

Autumn 2009

Important!

1. You are allowed to hand in two mock exams in total.
2. You must hand in the mock exam within the dead-line **October 16** at the Information centre (for some courses there is a different date which will be announced on the message board) Please put your name(block letters and date of birth) on top of the examination paper, and remember to give room for the Professor's comments by dividing each sheet of paper in two equal parts in the length of the sheet. If possible, please hand in a type written mock exam.
3. Please confirm on the top of the paper whether you are registered on the Bachelor level (Jur1000- level) or the Master Level (Jur 5000- level). The assessment is different for the two levels (please see the note below)
4. The mock exams will be returned to the students after **November 2**, please contact the Information Centre, DA, to have your exam paper back.

Yours sincerely,

Elisabeth Reien

IMPORTANT!

Re: assessment

The lectures and the exam will be the same, but there are different achievement requirements:

Master's level (15 ECTS credits): a good understanding is required: (5000- level)

Assessment: 4 hour written exam, grades from A-E for passes and F for fail

Bachelor's level (10 ECTS credits):a general understanding is required:(1000-level)

Assessment: 4 hour written exam grades: pass/fail

Law students on the Erasmus programme/bi-lateral agreements and Nord-Plus students and students on other Masterprogrammes at the UIO are supposed to register for exams at 5000- level. Other exchange students may only register for courses at bachelor's level.

NB! The following courses are only offered at Master's level: Public International Law , Introduction to the Norwegian Legal System

EXAM EC Competition Law- JUR5310/JUR1310

Autumn 2008

The German company Noldus AG is manufacturing machinery for the processing of frozen fish. On the European market, there are four other competitors of about the same size. The products have the same functionality and are based on the same technology. The barriers to entry are relatively high, in that the manufacture requires investment in highly specialized equipment. Agreements on sale or lease of machinery are generally subject to negotiations with the individual customer, which are normally large-scale producers of seafood. All competitors are members of the International Association of Suppliers of Fish-processing Equipment (IASF).

In June 2008, the Association decided to propose to the Members a system for market surveillance. The idea is that each manufacturer reports its sales data (quantity, customers, price), to IASF every month, and that the Association redistribute the collected data to the members. The aim of the system is to provide a tool so that the competitors may be better aware of market developments, to be able to benchmark own sales as against that of its competitors, and to increase knowledge on how the market operates.

Question 1) Give an overview of the application of Article 81 to activities of trade associations.

Question 2) Advice Noldus AG of whether it should participate in the cooperation.

Question 3) To the extent you have identified anti-competitive aspects related to the cooperation, advice IASF and its Members of how the system could be brought in line with EC Competition law.

During the summer of 2008, Noldus' French importer Pêche-utiles, had placed extensive orders with Noldus. Soon after, Noldus received a complaint from its Portuguese distributor, Sardiños SA, that Pêche-utiles had approached important customers with special offers. According to Sardiños SA, this was contrary to its distribution agreement, granting Sardiños SA exclusivity in Portugal. In turn, Noldus immediately approached Pêche-utiles, making it clear that it would suspend deliveries if Pêche-utiles continued to approach customers outside the French territory. Pêche-utiles responded that such claim was contrary to EC Article 81.

Question 4) On the background of these facts, discuss what obligations which lawfully may be imposed on Pêche-utiles with regard to sales outside France.

Enclosure: Article 81 and 82 of the EC treaty, excerpts from Regulation 2790/99 on vertical restraints.

**TITLE VI
COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF
LAWS**

**CHAPTER 1
RULES ON COMPETITION
SECTION 1
RULES APPLYING TO UNDERTAKINGS**

Article 81

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention,

restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

COMMISSION REGULATION (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices

Article 2

1. Pursuant to Article 81(3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 81(1) shall not apply to agreements or concerted practices entered into between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services ('vertical agreements').

This exemption shall apply to the extent that such agreements contain restrictions of competition falling within the scope of Article 81(1) ('vertical restraints').

Article 3

1. Subject to paragraph 2 of this Article, the exemption provided for in Article 2 shall apply on condition that the market share held by the supplier does not exceed 30 % of the relevant market on which it sells the contract goods or services.
2. In the case of vertical agreements containing exclusive supply obligations, the exemption provided for in Article 2 shall apply on condition that the market share held by the buyer does not exceed 30 % of the relevant market on which it purchases the contract goods or services.

Article 4

The exemption provided for in Article 2 shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- (a) the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier's imposing a maximum sale price or recommending a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;
- (b) the restriction of the territory into which, or of the customers to whom, the buyer may sell the contract goods or services, except:
 - the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer,
 - the restriction of sales to end users by a buyer operating at the wholesale level of trade,
 - the restriction of sales to unauthorised distributors by the members of a selective distribution system, and
 - the restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier;