

Name:

Enrolment No:



UNIVERSITY OF PETROLEUM AND ENERGY STUDIES
End Semester Examination, May 2019

Course: Competition law
Program: B. TECH.(ET), LL.B. (Hons.) IPR 2014
Course Code: LLBL 502

Semester: X
Time: 03 hrs.
Max. Marks: 100

Instructions: Each section contains separate instructions.

S. No.	SECTION A [2*5= 10 Marks]	Marks	CO
Q 1	Write short notes on the following: (i). AAEC (ii).Resale Price Maintenance (iii). Competition Advocacy (iv). Relevant Product Market (v). Cartel	2 2 2 2 2	1 2 3 2 2
SECTION B [20 Marks]			
Q 2	What do you understand by predatory pricing? Discuss it in light of following jurisdictions: a. U.S.A. b. India	5 5	4 4
Q 3	Discuss the concept of 'essential facilities' doctrine.	5	3
Q 4	What is a combination? Explain the process of regulation of combination.	5	3
SECTION-C [20 Marks]			
Q 5	Competition in an open market economy is not always easy for firms. It requires a constant effort to outperform rivals and to anticipate consumer trends. Simply put, firms have much to gain to competition, but much to lose therefrom as well. It is therefore not surprising that they devise strategies to avoid rivalry. The role of	10	3

	competition law is to preserve and, where necessary, to alter firms' <i>incentives</i> so that they have more to lose than to gain from restrictions of competition. Comment.		
Q 6	The enforcement of competition law by administrative authorities combining the prosecution and the adjudication functions is a source of major legal challenges. One could claim that such an enforcement system does not respect basic <i>due process</i> principles insofar as the authority would be judge in its own cause. Where the authority combines the prosecution and the adjudication functions, it may be tempted to disregard precedents and arguments contradicting its own views to favour its policy position. Analyze.	10	3
SECTION-D [50 Marks]			
Q 7	<p>Contrary to what is true in the US, there are judgments in EU competition law stating clearly that a refusal to license an intellectual property right may, in 'exceptional circumstances' amount to an abuse of dominance within the meaning of Article 102 TFEU. This principle was set out in Magill (Case T-76/89, Independent Television Publications Ltd v Commission [1991] ECR II-575) and then reiterated in IMS Health (Case C-418/01, IMS Health GmbH & Co. OHG v NDC Health GmbH & Co. KG [2004] ECR I-5039). According to this line of case law, a refusal in this context is abusive if the following conditions are met:</p> <ol style="list-style-type: none"> a. The input protected by intellectual property rights is 'indispensable' to compete at the downstream level. b. The refusal prevents the emergence of a 'new product' at the downstream level for which there is potential consumer demand. c. There is no 'objective justification' for the refusal to deal. d. The refusal to license leads to the elimination of competition at the downstream level. <p>In light of the above, answer the following questions:</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><u>Q.1</u> <u>Refusals to deal in Magill and IMS Health:</u></p> <p><u>Case C-418/01, IMS Health GmbH & Co. OHG v NDC Health GmbH & Co. KG [2004] ECR I-5039 :</u></p> <ol style="list-style-type: none"> a. What is a 'new product'? b. Which criteria can be used to determine whether a product is 'new'? c. What is a 'hypothetical market' within the meaning of the IMS Health judgment? d. What is constructive refusal to deal? e. The idea that competition law may be used to force a firm to deal with a rival is a very attractive one. Because of the virtually infinite plasticity of </div>		
		5 5 5 5 5	4 4 4 4 4

	<p>competition law provisions, such a remedy would offer an appropriate response to the challenges raised in a variety of industries. Comment.</p>		
<p>Q 8</p>	<p>As many other practices, tying was seen as problematic per se for many years. This past approach reflected, first, a negative preconception vis-à-vis intellectual property rights. The inventor of a device, or a production process, may sometimes engage in tying conduct. In <i>International Salt Co. v United States</i>, 332 US 392 (1947), for instance, the holder of a patent on a salt dispenser used in industrial processes tied the use of its invention to the acquisition of salt from it. Such instances were seen with concern insofar as they were understood to be a means used by the patent holder to obtain more than an adequate return on its invention. From this perspective, the scope and reach of exclusive rights had to be confined within well-defined limits. A different concern related to the presumed intent of firms practising tying and bundling. It was assumed that the purpose of such strategies was to leverage a dominant position from the tying market to the tied market. These two views were challenged, as in the case of predatory pricing, by the Chicago School.</p> <p>Please answer the following questions, in light of the above:</p> <ol style="list-style-type: none"> a. Why would Chicago scholars dismiss cases like <i>International Salt</i> as wholly unproblematic from a competition law standpoint? b. What is the most plausible explanation behind tying and bundling arrangements, according to them? 	<p>12.5</p> <p>12.5</p>	<p>4</p> <p>4</p>

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S. No.	SECTION A [2*5= 10 Marks]	Marks	CO
Q 1	Write short notes on the following: (i). Relevant Market (ii). Dominant Position (iii). Tying (iv). Digital Cartel (v). Pricing Algorithms	2 2 2 2 2	2 2 3 3 2
SECTION B [20 Marks]			
Q 2	What are the objectives of Competition Law? Explain.	10	1
Q 3	Why would Chicago scholars dismiss cases like International Salt as wholly unproblematic from a competition law standpoint? Discuss.	5	3
Q 4	How does the analysis of the 'two product' condition by the Commission and by Microsoft differ from one another? Explain.	5	3
SECTION C [20 Marks]			
Q 5	Firms' ability to compete effectively in the marketplace may be jeopardised if their position is weakened. This may be the consequence of a practice put in place by a dominant firm that makes it impossible for its rivals to remain on the market. It may also result from a merger (suppose that, as a result of a merger between a manufacturer and a distributor, competing distributors are unable to reach end-users). Discuss.	10	3
Q 6	If a dominant firm is required to deal with rivals, this will increase competition on the downstream. How do you explain, then, Areeda's doubts about the essential facilities doctrine?	10	3

SECTION D
[50 Marks]

Q 7	<p>The understanding of vertical integration has greatly evolved in the past decades. It is one of these areas in which the sophisticated understanding of business motivations has had a particularly profound effect on the definition of legal principles. It is now widely assumed that vertical restraints are unlikely to raise competition concerns where inter-brand competition is sufficiently intense. Put differently, so long as there is healthy competition among manufacturers in the relevant market, one can assume that vertical restraints will have a positive impact on competition and on consumers.</p> <p>a. What is the business motivation behind exclusive distribution, exclusive dealing and selective distribution?</p> <p>b. Why are these three vertical restraints potentially positive for consumers and for competition at large?</p>	12.5	4
Q 8	<p>Leniency programme is designed to break the incentives to coordinate conduct. The firm uncovering the cartel agreement is granted immunity from fines/criminal sanctions. Success of the programme in the US has been replicated in the EU (from 1996), Asian economies including India and elsewhere. Although, the leniency programme has still not been very successful in India but it is a known fact that the majority of cartel decisions originate in a leniency application in other jurisdictions especially in EU.</p> <p>In light of the above, answer the following questions:</p> <p>a. What is a cartel?</p> <p>b. Why are they considered as cancers on the open market economy?</p> <p>c. Is it acceptable to grant leniency in all cases? What are the qualifications introduced by the Competition Commission of India in this regard?</p> <p>d. Why are cartels considered to be unstable creatures?</p> <p>e. What according to you should be done for successful implementation of the leniency programme in India?</p>	5	4