

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Competition Law**
Semester-II (Batch: 2018-19)

LL.M. End Semester Examination: May-2019

Date: 8th May, 2019

Duration: 3 hours

Max. Marks: 70

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 anything 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.

Part-A

Answer **any five** of the following questions
(Word limit: 500-550 words for each answer)

Marks
(5x12=
60)

- Q.1 In February 2019, European Commission (EC) cleared the acquisition by Clamax Inc. (Clamax), a US pharmaceutical multinational, of 87 per cent stake in Glyco Care Plc (Glyco Care), a British pharmaceutical, which held 35.91 per cent equity shares in Life Assure, an Indian drug maker incorporated under the Companies Act, 1956. Subsequently, upon the advice of its counsels, Clamax notified the consummated transaction before the CCI for its approval on 1st May 2019. In the light of the aforesaid facts, answer the following questions:
- (a) Whether the instant transaction can be approved by the CCI, with or without subject to penalty proceedings? Examine.
 - (b) What factors must the CCI have due regard to while reviewing the notified combination? Elaborate.
- Q.2 Indian Television Viewers' Union (ITVU) moved the Competition Commission of India (CCI) in the first week of April 2019 alleging that the Direct to Home (DTH) operators were limiting competition amongst themselves in the market by not offering interoperability of their set-top boxes (STBs). ITVU claimed that DTH operators had entered into agreements with manufacturers of STBs, which restricted interoperability by limiting viewers' option to choose one network while using another company's STB, as the STBs were made technically non-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 operator unless he buys new STB from the DTH operator concerned. Besides, subscriber gets discouraged to change the operator as changing the entire set is expensive. In the light of the foregoing facts, answer the following questions:
- (a) In the light of the above-said situation, can there be an agreement between consumer and enterprise(s) in accordance with section 3(1) of the Competition Act, 2002? Elucidate.
 - (b) What is the type of agreement entered into between DTH operators and manufacturers of STBs under section 3 the Competition Act, 2002? Explicate.

- Q.3 Larex, a US leather products manufacturer, instituted a policy whereby it refused to sell to retailers that discounted its products below the suggested price. The purpose of this policy was to promote superior customer service, which was lacking with most discounting conglomerates. In return, Larex set a price to ensure that retailers received sufficient margins on Larex products, allowing them to provide superior quality customer service consistent with the distribution strategy, and maintaining a high quality brand image. Promax, a retailer of Larex products, began discounting the products in violation of the set price. Larex then discontinued distribution to the retailer. Promax filed a suit, alleging violation of section 1 of the Sherman Antitrust Act, 1890. In the light of the above-mentioned facts, answer the following questions:
- Whether the pricing policy of Larex is maintainable in the court of law? Examine.
 - Analyse the antitrust effects of maximum retail price vis-à-vis minimum retail price maintenance in light of *per se* violation and/or rule of reason standard.
- Q.4 Du Pont, an American chemical company, produced almost 75% of the cellophane, a flexible packaging material, sold in the United States, but it was found that cellophane constituted less than 20% of all sales of flexible packaging materials. In the light of the aforesaid facts, answer the following questions:
- Whether Du Pont was found to have held a monopoly position in the relevant market? Elaborate.
 - What is the significance of SSNIP test in determining relevant product market under antitrust analysis? Analyse.
- Q.5 Sytron, a small manufacturer of industrial sugar, has expanded its business by selling the bulk sugar packets to soft drinks industry. Sytron submitted a complaint to the competition authority that Leptron, a much larger producer of industrial sugar, is offering the products at below cost prices to the regular customers of Sytron in an effort to eliminate Sytron as a competitor. In the light of the aforementioned facts, answer the following questions:
- Does the action of Leptron amount to predatory pricing? Evaluate in the light of both the US and the EU competition laws.
 - How is predatory pricing technique as an abuse of dominance regulated under the Competition Act, 2002? Explain.
- Q.6 Write short notes on the following:
- Salient features of the Competition Act, 2002 *vis-à-vis* the erstwhile MRTP Act, 1969
 - Evolution of competition law and the doctrine of restraint of trade

Part-B

- Q.7 Answer the following questions: (6+4= 10)
- Elaborate on the power and jurisdiction of the Competition Commission of India, explaining the procedure for inquiry into the matters of Anti-Competitive Agreements, Abuse of Dominant Position and Combinations.
 - Critically analyse the overlapping jurisdictional issues of the Competition Commission of India.
