

GX 1705

Ollscoil na hÉireann, Gaillimh
National University of Ireland, Galway

Exam Code: 23CW, 3CL, 234BL, 34BC, 1OA, 1EM.

Exam: Semester II Examination 2003/2004
Second and Third Year Bachelor of Civil Law
Third Year Bachelor of Corporate Law
Second, Third and Fourth Year LL.B
Third and Fourth Year Bachelor of Commerce
Occasional and Erasmus Students

Module Code: LW 333

Module: Comparative Competition Law

Paper No.: One of One

External Examiner: Dr. Catherine Barnard

Internal Examiners: Ms. Anna-Louise Hinds

Instructions: Students must answer any **THREE** questions. All questions carry equal marks. Students are requested to **indicate** which questions they have answered on the front of their answer book.

Duration: TWO hours

No. of answer books: N/A.

Requirements: **Materials permitted:**
Students are allowed to refer to the Treaty Establishing the European Community (consolidated version including the Treaty of Amsterdam) and the Treaty of Nice 2001 or to photocopies or downloaded versions thereof or to copies of Foster, N., Blackstone's EC Legislation (any edition) in the examination room. Students may also refer to secondary EC legislation in downloaded or photocopied version, in particular the Vertical Restraints Regulation. Students may likewise refer to the Sherman Act 1890, the Clayton Act 1914, the Robinson-Patman Act 1914 and the Fair Trade Commission Act 1914. Erasmus students are allowed to use dictionaries.

Department: Law

P.T.O

1. Comment on the general context in which competition law operates in the EC and antitrust law in the US, referring to the applicable laws and the institutions that are in place to deal with competition law and policy in each jurisdiction.
2. Discuss in detail Case C-56/64 *Consten & Grundig* [1966] E.C.R. 556 in the context of Article 81 EC Treaty, with emphasis on the decisions of the Commission, the opinion of the Advocate General in the case before the European Court of Justice (ECJ) and the judgement of the Court itself.
3. X Ltd, a manufacturer of cameras in the UK, has decided to sell its products in the other EC Member States. The company appoints distributors in each of the Member States and grants them exclusive sales territories. All of the distribution agreements contain *inter alia* the following identical standard terms:
 - (i) a resale price maintenance clause;
 - (ii) a provision preventing each of the distributors from engaging in active sales in each others' territories;
 - (iii) a clause granting each of the distributors a secondary trademark XYX for X Ltd's products;
 - (iv) non-compete clauses, stipulating that if the distributor leaves the distribution network, it cannot engage in the distribution of competitors' products for a ten year period;
 - (v) a provision making the purchase of X cameras conditional upon the conclusion of a services contract with X Ltd.

You are asked to advise X Ltd of the legality of these terms under EC Competition Law. Please refer in your answer to any relevant Treaty provisions, secondary EC legislation and case law of the European Courts.

4. Explain the operation of the *per se* illegality test and the rule of reason test under Section 1 Sherman Act 1890. To what extent, if any, does Article 81(3) operate as an equivalent test in the EC?
5. Discuss the various tests used in the EC and in the US to determine the relevant market. Why is it important to determine the relevant market?
6. Comment on the effectiveness of the decentralisation of competition enforcement in the EC. How does this compare with the enforcement mechanisms in the US?

END