

Course title	Comparative Competition Law				
Responsible person to enter grades	Thomas CHENG、KAWASHIMA Fujio		開講区分	単位数	
			2nd semester	2.0	
Numbering Code		Day・Period, etc.	Other	Timetable Slot Code	3J371

Lesson topic

With the proliferation of competition law across the globe, competition law as a field has become increasingly international. While there seems to be an international consensus on many competition law issues, national variations exist. Therefore, it will be worthwhile to undertake a comparative study of competition law across jurisdictions. This course will focus on the U.S. and China, with some relevant examples from the European Union, and compare how these jurisdictions have enforced their competition laws.

Lesson target

This course aims to introduce students to the competition law of the major jurisdictions in the world from a comparative perspective.

By the end of this course, students will have a basic understanding of the fundamentals of U.S. antitrust law and PRC Anti-Monopoly law and how they compare and contrast with each other. Students will also acquire an appreciation of how contextual factors, such as a country's level of economic development and political environment, influence substantive competition rules.

Syllabus and plan

Fifteen lectures on different areas of competition law, including restrictive agreements, abuse of dominance/monopolization, merger review, the IP-competition interface, and abuse of administrative dominance, which is an area of competition law that is unique to China.

Evaluation method

Final exam (100%)

Evaluation baseline

Students will be evaluated based on their understanding of U.S. antitrust law and PRC Anti-Monopoly Law and on their ability to comment on the differences between the two regimes in an intelligent and informed manner.

Notice (include info. on related class)

This course presumes no prior background in competition law, although some basic understanding of competition law principles would be helpful.

Review and preparation

The details will be announced at the first session.

Office hour・Contact information

Contact details will be announced during lectures.

Message for student

Students are advised to prepare for class in advance and participate actively in class discussions.

Improvements in Teaching

Text

Antitrust Analysis: Problems, Text and Cases (Aspen Casebook Series, 8th ed.) / P. Areeda, L. Kaplow, A. Edlin & C. Hemphill : Wolters Kluwer Law & Business ,2021 ,ISBN:

Reference Material

China' s Antimonopoly Law: The First Five Years / Adrian Emch & David Stallibrass eds. : Wolters Kluwer Law & Business ,2013 ,ISBN:

The Evolution of China' s Anti-Monopoly Law / Xiaoye Wang : : Edward Elgar ,2014 ,ISBN:

Classroom Language

English

Keywords

Competition Law, Comparative, China, U.S.

Kobe University Graduate School of Law
Comparative Competition Law

MODULE OUTLINE

I. Basic Module Information

Instructor: Thomas K. Cheng

Course materials: ANTITRUST ANALYSIS: PROBLEMS, TEXT, AND CASES (7th edn./8th edn.), Philip Areeda, Louis Kaplow, Aaron Edlin & Scott Hemphill, Aspen Publishers.

Recommended articles on PRC AML listed below.

Assessment: 100% One-hour final exam

II. Module Description

This course introduces students to the competition law of the People's Republic of China, otherwise known as the Anti-Monopoly Law ("AML"), from a comparative perspective. Despite the relatively short history of the AML—it was adopted in August 2007 and came into effect in August 2008—China has quickly established itself as one of the major competition law jurisdictions in the world. It is regarded as one of the three leading merger review jurisdictions, alongside the U.S. and the European Union. While it has taken the U.S. and the EU decades to impose substantial fines, it has taken China less than a decade to fine the U.S. technology giant almost USD1 billion for abusive licensing practices. China has also been very active in cartel enforcement and enforcement against resale price maintenance, imposing multi-million dollar fines on companies for violations. There is little doubt that China is one of the most important competition law jurisdictions in the world. Despite all this, competition law decisional practices and case law are relatively sparse in China. To better understand and illustrate competition law principles in China, it may be helpful to draw on the jurisprudence of other jurisdictions. In this course, we will mainly focus on U.S. antitrust law.

Apart from its importance, the AML is worth studying also because of some of its unique features, the most prominent of which is Chapter 5. Chapter 5 deals with what is known in China as abuse of administrative monopoly, a phenomenon that is not unique to but is particularly serious in China due to the omnipresence of the state in the Chinese economy. The term refers to administrative interference in the market under various guises and encompasses conduct that is handled in other jurisdictions by non-competition law tools, such as the dormant commerce clause in the U.S. and the free movement of goods law in the EU. China is, however, one of a small number of jurisdictions which have chosen to tackle such administrative behavior under competition law.

III. Course Objectives and Outcomes

1. To introduce students to the basics of competition law in China from a comparative perspective.
2. To illustrate the interplay between law, economics, and politics in the context of competition law enforcement in an economy that differs significantly from that of the U.S. and the EU both in terms of the stage of economic development and state involvement.

