

School of Accounting and Commercial Law

## COML 304 COMPETITION LAW

Trimester One 2012

### COURSE OUTLINE

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<b>Names and Contact Details</b>	<b>Office</b>	<b>Telephone</b>
<i>Course Coordinator &amp; Lecturer:</i> Yvonne van Roy Email: <a href="mailto:Yvonne.vanRoy@vuw.ac.nz">Yvonne.vanRoy@vuw.ac.nz</a> Office hours: Monday 11.00-1.00pm	RH605	463-6762
<i>Course Administrator:</i> Rebekah Sage Email: <a href="mailto:Rebekah.Sage@vuw.ac.nz">Rebekah.Sage@vuw.ac.nz</a> (Office hours: Monday-Friday 8.30am-5pm) Office is closed: 10.30-10.45am and 3.30-3.45pm.)	RH708	463-7465

#### Trimester Dates

Teaching Period: Monday 5 March – Friday 8 June  
Study Period: Monday 11 June – Thursday 14 June  
Examination Period: Friday 15 June – Wednesday 4 July (inclusive)

#### Withdrawal from Course

1. Your fees will be refunded if you withdraw from this course on or before Friday 16 March 2012.
2. The standard last date for withdrawal from this course is Friday 18 May. After this date, students forced to withdraw by circumstances beyond their control must apply for permission on an 'Application for Associate Dean's Permission to Withdraw Late' including supporting documentation.

The application form is available from either of the Faculty's Student Customer Service Desks.

## **Class Times and Room Numbers**

### *Lectures:*

**Monday** 1:40-2.30pm and **Wednesday** 9.30-10.20am in GBLT2

### *Tutorials/Workshops:*

There will be no compulsory tutorials. However, there will be four non-compulsory workshops to assist with exam study, two before the mid-trimester test, and two before the final exam. These will be held at the following times and locations:

### *Workshops before Mid-Trimester Test:*

#### *Workshop 1*

Wednesday 21 March, 10.30am-11.20am, RWW126

Wednesday 21 March, 11.30am-12.20pm, RWW126

Monday 26 March, 2.40pm-3.30pm, RWW128

Monday 26 March, 3.40-4.30pm, RWW128

#### *Workshop 2*

Wednesday 28 March, 10.30am-11.20am, RWW126

Wednesday 28 March, 11.30am-12.20pm, RWW126

Monday 2 April, 2.40pm-3.30pm, RWW128

Monday 2 April, 3.40-4.30pm, RWW128

### *Workshops before Final Exam:*

#### *Workshop 3*

Monday 21 May, 2.40pm-3.30pm, RWW128

Monday 21 May, 3.40-4.30pm, RWW128

Wednesday 23 May, 10.30am-11.20am, RWW126

Wednesday 23 May, 11.30am-12.20pm, RWW126

#### *Workshop 4*

Wednesday 30 May, 10.30am-11.20am, RWW126

Wednesday 30 May, 11.30am-12.20pm, RWW126

Wednesday 6 June, 10.30am-11.20am, RWW126

Wednesday 6 June, 11.30am-12.20pm, RWW126

## **Course Learning Objectives**

By the end of this course, students should be able to:

1. explain the social and economic objectives underlying competition law in New Zealand, and analyse some of the different views concerning these;
2. describe the operation of the regime for control under the Commerce Act (and to some degree also, the Australian Trade Practices Act, recently renamed the Competition and Consumer Act 2010);
3. apply the provisions of the Commerce Act to fact situations;
4. critically assess the reasoning of judges in competition law cases, with respect to the words and underlying policies of the Commerce Act;
5. identify the concerns underlying changes to the Act (and proposal changes), and critically analyse the effectiveness (or likely effectiveness) of these changes.

