid

· Commission Notice on the enforcement of State aid law by national courts

· Vademecum State Aid

· Overview State Aid

Private application

European Union

- Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance
- Communication from the Commission on quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union Text with EEA relevance
- Communication from the Commission — Guidelines for national courts on how to estimate the share of overcharge which was passed on to the indirect purchaser
- Communication from the Commission Communication on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law

Spain

- Spanish Royal Decree-Law 9/2017
- CNMC “Guía de cuantificación de daños” July 2023

CASE LAW

Restrictive Agreements and abuse of dominant position

EUCJ Judgment Volkswagen EUCJ Judgment Comisión c. Italia EUCJ Judgment Oscar Bronner EUCJ Judgment IMS-NDC

EUCJ Judgment ASNEF-EQUIFAX

Spanish “Audiencia Nacional” Judgment ASNEF-EQUIFAX EUCJ General Court Judgment Microsoft

EUCJ General Court Judgment Bayer EUCJ Judgment T-Mobile

EUCJ Judgment Intel

EUCJ Judgment MEO Serviços

EUCJ Judgment Groupement Cartes Bancaires

EUCJ Judgement Coty

EUCJ Judgment FLS Plast A/S

EUCJ Judgment AC Treuhand

EUCJ Judgment Genentech

EUCJ Judgment Lundbeck

EUCJ Judgement Google Shopping

EC Decision AT.40099 Google Android

EC Decision AT.40411 – Google AdSense

EC Decision AT.39740 – Google Shopping

CNC Decision S-185/09, Bombas de Fluidos CNC Decision S-86/08, Peluquería Profesional

CNMC Decision S-14/07 Gestión Residuos Sanitarios

CNMC Decision S-13/19 Conservación de Carreteras

CNMC Decision S-005/21, Booking

Private application of competition law

EUCJ Judgment Tráficos Manuel Ferrer

EUCJ Judgment Volvo and DAF trucks

EUCJ Judgment Cogeco

EUCJ Judgment Skanska

EUCJ Judgment Donau Chemie

EUCJ Judgment Otis

EUCJ Judgment Manfredi

EUCJ Judgment Courage vs Crehan

EUCJ Judgment BRT Sabam

EUCJ Judgment SUMAL

Merger Control

Spanish Supreme Court Judgment Salcai/Utinsa

Spanish Supreme Court Judgment Prosegur/Blindados del Norte Spanish “Audiencia Nacional” Judgment ENI

EUCJ General Court Order EDF

EUCJ Order EDF

EUCJ Judgment Altice

State Aid

Commission Decision on the State aid implemented by Spain for Real Madrid and EUCJ General Court Judgment annulling the decision

Commission Decision on State aid implemented by Ireland to Apple

EUCJ Judgment Magefesa

EVALUATION/ ASSESSMENT

Evaluation: There will be a continuous evaluation throughout the entire subject. Three elements will be taken into account, first the students' oral interventions in the different sessions completed, second the written individual development of a practical case, and a final test.

Students' oral interventions: Given that it is a postgraduate degree we expect timely and adequate interventions from students to contribute to the topic addressed in each session. It is easy to understand that it is not possible for everyone to intervene in every session, though it is important to intervene and contribute in the sessions, showing knowledge and preparation. Each member of the lecturing team will assess contributions by quality and not by quantity, while at the same time it will incentivate students intervention and try to give opportunity for everyone. Thus, it is important to intervene in an appropriate and adequate manner to further the discussion and show the student preparation and knowledge. Ideally, there might be an interest to intervene at least once before each member of the lecturing team.

Practical case: A practical case will be provided. Students have to address in groups to be formed, and answer as appropriate within a maximum of pages that will be indicated. The pages have to conform to the following typography TimesNewRoman 12, adequate margins, i.e. 2 cms, and interspaces, i.e. 1 or higher.

Test: The test is aimed at evaluating the level of knowledge acquired on the subject.

FINAL MARK. The final mark will be obtained by applying the following criteria:

- Sessions participation: 30%

- Practical case: 30%

- Final test: 40%

OFFICE HOURS

To be scheduled with professors.

BIBLIOGRAPHY AND RESOURCES

The materials will be available to the students through the ADI IT platform in the "METODOLOGÍA" folder

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Relevant bibliography

"Faull and Nikpay: The EU Law of Competition" Third Edition Edited by Jonathan Faull and Ali Nikpay Localízalo en la biblioteca

"EU Competition Procedure" Third Edition Edited by Luis Ortiz Blanco

"Jones & Sufrin's EU Competition Law, Text, Cases, and Materials" Seventh Edition Alison Jones, Brenda Sufrin, and Niamh Dunne Localízalo en la biblioteca

"Competition Law" Eleventh Edition, Richard Whish and David Bailey Localízalo en la biblioteca

Relevant & useful websites

EUCJ: https://curia.europa.eu/jcms/jcms/j_6/en/

EU Commission Competition DG: https://competition-policy.ec.europa.eu/index_en

https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/competition_en

Eurlex: https://eur-lex.europa.eu/homepage.html

CNMC: https://www.cnmc.es/

Spanish case law - Cendoj: http://www.poderjudicial.es/search/indexAN.jsp

Spanish Official Journal ("Boletín Oficial del Estado" BOE): https://boe.es/

Chilling competition blog: https://chillingcompetition.com/