

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Competition Law  
Semester-II (Batch: 2017-18)

LLM End Term Examination: May 2018

Date: 7<sup>th</sup> May 2018

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 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.

**PART-A**

Answer any five of following questions:

**Marks**

- Q.1 Eleven major Indian sugar producers are alleged to have been coordinating at various levels of production and supply of white and fruit sugars for the past three years. Upon investigation by the Competition Commission of India (CCI), price parallelism has been found existing across the above producers; whereas, there is no substantive proof of affirmative correlation of data involving quantity of production, cost of production, capacity utilization, annual sales, profit margins etc., amongst these producers. Based on the above-stated facts, answer the following: (6+6 =12)
- (a) Whether the price parallelism is sufficient to hold the existence of a cartel amongst eleven major sugar producers? Examine.
- (b) Explicate the anti-competitive effects of cartelization in the light of Indian cartel cases.
- Q.2 ECS, a small producer of organic peroxides as an additive to flour, had planned to expand its business by selling the product also to the plastic industry. ECS complained that AKZO, a much larger producer of organic peroxides, was offering the product at below cost prices to ECS's regular customers, in an effort to eliminate ECS as a competitor. Based on the aforementioned facts, answer the following: (6+6 =12)
- (a) Whether the below cost pricing itself amounts to predatory pricing? Analyse in the light of EU competition law.
- (b) Critically evaluate the concept of predatory pricing as an abuse of dominant position in the light of the US and Indian competition law.
- Q.3 'Air Sagar' notifies its decision to acquire 'Air Narmada' before the Competition Commission of India (CCI) on 19<sup>th</sup> April 2018 for approval in pursuance of section 6(2) of the Competition Act, 2002. Both being low-cost Indian airlines are headquartered at Mumbai connecting around 19 cities of the country; and they jointly account for nearly around 83% of India's short-haul traffic to and from Mumbai. Previously, both the airlines along with other airlines at times had entered rigorous price competition to lure passengers. Based on the above-said facts, answer the following: (6+6 =12)
- (a) Whether the proposed combination can be given effect to by the CCI? Evaluate.
- (b) What are the relevant factors the CCI shall have due regard to while examining the notice of proposed combination?

- Q.4 'The MRTP Act, 1969, in comparison with competition laws of many countries, found to be inadequate for fostering competition in the market and for reducing, if not eliminating, anti-competitive practices in the country's domestic and international trade.' Explain the circumstances which led to the enactment of the Competition Act in 2002 having aimed at promoting competition in the Indian market. (12)
- Q.5 'Intellectual property and competition are often considered as like poles of a magnet that repel each other. Nevertheless, a key issue in establishing the relationship between intellectual property and competition law is the extent to which a third party may be authorised to use protected subject matter without the consent of the intellectual property right-holder.' Based on the aforesaid observation, answer the following: (6+6 =12)
- (a) Can the essential facilities doctrine be invoked to prevent the abuse of intellectual property rights in the form of refusal to deal?
- (b) Whether the intellectual property rights are subject to scanner under competition law? Examine in the light of section 3(5)(1) of the Competition Act, 2002.
- Q.6 Gencor Ltd., a South African company, operated mainly in mineral resources and metal industries, and Lonrho Plc, a U.K. company, engaged in mining and metals, hotels, agriculture and general trade, had proposed to acquire joint control of Impala Platinum Holdings Ltd ("Implants"), a company incorporated under South African law. Accordingly, Gencor and Lonrho jointly notified the European Commission under the Merger Regulation of their proposed acquisition. However, the European Commission refused to permit the transaction. Based on the above-stated facts, answer the following: (6+6 =12)
- (a) Whether the EC Merger Regulations were applied to the extra-territorial commercial transaction? Examine.
- (b) Does the Competition Act, 2002 have extra-territorial application? Comment.

### PART-B

(Maximum 250-275 words for each answer)

- Q.7 Write short notes on any two of the following:
- (a) Maximum resale price maintenance vis-à-vis minimum resale price maintenance (5)
- (b) Doctrine of restraint of trade in the context of development of competition law (5)
- (c) Significance of SSNIP test in determining relevant product market (5)

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