

SUBJECT: ACTION FOR DAMAGES UNDER THE EU LAW		
GRADUATE SCHOOL OF LAW: MASTER IN EUROPEAN UNION LAW	ECTS: 3	TRIMESTER: 2

WEEK SCHEDULE							
Week	Session	Session content	Group	Facilities other than classroom (lab, informatics room, etc.)	Student's week activity		
					Description	Front Class (hours)	Working hours
1	1	The foundations of European tort law. Contractual and extracontractual liability.			Analysis of the basics of civil liability in Spanish and EU Law, under the case law of ECJ and Spanish Supreme Court.	4	10
1	2	The elements of extracontractual liability and their application in the Law of the EU. The duty of reparation.			Study of the recommended bibliography, texts and materials.	4	10
2	3	The jurisdiction of the ECJ for actions of extracontractual liability.			Study of primary legislation and key provisions of the TFEU. The case law of the ECJ related to extracontractual liability.	4	10
2	4	The responsibility of the State for breaches of EU Law. Basics elements and jurisdiction. The role of national judge as a body of the EU judiciary.			Analysis of recommended case law of the ECJ regarding the Responsibility of the State for breach of the European Union Law. The national judge as guarantor of the EU rule of law.	4	10
3	FINAL EXAM					2	17
<b>TOTAL HOURS</b>						<b>18</b>	<b>57</b>

**UNIVERSIDAD CARLOS III DE MADRID**

**EU LAW MASTER - SEMINAR ON ANTITRUST DAMAGES**

**29, 30 AND 31 JANUARY AND 28 FEBRUARY 2019**

**28 January 2019**

**1. PURPOSE**

This Seminar focuses on antitrust damages in EU and Spanish law and policy. It explores the different issues that emerge over the life-cycle of an action for damages before Spanish courts in the context of an infringement of EU and Spanish competition law.

A key objective of this Seminar is to discuss the impact of the transposition of the EU Directive on antitrust damages by *Real Decreto* 9/2017 and the recent developments in follow on actions in Spain.

Under each of the topics discussed, a number of readings will serve as a platform for discussion.

**2. ASSESSMENT**

The Seminar would require students to read materials in advance (see Section 5 below).

Students would be expected to participate in classroom discussions that will take place on 29, 30 and 31 January. There would be a final case to be solved in law court format on 28 February -further instructions to follow-.

This is how you will be graded: seminar attendance and participation (40%), written submission for the final case (30%), final case to be solved in law court format (30%).

**3. COORDINATOR**

The Seminar will be coordinated by Manuel Contreras (+34 91 423 4000, [manuel.contreras@hsf.com](mailto:manuel.contreras@hsf.com)).

**4. PROGRAM**

See below the program and the speakers.

Program			
Time	Date		
	29 Jan	30 Jan	31 Jan
16:00 – 17:30	<i>"The reform of private antitrust enforcement in Spain"</i>  Speaker: Manuel Contreras (HSF Madrid)	<i>"Quantifying damages in antitrust"</i>  Speaker: Mateo Silos (Ofwat, London)	<i>"Recent developments in antitrust damages actions in Spain"</i>  Speaker: Manuel Contreras (HSF Madrid)
18:00 – 19:30	<i>"Disclosure in competition law damage actions: the Gaviscon case"</i>  Speaker: Chris Sherwin (AstraZeneca, London)	<i>"Access to documents in antitrust damage actions in Spain"</i>  Speaker: Manuel Contreras (HSF Madrid)	<i>"in-house counsel's perspective"</i>  Speaker: Magdalena Jakubicz (Cisco, Madrid)

## 5. MATERIALS

### 5.1 State of play of antitrust damages in Spain

Date and time: 29 Jan 2019, 16:00 -17:30.

Speaker: Manuel Contreras (HSF, Madrid).

Required readings:

- [What is a cartel?](#) Watch in full.
- [What is leniency policy?](#) Watch in full.
- Case [Manfredi](#). Read paras. 89 to 100.
- Case [Courage](#). Read paras. 25 to 29.
- [The Green Paper on antitrust damages actions: empowering European citizens to enforce their rights](#). Neelie Kroes (2006). Read all.
- [Directive](#). Read whereas 1 to 56.
- [Real Decreto](#). Read *exposición de motivos* (section III) and article 81 (definitions).
- For these texts, please consider:
  - What is a cartel? Who can benefit from leniency policy, why and how?
  - What are the main principles in Manfredi and Courage?
  - The obstacles identified by Neelie Kroes in 2006 to develop private antitrust enforcement in the EU, namely, stand-alone actions, costs, access to evidence and collective redress. Are any of these considered in the Directive and the Real Decreto?
- Read [Quick guide to competition law actions](#), sections. 4.1-4.4
- Read articles 1902 and 1968 [CC](#).
- Read [Real Decreto](#), article 74, Disposición transitoria primera.
- For these texts please consider
  - What is a stand-alone action? And a follow on action?
  - What is the limitation period to file a claim in a follow on action in Spain today? What was it before the Real Decreto came into force?
  - Are leniency /settlement materials available to claimants?
- Read [LEC](#), Article 15.
  - Spain operates an opt-in or opt-out regime?
  - Does the Real Decreto say something about opt in opt out model?
  - How the system works in Spain (article 15 LEC)?

