

# ADMINISTRATIVE LAW AND ECONOMIC REGULATION

**Bachelor of Laws LLB [2504110] SEP-2023 ALER-NLL.2.S.A**

Area Public Law and Global Governance

Number of sessions: 30

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Degree course: SECOND

Number of credits: 6.0

Semester: 1<sup>o</sup>

Category: COMPULSORY

Language: English

Professor: **LAZAR RADIC BOSKOVIC**

E-mail: [lradic@faculty.ie.edu](mailto:lradic@faculty.ie.edu)

Lazar is Senior Fellow in Law and Economics at the International Center for Law and Economics, and Adjunct Professor of Law at IE University. He specializes in competition law and economic regulation.

Lazar is a qualified lawyer with experience in band one law firms in Spain and Serbia, where he worked on all aspects of competition law and policy. He holds degrees in Law and Political Science from the Universidad Autonoma de Madrid, and LL.Ms from the University of Amsterdam (EU and International Law, Cum Laude) and the European University Institute (Comparative and International Laws). His PhD thesis, also awarded by the European University Institute, explores the political philosophy of competition law. Currently, his research and scholarship focuses on the legal, economic, and philosophical aspects of competition law and economic regulation in the digital sector.

His work has been published in several international journals. He blogs regularly at: <https://truthonthemarket.com/>

[lradic@faculty.ie.edu](mailto:lradic@faculty.ie.edu)

## SUBJECT DESCRIPTION

The course examines the competing explanations for the need and the development of regulatory intervention in markets and activities that affect citizens in several ways, whether with direct economic implications –as is normally the case– or otherwise.

The instrument governments apply in such situations is Administrative Law. However, this is a field where law merges with policy-making and economics, so a multi-discipline approach is needed in order to properly perform the legal tasks at stake.

The intervention of the State by means of specialised bodies –subject to varying degrees of independence from the executive– into the private market is a phenomenon whose rationales and instruments have been refined in recent years. In regulated sectors, regulators face the same issues within and outside national borders –whether or not the solutions are shared. From the classic control over basic resources such as oil and gas towards the evasive world of personal data and the internet, the present course studies the different styles and processes of regulation from a comparative and cross-border perspective, focusing on analytical methodology, remedial action, legal implications, enforcement and accountability.

This course is divided into three blocks:

**Block 1:** Theory of Economic Regulation

**Block 2:** Competition Law

**Block 3:** The Future of Economic Regulation: Regulating AI and Digital Platforms

## LEARNING OBJECTIVES

**The objective of the course is that students:**

1. Understand the main theories that underpin economic regulation.
2. Familiarize themselves with the risks and benefits of regulatory intervention, and the different theoretical approaches thereto.
3. Learn the main types of regulatory enforcement and be able to distinguish between ex-ante and ex-post regulation.
4. Be able to identify the main areas in which economic regulation takes place.

**By the end of the module, students will be expected to:**

1. Describe the main characteristics of the different regulatory systems, such as competition law and ex ante regulation applicable to specific sectors.
2. Describe the main reasons that justify economic intervention and identify the risks of over and under-regulation, as well as of "bad" regulation.
3. Discuss whether remedies are appropriate and proportionate and the legal and economic implications of such intervention.
4. Discuss the most appropriate ways to force companies to comply with regulatory obligations.
5. Place economic regulation in the broader context of administrative law.

## TEACHING METHODOLOGY

IE University teaching method is defined by its collaborative, active, and applied nature. Students actively participate in the whole process to build their knowledge and sharpen their skills. Professor's main role is to lead and guide students to achieve the learning objectives of the course. This is done by engaging in a diverse range of teaching techniques and different types of learning activities such as the following:

<b>Learning Activity</b>	<b>Weighting</b>	<b>Estimated time a student should dedicate to prepare for and participate in</b>
Lectures	20.0 %	30.0 hours
Discussions	6.67 %	10.0 hours
Exercises in class, Asynchronous sessions, Field Work	6.67 %	10.0 hours
Group work	2.0 %	3.0 hours
Individual studying	64.67 %	97.0 hours
<b>TOTAL</b>	<b>100.0 %</b>	<b>150.0 hours</b>