## Course Content

Week	Date	Lecture Topic	Workshops
1	5 Mar	1) Introduction to the course and the Commerce Act 1986	
	7 Mar	2) Object of the Act (s1A), role of the CC, overview	
2	12 Mar	3) Introduction to s27, ARA case	
	14 Mar	4) s27 issues – contracts, arrangements, understandings, s2(8) and 2(9)	
3	19 Mar	5) s27 issues – CAUs cont, s3(5), purpose s2(5), effect, likely effect	
	21 Mar	6) s27 issues – relevant market, competition	Workshop #1
4	26 Mar	7) s27 issues – substantially lessening competition, s3(2), s3(3); Review of s27	Workshop #1
	28 Mar	8) s30 Price fixing and Cartels	Workshop #2
5	2 Apr	9) s30 Issues (cont), ss31, 32, 33 exceptions	Workshop #2
	4 Apr	<b>9.30am - MID-TRIMESTER TEST (compulsory)</b>	
<i>6 April – 22 April (incl): MID-TRIMESTER BREAK</i>			
6	23 Apr	10) Proposal on Cartel Criminalisation	
	25 Apr	11) ANZAC DAY	
7	30 Apr	12) s29 Exclusionary Provisions: Introduction	
	2 May	13) s29 issues (cont)	
8	7 May	14) s37 Resale Price Maintenance	
	9 May	15) ss37 and 38, Resale Price Maintenance (cont)	
9	14 May	16) s36 – Taking advantage of market power	
	16 May	17) s36 – Substantial degree of power	
10	21 May	18) s36 – “Taking advantage of” (market power) <b>RESEARCH ESSAY DUE (compulsory)</b>	Workshop #3
	23 May	19) s36 – Predatory Pricing, Australian Provisions	Workshop #3
11	28 May	20) Scope of the Act, ss4, 5, 6, 7; Exceptions s44, 45	
	30 May	21) Exceptions s43 and Remedies, ss80, 81, 82, 89 (etc)	Workshop #4
12	4 June	22) QUEENS BIRTHDAY	
	6 June	23) Business acquisitions	Workshop #4

## Course Delivery

This course has two lectures each week, with four non-compulsory tutorials scheduled prior to the Mid-Trimester Test and the Final Examination. (These tutorials are designed to assist with exam study.)

## Expected Workload

The expected workload for this course is 150 hours, spent over the 12 teaching weeks, mid-trimester breaks, study week, and the examination period.

## Readings

The readings relevant to each topic area will be set out in handouts made available on Blackboard as the course progresses. There will be set material to be read in preparation for most lectures. You should make a practice of bringing your materials book and/or legislation (as appropriate) to class.

### Set texts:

The Commerce Act 1986 (incorporating all amendments).  
COML 304 Course Materials (2012)

### Recommended Reading:

There are a number of useful reference books on Competition Law held in the Law Library (some on Closed Reserve (C/R)). These include:

(NZ)

- Adhar, R., (ed.) *Competition Law and Policy in New Zealand* (C/R, Law Library)
- Brookers, *Gault on Commercial Law* – Chapters on the Commerce Act by Y. van Roy, L. Hampton, M. Berry (& others)
- Hampton, L.F., Chapter VI (“Competition Law”) of *Butterworths Commercial Law in New Zealand* by Farrar and Borrowdale (4<sup>th</sup> ed. 2000), or Chapters 31 – 37 in *Butterworths Introduction to Commercial Law*, Academic Edition 2005.
- Sumpter, M. (*et al*), *New Zealand Competition Law and Policy* (CCH New Zealand Ltd 2010).
- Van Roy, Y., *Guidebook to New Zealand Competition Laws* (2<sup>nd</sup> ed., CCH, 1991) (Note that this precedes the 2001 amendment)

(Aust)

- Taperell, G.Q., Vermeesch, R.B. and Harland, D.J., *Trade Practices and Consumer Protection* (C/R, Law Library)
- Miller, R.V., *Annotated Trade Practices Act* (C/R, Law Library)
- Heydon, *Trade Practices Law* (Loose-leaf service) (Law Library)
- Corones, S G, *Restrictive Trade Practices Law* (C/R, Law Library)
- Ransom and Pengilly, *Restrictive Trade Practices: Judgements, Materials and Policy* (C/R, Law Library)
- *Australian Trade Practices Reports* (CCH) (Law Library)

(General)

- Elhauge and Geradin, *Global Competition Law and Economics*, Hart Publishing 2007.

