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**UNIVERSITY OF FORT HARE
FACULTY OF LAW
(East London)**

**Advanced Competition Law and Policy
(Module Code: LCP611E)**

**MAIN DEGREE EXAMINATIONS
2023**

Time: The duration of the Assessment is limited to 3 hours – 180 minutes

Marks: 75

This paper consists of three (3) Questions

**Internal Examiner
Dr. A van Coller**

**External Examiner
Dr T Kondo (UWC)**

Instructions

- a. Read questions carefully and answer all the questions as per the instructions provided;
- b. Organise your time efficiently to ensure that you finish within the time allocated;
- c. Advanced Competition Law and Policy is an LLM Module. You must demonstrate the ability to identify and define the relevant issue(s) presented in the question; select and analyse the most relevant (international, regional and domestic) sources to solve the legal problems; generate appropriate responses and present reasoned solutions thereto. The essay-type questions require a reasoned legal opinion from you supported by relevant and reliable authority. There may exist alternative solutions to the issues, necessitating critical judgment and determining and presenting a reasoned choice between the potential alternative solutions. You must use appropriate conventions and terminology of legal discourse within this specialist area.
- d. The allocation of marks for questions should guide you as to what detail is required. Avoid repetition and the inclusion of irrelevant and immaterial information. Essay questions receive an impression mark. Do not repeat the question in your answer.

QUESTION 1

(25)

The South African steel manufacturing sector is made up of three large companies: Tata Steel (Pty) Ltd (Tata), Meta Steel (Pty) Ltd (Meta) and Ferro (Pty) Ltd (Ferro). Tata has 10% of the local market, while Meta and Ferro each have 30% of the steel market. All three of these companies, amongst other things, produce specialised mechanical steel parts for the industry. These parts are produced with sophisticated and specialised machinery. The market for these specialised steel products requires a considerable capital investment and is, as a result, not attractive to potential new entrants. There are, however, some competitors in the United States of America and Europe.

Meta intends to purchase four factories from Ferro for ten billion Rand. Ferro will then, after the sale, exit the steel market. This merger will potentially result in at least 50% of Ferro employees being retrenched as their positions become redundant. Ferro argues that its factories need to be more profitable as its client base does not allow them to operate 24 hours a day, a requirement for profitability in the industry. The impact of load-shedding was also mentioned as a factor that impacts profitability. Steel manufacturing equipment must remain functioning and takes some time to get back to full operation level after being switched off.

The sale of these factories to Meta will drastically reduce the level of competition in this South African market. Post-merger (of Meta and Ferro), the combined market share of the newly merged firm for producing the specialised mechanical steel parts for the domestic market will be 60%. It is argued that Meta will only have a real competitive threat from imports after the merger.

Required: Meta requires an opinion on whether:

- **the Competition Commission must be notified of this transaction,**
- **what is the procedure for merger notification, and**
- **whether the transaction would possibly be approved.**

Refer to any possible defences that Meta may have should the Competition Commission not approve of this transaction. Refer to legislation and relevant case law in your answer.

QUESTION 3

(25)

Four (4) companies dominate the domestic market within South Africa with regard to air travel. South African Airtravel (SAA), Southern Airlines (Southern), Bluesky and SunAir are all registered on the Johannesburg Stock Exchange. Southern is a wholly-owned subsidiary company of SAA. SAA has a market share of 75%. These operators sell their products and services mainly on the Internet and travel agents. Travel agents are generally paid by way of a standard basic commission of 10% per ticket sold for their services.

To broaden its market share, SAA introduced some marketing and incentive systems. These include the following:

- SAA informed all airline pilots and maintenance personnel in the employ of its competitors that SAA would employ them and offered a 25% increase in their existing salaries;
- SAA further threatened to discontinue its relationship with the only two national newspapers should these papers continue to accept and place advertisements for its competitors. SAA is a significant client for the national newspapers for advertising;
- SAA concluded an agreement with Southern whereby SAA would focus on the routes between the main cities domestically while Southern would move its operations from the main airports to smaller airports. Southern would also operate only between smaller towns only;
- SAA also introduced a 'motivation' or incentive system whereby commission to travel agents is paid through a basic commission for all sales up to a target figure set by agreement. The agents become eligible for two further types of additional commission that are paid over and above the basic commission where they exceed the agreed target figure. The competitors of SAA could not match this incentive scheme because their volume base of sales is too low in relation to that of SAA. The travel agents thus have a compelling financial incentive to sell an SAA ticket to a customer over that of a rival. It is further common knowledge that agents are able to influence the customer's choice regarding the operator to use. The increased business that the scheme brings to SAA is at the expense of its rivals.

Required: Evaluate the situation with regard to the anti-competitive practices that may be relevant here or any practices that may lead to a less competitive market with reference to South African case law. Refer to legislation and relevant case law in your answer.

Total:

(75)