IV. Course Schedule

Day 1:

January 10 (Tue)

Class 1: 13:20pm to 14:50pm

General Introduction

Class 2: 15:10pm to 16:40pm

Restrictive Agreements

Day 2:

January 11 (Wed)

Class 1: 15:20pm to 16:40pm

Restrictive Agreements

Class 2: 17:00pm to 18:30pm

Restrictive Agreements

Day 3:

January 12 (Thu)

Class 1: 13:20pm to 14:50pm

Abuse of Dominance

Class 2: 15:10pm to 16:40pm

Abuse of Dominance

Day 4:

January 16 (Mon)

Class 1: 15:10pm to 16:40pm

Abuse of Dominance

Class 2: 17:00pm to 18:30pm

Merger Review

Day 5:

January 17 (Tue)

Class 1: 13:20pm to 14:50pm

Merger Review

Class 2: 15:10pm to 16:40pm

IP-Competition Interface

Day 6:

January 18 (Wed)

Class 1: 15:10pm to 16:40pm

IP-Competition Interface

Class 2: 17:00pm to 18:30pm

IP-Competition Interface

Day 7:

January 19 (Thu)

Class 1: 13:20pm to 14:50pm

Abuse of Administrative Monopoly

Class 2: 15:10pm to 16:40pm

Abuse of Administrative Monopoly

Day 8:

January 20 (Fri)

Class 1: 1:20pm to 2:50pm

Examination

V. Recommended Reading**General Introduction**

Articles on China:

1. Angela Huyue Zhang, *Bureaucratic Politics and China's Anti-Monopoly Law*, 47 Cornell International Law Journal 671-707 (2014).
2. Randall Peerenboom, *Resistance, Revision and Retrenchment in the Transition to a Competitive Market Economy in China*, La Trobe University School of Law Legal Studies Working Paper Series No. 2008/8 1-24.
3. Zhenguo Wu, *Perspectives on the Chinese Anti-Monopoly Law*, 75 Antitrust Law Journal 73-116 (2008).

4. Xiaoye Wang, *Highlights of China's New Anti-Monopoly Law*, 75 *Antitrust Law Journal* 133-150 (2008).
5. Salil K. Mehra & Meng Yanbei, *Against Antitrust Functionalism: Reconsidering China's Antimonopoly Law*, 49 *Virginia Journal of International Law* 379-429 (2009).
6. Oliver Q.C. Zhong, *Dawn of a New Constitutional Era or Opportunity Wasted, An Intellectual Reappraisal of China's Anti-Monopoly Law*, 24 *Columbia Journal of Asian Law* 87-128 (2010).
7. Adrian Emch, *Chinese Antitrust Institutions—Many Cooks in the Kitchen*, 10 *Competition Policy International* 217-226 (2014).
8. Wendy Ng, *The Independence of Chinese Competition Agencies and the Impact on Competition Enforcement in China*, *Journal of Antitrust Enforcement* 1-22 (2015).
9. Thomas J. Horton, *Antitrust or Industrial Protectionism: Emerging International Issues in China's Anti-Monopoly Law Enforcement Efforts*, 14 *Santa Clara Journal of International Law* 109-142 (2016).

Monopolistic Agreements

U.S. Cases:

1. *United States v. Socony-Vacuum Oil*, 310 U.S. 150 (1940). (Areeda, Kaplow & Edlin 7th edn. (AKE 7) 134-140/8th edn. (AKE 8) 107-113)
2. *United States v. Topco Associates*, 405 U.S. 596 (1972). (AKE 7 146-147/AKE 8 117-119)
3. *National Society of Professional Engineers v. United States*, 435 U.S. 679 (1978). (AKE 7 166-171/AKE 8 138-143)
4. *Broadcast Music v. Columbia Broadcasting System*, 441 U.S. 1 (1979). (AKE 7 149-158/AKE 8 121-130)
5. *Arizona v. Maricopa County Medical Society*, 457 U.S. 332 (1982). (AKE 7 159-165/AKE 8 132-137)
6. *State Oil Co. v. Khan*, 522 U.S. 3 (1997). (AKE 7 605-611/AKE 8 554-159)
7. *California Dental Association v. Federal Trade Commission*, 526 U.S. 756 (1999). (AKE 7 181-193/AKE 8 154-161)
8. *Leegin Creative Leather Products v. PSKS*, 551 U.S. 877 (2007). (AKE 7 612-630/AKE 8 560-570)

Articles on China:

1. Thomas K. Cheng, *The Meaning of Restriction of Competition under the Monopolistic Agreements Provisions of the PRC Anti-Monopoly Law: Convergence to International Mainstream or a Chinese Approach?*, 40 *World Competition* 323-354 (2017).

2. Quinxu Bu, *China's Dual Enforcement System regarding Resale Price Maintenance Agreements*, 38 *World Competition* 235-252 (2015).
3. Yichen Yang, *Price-Related Cartels under the Chinese Anti-monopoly Law Regime: The Need to Clarify Four Substantive and Procedural Issues*, 39 *World Competition* 479-512 (2016).