## **PROGRAM**

### **SESSIONS 1 - 2 (LIVE IN-PERSON)**

#### **Introduction to Economic Regulation**

In this introductory session, we will seek to understand the basic concepts underpinning the notion of economic regulation and to delineate the scope of the course. We will start by discussing the paper "What is Economic Regulation?", and grasping the conceptual differences between two types of regulation: economic regulation and social regulation. While social regulation is relevant in its own right, the first two blocks of the course will focus on the former sort. We then move on to discussing the goals of economic regulation and the techniques public authorities may use to achieve these goals. We finish by inquiring about the relationship between sector-specific regulation of network industries/public utilities and competition law. Why do you think the two are studied together?

*Article: Economic Regulation (Kauffman Institute)*

*Article: What is Economic Regulation? (s-c)*

*Book Chapters: Understanding Regulation, chapter 2: Why regulate? (ced)*

*Article: Economic Regulation: A review of issues (Annals of Public and Cooperative Economics, 73(4), 493–519; 2002) (CED)*

### **SESSIONS 3 - 4 (LIVE IN-PERSON)**

#### **Theories of Economic Regulation**

Does economic regulation always serve the public good? In this session, we seek to untangle this fundamental question by studying two theories that seek to explain economic regulation from opposing angles: the public interest theory and the public-choice theory. By the end of this session, students should have a general theoretical toolkit allowing them to better understand the justification and reasons (the two are not necessarily the same thing) behind different types of economic regulation.

*Article: The Theory of Economic Regulation (The Bell Journal of Economics and Management Science, 2(1), 3. 1971) (CED)*

*Article: Theories of Economic Regulation (The Bell Journal of Economics and Management Science, 5(2), 335–358. 1974) (CED)*

*Article: Slow Economic Growth: It's the Regulations, Stupid! (Reason, 2016, May 24)*

*Multimedia Material: Video: Great Moments in Unintended Consequences (Vol. 4) (Youtube)*

## **SESSIONS 5 - 6 (LIVE IN-PERSON)**

### **Public Utilities as the Quintessential Subjects of Economic Regulation**

In this session, we look at two examples of regulated industries: energy and telecommunications. We look at their goals and the techniques used to achieve them. Can we apply any of the lessons from sessions 1 to 4 to the economic regulation applicable to these two industries?

*Article: New EU telecom rules: latest actions in time for transposition deadline (European Commission, 21 December 2020)*

*Article: The European Internal Energy Market Factsheet (European Union)*

*Book Chapters: Modern Economic Regulation, Chapter 10: Telecommunications Regulation*

*Article: Big Telco vs. Big Tech: The battle over 'fair share,' explained (Politico Pro, FEBRUARY 20, 2023)*

## **SESSIONS 7 - 8 (LIVE IN-PERSON)**

### **Regulatory Agencies**

In this session, we examine the role and powers of different types of regulatory agencies. What does it mean when a regulatory agency is "independent"? Why is it important that regulatory agencies should remain independent, and how can such independence be guaranteed (if at all)? What is the alternative to independent agencies? How should regulatory agencies enforce the rules against market actors? We end by discussing the notion of the "administrative state," i.e., the notion that the mushrooming of regulatory agencies creates a sprawling, bloated, costly and unmanageable state apparatus, and the arguments raised by its critics, especially in the US.

*Book Chapters: Modern Economic Regulation: An Introduction to Theory and Practice, chapter 7: The institutions of regulation (ced)*

*Book Chapters: Types of Responsiveness, chapter 7 in Regulatory Theory: Foundations and Application*

*Article: The Rise and Rise of the Administrative State (Harvard Law Review, 107(6), 1231–1254, 1994) (CED) (Optional)*

## **SESSIONS 9 - 10 (LIVE IN-PERSON)**

The first part of this session is reserved for a general review of the materials covered so far. Together, we will clarify any outstanding questions and make sure that everyone has a solid grasp of the main ideas, theories, and concepts discussed in the first block. In the second part of the session, students will sit a test made up of a combination of multiple-choice, true/false, and short-form questions. The duration of the test will be approximately one hour.

