

ELECTIVE PAPER 6D: ECONOMIC LAWS

SOLUTION

Case Study 7

I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (a) [Hint: The matter relates to concerns of an individual consumer regarding non-delivery of booked vehicle in the given time]
2. (b) [Hint: The allegations essentially relate to abuse of dominance by a car manufacturing company, directly or through its authorized dealer]
3. (c) [Hint: The tried to portray his issue as an issue of consumer exploitation to draw the attention of the competition authority]
4. c, d, a, b [Hint: To examine a case under section 4 of the Competition Act, 2002, it is to be seen first whether the alleged entity is an enterprise or not before defining the relevant market, assessment of its position of dominance in the relevant market and examination of its conduct]
5. b, a, d, c [Hint: To examine a case under section 3 (4) of the Competition Act, 2002, first it is to be seen whether the alleged two entities are in a vertical chain and whether they have entered into any agreement as defined under the Competition Act, 2002. Then it is to be seen whether such agreement is anti-competitive and it has appreciable adverse effect on competition]
6. (a) [Hint: Essentially, the allegations relate to passenger car market]
7. (d) [Hint: All are the factors prescribed under section 19 (6) the Competition Act, 2002 to assess dominance of an enterprise in a relevant market]
8. (b) [Hint: Cartelization requires agreement amongst players placed at horizontal level]
9. (a) [Hint: No competition concerns raised in the matter as delay in giving delivery to a consumer or not passing the benefit of tax reduction to consumer or increasing the price cannot said to be anti-competitive]
10. (d) [Hint: Refer section 4 of the Competition Act, 2002]

II. ANSWERS TO DESCRIPTIVE QUESTIONS

1. Even though the concerns raised by Mr. Nazir cannot be redressed by the competition authority as it essentially relates to grievances of an individual consumer of a passenger car manufactured by XMC Pvt. Ltd, however if the matter is placed before the competition authority it will be examined in terms of section 4 of the Competition Act, 2002. It is so because the allegations of Mr. Nazir essentially relate to abuse of dominance by XMC Pvt. Ltd, directly or through its authorized dealer M/s Ratan Lal & Sons.

To examine the matter under section 4 of the Competition Act, 2002, it is to be seen first whether the alleged entity is an enterprise or not before defining the relevant market, assessment of its position of dominance in the relevant market and examination of its conduct.

Enterprise: Yes, XMC Pvt. Ltd. is an enterprise in terms of Section 2 (h) of the Act.

Relevant Product Market: The market for passenger car [section 2 (t)]

Relevant Geographic Market: whole of India [see section 2 (s)]

Relevant Market: the market for passenger car in India [section 2 (r)]

Assessment of Dominance of XMC Pvt. Ltd.: Appear to be dominant in the market for passenger car in India as it has highest market share and financial strength besides its brand name and dependence of the consumer on it.

Assessment of the alleged conduct of XMC Pvt. Ltd.: Not appear to be abusive. Delay in giving delivery of a product to a consumer or not passing the benefit of tax reduction to consumer or increasing the price cannot said to be anti-competitive in terms of section 4 of the Competition Act, 2002.

2. To examine the matter under section 4 of the Competition Act, 2002, it is to be seen first whether the alleged entity is an enterprise or not before defining the relevant market, assessment of its position of dominance in the relevant market and examination of its conduct. **(all the steps of answer no. 1 above to be followed)**

Delay in giving delivery of a product to a consumer without enabling provisions in the booking document may be an issue of breach of contract between two parties. It may not be a case of imposition of unfair condition in term of the provisions of section 4 of the Competition Act, 2002. Further, increasing price is a commercial decision of an enterprise which is taken considering the market demand conditions of the product. If market is competitive then excess price, if any, can be wiped out in the long run, no intervention of the competition authority is required. However, if the company raised the price after negotiation with the consumer, it can be challenged in other appropriate forum.

3. As per section 2(r) of the Act, 'relevant market' means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. Further, the term 'relevant product market' has been defined in section 2(t) of the Act as a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. And, the term 'relevant geographic market' has been defined in section 2(s) of the Act to mean a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.

In order to determine the 'relevant product market', the Commission, in terms of the factors contained in section 19(7) of the Act, is required to have due regard to all or any of the following factors viz. physical characteristics or end- use of goods, price of goods or service, consumer preferences, exclusion of in-house production, existence of specialized producers and classification of industrial products. Similarly in order to determine the 'relevant geographic market', the Commission, in terms of the factors contained in section 19(6) of the Act, is required to have due regard to all or any of the following factors viz., regulatory trade barriers, local specification requirements, national procurement policies, adequate distribution facilities, transport costs, language, consumer preferences and need for secure or regular supplies or rapid after - sales services.

As stated above, as per the provisions of the Competition Act, 2002 the relevant market comprises of the relevant product market and relevant geographic market. In the instant matter, the relevant product market may be considered as the 'market for passenger car'. It may be noted that the allegations of Mr. Nazir pertains to purchase and after sale service of a passenger car which cannot be substitutable with other type of vehicle in terms of price, end use, characteristics, etc. The relevant geographic market in this matter may be considered as 'India' because the condition of competition in passenger car market in India is homogeneous throughout India. A consumer can buy a passenger car from any part of India with similar competitive condition. Thus, the market for passenger car in India may be considered as the relevant market in this case.