Abuse of Dominance

U.S. Cases:

1. *Standard Oil Co. of California (Standard Stations) v. United States*, 337 U.S. 293 (1949). (AKE 7 714-719/AKE 8 646-651)
2. *Barry Wright Corp. v. Grinnell Corp.*, 724 F.2d 227 (1st Cir. 1983). (AKE 7 723-726/AKE 8 655-658)
3. *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2 (1984). (AKE 7 672-684/AKE 8 610-621)
4. *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985). (AKE 7 455-461/AKE 8 412-419)
5. *United States v. Microsoft*, 253 F.3d 34 (D.C. Cir. 2001). (AKE 7 426-443/AKE 8 388-405)
6. *Verizon Communications v. Law Offices of Curtis Trinko, LLP*, 540 U.S. 398 (2004). (AKE 7 465-472/AKE 8 423-430)

Articles on China:

1. Thomas K. Cheng, *Regulation of the Digital Economy under the Anti-Monopoly Law*, 17(2) *Competition Law International* 113-23 (2021).
2. Xueguo Wen, *Market Dominance by China's Public Utility Enterprises*, 75 *Antitrust Law Journal* 151-171 (2008).
3. Adrian Emch, *Effects Analysis in Abuse of Dominance Cases in China: Is Qihoo 360 v. Tencent a Game-Changer?*, 12 *Competition Policy International* 11-32 (2016).
4. Liyang Hou, *An Evaluation of the Enforcement of China's Anti-Monopoly Law in 2008-2013*, 3 *Journal of Civil and Legal Sciences* 1-12 (2014).

Merger Review

U.S. Cases:

1. *Hospital Corporation of America v. Federal Trade Commission*, 807 F.2d 1381 (7th Cir. 1986) (copy provided).

2. Federal Trade Commission v. Staples, 970 F. Supp. 1066 (D.D.C. 1997). (AKE 7 803-821/AKE 8 743-756)
3. Federal Trade Commission v. H.J. Heinz, 246 F.3d 708 (D.C. Cir. 2001) (copy provided).

Articles on China:

1. Dan Wei, *China's Anti-Monopoly Law and its Merger Enforcement: Convergence and Flexibility*, 14 *Journal of International Economic Law* 807-844 (2011).
2. Mark Furse, *Merger Control in China: Four and a Half Years of Practice and Enforcement—A Critical Analysis*, 36 *World Competition* 285-313 (2013).
3. Fei Deng et al., *A Hard Landing in the Soft Drink Market—MOFCOM's Veto of the Coca-Cola & Huiyuan Deal*, *Global Competition Policy* April 2009 (2).
4. Matthew T. Drenan, *Shipping Market and Why the P3 Agreement Failed*, 24 *Michigan State International Law Review* 101-108 (2015).
5. Deborah Healey, *Anti-Monopoly Law and Mergers in China: An Early Report Card on Procedural and Substantive Issues*, 3 *Tsinghua China Law Review* 17-58 (2010).
6. D. Danny Sokol, *Merger Control under China's Anti-Monopoly Law*, 10 *NYU Journal of Law & Business* 1-36 (2013).

IP-competition interface

Articles on China:

1. Thomas K. Cheng, *The IP-Antitrust Interface in China: An Uncharted Territory*, in *ANTITRUST INTELLECTUAL PROPERTY AND HIGH TECH HANDBOOK* 120-37 (D. Daniel Sokol & Roger D. Blair eds.) (Cambridge University Press 2017).
2. Thomas K. Cheng, *The PRC NDRC Case Against Qualcomm: A Misguided Venture or Justified Enforcement of Competition Law?*, 5 *Journal of Antitrust Enforcement* 76-99 (2016).
3. Thomas K. Cheng, *Antitrust Issues in the Pharmaceutical Sector in China*, in *ANTITRUST IN EMERGING AND DEVELOPING COUNTRIES* 59-83 (2nd ed.) (Eleanor Fox et al. eds.) (Concurrences 2016).
4. Liyang Hou, *Antitrust Regulation of Intellectual Property Rights in China* 1-15, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2648736.
5. Yong Huang et al., *Essential Facilities Doctrine and Its Application in the Intellectual Property Space under China's Anti-Monopoly Law*, 22 *George Mason Law Review* 1103-126 (2015).

Abuse of Administrative Monopoly/Competition and the State

Articles on China:

1. Thomas K. Cheng, *Abuse of Administrative Monopoly in China*, in STATE-INITIATED RESTRAINTS OF COMPETITION 135-165 (Josef Drexl & Vicente Bagnoli eds.) (Edward Elgar 2015).
2. Thomas K. Cheng, *Competition and the State in China*, in COMPETITION AND THE STATE 170-186 (D. Daniel Sokol, Thomas K. Cheng & Ioannis Lianos eds.) (Stanford University Press 2014).
3. Eleanor M. Fox, *An Anti-Monopoly Law for China—Scaling the Walls of Government Restraints*, 75 Antitrust Law Journal 173-194 (2008).
4. Wentong Zheng, *Transplanting Antitrust in China: Economic Transition, Market Structure, and State Control*, 32 University of Pennsylvania Journal of International Law 643-721 (2010).
5. Angela Huyue Zhang, *Taming the Chinese Leviathan, Is Antitrust Regulation a False Hope?*, 51 Stanford Journal of International Law 195-228 (2015).