NOVA SCHOOL OF LAW

Competition Law (MM 145)

14 June 2020

Final exam (S/M)

Instructions:

- The exam has the total duration of 180 minutes
- The exam is composed of three parts (I, II and III); in part I you choose only 1 question.
- The total score of the exam is 20 points.
- Answers should be drafted with a *clear handwriting* and **ought not extend beyond 4 pages** (i.e. one exam sheet). *Please be straightforward in your answers*.
- Candidates are allowed to answer this exam either in *Portuguese* or in *English*.
- Abbreviations can be used, provided that their meaning is explained when the abbreviation is used for the first time (e.g. IMF = International Monetary Fund).
- During the exam you are allowed to have access to your own *printed* written materials (legislation, notes, books, etc.).
- Quoting from external sources, whatever their nature (case law, legislation, books, articles, etc.) should be clearly indicated in your exam sheet through a brief reference to the external source. The transcription of passages taken from a third party should be duly mentioned in your answer, while failure to do so may amount to plagiary.
- **Please be aware that access or use of tablets, smartphones, laptops and all electronic gadgets that may allow you to have access to the internet is strictly forbidden during the entire duration of the exam.**

Good luck!

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Part I (4 points)

Please answer 1 (one) of the following questions

1) If perfect competition rarely exists in the real world and the model of perfect competition is just that — a model —, *what is its usefulness for competition law*?

2) What is the relation between *market power* and *dominance* in the context of Art. 102 TFEU?

Part II (10 points)

«*European Commission - Press-release*

Commission fines 4 companies 88 € million for car-batteries recycling cartel

Brussels, 14 June 2012

From 2009 to 2012, four recycling companies took part in a cartel to fix the purchase prices of automotive batteries in Belgium, France, Germany, and the Netherlands. The companies are Midex (Belgium), Eco-Batteries (UK), Thalis (US) and Recylex (France).

Recycling companies purchase used automotive batteries (from cars, vans or trucks) from scrap dealers or scrap collectors. The used batteries are obtained from collection points such as garages, maintenance and repair workshops, battery distributors, scrapyards and other waste disposal sites. Recycling companies carry out the treatment and recovery of scrap batteries and then sell recycled lead, mostly to battery manufacturers, who use it to make new car batteries.

The four companies reached agreements to reduce or to maintain prices offered to suppliers at a certain level or to reduce them by a certain amount, sometimes in phased reductions over time. They also agreed on prices offered to specific suppliers. Unlike in most cartels where companies conspire to increase their sales prices, the Commission concluded that the four recycling companies colluded to

reduce the purchase price paid to scrap dealers and collectors for used car batteries.

The Commission also found that the four companies exchanged information on current or future prices offered to suppliers and, on some occasions, they also provided information to each other on expected volume of purchases, on current levels of stocks or levels of activity.

The majority of the anti-competitive contacts between the four recycling companies took place on a bilateral basis, mainly through telephone calls, emails, or text messages. According to the Commission, the parties were well aware of the illegal character of their contacts and sometimes tried to disguise them by using coded language, for example referring to weather conditions to signal different price levels.»

The four companies have lodged an appeal against the Commission's decision before the General Court (GC); in their appeal they challenge the decision on the following grounds, *which you are asked to comment on*:

a) The Commission has no proof that any anticompetitive agreement has ever taken place;

b) Since, as the Commission acknowledges, the alleged agreement led to a reduction in price, (i) it cannot be considered anticompetitive; in addition, and before concluding it was anticompetitive, the Commission should have made a full assessment of the effects of the alleged anticompetitive agreement;

c) Information exchange (i) is not anticompetitive and, in any case, (ii) the Commission should not have considered it as a separate offence (in addition to the agreement), but rather as part of the agreement;

d) The Commission should have made an assessment under Art. 101(3) TFEU and, in that context, it should have taken into consideration that the agreement has a positive impact on the environment and, thus, on consumers.

e) The Commission should reduce the amount of the fine since Thalis is a U.S. company and therefore it is not subject to EU competition rules.

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Part III (6 points)

«It is true that application of Article [102] presupposes a link between the dominant position and the alleged abusive conduct, which is normally not present where conduct on a market distinct from the dominated market produces effects on that distinct market. In the case of distinct, but associated, markets, as in the present case, application of Article [102] to conduct found on the associated, non-dominated, market and having effects on that associated market can only be justified by special circumstances.»

Please (i) explain the above paragraph and (ii) refer which types of abuse may be at stake in cases such as the one described above.