

The Dickson Poon School of Law

KING'S
College
LONDON

King's LLM

Competition Law module descriptions for prospective students 2017–18

This document contains module descriptions for modules expected to be offered under the LLM programme starting in 2017-18, to be used as an indication of the programme's options and a way of informing your decision to study at The Dickson Poon School of Law. King's reserves the right to change the content of the modules, as well as whether or not a module is running in any particular year if the circumstances so dictate.

Note that individual terms and conditions for entry onto a module may apply, such as prerequisites or caps on the total number of students. These will be communicated clearly after enrolment onto the programme and before you are asked to make your module selection.

If you have any questions, please contact:

Law Department

law-department@kcl.ac.uk

+44 (0) 20 7848 5899

King's LLM

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King's LLM: Competition Law modules

7FLA007

COMPETITION LAW AND REGULATED NETWORK INDUSTRIES

40 CREDITS – FULL-YEAR MODULE

The European Union has taken, and continues to take, significant measures designed to liberalise certain network-based sectors. In opening up those sectors to greater competition, the European Commission has delegated a wide range of regulatory powers to National Regulatory Authorities, who work closely with National Competition Authorities in order to achieve the optimum competitive balance most likely to be able to deliver consumer welfare. That balance is often very difficult to manage, especially the delicate matters of economic judgement that need to be made in relation to the legality of particular practices and the strategically important political initiatives that are undertaken in the affected sectors which can distort the competitive process between Member States.

The module takes an inter-disciplinary approach in exploring how the balance between law and economics on the one hand, and ex post and ex ante rules on the other, is struck, both at the theoretical level and in its practical application across key sectors. You explore legal, economic and public policy principles that affect regulated sectors, and examine the application of those principles to specific sectors such as electronic communications, media, air transport and energy (gas and electricity). In addition, specialist subjects such as financial services, water and postal services are also often considered by guest lecturers.

Recent Article 102 TFEU case-law is particularly relevant here, as are a range of Sector Enquiries that have been conducted by the European Commission (often reflected in public consultations run at Member State level). Moreover, a growing body of administrative practice in the field of merger control explores how behavioural remedies can be applied in connection with mergers in the affected sectors, and the appropriate regulatory institutions that can best assure their proper implementation.

The object of the module is to prepare students for the sorts of issues likely to arise in their home jurisdictions and at Community level in these areas. Most importantly, there will be an emphasis on the evolutionary aspects of policymaking and competition law enforcement in these sectors, given the varying ownership structures and rules in different jurisdictions. As this is an advanced module, previous knowledge of competition law would clearly be preferred, but is not required.

The module is taught through lectures, primarily by leading practitioners specialising in the applications of competition law and regulation to particular sectors. The lectures are supplemented by specialist seminars delivered by economists and regulators, each of whom provides an alternative perspective on the problems already covered in the lectures. You are encouraged to actively engage with the issues being addressed. At least one Moot Court will be held on a topic of interest.

A three-hour written examination will be set. You will be able to answer by focusing on two specific areas of regulation, for example energy or communications regulation (although if students prefer to discuss more areas they can), but must also be able to respond to general analytical questions which cut across various regulated network sectors.

King's LLM: Competition Law modules

7FFLA009

ECONOMICS OF COMPETITION LAW

40 CREDITS – FULL-YEAR MODULE

The overall aim is to ensure that students have an appreciation of the underlying economics employed in anti-trust cases. The emphasis is on the practical application of economics rather than pure theory. On completing the module, you should have an understanding of the economics used in anti-trust case analysis and be aware of both the strengths and weaknesses in its application both theoretically and empirically. A key aim is that you will have an understanding of the economic tools used by anti-trust economists and to be able to engage in a dialogue with these economists.

No previous knowledge of economics is required. Whilst much of the technical economic literature is mathematical, the module will not require an advanced knowledge of mathematics. The approach to formal theory will, as far as possible, be diagrammatical.