## **SESSIONS 11 - 12 (LIVE IN-PERSON)**

### **The Economics of EU Competition Law**

In this session, which marks the beginning of the second block of the course, we seek to grasp the basic economic principles underpinning EU competition law. Competition laws (antitrust laws in the US) are laws that seek to curb anticompetitive behavior and which, unlike economic regulation, apply across the board i.e., to *all* companies. Before we delve into the substance of the law, however, it is important that we become familiar with some basic economic concepts which undergird it, such as productive, dynamic, and allocative efficiency; deadweight loss; consumer welfare and consumer surplus; market definition and market power. These concepts serve to guide law enforcement, but also – as we shall see – to justify the existence of competition laws in the first place.

*Book Chapters: EU Competition Law: Text, Cases, and Materials (chapter 3: MARKET POWER,*

MARKET DEFINITION, AND BARRIERS TO ENTRY) (ced)

*Book Chapters: EU Competition Law: Text, Cases, and Materials (chapter 1: INTRODUCTION TO COMPETITION LAW) (ced)*

*Other / Complementary Documentation: Case 85/76 Hoffman-La Roche & Co v Commission (Judgment of the Court, EU)*

## **SESSIONS 13 - 14 (LIVE IN-PERSON)**

### **The Three Legs of EU Competition Law**

Now that we understand their economic backdrop, we continue discussing the history, rationale, and objectives of competition law. The introductory chapter in Jones' and Surfin's book should help you to prepare for this. We then move on to examining the three "legs" of EU competition law: (i) anticompetitive agreements; (ii) abuse of dominance; and (iii) mergers. Use the charts attached to help you get a high-level grasp of the rules and exceptions that apply to the three legs. How do the three "legs" of competition law contribute to the goal of protecting competition?

*Book Chapters: EU Competition Law in Charts (ced)*

*Book Chapters: EU Competition Law: Text, Cases, and Materials (Chapter One: Introduction to Competition Law, 2019, OUP) (CED)*

*Other / Complementary Documentation: Ahlström Osakeyhtiö and others v Commission (Joined cases 89, 104, 114, 116, 117 and 125 to 129/85) (Judgment of the Court, EU)*

## **SESSION 15 (LIVE IN-PERSON)**

In this session, we discuss a recent EU competition law case. What were the points of fact? What economic arguments were invoked? What did the authorities (Commission or courts, as the case may be) decide and why?

The case and the relevant materials will be made available to students in due time.

## **SESSIONS 16 - 17 (LIVE IN-PERSON)**

### **State Aid and Services of General Economic Interest**

We move on to the study of another way in which EU law aims to protect competition: state aid law. EU state aid law is technically separate from EU competition law, though the two are intimately interrelated. With the state aid provisions, the Treaty on the Functioning of the European Union aims to prevent member states from favoring domestic companies, thereby distorting competition in the internal market. Thus, the EU competition law acquis – broadly understood – acknowledges that both states and private companies are in principle capable of harming competition. Finally, we look at the conditions under which Services of General Economic Interest can be exempted from the general competition provisions, and discuss how this dovetails with the broader themes of the course (market failure, economic regulation, monopoly, etc).

*Book Chapters: European Union law: Text and materials (Chapter 22: State Aid Law) (See Bibliography)*

*Book Chapters: EU Competition Law (Chapter 6: The Obligation of Member States under the EU Competition Rules) (See Bibliography)*

*Other / Complementary Documentation: Case C-280/00 Altmark (Judgment of the Court, EU)*

## **SESSIONS 18 - 19 (LIVE IN-PERSON)**

### **The Enforcement of EU Competition Law**

We now turn to exploring how EU competition law is enforced. As we will see, despite recent efforts to bolster actions for damages, EU competition law differs significantly from US antitrust law in that it relies mostly on public enforcement, namely enforcement by the Commission and the National Competition Authorities. We look at how this two level public enforcement system functions by analyzing how cases are allocated within the European Competition Network (ECN). We then discuss the Commission's and National Competition Authorities' broad powers to investigate and levy fines (including periodic penalty payments aimed at forcing compliance) against companies which have infringed, or are suspected of having infringed, EU competition law.

