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Universitetet i Oslo

EXAM

JUS5310 - EU Competition Law - Autumn 2017

Date: 21 November

Time: 09:00

In the EU member state Southway, the company Magazon distributed books to retail outlets that are not traditional bookstores, such as kiosks and grocery stores (the so-called mass market for books). Magazon was owned by Southway's four largest book publishers, none of which could exercise decisive influence over the distribution company.

The four publishers had approximately equal market shares in the relevant Southwegian distribution mass market for books, and their combined share in that market was 51 %. The remaining 49 % were held by 10 small and medium sized publishers.

The kiosk and grocery store chain group Royaltan Convenient also owned (100 %) and operated its own book distribution company, Intrapress. Intrapress was Magazon's only competitor for distribution to the Southwegian mass market for books. Both Magazon and Intrapress distributed books from Southway's publishers to Royaltan Convenient's kiosks and grocery stores.

In 2017, Royaltan Convenient / Intrapress decided that Intrapress should be the only distributor of books to Royaltan Convenient's kiosks and grocery stores. The decision would increase Intrapress' turnover and profits. Intrapress therefore gave notice to Magazon and its owners that Magazon would no longer distribute books Royaltan Convenient's kiosks and grocery stores.

The CEOs (Chief Executive Officers) of Magazon and its four owners subsequently held a meeting to decide how they should respond the Intrapress / Royaltan Convenient's new distribution policy. The CEO of Magazon suggested that the four publishers should respond by not supplying Royaltan Convenient with any of their respective books, unless Magazon would handle the distribution. The CEOs neither confirmed nor rejected Magazon's proposal, but stated that they would consider the idea. After further internal decision making processes within each of the four respective publisher companies, they all decided to stop supplying Intrapress / Royaltan Convenient with books.

Without books from the four publishers, Intrapress would not be able to maintain a sustainable business operation. Intrapress therefore decided to lodge a complaint to the European Commission.

Question 1: Discuss whether Magazon and/or the four publishers have infringed TFEU Article 101 and/or 102.

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Magazon was also the largest European wide distributor of e-books (electronic books). In the relevant European e-books market, Magazon held a market share of 45 %.

Magazon's agreements with a large number of e-book publishers required the publishers to notify Magazon of any more favourable prices offered to other distributors of e-books and to offer Magazon equally favourable prices as those offered to other distributors (so-called Price Parity Clauses).

Magazon's largest competitor in the European market for the distribution of e-books was a company called i-books with a market share of 25 %. i-books decided to lodge a complaint to the European Commission. i-books argued that the agreements between Magazon and the e-books publishers reduced i-books' ability to negotiate and compete on price.

Question 2: Discuss why/why not the clauses may harm competition, and whether Magazon and/or the e-book publishers have infringed TFEU Article 101 and/or 102.

The European Commission initiated proceedings and subsequently issued a Statement of Objections against Magazon signaling its intention to impose a substantial fine. Three weeks later, the European Commission queried Magazon whether it would be willing to offer commitments under Regulation No 1/2003 Article 9.

Question 3: Discuss whether Article 9 may apply, and, assuming it does, advice Magazon on appropriate commitments.

Magazon's owners, the four publisher companies, each had equal representation of the voting rights at Magazon's general assembly of shareholders.

After long negotiations, the publisher companies entered into a share purchase agreement. Pursuant to the agreement, one of the owners/publishers, Golden Valley, would buy 5 % of the shares (and accompanying voting rights) in Magazon from each of the three other publishers. The four publisher companies also entered into a separate shareholders agreement, according to which no decision concerning Magazon's budget and business plan could be taken without Golden Valley's approval and consent. If the share purchase transaction was completed, Golden Valley would hold 40 % of the shares and voting rights in Magazon.

Question 4: Discuss whether the agreements between the publishing companies constitute a concentration within the meaning of Regulation 139/2004 (the EU Merger Regulation) Article 3.