

<b>Name:</b>	
<b>Enrollment Number:</b>	

**UNIVERSITY OF PETROLEUM AND ENERGY STUDIES**  
**Online End Semester Examination, June 2021**

**Course: Competition Law**  
**Program: LL.M**  
**Course Code: CLCC7001**

**Semester: II**  
**Time: 03 hrs.**  
**Max. Marks: 100**

**SECTION A**  
**Each Question carries 5 Marks**

	Question	
<b>Q1</b>	Differentiate between the provisions of MRTP Act and Competition Act.	<b>CO 1</b>
<b>Q2</b>	How international convergence is achieved on major competition principles. What role WTO plays in this?	<b>CO 4</b>
<b>Q3</b>	Write a short note on leniency provisions under the Competition Act of India	<b>CO 1</b>
<b>Q4</b>	Differentiate between exclusionary and exploitative abuses	<b>CO 1</b>
<b>Q5</b>	Elaborate the concept of combinations	<b>CO 2</b>
<b>Q6</b>	Write a note on Competition Compliance Program	<b>CO 1</b>

**SECTION B**  
**Each Question carries 10 marks**

<b>Q7</b>	With a view to update the Competition Act, 2002 and associated regulations, the Indian Government constituted the Competition Law Review Committee in October 2018. The Committee submitted its report to the Government on 14 August 2019. Based on the recommendations made in the Report, the MCA has introduced a draft Competition Bill, 2020 to overhaul the Act. Enumerate the major amendments proposed by the CLRC.	<b>CO 2</b>
<b>Q8</b>	<p>“For about 10 years until 1997 most of the companies in the fire alarm and fire sprinkler installation industry in Brisbane held regular meetings, at which they agreed to allow certain tenders to be won by particular competitors. Calling themselves the ‘Sprinkler Coffee Club’ and the ‘Alarms Coffee Club’, the groups would meet up over a cup of coffee at hotels, cafes, and various sporting and social clubs. At these meetings they would share tenders and decide who was to submit ‘cover prices’ to make the tender process look legitimate, while ensuring the agreed company won the tender.”</p> <p>How do you think the aforesaid conduct may fall foul of competition law in India? Discuss in detail with few examples.</p>	<b>CO 3</b>

<b>Q9</b>	Discuss the role of CCI in developing ‘competition culture’ in the country. Do you think CCI has been able to achieve its objectives? Elaborate	<b>CO 4</b>
<b>Q10</b>	Determination of ‘Relevant Market’ in abuse of dominance cases is of utmost importance. Discuss the process followed by CCI to determine relevant market.	<b>CO 2</b>
<b>Q11</b>	“Antitrust scholars must confront an inconvenient truth: innovation drives competition as much as competition drives innovation. This truth requires that antitrust analysis recognize that advancing dynamic (non static) competition and supporting (using the rule of reason) innovation will benefit consumers, certainly in the long run if not in the short run”. - Discuss	<b>CO 4</b>

**SECTION C**  
**Each Question carries 20 marks**

<b>Q12</b>	<p>Music World is a company incorporated in 2004 with its headquarters in Gurgaon and engaged in selling music albums online. Customers can visit the website of Music World and place orders and the albums are then delivered by the company via courier services to the customers. Dreams Co., Ethnic Music House, Unique Music Ltd. and Global Series Ltd. are four music record label companies incorporated in various cities in India (hereinafter collectively referred to as the “Music Companies”). The Music Companies together control almost 71% of the total market share in India. Ever since its commencement of business in 2004, Music World used to enter into Wholesale Distribution Agreement (hereinafter referred as the “WDA”) with each of the music companies mentioned above, pursuant to which, the later would charge a wholesale price for each album it records (usually around 50% of the list price) and Music World would retain full discretion as to the actual sale price. In 2007, Music World decided to enter the E-music market where the tracks of a physical albums they were selling online are available electronically on special devices. As a consequence, Music World launched an electronic device called GROOVE. Thus, Music World began selling digital formats of these albums that could be heard by customers on GROOVE. In the initial period of the mushrooming of the E--music business, the music Companies continued with the WDA model for E-albums with music album sellers including Music World. Further, owing to the negligible costs involved in storing and transporting of the albums in digital format, music Companies were able to offer the E-albums at much lower price than the physical albums. After the launch of GROOVE in 2007, Music World employed a discount pricing strategy for E-albums on GROOVE. The discounted price of the E-albums was significantly lower than the retail price of the physical albums. At times Music world offered E-albums at less than the wholesale price charged by the music Companies for the E-albums. This discount strategy employed by Music World led to concerns among the Music Companies as they felt that this would severely impact the sale of the physical albums which still was the segment where they earned their major share of profits.</p> <p>In 2009, Banana, a leading supplier of mobile telephone devices with its headquarters in Mumbai announced its entry into the E-album market with the launch of its mobile device called the M-Track – a mobile device with much better frequencies that will enable customers to hear music more comfortably. The Music Companies came together and decided to jointly adopt a strategy involving Banana to arrest the falling prices of E-albums they were selling. Accordingly, the music Companies negotiated with Banana to discard the WDA model and instead enter into an Agency Agreement, wherein Banana will only act as the agent of the music label companies (the</p>	<b>CO 3</b>
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principal) while selling the E-albums and Banana was to receive 30% of the sale price as commission for their services. The agreement also sought to make the pricing of E-albums to a formula tied to the price of the physical albums. Banana agreed to enter into the agency agreement provided the agreement included a Price Parity Condition (hereinafter called the “PPC Clause”). The PPC Clause requires that the music companies price their E-albums no higher on Banana’s platform than they were priced on other online platforms. Though the music Companies agreed to this term and thus entered into an agency agreement with Banana, they were aware that the agreement would provide them with the desired benefits only if Music World is also brought on-board. After the Agency agreement with Banana was entered in 2013, representatives of the music Companies and Banana separately met representatives of Music World to convince them to dump the WDA and instead enter into the agency agreement. The meetings happened multiple times over a period of 3 years without any measure of success. Hard negotiations took place and in September 2016, Global Series Limited, one of the music Companies, threatened to stop the production of GROOVE versions of its new releases. Music World retaliated by deciding to stop selling all titles of Global Series Limited on its platform including the physical albums. Finally, with much reluctance, Music World agreed to enter into the agency agreement with the four music companies in February 2017. Simultaneously, Music World also wrote to the Competition Commission of India complaining that the simultaneous demand of the various music Companies to enter into terms similar to one that they had entered into with Banana was inherently ‘anti-competitive’. By August 2017, many other music houses other than the big four companies also started entering into similar agency agreements with Banana. The impact of these agreements on the market was a significant rise in the prices of E-albums. Though the prices were still lower than the physical format, the E-albums were still priced higher than what was the earlier price on GROOVE. The Competition Commission of India (CCI), started inquiry under Section 26 of the Competition Act, 2002 and directed investigation under section 26(1) of the Competition Act.

**Read the above paragraph and answer the following questions:**

**(a) Considering that the pricing strategy of Music World would severely impact the sale of the physical albums leading to significant losses for the music Companies, do you think that the agency agreement was merely a “competitive reaction” to such strategy or does the same have anti-competitive effect in view of Section 19(3)? [10]**

**(b) How is the treatment of law different with respect with horizontal and vertical agreements under Section 3 of the Competition Act, 2002? Also, state the jurisprudential analysis as to why such difference exists? [10]**