Note that various reports and policies of the Commerce Commission may be found on its website ([www.comcom.govt.nz](http://www.comcom.govt.nz)), including:

The Mergers and Acquisitions Guidelines

The Leniency Policy (under heading “The Commission”)

The Co-operation Policy (under heading “The Commission”)

Helpful also is the ACCC website: [www.accc.gov.au](http://www.accc.gov.au)

## Assessment Requirements

The items of assessment for this course are: a mid-trimester test, a research essay, and a final examination. Students **MUST** do **all three** items of assessment. However, the marks for these items of assessment will be totalled in whichever of the following three ways is most favourable to the student.

<b>EITHER</b>	Mid-Trimester Test	100 marks
	Research Essay	150 marks
	Final Exam	<u>250 marks</u>
	<b>TOTAL</b>	<u>500 marks</u>
<b>OR</b>	Mid-Trimester Test	100 marks
	Final Exam	<u>400 marks</u>
	<b>TOTAL</b>	<u>500 marks</u>
	(In this case the mark for the Research Essay will not count)	

<b>OR</b>	Research Essay	150 marks
	Final Exam	<u>350 marks</u>
	<b>TOTAL</b>	<u>500 marks</u>
	(In this case the mark for the Mid-Trimester Test will not count)	

- **The Mid-Trimester Test will be held on Wednesday 4 April 9.30am-10.20am**  
The test is an open book test. You may bring any material you wish into the test room.
- **The Research Essay is 2000 words (max), due on Monday 21 May by 2pm.**  
See below for more information.
- **The Final Examination is in June.**  
The final examination will be for TWO hours and is an open book exam. You may bring any material you wish into the exam room.

*Note: Your assessed work may also be used for quality assurance purposes, such as to assess the level of achievement of learning objectives as required for accreditation and audit purposes. The findings may be used to inform changes aimed at improving the quality of FCA programmes. All material used for such processes will be treated as confidential, and the outcome will not affect your grade for the course.*

## Research Essay

Suppose that the conduct which occurred in the case Crown Milling Co Ltd v The King [1927] AC394 had occurred during the period 2005-2012, and that the *Commerce (Cartels and other Matters) Amendment Bill* had been passed into law in late 2011. The relevant conduct is as follows:

A company called Distributions Ltd was set up by most of the flour millers in New Zealand to act as an exclusive selling agent for the flour produced by those millers. Crown Milling Co Ltd was one of those millers. The agreement between Distributions Ltd and the individual millers was that:

- (a) The prices for flour produced by the millers were to be fixed by the directors of Distributions Ltd (who were members of the management of the participating milling companies), *and*

- (b) Distributions Ltd was to make arrangements for the “equitable distribution of trade”, which included the power of fixing the amount of production for each participating miller and also deciding where the production was to take place at different parts of New Zealand.

Distributions Ltd had been set up after government regulation of flour supplies was removed after the First World War.

Required:

Advise the parties to the agreement about their possible liability under the amended Commerce Act, and any penalties which could be imposed. Advise also of any steps the parties might take in order to avoid or decrease their liability.

**Basic Requirements for Your Essay**

1. There should be an introduction and a conclusion, clearly headed as such.
2. Do not grossly exceed the word limit (10% tolerance is acceptable) - *after this point the work will not be marked.*
3. The due date will be strictly adhered to. However, if you consider you have a good reason for not meeting this deadline, please see the course co-ordinator as soon as you know you will have this problem. Otherwise, the penalty will be 5% per day (after the due date).
4. All ideas or quotations from another work must be referenced. You could either use footnotes (for guidance, look at the way this is done in the chapters and articles included in the materials books), or use the APA system you were shown in FCOM 110 or 111. Remember to include the page reference, not just the title of the work being referenced. *Do not quote the course materials books as a reference – quote the original source of the work you are referencing.*
5. There should be a bibliography, listing the sources of information you have used for your essay; (note that a bibliography is not a substitute for referencing).
6. Provide a separate cover sheet that shows:
  - The Title
  - Your Name
  - The Course Code
7. Leave a 2 inch (5 cm) margin, to enable room for comments.
8. Write clearly or type your work.
9. Do not plagiarise (see pp.97 & 103 of the University Calendar for further information). Plagiarism is defined there as “the presentation of the work of another person or other persons as if it were one’s own work, whether intended or not. This includes published and unpublished work, material on the Internet and the work of other students and staff”. If you want to include a passage from another person’s work, use quotation marks at the beginning and end of the passage, then include the appropriate reference. If you want to include the ideas of another person, but not their exact words, you must include a reference to that person’s work (but no quotation marks are necessary).

