Name:

Enrolment No:

UNIVERSITY OF PETROLEUM AND ENERGY STUDIES
End Semester Examination, December 2018

Course: Competition Law **Course Code: LLBL 502** **Semester: IXth**
Programme:
B.Com,LL.B(H),Taxation Laws/
BB.A,LL.B(H), Corporate Laws/
B.A,LL.B(H),Energy Laws, 2014

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

Instructions: Separate instructions are given for all the sections in the Question Paper. Please attempt accordingly

SECTION A (10 Marks)

S. No.		**Marks**	**CO**
	Write few sentences on the following:		
1	Collective Dominance	**2**	**CO2**
2	Recoupment	**2**	**CO1**
3	Competitive neutrality	**2**	**CO1**
4	Substitutability and relevant market	**2**	**CO3**
5	Royalty Rebates	**2**	**CO2**

SECTION B (20 Marks)

	Explain the following:		
6	SSNIP Test	**5**	**CO2**
7	Margin Squeeze	**5**	**CO2**
8	Differentiate between '*per se*' and '*rule of reason*' test in competition Law. Which test do you think India is closer to? **OR** Elaborate the Leniency Provisions in India. What is your opinion on its success in detecting cartels?	**10**	**CO2**

SECTION-C (20 Marks)			
9	Cartels have provoked strong and hostile reactions from competition enforcement authorities across the globe and are generally considered to be the most egregious violations of competition law. Discuss.	**10**	**CO4**
10	What are the essentials to apply the “essential facilities” doctrine? Discuss with the help of some decided cases.	**10**	**CO4**
SECTION-D (50 Marks)			
11	Note: The Competition Law of Indiana is the same as Competition Act, 2002. A drug maker - RUBRIC that required its patients to purchase its blood-monitoring services along with its medicine “TRICOPA” to treat schizophrenia. Schizophrenic patients require to monitor their blood regularly. RUBRIC was the only producer of the medicine “TRICOPA” having a patent, but there were many companies capable of providing blood-monitoring services to patients using the drug. The Competition Commission claimed that tying the drug and the monitoring services together raised the price of that medical treatment and prevented independent providers from monitoring patients taking the drug. Further, during few months of the launch of TRICOPA, RUBRIC started offering significant discount on the blood-monitoring services, so as to effectively make it difficult for the existing providers of blood-monitoring services to offer the services at the rates offered by RUBRIC. You are working with the antitrust department of the Competition Commission of Indiana. Prepare a report for the Commission advising it on the *prima facie* view addressing the following key issues:		**CO4**
11.A	Assessment of the relevant market(s) in this case on the basis of factors under the Competition Act 2002	**7**	**CO4**
11.B	Interface of Intellectual property rights with competition law and your opinion as to how commission should address “*the Intellectual Property Rights and Competition laws are generally considered as contradictory to each other as IPRs grant exclusivity which hinders competition*.”	**7**	**CO4**
11.C	The case will fall under which provisions of the Act?	**5**	**CO4**
11.D	The concept of penetrative pricing versus predatory pricing.	**6**	**CO4**
12	*AT&T/TIME WARNER - Administrative Council for Economic Defence – CADE (Brazil)* AT&T proposed to acquire Time Warner in October 2016. AT&T owns Sky, a payTV company in Brazil and Time Warner owns and distributes a series of channels to pay-TV operators, such as TNT, CNN, Cartoon Network, HBO and *Esporte*		**CO3**