Given the extent of the material that needs to be covered, the bulk of the lectures are devoted to formal teaching, however the style will be both informal and interactive, questions are encouraged. The economics will be illustrated by reference to actual cases. By its nature the module proceeds by considering a series of building blocks which together make up the toolkit typically used by economists in anti-trust cases. The slides presented in each seminar will be posted in advance on KEATS (Moodle). In addition, a discussion forum will be set up so that students can ask questions (anonymously if preferred) which will be answered prior to the next seminar and posted on KEATS.

7FFLA010

NEW SYSTEMS OF COMPETITION LAW

40 CREDITS – FULL-YEAR MODULE

The emergence of competition law as a global enterprise is a remarkable development in economic regulation. As recently as the 1980s, competition law was a serious concern in only a handful of jurisdictions. Today, approximately 125 jurisdictions have established competition laws, and over 110 of these have been enacted since 1990. Proficiency in competition law requires awareness of this dynamic international policy environment. Experience with old and new systems, alike, has supplied an especially informative subject for comparative study. In the years ahead, still more jurisdictions will create new competition law systems, and existing regimes will undergo major reforms.

This course addresses a number of aspects relating to the establishment and successful operation of new systems of competition law and policy. It will consider how the political and economic environment shapes and influences the objectives underpinning a competition law system, acquaint students with how various jurisdictions have defined substantive standards that govern matters such as dominant firm conduct, mergers, and agreements involving rival companies and examine how the design of competition policy institutions influences substantive policy outcomes and impacts on the interpretation of the laws. It will also consider how the institutional structure (and independence) of competition agencies may affect how companies and their legal advisers construct their arguments and in which fora (and to whom) they should raise them.

Both terms devote extensive attention to jurisdictions that have formed competition laws as part of a larger program of economic reform to facilitate greater reliance on market mechanisms. The first part of the course will focus more closely on system and institutional design. The second part will focus more deeply on the experience of a few carefully selected jurisdictions, to include China, India, Russia, Brazil, Israel and Hungary, considering how the factors discussed in the first part have influenced the introduction and development of the competition law regime in those jurisdictions.

King's LLM: Competition Law modules

7FFLA011

EU STATE AID & STATE REGULATION LAW

40 CREDITS – FULL-YEAR MODULE

The EU regulation of public undertakings and EU state aid law are increasingly important parts of EU competition law. The case law at national and European levels is growing in both number and importance, particularly of late. The reasons for this increasing focus on public intervention in the economy are numerous and varied but they primarily relate to the impact of such intervention on the completion of the internal market and the current liberalization and privatisation processes. The module focuses on the relevant provisions of the Treaty, most notably Articles 86, 87 and 88; analysing them (and the resulting case law/ decisions) through various legal, political and economic prisms. For more details please see the module outline at the bottom of this page. No previous knowledge of the subject is required.

The module is taught in seminars; you are encouraged to actively engage with the issues being addressed.

7FFLA016

EUROPEAN UNION COMPETITION LAW

40 CREDITS – FULL-YEAR MODULE

The aim of the module is to teach the basic provisions of EU competition law; to study the law in its economic and market context; and to consider particular business phenomena - distribution agreements, licences of intellectual property rights, cartels, joint ventures etc. - against the backdrop of the EU Treaty generally and Articles 101 and 102 and the EU Merger Regulation in particular. No previous knowledge of the subject is required.

Throughout the academic year there will be a series of tutorials, given by David Bailey, which follow the course of seminars given by Richard Whish. The tutorials are intended to assist your understanding of the subject in general and its practical application to problem questions in particular. A separate tutorials handout will be provided.

The teachers of this module expect a high degree of participation by all students. It is not intended, in general, to provide lectures except where, for particular reasons, it may be helpful to do so. At each seminar, discussion will be encouraged and expected. You are required to have prepared answers to the questions asked at the end of each seminar handout.

7FFLA059

UK COMPETITION LAW

40 CREDITS – FULL-YEAR MODULE

This module is concerned with the control of private economic power through the competition laws in the UK. Those laws are contained primarily in the Competition Act 1998 (as amended) and the Enterprise Act 2002. The landscape for competition law enforcement in the United Kingdom has changed out of all recognition in the last few years. Articles 101 and 102 of the EU Treaty are directly applicable in the UK, and, in certain circumstances, the domestic authorities and national courts are obliged to apply them. However, there is also a substantial body of competition case-law and decisional practice in the UK.

