

**Date of the seminar:**

Wednesday 9<sup>th</sup> March 2011 from 12h45 to 13h45  
(sandwichs included during the conference)

**Location of the seminar:**

Faculty of Law, Economics and Finance  
BRC 2.01 (2<sup>nd</sup> floor)  
148, avenue de la Faïencerie  
L-2511 Luxembourg

**Language:**

English

**Registrations:**

- Free seminar
- Maximum number of registrations: 40
- **Registrations** by email:  
[fdef-colloques@uni.lu](mailto:fdef-colloques@uni.lu) (Last name, first name, institution)

**Information:**

Tel: +352 46 66 44 6619  
Contact person: Mrs Armelle Arnould

Lunchtime Seminar

**Toward the Restoration of  
Categorical Analysis in U.S.  
Antitrust Law:  
The Demise of Old Categories  
and the Need for New Ones**

By Jesse W. Markham, Jr.,  
Marshall P. Madison Professor of Law,  
University of San Francisco Law School

### Lunchtime "Work in progress" Seminar

This research seminar is intended to bring together legal scholars interested in debating recent research and work in progress in the area of law.

#### **The format:**

- The meetings will be held at lunch time – from 12h45 till no later than 14h00, on the campus of the university, in the meeting room in the Batiment Soupert, 148, Av de la Faiencerie)
- Sandwichs and drinks will be provided by the University for all participants.
- A speaker presents for 30 Minutes followed by a discussion with the participants.
- The meetings will take place several times per semester. At each event a chosen speaker will present a paper of his or her most recent work or of his or her work in progress. The participants engage in an active discussion from the point of view of their diverse background and specialities.

#### **The speakers:**

- Speakers will be invited to present from people working in Luxembourg and from external visitors. The decisive issue is the cutting edge of their research and the potential to generate an interesting debate.
- Suggestions for speakers should be sent to Professor Matthew Happold ([matthew.happold@uni.lu](mailto:matthew.happold@uni.lu))

#### **The aim of the seminar:**

- The goal is to achieve a lively and fruitful discussion for both the presenter and for all participants. This will contribute to a culture of interested debate in new ideas and approaches to the law at the University and in Luxembourg in general.

#### **General information:**

- The programme of the meetings and invitations will be distributed amongst all potentially interested researchers in Luxembourg.
- The language of the meetings is French, English and German. The programme sent to interested recipients will indicate the speaker's language of choice for presentation. Comments will be welcome also in any of the other languages.

### **Toward the Restoration of Categorical Analysis in U.S. Antitrust Law: The Demise of Old Categories and the Need for New Ones** **By Jesse W. Markham, Jr.**

The presentation describes the evolution of U.S. antitrust law away from earlier categorical modes of analysis, and argues for restoring categorical analysis under new categories of offences. U.S. antitrust law previously relied on categories of offenses to determine the extent to which a court would be required to enquire into their various competitive effects. Thus, for example, an arrangement between a manufacturer and its dealers that could be characterized as a vertical minimum price fixing agreement was treated as a *per se* offence. The Supreme Court has recently repudiated categorical antitrust analysis on the ground that more flexible analysis avoids improper condemnation of innocent or efficient conduct. The unfortunate consequence is that U.S. antitrust prohibitions are unpredictable in application and chaotic. Replacing old categories with more economically sophisticated new ones is therefore preferable to the current antitrust jurisprudence

#### **About Jesse W. Markham, Jr.**

Educated at Harvard University (AB degree), the University of Massachusetts, Amherst (Master's Degree in Philosophy), and Vanderbilt University Law School (Doctor of Jurisprudence). Prof. Markham practiced law with Rogers & Wells (now Kramer & Levin) in Paris; and with Orrick, Herrington & Sutcliffe LLP and Morrison & Foerster LLP, where (at both firms) he was chair of the antitrust law practice. He also served as Deputy Attorney General for Antitrust with the Commonwealth of Massachusetts and later with the State of California. He has taught antitrust law courses at the University of San Francisco, the University of California at Berkeley and the Haas Business School at the University of California at Berkeley. Since 2008 he has occupied the professorial chair and teaches full time. Prof. Markham's recent publications include *California Antitrust Law* (Co-author, Lexis 2010); "Lessons For Competition Law From The Economic Crisis: The Prospect For Antitrust Responses To The Too-Big-To-Fail Phenomenon," *Fordham Journal of Corporate and Finance Law* (2011), and "The Supreme Court's New Implied Repeal Doctrine: Expanding Judicial Power To Rewrite Legislation Under The Ballooning Conception Of 'Plain Repugnancy'", *Gonzaga Law Review* (2010).