EKSAMEN I JURIDISKE VALGEMNER

HØST 2014

Dato: Fredag 28. november 2014
Tid: Kl. 10:00 – 14:00

JUR1310/JUS5310 – EU Competition Law

The language of examination for this course is English: students may answer in English ONLY, answers in any other language than English will be given a F (F for fail).

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 Each Monday afternoon, however, the approval was withdrawn, and the dealers increased the price to the recommended retail price.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. (BA-students only)*
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> *Question 2: Discuss whether the pricing systems of the oil companies are covered by the Block Exemption Regulation 330/2010. (Both BA and MA students)*

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. (MA students only)*

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. (Both BA and MA students)*

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. (MA students must answer either question 5, 6 or 7)*

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. (MA students must answer either question 5, 6 or 7)*

> *Question 7: Discuss whether the potential effects of the business plan on competition would be of a coordinated or a non-coordinated (unilateral) nature. (MA students must answer either question 5, 6 or 7)*

BA-students to answer questions 1, 2 and 4.

MA-students to answer questions 2, 3, 4 and either question 5, 6 or 7.

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Sensuren faller fredag 19. desember klokken 15.00. Kontroller på StudWeb eller ta kontakt med Infosenteret på 22 85 95 00.

Kandidatene har rett til en redegjørelse for sensurvedtaket ved henvendelse til sensorene innen en uke etter sensur. Kontaktinformasjon for sensorer finnes på Fakultetets nettsider. Du kan også ta kontakt med infosenteret. Klagefristen er tre uker etter sensur.

The result of the exams will be announced on Friday 19. December, at 15.00 hours. You can check the results in the StudWeb, or by contacting the Information Centre, phone 22 85 95 00.

After the exam results are announced, candidates have the right to be informed of the grounds for the result as long as a request is made within one week of the announcement. The names and contact information of the examiners can be found on the Faculty's website, or by contacting the Information Centre. The deadline for appeal is three weeks after the announcement of the results.

Oslo, 28.11.2014