

**NATIONAL UNIVERSITY OF IRELAND, GALWAY
FACULTY OF LAW**

SEMESTER II EXAMINATIONS 1999/2000

**LL.B. – ALL YEARS
BACHELOR OF CORPORATE LAW DEGREE
BACHELOR OF COMMERCE DEGREE
ERASMUS & OCCASSIONAL**

COMPARATIVE COMPETITION LAW(LW333)

**Professor C. Warbrick
Mr. T. Carney**

Time Allowed: **Two Hours & Thirty Minutes**
ERASMUS students have an additional half hour

Answer **THREE** questions

Answer **Part A** **AND** any **two** questions from **Part B**

PART A
(Compulsory)

1. Jolex Ltd, in the United Kingdom, manufactures high-class jewellery including its famous state-of-the-art *mobilefone* watch. Its board of directors makes a decision to penetrate the US market and appoints distributors in various parts of the United States, granting them, respectively, exclusive territories there. At the same time, Jolex decides to enter the German market and concludes an exclusive distribution agreement with Matthias. It does not notify the agreement to the EC Commission. All the supply agreements between Jolex and its German and US exclusive distributors contain the following identical standard terms:
 - (a) a provision for resale price maintenance;
 - (b) a provision preventing the exclusive distributor from selling through any method whatsoever the product into the territories of other distributors appointed by Jolex, be they in the US or Germany;
 - (c) a provision making the sale of Jolex's *mobilefone* watch conditional upon the conclusion of repair contracts with Jolex.

The Federation of Small Retail Jewellers of America organises its members to under-cut all prices set by Jolex's distributors in the US. It alleges that this action is justified as Jolex is unfairly subsidising its entry onto the US market through reliance on the huge profits it generates on the British market.

You are asked to advise Jolex on the legality of these agreements under US anti-trust law and EU Competition law. Also consider any action that Jolex might take against the Federation of Small Retail Jewellers of America.

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PART B

(Answer any two questions)

2. Critically assess what general lessons may be learned by the European Union from the US model for the control of abusive behaviour by dominant firms. Support your conclusions by reference to examples of abusive conduct identified in cases decided in the US and EU.
3. Examine, with reference to the decided cases, how jurisdiction is established by litigants in the various US anti-trust and EU Competition law proceedings.
4. Discuss the extent to which there exists in Article 81(1) of the EC Treaty a workable rule of reason. In your answer, have regard to the development of the rule of reason and the principle of *per se* illegality under Section 1 of the Sherman Act, 1890.
5. Answer **EITHER** (a) **OR** (b)

- (a) Examine, with reference to the case law, the role of the cross-price elasticity test in the respective definitions by US anti-trust and EU competition enforcement authorities of relevant markets under Section 2 of the Sherman Act, 1890 and Article 82 of the EC Treaty.

OR

- (b) Newton produces cement. It has 59% market share in Ireland. It is the sole producer of Rotide, a chemical gelling agent. Newton decides to raise its price for cement by 60% and the price of Rotide by 120% to subsidise the development by it of an incinerator plant on the outskirts of Galway city. Isaacs, the largest single consumer in Ireland of cement, complains to the EU Commission about Newton's pricing policy. Isaacs believes that Newton is making a profit of 35% on its Irish cement sales and a profit of 120% on Rotide. Newton believes that its pricing policy is not contrary to European law and points to the recent, very large price increases for housing in Ireland. However, the Commission is aware that Newton is selling its cement on the UK market at a much lower price than that charged to Irish consumers. Newton holds 12% of the UK market.

Advise Newton on the legal situation under Article 82 of the EC Treaty. Briefly compare the situation with the legal position in the United States.