	Interativo, a growing Brazilian sports channel. The merger would then result in a vertically integrated company, since Time Warner provides channels to Sky and to other TV operators. CADE found that the resulting company would have the ability and incentive to foreclose both the upstream and the downstream market. Regarding input foreclosure, CADE found that although Time Warner's market shares were not extremely high for some genres, its channels and packages were very important for the TV operators and it would be hard for them to compete without these channels. CADE also found that a complete foreclosure would be unlikely since the channels' revenue is a factor of the number of subscribers they have. However, there was evidence that Time Warner could adopt a number of strategies to make its competitors worse off, such as raising prices and selling channels in bundles. CADE also found that such strategies had been used before by another company that was vertically integrated. For customer foreclosure, CADE found that Sky was second in the pay-TV market, with 30% market share and was extremely important for channels to be distributed by it. Sky also had the incentive to completely foreclose the market, especially for smaller channels, since it would have, through Time Warner, a wide diversity of channels. Other strategies of partial foreclosure could also be used, such as changing its line-up, enhancing Time Warner's channels in Sky's programming and paying lower prices to third parties' channels. These kinds of strategies along with total foreclosure were also observed in the past by another company that was vertically integrated. Finally, CADE found that the merger could increase the probability of collusion between the new company and the other company that was vertically integrated (*Globo/Claro*), since it would make them more symmetrical and allows the flow of information between the parties involved. The parties proposed behavioral remedies, which included mechanisms of transparency, a Chinese wall and the possibility of arbitration in case a third party felt harmed. The merger was approved in 2017 with these remedies.		
(i)	Distinguish between coordinated and non-coordinated effects of a merger. Enlist the competition concerns identified by CADE in this vertical merger and categorize them into coordinated and non-coordinated effects.	**10**	**CO3**
(ii)	What do you understand by behavioral remedies? How is it different than structural remedies?	**5**	**CO3**
(iii)	If this case was to be examined by the Competition Commission of India, what would be the factors the Commission could have looked into to determine whether the combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market?	**10**	**CO3**

Name:	
Enrolment No:	

UNIVERSITY OF PETROLEUM AND ENERGY STUDIES
End Semester Examination, December 2018

Course: Competition Law **Course Code: LLBL 502** **Semester: IXth**
Programme:
B.Com,LL.B(H),Taxation Laws/
BB.A,LL.B(H), Corporate Laws/
B.A,LL.B(H),Energy Laws, 2014
Time: 03 hrs. **Max. Marks: 100**

Instructions: Separate instructions are given for all the sections in the Question Paper. Please attempt accordingly.

SECTION A

S. No.		Marks	CO
	Write few sentences on the following:		
1	COMPAT	**2**	**CO1**
2	"Enterprise" under Competition Act	**2**	**CO1**
3	Refusal to Deal	**2**	**CO2**
4	HHI	**2**	**CO3**
5	Interim Orders of the Commission	**2**	**CO2**

SECTION B

6	Discuss the role of CCI in developing 'competition culture' in the country. How far it has changed since 2009?	**5**	**CO3**
7	Distinguish the concepts of exclusive supply and exclusive distribution agreements	**5**	**CO4**
8	Discuss the power and functions of Competition Commission of India. How Chairman CCI is differently placed than its members in deciding a Case?	**10**	**CO2**

