

Mock exam instructions for EU Competition Law

(Please note that writing a mock exam is not mandatory)

Submission deadline **6 November 2015 at 15:00** – submission in **Fronter**

1. Students type their names on top of the paper + level (bachelor or master), and submit it in the correct hand-in folder in Fronter: bachelor or master. For mock exam purposes, we use the same questions for both levels.
2. Students are strongly encouraged to work in groups, since this can maximize your learning and understanding. Submissions written jointly by three or more students will receive a tentative grade and some explanatory comments will be made available in Fronter. The mock exam will also be discussed in the last lecture. We will strive to comment on all papers that have been submitted jointly by three or more students before this date, but please be prepared for the possibility of receiving comments at a later date. We do not guarantee individual feedback or commentary on papers submitted by groups of less than three students. Please indicate clearly the names of all the students in the group.
3. An upper limit of 2,500 words applies. Kindly confirm the number of words on the top of the document. If you consider that the word limit is insufficient to respond well to all questions, you can choose to submit a response to only one or part of the questions but, if so, please indicate this clearly. Your response should be structured and concise.
4. Each student group to answer 3 out of the following set of 7 questions.
5. Submission in Fronter
 - a) Log into Fronter with your usual password and username <https://fronter.uio.no/>
 - b) Find the Fronter room: JUS5310 Fellesrom-2015
 - c) Go to the folder “Mock Exam”, find correct subfolder and submit in one of the following folders: “Hand-in folder bachelor’s level”, or “Hand-in folder -master’s level”. (You choose individual Hand-in OR groupwork)
 - d) NB! If the paper is submitted outside the folder, other students may view it!

If you have problems with the access to **Fronter** please send an e-mail to elisabeth.reien@jus.uio.no.

JUR 1310/JUS5310 EU Competition Law

In Mainland, a Member State of the European Union, there were four oil companies each having a market share of 25 % on the national retail market for road fuel. Prices to consumers followed a weekly pattern, where prices generally increased Monday afternoon and then gradually declined until the next price increase. As a rule, on Monday afternoons the prices increased to the level of the "recommended retail price", which the oil companies published (independently of each other) on their respective websites.

The competition authority in Mainland initiated an investigation. It turned out that the oil companies all applied a similar pricing system, which worked as follows: Independent fuel stations (i.e. fuel stations ran by independent retail undertakings) paid a flat price pr. liter fuel purchased from the oil companies, and were in principle free to set their resale price. However, as local competition forced retail prices down during the week, any price reduction by the dealers had to be approved by the suppliers (i.e. one of the oil companies). As a rule, such approval was granted, either by email or phone. Each Monday afternoon, however, the approval was withdrawn, and the dealers increased the price to the recommended retail price. The oil companies argued that their pricing systems were covered by the Block Exemption Regulation 330/2010.

Question 1: Explain briefly how RPM (Resale Price Maintenance – i.e. fixed or minimum resale prices in vertical relationships) may harm competition.

Question 2: Discuss whether the pricing systems of the oil companies are covered by the Block Exemption Regulation 330/2010.

Some fuel stations were operated through a special arrangement whereby an oil company entered into a land lease & service operator agreement. Under such arrangement, the oil company would lease the premises, and install required technical facilities. The station would be run by an operator which would sell fuel to consumers on behalf of the oil company. The operator would be remunerated by the oil company a fixed amount per liter fuel sold to the consumers. Other services like sale of food, drink & groceries would be left solely to the operator and under the operator's brand (the oil company would not be involved in that part of the business).

Question 3: Under such scenario, would the oil company be entitled to set the retail fuel price? Substantiate your answer.

After substantial media focus, the EU Commission took interest in the case, and initiated an investigation of the four oil companies. According to the Commission, the parallel pricing systems and the weekly price increases indicated that the oil companies operated a secret cartel. The oil companies disputed the competence of the Commission, arguing that there was no effect on inter-state trade. Furthermore, they claimed that the evidence relied on by the Commission was too speculative to establish an infringement of Article 101 TFEU.

Question 4: Discuss whether Article 101 TFEU applies, and whether the Commission is in a position to establish an infringement of Article 101 TFEU.

A few months into the investigation, the oil company QX applied for leniency, confessing that in 2012, there had been a meeting between the four oil companies. In that meeting, they had

agreed on the pricing system and that prices should be increased to recommended prices every Monday. None of the other oil companies had applied for leniency.

Question 5: Discuss whether QX is in a position to be granted a) full immunity or b) is entitled to a reduction in its fine.

In parallel with the investigations, the oil companies QX and Clam Inc. discussed a business plan whereby they were to transfer their respective portfolios of fuel station to a 50:50 owned joint venture company named Clam-X. The joint venture was to operate all retail operations for the parent companies, and would have the ability to source fuel also from third-parties. After the transaction, Clam-X's market share would be approximately 50, while the two other oil companies would hold approximately 25 % each.

Question 6: Discuss whether the joint venture should be considered a concentration according to the EUMR.

Question 7: Discuss whether the potential effects of the business plan on competition would be of a coordinated or a non-coordinated (unilateral) nature.

Each student group to answer 3 out of the set of 7 questions.