

PGDM (2019-21)

Legal Aspects of Business

DM 107

Trimester – I, End-Term Examination: September 2019

Time allowed: 2 hrs 30 min

Max Marks: 50

Roll No: _____

Instruction: Students are required to write Roll No on every page of the question paper, writing anything except the Roll No will be treated as **Unfair Means**. All other instructions on the reverse of Admit Card should be followed meticulously. In case of rough work please use answer sheet.

Sections	No. of Questions to attempt	Marks	Total Marks
A	Minimum 3 question with internal choices and CILO (Course Intended Learning Outcome) covered.	3*10	30
B	Compulsory Case Study with minimum of 2 questions	20	20
Total Marks			50

Section A

Note: Answer any three questions each question carries equal marks. (10 x 3 = 30)

A1a. (i) "The fundamental attribute of corporate personality is that company is a legal entity distinct from the members." Elucidate the statement. And (ii) What are the special features of Company as an entity that has made it more popular in Business world. (CILO-1)

OR

A1b. Elaborately explain the essential features of the Consumer Protection Act, 1986. Also briefly discuss 'unfair trade practices' and 'restrictive trade practices' as discussed under consumer protection statute?. (CILO-1)

A2a. (i) "The essence of every agreement is that there ought to be free consent on both the sides". Comment. And (ii) If a seller is left unpaid by the buyer willfully then what are the remedies available to the seller? (CILO-1)

OR

A2b. "Intellectual property laws are essential for a developing economy". In the light of this statement elaborate on the nature and type of intellectual property laws available to an entrepreneur in India.(CILO-1)

A3a. "India is going through a phase of major labour reforms". In the light of this statement compare the basics of major labour laws pre and post reforms. (CILO-1)

OR

A3b. "A firm of stock brokers has two dishonest clerks. They stole the cheques issued by the firm of their customers having similar name as theirs. Later they transferred it to their respective accounts in a reputed bank. The cheques were crossed in favour of the concerned similar named clients." In the light of this case discuss the different types of 'crossing of the cheques' and the available remedies to the affected parties. (CILO-1)

Section B

Note: Analyze the following case and answer the following questions.(CILO-2) (10x2=20)

Hyundai Case: A food for Thought for CCI

The automobile industry is prominent for a high incidence of alleged anti-competitive conduct on the part of car manufacturers and their dealers. The Competition Commission of India (CCI) recently penalized Hyundai Motor India for indulging in such behavior through vertical agreements with its dealer via: (1) resale price maintenance (RPM) i.e. imposing price levels and maximum permissible discount at which the passenger car should be sold; and (2) tie-in arrangement i.e. tying-in lubricants/oils to buy from specified vendors and imposing penalties for non-compliance.

Upon appeal, National Company Law Appellate Tribunal (NCLAT) set aside the CCI order stating that the competition regulator should have drawn up its own opinion, and based its decision on relevant evidence; analysis of competition concerns; and provide an explanation of whether the evidence on record is reliable.

Following a pronouncement by the Supreme Court, NCLAT observed that the decision was made without defining the relevant market.

RELEVANT MARKET DEFINITION

Market definition is a tool to identify and define the boundaries of competition between enterprises and the competitive constraints faced by them. Without considering the different aspects of a relevant product involved in anti-competitive behaviour, and linking these with an appreciable adverse effect on competition, it cannot be conclusively held as to how the behaviour has affected the market.

The European Commission's notice on market definition provides for factors the competition authorities need to consider while defining the relevant market, namely:

"(1) The boundaries of product and geographic markets with the necessary factual evidence to reach a conclusion; (2) separate product and geographic markets for different levels of production or distribution of the goods/services in question; and (3) any additional information of the undertakings involved."

RESALE PRICE MAINTENANCE

Usually for RPM to constitute a violation of competition law, the upstream enterprise (in this case, the car manufacturer) may actively seek to penalize deviations from prescribed prices, with threats to cut supply to the dealer/retailer and impose related conditions, such as not advertise or promote a deviation from the minimum or maximum price.

While deciding that Hyundai India imposed RPM to stifle inter-brand competition, CCI did not explain how the relevant market had suffered from higher prices and how there was lesser competition between cars of the same brand (intra brand) and other brands (inter-brand).

According to the theory of harm, inter-brand competition is reduced when all the car manufacturers follow RPM to keep prices at a certain level, leaving no choice for consumers to shift to other brands and/or to different dealers of the same marque. Without finding actual evidence of such harm in the market, compared to efficiencies created through supply chains of a huge range of brands of cars, as well as dealers, it cannot be concluded there is an adverse effect on competition.

TIE-IN ARRANGEMENT

Hyundai mandated its dealers to purchase engine oil from two designated vendors, at the price it indicated. In case of non-compliance, Hyundai threatened to terminate the dealership agreement.

While CCI noted that the threat resulted in price discrimination under section 3(4)(a) of the Competition Act, it did not support its reasoning with actual evidence on record. Thus, NCLAT found there was no basis on which CCI could have penalized Hyundai and/or its dealers.

NCLAT has set the benchmark for CCI to pass final orders after an independent assessment of the relevant market from the market factors found in the Director General's report and other evidence on record. However, in our view instead of setting aside the order, an opportunity could have been taken to develop jurisprudence on RPM and vertical arrangements that have an adverse effect on the market.

It could have done so with elaborations on the law relating to vertical restraints in developed jurisdictions, competition concerns, based on evidence on record, as well as the missing links of facts and law on RPM.

In conclusion, the role of the appellate body is crucial to develop jurisprudence, with the help of precedents in foreign jurisdictions, based on sophisticated market analysis and economic concepts applicable to any anti-competitive conduct.

In this light, the role of competition law experts would be even more significant in helping the corporate sector with its business arrangements to mitigate competition law risks and liabilities.

- B1. What is the role of Competition Commission of India (CCI) in managing healthy competition in market in the light of Hyundai's case? Has Hyundai Motor India Ltd infringed any provision of CCI? (CILO-2)
- B2. In the absence of any directive from CCI regarding 'Resale Price Maintenance' agreements, how will the governing bodies take corrective measures to overcome such anomalies? (CILO-2)