*Other / Complementary Documentation: Regulation 1/2003 (Official Journal of the European Communities)*

*Other / Complementary Documentation: Commission Notice on cooperation within the Network of Competition Authorities (Official Journal of the European Union)*

*Other / Complementary Documentation: Commission's Leniency Notice (Official Journal of the European Union)*

*Multimedia Material: Video: Lysine Tapes 1-6 (United States Department of Justice) (Youtube)*

*Book Chapters: EU Competition Law (Chapter 7: Articles 101 and 102: public enforcement by the European Commission and national competition authorities under Regulation 1/2003) (See Bibliography)*

*Other / Complementary Documentation: Case C-89/11 P E.ON Energie AG (Judgment of the Court, EU)*

## **SESSIONS 20 - 22 (LIVE IN-PERSON)**

In this session, students will make short (10-12 minute), individual presentations on a topic related to the second block of the course. Following their presentation, students will answer questions from their peers and receive direct feedback from the professor. This session is meant to be interactive, dynamic and engaging. Presentation topics will be suggested beforehand by the professor - but students are welcome to take the initiative.

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Feedback and review.

## **SESSIONS 23 - 24 (LIVE IN-PERSON)**

### **Regulating AI: The EU's AI Act**

This session marks the third and final block of the course, which deals with the future of economic regulation. In our first session, we look at the EU's AI Act. What does the AI Act aim to achieve? Is it better understood as economic regulation, social regulation, or a combination of both? Do public choice and rational choice theory help explain the AI Act? Are there any potential unintended consequences of the AI Act?

*Article: EU AI Act: first regulation on artificial intelligence*

*Other / Complementary Documentation: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS*

## **SESSIONS 25 - 26 (LIVE IN-PERSON)**

### **Regulating Digital Platforms: The Digital Markets Act**

In the final session of this block, we look at the recent regulatory initiatives by the EU to "rein in" tech companies. Formally, these regulations are not part of the EU competition law acquis – but do they cover some of the same conduct (e.g., "self-preferencing") contemplated by the core competition law provisions, such as Article 102 TFEU? What are the stated goals of the regulations, and why did the Commission feel the standard provisions of competition are insufficient in the context of digital markets? We examine the EU Commission's Digital Markets Act. Are these "sector-specific" regulations or are they more akin to competition law? Post DMA, will the digital sector be "fully liberalised" area of economic activity? Does the DMA share any characteristics with economic regulation of public utilities? How does it differ? Can you think of three examples of how the DMA might affect you (think of how you use your iPhone, Instagram, Amazon or Whatsapp)?

*Article: Europe fit for the Digital Age: Commission proposes new rules for digital platforms (European Commission)*

*Technical note: Digital Markets Act (European Commission)*

*Multimedia Material: Video: The EU's Digital Markets Act: What is it and what will the new law mean for you and Big Tech? (Euronews, Youtube)*

*Multimedia Material: Video: What is the EU Digital Services Act and how will it impact Big Tech? (Euronews, Youtube)*

*Article: Antitrust: Commission fines Google €2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison shopping service - Factsheet (European Commission)*

## **SESSION 27 (LIVE IN-PERSON)**

### **Digital Regulation Across the Pond: A Look at the US**

After engaging substantially with EU law, we take a quick look over the other side of the pond. We take a comparative look at digital regulation in the US by examining four recent proposed bills (which might be law by the time you read this – such is the urgency with which regulation in this field is being pursued). Now that we have a solid understanding of core competition law principles and the EU's regulatory proposals in the tech sector, we are in a good position to compare and contrast those rules with those of another leading regulatory power: the US. This raises another important concept: regulatory competition i.e., the race by jurisdiction's to set the standard for global standards beyond their national borders. Thus, we examine four proposed bills: (i) the American Innovation and Choice Online Act (AICOA); the (ii) Open Apps Market Act; and (iii) the ACCESS Act. Are these legislative proposals similar to the DMA and the DSA? What do they aim to achieve? Would you say these are competition rules, or sector-specific rules? Are they similar to "common carrier duties" imposed on network industries and public utilities?

