GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
Course: Competition Law
Semester-VIII (Batch: 2013-18)

End Semester Examination: April-May 2017

Date: 8th May, 2017
Duration: 3 hours **Max. Marks: 50**

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Answer any five of the following:
(Maximum 550-600 words for each answer)

Marks (5x10 =50)

Q.1 Indian Television Viewers' Forum (ITVF) wishes to move the Competition Commission of India (CCI) in the month of June 2017 as it feels aggrieved by Direct to Home (DTH) operators that they are limiting competition amongst themselves in the market by not offering interoperability of their set-top boxes (STBs). ITVF claims that DTH operators had entered into agreements with manufacturers of STBs, which further restricted interoperability by limiting viewers' option to choose one network while using another company's STB by not making their STBs technically interoperable. In other words, once a consumer buys the STB to access services of a particular DTH operator, he cannot avail the services of any other DTH operators unless he buys new STB from the concerned DTH operator. As a result, subscribers get discouraged to change the operator as changing the entire set is expensive.

(a) In the light of the above-said information discuss the potential anti-competitive agreements falling under section 3(3) and/or section 3(4) of the Competition Act, 2002.

(b) Whether there can be an agreement between consumer and enterprise(s) in accordance with section 3 of the Competition Act, 2002?

Q.2 India's largest telecom service provider Bharti Airtel Limited (Airtel) in its information filed before the Competition Commission of India (CCI) in the month of February 2017 alleged that Reliance Jio Infocomm Limited (Jio) has been abusing dominant position by resorting to predatory pricing since its launch in September 2016. As per the information Jio is a dominant player in the Indian telecom sector, as it is a subsidiary of Reliance Industries Limited (RIL), which is the largest enterprise in India in terms of size, revenue, assets and value. It is alleged that the business strategy of Jio is to bind the customer to free services (free data and unlimited voice calling), thereby minimizing competition, including eliminating competition from small players. Once Jio obtains a higher market share, it would likely increase tariff rates as competition will be limited and the customer will be left with lesser number of service providers to choose from. Jio had earned no revenue from its operations during October 2016 to March 2017. However, Jio has made it public that its tariff plans have been found to be non-predatory by the

telecom regulator, Telecom Regulatory Authority of India (TRAI), and therefore the question of its offerings being predatory does not arise.

(a) How best can Jio's business strategy be considered to be predatory leading to an abuse of dominant position under section 4 of the Competition Act, 2002?

(b) If you are the legal counsel to Jio, how would you defend your client before the CCI against the alleged predatory behaviour in the light of relevant provisions of the Competition Act, 2002?

Q.3 Vodafone India Limited (VIL), Vodafone Mobile Services Limited (VMSL) (Collectively, Vodafone India) and Idea Cellular Limited (Idea) moved the Competition Commission of India (CCI) in April 2017 under section 6(2) of the Competition Act, 2002 on their proposed merger to combine telecommunications businesses in India. While VIL is a wholly-owned subsidiary of Vodafone Group Plc, London, VMSL is a wholly owned subsidiary of VIL. Vodafone India and Idea are pan-India integrated mobile operators offering telecommunication services, including pan-India mobile telephony services across 22 telecom circles, each presently serving more than 200 million subscribers across the country. While Vodafone India and Idea currently being second and third largest player respectively, post-merger the combined company would become the leading communications provider in India with more than 400 million customers, accounting for 35 per cent customer market share and 41 per cent revenue market share, thereby pushing the present No.1 player, Bharti Airtel Limited (Airtel) having 270 million customers with a revenue market share of nearly 32 per cent, to No.2 position. The merged entity with its scale, size and synergies will be a stronger rival to Reliance Jio Infocomm (Jio), having more than 72 million customers. The merger, if approved, will result in the Indian telecom space being dominated by three strong private firms, Vodafone-Idea, Airtel and Jio, along with state-owned telecommunications company, Bharat Sanchar Nigam Limited (BSNL). As claimed by Idea, the merger will create a high quality digital infrastructure that will transition the Indian population towards a digital lifestyle and make the Digital India Vision a reality.

(a) Examine as to whether the proposed merger causes or is likely to cause an appreciable adverse effect on Indian telecom space in the light of section 6(1) read with section 20(4) of the Competition Act, 2002.

(b) Indicate the present threshold limit provided under section 5 of the Competition Act, 2002 for defining a combination.

Q.4 Microsoft, a US multinational computer technology corporation, in the beginning of 1990s started selling its Windows Operating System together with its web browser, Internet Explorer. The Company had acquired more than 90% market share in the worldwide market for Intel-compatible personal computer systems. In May 1998 the US Department of Justice and 20 US States filed anti-trust cases against Microsoft Corporation pursuant to the Sherman Anti-trust Act, 1890.

(a) Whether the above-said situation amounted to tying?

(b) Whether the Microsoft did attempt to monopolize web browser market? What was the outcome of the case?

Q.5 On the basis of a *suo-moto* inquiry based on the information received from the Central Bureau of Investigation on 1st April 2014 the CCI has recently found three enterprises, M/s Pyramid Electronics, M/s Kanwar Electricals, and M/s Western Electric and Trading Company, to have cartelized in respect of tenders floated by Indian Railways for supply of Brushless DC fans and other electrical items, and imposed penalties on them along with their respective responsible office-bearers for the violation of section 3(3) of

the Competition Act, 2002. Nevertheless, in this recent order CCI has granted leniency to an enterprise together with its officer based on its application under relevant provision of the Competition Act, 2002.

(a) What are the grounds under which the CCI has granted leniency to the concerned enterprise along with its officer?

(b) What is the maximum penalty that can be imposed under pertinent provision of the Competition Act, 2002 in the case of a bid rigging cartel?

Q.6 Michelin NV, an European tyer maker, was found to have based commercial and pricing policy towards its dealers on a complex system of exclusive dealing and loyalty discounts. The main objective of the policy was to connect dealers to the company and to maintain the company's market share, and consequently to undermine competition in the common market for relevant tyre products.

(a) What was the relevant market delineation made by the ECJ in the instant case?

(b) Whether Michelin was found to have abused its dominant position? Clarify with help of relevant case laws.

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