

UNIVERSITY OF FORT HARE
NELSON R MANDELA SCHOOL OF LAW

**Competition Regulation,
Enforcement and Procedure**

LRP 611E

DEGREE EXAMINATIONS

JUNE 2023

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Time: 3 hours

Subject: Competition Regulation, Enforcement and Policy

Marks: 100

**This paper consists of Four (4) pages including the
cover page**

Internal Examiners
Dr T Shumba

External Examiner
Dr T Kondo

GENERAL INSTRUCTIONS

- a. Answer all the questions
- b. Each question must be answered as per the instructions provided
- c. It is in your best interest to write clearly, neatly and legibly
- d. Rely on relevant case law and statutory provisions where applicable

QUESTION 1

“The [Competition]Tribunal is a creature of statute and has no inherent powers, and in accordance with the constitutional principle of legality, has to act within the powers conferred upon it by its enabling statute.”

Critically discuss recent authority on the powers of the Competition Tribunal and analyse the effectiveness of the Tribunal function as an integral actor in both public and private enforcement of competition law. **[25 marks]**

QUESTION 2

“Irrespective of one's approach to competition law [enforcement], it should be recognised that law is a dynamic phenomenon whose focus and content are influenced by prevailing political dispensations and socio-economic preferences and imperatives. The development of competition law [enforcement] in South Africa and, more particularly, the objectives it is intended to achieve, bears testimony to this.”

Critically discuss this statement in the context of the historical development of South African Competition law. **[25 marks]**

QUESTION 3

Morata, a low income old man from Mbali rural district, only heard about the release of Nelson Mandela during an ANC campaign rally for the upcoming 2021 by-elections held in his village on 3 April 2021. He decided that he will travel to Pretoria to have a glimpse of the icon.

Upon arriving in Pretoria, he fell sick. People there are talking about masks, sanitisers, the coronavirus (Covid19), the third wave and many

other things which Morata is unaware of. In fact, he has also learnt that President Mandela was released from prison far back in the 90s and is no more. Morata is so embarrassed with his ignorance that he becomes so upset by his lack of access to basic information and blames this on the high cost of Vodacom data, the only network with a signal in Mbali.

Morata has heard that there is a Competition "something something" that can help him get cheap data and has approached you for a detailed explanation about who can approach the Commission, when can this Commission be approached, how is it approached and what this Commission can possibly do when approached with a complaint such as this one. Please limit your explanation to the Commission's handling of a complaint and focus on whether the Commission "as a vehicle for transformation", can be regarded as accessible and effective for the poor and indigent. **[25 marks]**

QUESTION 4

Brainlords Pty Ltd is a business in Johannesburg that has been involved in a widely reported price fixing scandal. The directors of Brainlords have always been aware that the CEO of their firm together with managers in relevant departments have been fixing prices with a rival firm but never took any action. The matter has caught the ire of competition authorities who are now busy with investigations. Brainlords directors are worried about the possible legal consequences of this scandal and have approached you for advice. Please pay

attention to both civil and criminal consequences for all involved in this scandal. **[25 marks]**

[TOTAL 100 MARKS]