

# Printout

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**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: **Competition Law**  
Semester-II (Batch: 2013-14)

End Term LL.M. Examination: May-June 2014

Date: 2<sup>nd</sup> June 2014

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.

**Answer any seven of the following:  
(Maximum 450-500 words for each answer)**

**Marks**  
(7x10=  
70)

- Q.1 Certain retail tyre dealers periodically circulated amongst themselves a list containing names of wholesale tyre dealers, who were reportedly selling tyres directly to consumers. Although there was no agreement on the part of the retailers to refrain from dealing with the wholesalers whose names appeared on the list, many of the retail dealers stopped purchasing tyres from the listed wholesalers.
- (a) What is meant by an agreement under the law of antitrust?
  - (b) Can an agreement be inferred from the course of conduct followed by the retail tyre dealers?
  - (c) Whether a parallel action alone can be sufficient to establish a conspiracy?
- Q.2 'Any nation may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the nations reprehend; and these liabilities other nations will ordinarily recognize'.
- (a) Explain briefly the application of US anti-trust laws to international transactions.
  - (b) Does the Competition Act, 2002 have extraterritorial application? Comment.
- Q.3 'While the formation of a cartel amounts to an anti-competitive trade practice, which is indisputably against the public interest, the existence of a cartel is seldom proved by direct interest'. Explain the burden of proof of cartelization under Section 3 of the Competition Act, 2002 with the help of decided cases.
- Q.4 'United Brands, a US company, owned its own banana plantations in South America and enjoyed a large share of the banana market amounting to 40-45% in the European Community geographic market, which consisted of Germany, Benelux, Ireland, and Denmark. It shipped its Chiquita bananas to two unloading ports, where they were resold to various national distributors at significantly different prices, notwithstanding that the purchasers paid the freight costs to the various ripening installations. In the meanwhile, the United Brands refused to sell a Danish distributor who had promoted competing bananas.
- (a) Whether the above situation of the United Brands amounted to discriminatory pricing?
  - (b) Did the refusal to sell amount to the abuse of dominant position under Article 82 of the EC Treaty?

- Q.5 Critically analyse the two prominent schools of thought on competition analysis. Explain the usefulness of game theory in terms of non-cooperative static and repeated games in understanding the oligopolistic competition.
- Q.6 'In the absence of any purpose to create or maintain a monopoly, the right of trader or manufacturer, engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal cannot be restricted. He may, however, announce in advance the circumstances under which he will refuse to sell'. Analyse the extent of application of the 'essential facilities doctrine' to the area of intellectual property rights.
- Q.7 'The MRTP Act, 1969, in comparison with competition laws of many countries, was 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'. Explicate the circumstances which led to the enactment of the Competition Act in 2002 having aimed at promoting competition in the Indian market.
- Q.8 'While mergers can have an appalling effect as they can raise competition concerns, corporate reorganisation in the form of mergers may be in line with the requirements of dynamic competition. The greater the potential adverse competitive effect of a merger the greater must be cognizable efficiencies in order to conclude that the merger will not have an anti-competitive effect in the relevant market'.
- (a) Explain the various types of combinations considering their modified threshold limit, which are having an appreciable adverse effect on competition, in the light of Section 5 of the Competition Act, 2002.
- (b) Explain the defence of efficiencies as an essential part of the rule of reason analysis in the cases of anti-competitive disputes over mergers.
- Q.9 Write short notes on the following:
- (a) Predatory pricing and abuse of dominant position
- (b) Powers and functions of the Competition Commission of India

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