

---

**European Economic Law****8 January 2020**

---

**Duration:** 120 minutes

- Please check both at receipt as well as at submission of the exam the number of question sheets. The examination contains 2 pages and 4 questions.

**Notes on grading**

The exam contains two parts. You have to respond to both of them in English. When grading the exam each question is weighted separately. The two parts of the exam have equal weight. Points are distributed to the individual questions as follows:

*Part I*

Question I	32 points	50%
------------	-----------	-----

the total of the points for Part I includes up to 2 points for good structure and argumentation

*Part II*

Question 1	24 points	37,5%
Question 2	4 points	6,25%
Question 3	4 points	6,25%

the total of the points for Part II includes up to 2 points for good structure and argumentation

Total	<hr/> 64 points	<hr/> 100%
-------	-----------------	------------

**We wish you a lot of success!**

## **Part I (Prof. Heinemann): *The Fundamental Freedoms***

From 2015, Germany has put in place a legal framework for the introduction of a charge for the use by passenger vehicles of federal roads, including motorways: the ‘infrastructure use charge’. By that charge, Germany intends to move in part from a system of financing by means of taxation to a system of financing based on the ‘user pays’ and ‘polluter pays’ principles. The revenue from that charge will be entirely allocated to financing the road infrastructure, the amount of which will be calculated on the basis of cylinder capacity, the type of engine and the emission standard of the vehicle.

Every owner of a vehicle registered in Germany will have to pay the charge, in the form of an annual vignette, of no more than €130. For vehicles registered abroad, payment of the charge will be required (of the owner or the driver) for use of the German motorways. In that regard, a 10 day vignette is available costing between €2.50 and € 25, a 2 month period costing between €7 and €50 and annual vignettes are available, at no more than a maximum of €130.

In parallel, Germany has provided that the owners of vehicles registered in Germany will qualify for relief from the motor vehicle tax to an amount that is at least equivalent to the amount of the charge that they will have to pay. Thus, in sum, German car owners – contrary to car owners from abroad – do not bear any additional financial burden due to the ‘infrastructure use charge’.

The Republic of Austria argues that the national measures at issue are liable to have effects on cross-border supplies of goods using passenger vehicles weighing up to 3.5 tonnes which are subject to the new ‘infrastructure use charge’. Therefore, according to the Austrian government, these measures are in breach of the rules on the free movement of goods. The Federal Republic of Germany contends that the ‘infrastructure use charge’ only affects the transport of products and constitutes, accordingly, a selling arrangement within the meaning of the *Keck* decision. Moreover, according to Germany, the new system is necessary to protect the environment.

**Question:** Is there a violation of the rules on the free movement of goods? Please start from the idea that the EU has taken no harmonization measures with respect to the financing of roads or regarding the motor vehicle tax. 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 free movement of goods rules.

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

## **Part II (Prof. Picht): EU Competition Law**

### **Question 1**

#### **Facts:**

B is a shopkeeper in Italy who sells, inter alia, a large product (PL) and a small product (PS). The markets for PL and PS, respectively, are two distinct product markets. B supplies these products from the French company S which holds a 35% market share on the market for PL wholesale sellers and a 26% market share on the market for PS wholesale sellers, while B holds a market share of 14% on the market for PS wholesale buyers.

B and S have concluded a “framework supply contract” in order to provide an efficient and reliable structure for their distribution relationship. According to this contract, B must buy 82% of all PL and PS products it purchases from S. This obligation runs for 3 years regarding PS and for 8 years regarding PL. Furthermore, B is obliged to contract, for all product shipments from S to B, with B-Ex, a fully-owned subsidiary of B (i.e. B holds 100% of the shares in B-Ex).

#### **Question:**

- 1.1 Is EU competition law applicable to the “framework supply contract”?
- 1.2 If so, does the “framework supply contract” violate EU competition law?
- 1.3 To the extent a violation is present, which are the legal consequences for the “framework supply contract”?
- 1.4 Provided a violation is present, which provisions of which EU Regulation would S have to consult in order to estimate the fines the EU Commission could impose on it?

#### **Question 2** (*without reference to the above facts*)

Explain the statement that “abuse in the sense of Art. 102 TFEU is an objective concept”.

#### **Question 3** (*without reference to the above facts*)

Describe the “merger test” of EU competition law, as implemented in Art. 2(2), (3) of the EU Merger Regulation.