### 5.2 Disclosure in competition law damage actions: the Gaviscon case

Date and time: 29 Jan 2019, 17:45 – 19:00.

Speaker. Chris Sherwin (AstraZeneca)

Required readings:

- [Directive](#) (read all)
- [Press release about the UK authority's Gaviscon decision](#) (read all)
- [Notice about a follow on claim brought by a competitor in the Gaviscon case](#) (read all)

### 5.3 Quantifying damages in antitrust

Date and time: 30 January 2019, 16:00 – 17:30.

Speaker: Mateo Silos (Ofwat, London).

Required readings:

Laitenberger, U. and F. Smuda, (2013):  
“Estimating Consumer Damages in Cartel Cases”



laitenberger and smuda\_2013.pdf

Hüschelrath, K., K. Müller and T. Veith (2013):  
“Concrete Shoes for Competition: The Effect of The German Cement Cartel on Market Price”



hüschelrath, müller and veith\_2013 .pdf

For these texts, please consider:

- What methods do the articles use to identify the counterfactual?
- What criticisms would you raise against the methodologies any of these articles use? For instance, what criticisms would you raise against using “competitive manufacturers’ brands” as a counterfactual in the differences-in-differences approach in Laitenberger and Smuda (2013)?
- If any, what suggestions would you make to improve the quantification undertaken in any of these articles?

Additional reading:

Connor, J. M. (2001): “Our Customers Are Our Enemies”



connor\_2001.pdf

### 5.4 Access to documents, leniency-related Evidence, etc. in the Spanish private enforcement system.

Date and time: 30 January 2019, 18:00 – 19:30.

Speaker: Manuel Contreras (HSF, Madrid).

Required reading:

- Read [Real Decreto](#), Article 283 bis a) to k)

For this text please consider:

- How the document exhibition system works step by step? Is this available to the defendant or it is just for the claimant only?
- Is the limitation period in Article 283 bis e) 2 of the Real Decreto compatible with the right to a due process?
- Why there are fully protected documents and documents with relative or temporary protection?

Required readings:

- [Real Decreto](#). Read articles 79, 75, 77 and Article 283 bis i) 7.
- [Cartel File Disclosure to Damage Claimants in Donau Chemie](#), Read all.

For these texts, please consider:

- What is a passing-on defence? Which party has to prove it?

- What are the legal effects in Spanish courts of a decision rendered by the UK competition authority? What about in a "post-Brexit" scenario?
- How the settlement procedure works in practice? Do you see any incentives for defendants in a cartel case to settle first and before the other members of the cartels?
- Is the system provided in Article 283 bis i) 7 in relation to the protection of leniency applications compatible with the principles of *Donau Chemie*? And with the principles of due process?

## 5.5 Recent developments in antitrust damage actions in Spain

Date and time: 31 January 2019, 16:00 – 17:45.

Speaker: Manuel Contreras (HSF, Madrid).

Required reading:

- Order of the commercial court of Valencia 17/12/2018



Valencia order.pdf

- [Real Decreto](#). Read articles 79.1 and 2 and 80.

For this text please consider:

- Which arguments are raised by the court to explain that the passing on defence cannot be used (by the defendant) for acts in which the pass of the overcharge (by the claimant) is not directly connected with the act that generated harm? What about the legal texts used by the court?

Required reading:

- Judgement of the commercial court of Madrid 7/5/2018



Mercantil Madrid.pdf

- Judgement of the commercial court of Barcelona 6/6/2018



Mercantil Barcelona.pdf

For these texts please consider:

- Limitation periods, joint and several liability, damage calculation, importance of expert witness reports.

## 5.6 In-house counsel's perspective

Date and time: 31 January 2019, 18:00 – 19:30.

Speaker: Magdalena Jakubicz (Cisco, Madrid).

Required readings:



Truck  
cartel\_damages news



Articles PARR  
Global\_270119.pdf

Required questions:



Seminar UC3M  
Damages Directive\_3