SECTION-C

9	"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	**10**	**CO4**

	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." How do you think the aforesaid conduct may fall foul of competition law in India? Discuss in detail with few examples.		
10	Vertical agreements can sometimes contain provisions that prevent, restrict or distort competition, known as vertical restraints. What is the law prohibiting vertical restraints in India? How important it is to prove AAEC in vertical restraints cases compared to horizontal restraints? Discuss	**10**	**CO4**
	SECTION-D		
11	"The Indian Telecom in the past few months has witnessed a turmoil, which was caused by a new entrant in the telecom market by the name of "Jio", a product of the conglomerate of Reliance Group of Industries. The services under the offer which was first launched as an "employee-only" offer (i.e. Unlimited Calling for life and Unlimited Data Benefit) were made open to the general public which this resulted in the torrent and surge of the masses to avail the proposed benefits. From what was already prognosticated not only did the move trigger profusion of clientele, but also instilled the rivals with a sense of fierce competition. This further resulted in multifold reduction in the prices of the services of all other leading service providers which then painted this insurgence of competition as an act of intentional sabotage. Though the allegations can't be discarded as foul cry, but the consumer centric market has welcomed the new entrant and the competition with open hands which further makes it difficult for others to form a basis of competition."		**CO4**
A	What is your opinion on the entry of "Jio" in the telecom market of India in light of the provisions relating to 'prohibition of abuse of dominance in India'?	**8**	**CO4**
B	What is the logic behind penetration pricing? Is it justified, especially vis-à-vis provisions relating to 'predatory pricing'? Discuss	**7**	**CO4**
C	What is the test of predatory pricing (factors to be considered) laid down by Competition Commission of India? Discuss with some decided cases.	**10**	**CO4**
12	Cinepolis India is a company incorporated under the (Indian) Companies Act, 1956. It is engaged in the business of developing, operating and managing cinema theatres/multiplexes for the purposes of providing entertainment to the public throughout India. Cinepolis India is the first international exhibitor of films and started its Indian cinema operations in 2009. Across India, Cinepolis India has 226 operational screens under the brand names of Cinepolis, Cinepolis VIP, Cinema Star and Fun Cinemas. It currently operates from 5 locations in New Delhi, all of which are in North, West, and East Delhi regions and runs 17 screens. It is submitted that Cinepolis India does not have any operations in the South Delhi region.		**CO4**

	DUL, a company incorporated under the (Indian) Companies Act, 1956 is an indirect subsidiary of DLF Limited ("DLF") and forms part of DLF Group. DUL is engaged in the business of providing and maintaining commercial office and retail properties, electricity generation and distribution, development of real estate viz. residential and commercial spaces, marketing and advertising in commercial and retail properties including that of operating and maintaining cinema theatres/ multiplexes for the purposes of providing entertainment to the public throughout India. DUL ventured into the film exhibition business in 2003 with the start of their first multiplex in DLF City Centre, Gurgaon. The film exhibition division of DUL is housed in DUL itself. As on June 30, 2016, DUL operates a multiplex theatre at DT Saket and a single screen theatre at DT (Savitri) GK-II, both in the South Delhi region. It has three wholly-owned subsidiaries in India namely Ariadne Builders & Developers Private Limited, Hyacintia Real Estate Developers Private Limited and DLF Energy Private Limited. The proposed transaction relates to the acquisition of business of operating and maintaining cinema theatres/multiplexes of DUL, located at DT Saket (consisting of 6 screens) and DT (Savitri) GK-II (consisting of 1 screen) ("Business Undertaking") by Cinepolis India. DUL has agreed to transfer the Business Undertaking as a going concern on a 'slump sale' basis (as defined under Section 2(42C) of the Income Tax Act, 1961). The proposed transaction is pursuant to a business transfer agreement dated 8 June 2016 entered into between Cinepolis India and DUL to acquire the Business Undertaking ("Proposed Transaction").		
(i)	The Proposed Transaction amounts to a combination in terms of Section 5 (a) (i) (A) of the Competition Act, 2002. Discuss the two other modes of 'combinations' discussed under Section 5.	**10**	**CO4**
(ii)	Discuss the relevant factors to be considered by the Commission in determining the relevant market in this case.	**10**	**CO4**
(iii)	In terms of the CCI Order in this case, among other commitments, PVR was: – required to terminate its agreements in the relevant markets of Noida and Gurgaon and DLF (costing it around 22 screens); – submit an certificate that, it will not expand organically or inorganically in Noida and Gurgaon (for next three years) and in South Delhi (for next five years); and – submit a certificate that, for the next five years it will not acquire directly or indirectly any interest in the properties in which it is terminating the agreement DLF was required to submit an undertaking that it will either continue to operate for a period of five years or sell/ lease or transfer some of the assets in the relevant market of South Delhi (of 7 theatre screens) to an effective and viable competitor of PVR Discuss the nature of 'remedies' ordered by CCI in this case.	**5**	**CO4**