The purpose of this module is to consider the rationale, scope and application of the Chapter I and II prohibitions in the Competition Act 1998 (which broadly correspond to the Articles 101 and 102 EU). It will also examine distinct features of UK competition law, including concurrent enforcement by sector-specific regulators of the Competition Act 1998 and market investigation references, the domestic merger control regime, super-complaints, and the criminal cartel offence under the Enterprise Act.

No previous knowledge of the subject is required.

The module is taught in weekly seminars; you are encouraged to actively engage with the issues being addressed.

7FFLA061

US ANTITRUST LAW

40 CREDITS – FULL-YEAR MODULE

This module examines the US federal antitrust laws, the world's oldest sophisticated competition regime. You study the core antitrust provisions, chart the evolution of the law and examine the different factors which have led the law to its current provisions. The module introduces the laws, their objectives and the enforcement system prior to considering how they apply to horizontal and vertical agreements and unilateral conduct. No previous knowledge of the subject is required.

The module is taught in seminars; you are encouraged to actively engage with the issues being addressed.

King's LLM: Competition Law modules

7FFLA579

EU PUBLIC PROCUREMENT LAW

20 CREDITS – HALF-YEAR MODULE

EU public procurement law has emerged as a major area of practice for EU lawyers, bolstered by the introduction of new enforcement procedures in 2009 and a growing volume of cases before the European and Member State courts. This module offers a comprehensive grounding in the EU regime. It covers:

- the policy objectives of the EU public procurement law regime and its foundations in the TFEU;
- the substantive rules relating to entities and contracts covered, award procedures, selection of bidders and contract award criteria;
- information disclosure requirements, in particular the European courts' evolving case law and the relationship with the general principle of transparency and Freedom of Information laws;
- the use of public procurement to further social, policy and environmental objectives;
- and enforcement mechanisms and practice throughout the EU, including the new Remedies Directive and Article 258 TFEU infraction proceedings.

No previous knowledge of the subject is required.

7FFLA592

ADVANCED MERGER ECONOMICS FOR LAWYERS

20 CREDITS – HALF-YEAR MODULE

This module will provide lawyers with greater insight into the economics of mergers across a number of different jurisdictions worldwide. This is an area where law and economics has evolved dramatically in recent years and where academic research into the effects of mergers have led to dramatic changes in approach in practice. The course focuses not on jurisdictional and procedural aspects of competition law merger control but on substantive assessment. It adopts a comparative approach highlighting difference in goals and economic approach and considers how academic advances have impacted no such assessment.

7FFLA593

COMPETITION ENFORCEMENT AND PROCEDURE

20 CREDITS – HALF-YEAR MODULE

Competition enforcement has undergone major reforms in the past decade, generating intellectually stimulating scholarship and challenging practical problems. In the European Union, enforcement by the European Commission and National Competition Authorities (administrative or public enforcement) changed significantly in 2004. Furthermore, competition enforcement has moved away from a purely administrative model. Alongside public enforcement, private litigation (private enforcement) is now a major feature of the system and, in some countries, including the United Kingdom, certain competition infringements are also a criminal offence (criminal enforcement). In addition, competition enforcement has a global dimension, both in terms of the scope and breadth of legal scholarship and in practice. The aim of this course is to give students the knowledge and the analytical tools necessary to understand the dynamics of public and private enforcement in the European Union and in the global context, to deal with the complex procedural problems that arise in practice, and to form their own view on the policies and enforcement models involved.

While the main focus of the course will be on EU law, the course also aims at exploring the relationship between EU law and national law. Therefore, enforcement models in EU Member States will be discussed, with a privileged but not necessarily exclusive focus on the United Kingdom and English law. Furthermore, jurisdictions outside the EU will be considered when they have provided important intellectual paradigms for the development of competition enforcement or because of their practical importance. In both respects, the United States of America is a key jurisdiction.