Do you think it is appropriate to impose such obligations on private companies which have never been public monopolies, such as Google, Facebook, Amazon, and Apple?

*Technical note: American Innovation and Choice Online Act (US Congress)*

*Technical note: Access Act (US Congress)*

*Technical note: Open Apps Market Act (US Congress)*

*Article: At Open Markets Institute Conference, Klobuchar Highlights how her Bipartisan Legislation to Stop Big Tech Self-Preferencing Will Boost Innovation and Protect National Security (klobuchar.senate.gov)*

*Article: 10 Things the American Innovation and Choice Online Act Gets Wrong (2021, Truth on the Market)*

*Article: The ABA's Antitrust Law Section Sounds the Alarm on Klobuchar-Grassley (2022, Truth on the Market)*

## **SESSIONS 28 - 29 (LIVE IN-PERSON)**

The first part of this session is dedicated to reviewing the materials of block three. In the second part of the session, the class will debate the question of whether and if so how digital platforms and AI should be regulated. The class will be divided into two groups. Group one will argue the position that stricter in AI and digital platforms are necessary. Group two will argue the opposite. Students are expected to make use of the knowledge and tools acquired during the course.

### **SESSION 30 (LIVE IN-PERSON)**

The final exam will consist of an essay, the topic of which will be chosen by students and pre-approved by the professor. The deadline for handing in the essay will be one week before the final session. Upon submitting their essay, students will be assigned a partner. On the day of the exam, students will present their assigned partner's essay and give them feedback in front of the class. The grade of the final exam will be based 80% on the quality of the written essay and 20% on the quality of the presentation and the relevance of the feedback given. Students who are able to give other students (i.e, those other than their assigned partner) further valuable feedback can score up to an extra 10% more on the final exam.

### **EVALUATION CRITERIA**

<b>criteria</b>	<b>percentage</b>	<b>Learning Objectives</b>	<b>Comments</b>
Final Exam	30 %		
Intermediate Tests	30 %		
Individual Work	30 %		
Class Participation	10 %		

### **RE-SIT / RE-TAKE POLICY**

General rules: the date and location of the exams will be set in advance and will not be subject to change. In order to sit any of the three exams, students must have a 70% attendance record. Only one attempt per exam will be allowed.

Retakes: there will be a retake exam for students who fail the subject, which will take place roughly one month after the final exam. The retake exam will encompass all materials covered during the course, and the maximum grade will be capped at 80%.

### **BIBLIOGRAPHY**

#### **Compulsory**

- Damien Chalmers and Giorgio Monti. (2019). *European Union Law Text and Materials*. 4th. Cambridge University Press. ISBN 9781108463591 (Printed)
- Richard Whish and David Bailey. (2021). *Competition Law*. 10th edition. OUP. ISBN 9780198836322 (Printed)
- Christopher Decker. (2023). *Modern Economic Regulation*. 2nd edition. Cambridge. ISBN 9781009087735 (Printed)

### **BEHAVIOR RULES**

Please, check the University's Code of Conduct [here](#). The Program Director may provide further indications.



## **ATTENDANCE POLICY**

Please, check the University's Attendance Policy [here](#). The Program Director may provide further indications.

Please notify the professor at least 24 hours in advance in case you are not able to come to class. Unless you have a valid justification (e.g., medical visit or urgent family matter), your absence will be reflected negatively on your attendance score.

## **ETHICAL POLICY**

Please, check the University's Ethics Code [here](#). The Program Director may provide further indications.

