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Spring Term 2023

European Economic Law

19 June 2023

Duration: 120 minutes

Please check at receipt of the exam the number of question sheets. The examination contains 3 pages (including this title page) and 5 questions (Question I, Question 1, Question 2a, Question 2b and Question 3).

Notes on marking

This examination contains two parts. You have to respond to both of them in English. The two parts have the same weight (50% each).

When marking the exam, each question is weighted separately. Points are distributed to the individual questions as follows:

Part I

Question I ca. 50%

the total of the points for Part I includes up to 4 extra points for good structure and argumentation

Part II

Question 1 ca. 30%
Question 2a ca. 3%
Question 2b ca. 10%
Question 3 ca. 7%

the total of the points for Part II includes up to 4 extra points for good structure and argumentation

Total 100%

We wish you a lot of success!



Part I – *The Fundamental Freedoms* (50%)

Italy has been suffering from prolonged water shortage. Studies by environmental associations have shown that a large proportion of the washing machines in use are harmful to the environment. This is caused by their high consumption of energy and water.

The Italian government doesn't want to sit and watch and therefore adopts a regulation which states that only washing machines that meet high energy efficiency requirements may be sold and used in Italy. In particular, the washing machines may only consume a small amount of water. This measure is expected to save considerable amounts of water. After a transitional period of ten years (the usual period of use of washing machines), only environmentally friendly washing machines may be used.

"Wash KING", a washing machine manufacturer, incorporated in Germany, sells its machines worldwide. In addition, "Wash KING" provides a laundry service for hotels: they pick up the laundry, wash it (in their own machines) and bring it back to the hotel.

The new regulation would affect "Wash KING" severely: Its washing machines would – as a lot of other machines – need a lot of improvement to meet the requirements of the new regulation.

"Wash KING" would also have to sell its machines at a much higher price.

Therefore, "Wash KING" challenges the regulation in court, claiming that said regulation violates European law. "Wash KING" holds that the regulation in fact makes it impossible for them to sell washing machines in Italy and to provide their laundry services to the Italian hotels. The Italian government on the other side argues that any measure now is necessary to combat water shortage and thereby prevent long-term environmental damage.

Question I: Is there a violation of the Treaty rules on the fundamental freedoms? (≈ 50%)

Note:

Please start from the idea that the EU has taken no harmonization measures with respect to the manufacturing of washing machines.

Please integrate a full analysis of all conditions of the Keck and the Cassis formula, even if these concepts are not relevant for your solution.

Please do not examine any other EU law outside the rules on the fundamental freedoms.

The question is only about substantive law. Please do not comment on the procedural steps Austria could take.



Part II – EU Competition Law (50%)

Case 1:

Cinestar (C), a company domiciled in Belgium, is a film exhibitor operating several large multiplex cinemas in Belgium. After the bankruptcy of their main supplier for popcorn, C is on the lookout for a new supplier. Popcorn Paradise (P), a company domiciled in Portugal, is a wholesaler for ready-made popcorn that caters exclusively to professional movie theatres. C and P conclude a contract that, inter alia, contains a provision which defines a “recommended retail price” (RRP) of 9 EUR, indexed for inflation (i.e. the price moves upwards in parallel to the inflation index), for a standard sized popcorn bag. Another provision in the contract obliges C to only source popcorn from P for the subsequent five years. At each inflation-related adjustment of the RRP, P communicates the adjusted price directly to the cash registers in C’s cinemas. Cinema staff can, however, set a resale price in the cash registers which deviates from the adjusted RRP.

Note: C has a market share of 30% and P has a market share of 25% on the relevant markets.

Question 1: Do the contractual provisions violate Art. 101 TFEU? You can assume that Art. 101 TFEU is applicable. (≈ 30%)

Case 2:

Xeax (X), a company that manufactures smartphones, tells company Yellowchip (Y), its long-time supplier for smartphone chips, that X will not renew their supply contract, which terminates at the end of the year, and will most likely turn to a competitor of Y. Y responds by stating that, should X not renew the supply contract and accept a price increase of 25% per chip, Y will not supply X anymore in the future should X wish to re-establish its supply relationship with Y.

X claims that the behaviour of Y violates Art. 102 TFEU. Y counters and claims that his behaviour is of no harm to consumers and, therefore, Art. 102 TFEU is not violated.

Note: Y has a dominant position on the relevant market.

Question 2a: Comment on Y’s statement that Art. 102 TFEU only protects consumers. (≈ 3%)

Question 2b: How would you assess the compliance of Y’s behaviour with Art. 102 TFEU? You can assume that Art. 102 TFEU is applicable. (≈ 10%)

Question 3: Explain the main concepts and approaches regarding the geographical applicability of EU competition law. (≈ 7%)