King's LLM: Competition Law modules

7FFLA595

REGULATORY POLICY AND PRACTISE

20 CREDITS – HALF-YEAR MODULE

Regulation has become a permanent feature of the way in which contemporary democratic economies (including Britain and other European countries) are governed. There are few spheres of economic activity that are not subject to some form of regulatory oversight and control. Daily news programmes rarely pass without some mention of a significant regulatory decision, proposed regulatory reform, or allegations of some regulatory failure or scandal. For lawyers, dealings with regulators and regulatory regimes have become part of the staple diet of their work. Yet the practice of regulation is far from straightforward. Regulatory policy and practice has evolved considerably from its traditional origins in the form of 'command and control', accompanied by the growth of specific terminology and concepts that are likely to be unfamiliar to those other than regulatory technocrats. This course provides an opportunity for students to develop an understanding of, and critically to evaluate, the basic tools, techniques and decision-making methodologies that are employed in regulatory design and practice. It will be of interest to both private and public sector lawyers who practice in regulated sectors of the economy, enhancing their understanding of how regulators go about the business of regulatory decision-making.

This module is aimed at providing students with a set of general analytical tools and concepts that may be applied to the regulation of any domain of social activity, in any jurisdiction, in seeking to understand how regulatory authorities pursue the social and/or economic objectives that they are expected to promote. Students will develop an awareness the challenges (of both a principled and practical kind) associated with attempts by regulatory authorities in seeking to promote particular social goals, including an appreciation of the kinds of conflicts and tensions which may arise within, or as a product of, the regulatory process. It will also enable students to undertake a critical appraisal of regulatory institutions, policy and practice, including the role and limits of the law's contribution to regulation.

First, we will begin by exploring debates about the nature of regulation, the regulatory state, and the role of law in the regulatory endeavour. Secondly, we will explore different techniques and instruments of regulation, ranging from classical 'command-and-control' regulation through to instruments which rely primarily on other competition, consensus, communication or 'code' (architecture) as the means for regulating social behaviour. Thirdly, we will consider so-called 'new governance' approaches to regulation and the factors which may influence the choice of regulatory instrument. Fourthly, we examine issues of enforcement and compliance styles, including the role of the civil and criminal law, the role of private enforcement, and explore the way in which regulatory enforcement is carried out 'at the sharp end' in the practice of regulatory enforcement officials.

No previous knowledge of the subject is required. This module will be useful to students from a range of backgrounds (including but not limited to those with an interest in competition and utilities regulation) particularly those interested in public policy generally, or in the regulation of particular sectors, such as technology, banking, energy, healthcare and so forth. It encourages students to view the law in a fresh light, drawing upon insights from various social scientific perspectives (including politics, economics and criminology) in order to understand how the law helps to shape public policy outcomes and social behaviour more generally.

King's LLM: Competition Law modules

7FFLA601

COMPETITION LAW IN FINANCIAL SERVICES

20 CREDITS – HALF-YEAR MODULE

The financial industry plays a crucial role in the UK economy. Financial products and services are diverse and highly regulated and present a number of features which may make financial markets working not as well as they should, in the interests of consumers.

Following the financial crisis, regulation in the sector has become stricter and so has the application of competition laws, and not only in the State aid field, where since October 2008 EU governments' support of banks in distress resulted in more than 400 decisions involving about a quarter of the EU banking system by assets. The increasingly central role of financial services in the enforcement priorities of the competition authorities at EU and UK levels is reflected in numerous cartel, abuse of dominance and merger control cases as well as a considerable number of market investigations/studies.

This module will provide students with an in-depth knowledge of the main dynamics affecting the application of competition laws in financial services assessing banking, insurance, capital markets and payment systems cases and market investigations.

Contact

The Dickson Poon School of Law
King's College London
Somerset House East Wing
London WC2R 2LS

Tel: +44 (0) 20 7848 2097

Fax: +44 (0) 20 7848 7200

Email: law-llmadmissions@kcl.ac.uk

