



UNIVERSITY OF ESWATINI
INSTITUTE OF DISTANCE EDUCATION
DIPLOMA IN LAW
FINAL EXAMINATION PAPER NOVEMBER 2021

TITLE OF PAPER : COMPETITION LAW
COURSE CODE : IDE LAW314
TIME ALLOWED : THREE (3) HOURS
INSTRUCTIONS :

1. **ALL QUESTIONS ARE COMPULSORY.**
2. The total number of marks available for this examination is 80.
3. Read carefully section specific instructions on answering questions.
4. Begin answering new sections on a fresh page.
5. The order in which sections are attempted is not material; sections and questions must be numbered clearly.

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GIVEN
BY THE INVIGILATOR**

Question 1**(15 Marks)**

- (a) List the six sources of Competition Law in Eswatini.
- (b) List some of the substantive issues which must be considered in merger review?
- (c) In the context of competition law, what do the following acronyms stand for:
 - (i) COMESA,
 - (ii) ICN,
 - (iii) SADC?

Question 2**(15 Marks)**

There are 3 wine retailers in Eswatini, namely Wine World, Cape Country, and Sip 'n See. The managers of the 3 retailers bump into each other at the International Winemakers Expo held in Cape Town and they casually start discussing the state of the economy in Eswatini and how the market for the sale of wine is taking a knock. Research shows that 70% of the Swazi population drinks white wine and 47% drink red wine. As the only 3 retailers of wine they decide to fix things so as to protect the market and ensure that their businesses survive. Later that night they meet at a restaurant to have constructive discussions and they decide that Wine World will operate only in Mbabane and Pigg's Peak, Sip 'n See will operate only in Ezulwini and Manzini, and Cape Country will operate only in Nhlanguano and Hlatikulu. Other parts of the country are free for all as they collectively constitute only 0.5% of the wine drinking population in Eswatini. They also discuss the fact that most customers like to have white wine with cream cheese, so Sip 'n See decides that it will start selling all of its best-selling white wines with cream cheese as a combo.

The Eswatini Competition Commission started investigating the 3 retailers. Acting as legal counsel for Sip 'n See, you are requested to fully advise Sip 'n See indicating likely outcomes of the investigation, and also provide advice as to whether, and if so how Sip 'n See may obtain a settlement with the

Commission to avoid or reduce potential fines. In your advice, make reference to specific provisions of the applicable law.

Question 3

(20 Marks)

(a) Via Electric is the only electricity company in Eswatini. BNB wants to compete with Via Electric, but it needs to lease usage of Via Electric's electricity transmission grid. Via Electric agrees and sets the rental fee at \$100 Million per week. BNB projections show that it will make a profit of around \$12 Million a month in its first year of operation. Via Electric's financial statements show that it made a profit of \$1.2 Billion in the preceding financial year.

Advise BNB. In your advice you are required to explain which competition law doctrine applies in these set of circumstances and fully explain the substantive meaning of this doctrine. You are also required to make reference to provisions of the applicable law in Eswatini.

Question 4

True or False

(20 Marks)

- (a) Competition as a concept refers to market rivalry between market players over suppliers.
- (b) It is a function of competition law to protect consumers from market participants which are powerful when compared to consumers.
- (c) Competition Authorities such as the Eswatini Competition Commission strives to ensure that there is perfect competition in all markets.
- (d) Intervention from a competition regulation perspective generally happens *ex post facto*, except in the case of merger control.

- (e) The hypothetical monopolist test is also known as the SSNIP test.
- (f) Market definition comprises of both the product market and the geographic market.
- (g) Agreements providing for cooperation between competing independent market participants directed at eliminating competition between them fall under vertical restraints.
- (h) It is a fundamental principle of competition law that firms which produce substitute products must compete.
- (i) Section 30 (1) of the Competition Act of 2007 deals with collusion in all its forms.
- (j) Section 30 (1) of the Competition Act of 2007 requires that both the object and effect of collusive agreements are proven.
- (k) Resale Price Maintenance (RPM) occurs when a supplier of goods or services (e.g. a manufacturer or wholesaler) specifies a maximum price (also known as a ceiling price) above which a reseller must not on-sell, or advertise for sale, those goods or services.
- (l) All vertical relationships are pro-competitive.
- (m) Exclusive dealing restrictions frequently have been condemned for their foreclosing effects.
- (n) Technically speaking there is a difference between market power and dominance.
- (o) A merger is defined in the Competition Act of 2007 as the acquisition of an interest in any trade involved in the production or distribution of any goods or services, or an asset which is or may be utilised for or in connection with the production of any commodity.
- (p) Mergers implemented prior to notifying the Commission and getting authorisation thereto have no legal effect, and thus the Commission can order that an unlawful merger be undone.
- (q) Merger provisions of the Competition Act of 2007 apply to all shareholders including nominal shareholders.
- (r) The Eswatini Competition Commission is made up of two competition authorities which are technically separate but work together.

- (s) The COMESA Competition Commission is a regional organization established by SADC.
- (t) The Swaziland Communications Commission Act of 2013 empowers the Eswatini Communication Commission to administer certain aspects of the Competition Act as they relate to the sectors within the purview of the regulator.

Question 5

(10 Marks)

Multiple Choice

- (a) The relevant market:
 - i. is helpful for competition law, but not essential as every market may, depending on the circumstances, be relevant.
 - ii. shows who is competing with who, and is determined in terms of substitutability.
 - iii. is an exact science which helps to establish the power of undertakings with absolute precision
 - iv. i and ii above
 - v. none of the above

- (b) The SSNIP Test is useful when defining the relevant market. What does SSNIP stand for?
 - i. Substantial and Significant New Incremental Prices
 - ii. Sequence of Small but Noticeable Intervals of Price
 - iii. Small but Significant Non-Transitory Increase in Price
 - iv. Significant and Salient Number Indicating Price
 - v. None of the above.

- (c) In general terms, a cartel can be described as-
 - i. a monopoly, with only one firm acting in the market

- ii. a situation whereby two firms agree to pool their resources, usually with the intention of developing a new product or service that they could not produce separately
- iii. a group of firms that comes together and acts in the market as if they were one rather than competing independently
- iv. ii and iii above
- v. none of the above

(d) A vertical agreement-

- i. is an agreement between firms located in the same relevant product market, but in different relevant geographic markets
- ii. is an agreement between competitors with regard to the conditions of distribution of their products
- iii. is an agreement between firms at different levels of the chain of production or distribution
- iv. can never be between competitors
- v. iii and iv above

(e) Mergers are analysed *ex ante*, and therefore-

- i. it is procedurally similar to the control of dominance
- ii. the concern is always on actual effects
- iii. the concern is always on potential effects
- iv. they are not predictive in nature
- v. All of the above

(f) Which of these statements about concerted practices is true?

- i. They imply some form of coordinated action between firms
- ii. They do not require any contact between the parties, as they can be achieved by the operation of normal market forces
- iii. Both i and ii are true
- iv. Both i and ii are not true