

**UNIVERSITY OF FORT HARE  
NELSON R MANDELA SCHOOL OF LAW  
(East London Campus)**

**COMPETITION LAW  
LMC 412E / LMC 413E**

**EXAMINATIONS 2023  
SUPPLEMENTARY EXAMINATION PAPER**

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**INTERNAL EXAMINER**

Ms. L. E. Gomomo

**EXTERNAL EXAMINER**

Dr. Kondo

**INSTRUCTIONS**

1. Answer ALL questions.
2. Substantiate your answer by reference to applicable case law and/or legislation.
3. Pay attention to marks allocation.

### QUESTION 1

Discuss the single economic concept under the Competition Act 89 of 1998 (as amended), in your answer also refer to case law.

[25 Marks]

### QUESTION 2

Firm A is a dominant firm in the Beer market with 90% of the market share. Firm A's annual turnover in the Republic amounts to 5 Billion Rands. The Competition Commission alleges that Firm A has engaged in price discrimination as a seller in terms of section 9(1) of the Competition Act 89 of 1998 (as amended) by selling its products to its customers, the so-called Appointed Distributors (Ads) more favourable retail prices and discounts as opposed to its Independent Distributors (IAs) a retail price and no discounts. In your answer, also discuss:

- (a) The abuse of dominant restriction threshold applicable in terms of section 6 of the Act;
- (b) The market share and onus of proof on dominance in terms of section 7 of the Act;
- (c) Market assessment; and
- (d) Analyse the above scenario in reference to the relevant legislation and case law.

[25 Marks]

### QUESTION 3

Firm A and B are the only competitors in the South African steel industry. They are steel merchants involved in processing and supply of steel products. The relevant product market constitutes of Non-ISF products and ISF products. Non-ISF steel products are a normal quality finish steel products. Whereas ISF produces high quality steel finished products. Firm A has 60% of the market share in each of the product markets; same as and Firm B with 40% in each of the product market.

The parties to the proposed merger have recently concluded merger negotiations. Firm A ("acquiring firm") with a turn-over of 2 Billion Rands will acquire 50% stake of Firm B ("target") through purchase of shares constituting only the SF business. Whereas, Firm B with a turn-over of 740 Million Rands is selling the shares to Firm A because it incurred losses for past 2 financial years and might close most of its operating factories if the merger is not approved. Firm B will also retain a significant portion of its assets post-merger, it will retain 50 % of the business, but only in the Non-SF market and will exit the SF market. Firm B also has overcapacity in its various plants. Its remaining Non-SF business will through various plants operate independently and continue to compete with Firm A in the Non-SF industry. It will utilise its overcapacity to manufacture more goods in the Non-SF market. The South African

steel industry is currently facing economic distress due to import competition. The parties claim that there will be no job losses since Firm B will be expanding its operations. Therefore, the merger must be approved on the public interest consideration of job creation of approximately 500 new jobs.

Your legal firm XYZ Attorneys have been asked by Firm A and B to provide a legal opinion on the following:

1. The notification procedure of the merger in terms of the Competition Act 89 of 1998 (as amended);
2. The classification of the proposed merger including filing fees to be paid;
3. The assessment criteria the Competition authorities will use to assess the merger; and
4. Whether the proposed merger is likely to be approved, taking into account legal precedent?

[25 Marks]

#### QUESTION 4

Discuss the term unlawful competition in relation to the Mullane and Another v Smith and Others (2014/28264) [2015] ZAGPJHC 66; [2015] 3 All SA 230 (GJ) (20 April 2015).

[25 Marks]

[Total for this paper: 100 marks]

**-END OF EXAMINATION PAPER-**