


Name:			
Enrolment No:			
UPES End Semester Examination, December 2023			
Course: Competition Law Program: BBA. LL.B.-H-Corporate Law Course Code: CLCP5001		Semester: IX Time : 03 hrs. Max. Marks: 100	
<u>Instructions: Write briefly focusing on relevant concepts, provisions, amendments, and case laws.</u>			
SECTION A (5Qx2M=10Marks)			
S. No.		Marks	CO
Q 1	Write short notes on any five of the following:		
a.	Relevant Geographic Market	2	CO1
b.	Herfindahl Hirshman Index	2	CO1
c.	Competition Advocacy	2	CO1
d.	International Competition Network	2	CO1
e.	Oligopoly	2	CO1
f.	Predatory Pricing	2	CO1
SECTION B (4Qx5M= 20 Marks)			
Q 2	Discuss Network Effects and its application in the online digital space to gain market power.	5	CO2
Q 3	Explain the concept of Relevant Product Market with help of case law.	5	CO2
Q 4	Briefly discuss various factors to be taken into account for establishing the 'Theory of Harm' in case of Combinations in India. Cite relevant provisions and case law.	5	CO2
Q 5	What is a dominant position of an enterprise? Discuss with help of case law.	5	CO2
SECTION-C (2Qx10M=20 Marks)			
Q 6	Comment upon the nature of merger remedies designed by CCI for Combinations in India. Cite relevant case(s).	10	CO3
Q 7	Critically examine the role of Big Data in analysing abuse of dominance cases in digital platform markets.	10	CO3

(SECTION-D = 50 Marks)

Read the passage carefully and answer the following questions:

In 2015, Teo wanted to enter the e-book market with the launch of its T-Pad and the T-Bookstore. Horizon was already active on the e-book market with its book reader Bindle and the Horizon online bookstore. All major publishers sold through Horizon based on a *wholesale model*, i.e. the e-books were sold to Horizon at wholesale price, and Horizon using a proprietary algorithm then set the prices for the e-books sold on its platform. Certain contractual restrictions like RPM (resale price maintenance) and APPA (across platform parity agreements) were also placed to control the prices. Most of the publishers as well as Teo were unhappy about the low retail prices set by Horizon, in particular for new releases and bestsellers. However, despite their concerns and a regular exchange of those concerns between them, the publishers did not manage to change Horizon's pricing policy. It was in this situation that Teo presented itself as a welcome retail alternative to the publishers.

Teo proposed an agency model to the publishers, where the publisher would set the retail prices for e-books sold via the T-Bookstore themselves, limited by maximum prices that depended on the pricing of the hardcover edition. Teo would receive a commission of 32% for each e-book sold. This, however, did not resolve the problem of low-price competition by Horizon, and Teo still faced the risk of being unable to sell e-books if Horizon's pricing strategy would not be changed. To this purpose, Teo included an MFN clause in the publishers' contracts, which obliged them not to sell e-books on the T-Bookstore at higher prices than on any other platform. The only way the publishers could solve this problem was to move to an agency model in their contracts with Horizon as well, but individually this was a risky strategy, unless all publishers moved to the agency model at the same time.

Teo played a very active part in communicating between the publishers the state of its individual negotiations with the publishers, and their respective steps to negotiate agency contracts with Horizon, to provide the reassurance the publishers needed for this risky move. By March 2017, most of the major publishers had negotiated agency agreements with Horizon. Horizon wants to approach the Competition Commission of India. **In the light of the above, answer the questions 8 and 9:**

Q 8

Examine the nature of clauses in two of the following and identify when such agreements can cause appreciable adverse effects on competition. **(Attempt two)**

- a. MFN clause
- b. APPA agreements

20

CO4

Q 9	<p>c. RPM</p> <p>Examine whether agreements discussed in the paragraph will be horizontal or vertical in nature. Discuss the applicable provisions in light of hub and spoke arrangements in online markets.</p>	15	CO4
Q 10	<p>Read the below passage carefully:</p> <p>“The legislative intent and the subject matter that the two statutes deal with is the test in ascertaining whether two statutes can coexist. The starting point of the assessment necessarily has to be the subject matter of the statutes. In the present matter, as set out above, the subject matter is an inquiry being conducted by a statutory authority, into allegations of anti-competitive agreements and allegations of abuse of dominant position..... While the Competition Act deals with these subjects generally, the Patents Act deals with these subjects specifically in the context of patents. The legislature, in its wisdom, after enacting the Competition Act, amended the Patents Act to introduce Chapter XVI and has chosen to keep the effect of the orders of the Controller <i>in personam</i>. It is not for this Court to comment on the propriety thereof, nor does this persuade us to permit exercise of powers by CCI contrary to legislative intent.”</p> <p>Critically examine the observations of the Hight Court given above in light of the interface between Competition Act and the Patents Act in India and EU.</p>	15	CO 3