### Quality Assurance Note

Your assessed work may also be used for quality assurance purposes, such as to assess the level of achievement of learning objectives as required for accreditation and audit purposes. The findings may be used to inform changes aimed at improving the quality of FCA programmes. All material used for such processes will be treated as confidential, and the outcome will not affect your grade for the course.

### **Examinations**

Students who enrol in courses with examinations are obliged to attend an examination at the University at any time during the formal examination period.

The final examination for this course will be scheduled at some time during the period from Friday 15 June – Wednesday 4 July (inclusive).

### **Mandatory Course Requirements**

All three items of assessment are mandatory, i.e. the Mid-Trimester Test, the Research Essay and the Final Exam.

*Note: You will receive a fail grade if you do not receive at least 40% over the mid-Trimester Test and Research Essay combined.*

### **Penalties**

(See “Basic Requirements for Your Essay”, above).

### **Class Representative**

A class representative will be elected in the first class, and that person’s name and contact details made available to VUWSA, the Course Coordinator and the class. The class representative provides a communication channel to liaise with the Course Coordinator on behalf of students.

### **Communication of Additional Information**

Additional information concerning this course will be provided:

- (i) in lectures, *and*
- (ii) on Blackboard, *or*
- (iii) you can obtain hard copies of course handouts from the Handouts Area (near the lift area on the 7<sup>th</sup> floor of Rutherford House).

### **Use of Turnitin**

Student work provided for assessment in this course may be checked for academic integrity by the electronic search engine <http://www.turnitin.com>. Turnitin is an on-line plagiarism prevention tool which compares submitted work with a very large database of existing material. At the discretion of the Head of School, handwritten work may be copy-typed by the School and subject to checking by Turnitin. Turnitin will retain a copy of submitted materials on behalf of the University for detection of future plagiarism, but access to the full text of submissions will not be made available to any other party.

**For the following important information follow the links provided:**

**Academic Integrity and Plagiarism**

<http://www.victoria.ac.nz/home/study/plagiarism.aspx>

**General University Policies and Statutes**

Find key dates, explanations of grades and other useful information at

[www.victoria.ac.nz/home/study](http://www.victoria.ac.nz/home/study)

Find out about academic progress and restricted enrolment at

<http://www.victoria.ac.nz/home/study/academic-progress.aspx>

The University's statutes and policies are available at [www.victoria.ac.nz/home/about/policy](http://www.victoria.ac.nz/home/about/policy), except qualification statutes, which are available via the Calendar webpage at

<http://www.victoria.ac.nz/home/study/calendar.aspx> (See Section C).

Further information about the University's academic processes can be found on the website of the Assistant Vice-Chancellor (Academic) at

[www.victoria.ac.nz/home/about\\_victoria/avcacademic/default.aspx](http://www.victoria.ac.nz/home/about_victoria/avcacademic/default.aspx)

**AVC (Academic) Website: information including: Conduct, Academic Grievances, Students with Impairments, Student Support**

[http://www.victoria.ac.nz/home/about\\_victoria/avcacademic/Publications.aspx](http://www.victoria.ac.nz/home/about_victoria/avcacademic/Publications.aspx)

**Faculty of Commerce and Administration Offices**

<http://www.victoria.ac.nz/fca/studenthelp/>

**Te Putahi Atawhai**

**Maori and Pacific Mentoring Programme**

<http://www.victoria.ac.nz/tpa/>