
European Economic Law

27 June 2022

Duration: 120 minutes

Please check both at receipt as well as at submission of the exam the number of question sheets. The examination contains 4 pages (including the title page) and 5 questions (Question I, Question 1, Question 2, Question 3a, Question 3b).

Notes on grading

The examination contains two parts. You have to respond to both of them in English. The two parts have the same weight.

The individual questions are weighted as follows:

Part I

Question I

50%

the total of the points for Part I includes up to 4 extra points for good structure and argumentation

Part II

Question 1

ca. 32%

Question 2

ca. 8%

Question 3a

ca. 5%

Question 3b

ca. 5%

the total of the points for Part II includes up to 4 extra points for good structure and argumentation

Total

100%

We wish you a lot of success!

Part I – The Fundamental Freedoms (50%)

Midnight in Paris SA (a corporation registered in France, hereafter: *MIP*) owns several furnished apartments in Paris (number of inhabitants: 2.2 million people) and offers them for rent to short-term visitors of the French capital on its website. As a sign of courtesy, visitors are offered a selection of French red wines awaiting them in the flat. The clients come from France, from other Member States of the European Union and from other countries from the rest of the world. The French Construction and Housing Code (hereafter: CHC) provides that, in municipalities with more than 200 000 inhabitants, prior authorisation by the mayor of the municipality is required for the short-term letting of furnished accommodation to a transient clientele which does not take up residence there. According to the CHC, that authorisation is subject to an offset condition according to which the company has to convert non-residential premises into housing. The aim of the CHC is to fight against housing shortage in the big cities and to guarantee social diversity. *MIP* did not respect these rules and rented out the flats without the required authorisation. The mayor of Paris fined *MIP* for this behaviour. *MIP* appeals and argues in court that the relevant rules prevent the company from doing its cross-border business and therefore violate the fundamental freedoms of the EU internal market. The French government argues that the regulation in the CHC is intended to establish a mechanism for combating the long-term rental housing shortage, the objective of which is to deal with the worsening conditions for access to housing and the exacerbation of tensions on the property markets, which constitutes an overriding reason relating to the public interest. Moreover, according to the French government, the regulation is limited to large cities where these problems mainly occur; and an authorisation will be granted if the owner transforms other premises into housing.

Question I: Does France violate the fundamental freedoms?

Notes:

- *The question is only about the fundamental freedoms. Please do not examine any other EU law outside this area. In particular, please do not examine Directive 2006/123/EC on services in the internal market.*
- *There is no EU harmonisation measure in the field of short-term letting of furnished apartments.*
- *Please only deal with substantive law, and do not comment on procedural steps that could be taken.*

Part II – EU Competition Law (50%)

Company S, domiciled in Italy, produces concert pianos for the high-end professional market. Company W, domiciled in Germany, produces, inter alia, pianos for amateur use as well as pianos for the high-end professional market. W also conducts extensive research in the field of acoustics and produces specialized mechanical components for pianos to enhance their acoustic performance. S has a market share of 12%, whereas W has a market share of 5–7% in all markets it is active in.

Recognizing each other's expertise and know-how in different areas of the piano manufacturing process, S and W decide to join forces and produce a new grand concert piano that should not only surpass the acoustic performance of concert pianos on the market to date but should also allow for shorter production time and lower manufacturing costs. A contract (entitled «Joint Production Agreement», JPA) concluded between S and W provides that the new product shall only be jointly produced, distributed and sold. Furthermore, the parties agree on a maximum production of ten pianos per year and a retail price of € 225'000.- per piano. In the event of a breach of any of these provisions, the breaching party shall owe a contractual penalty in the amount of € 50'000.- per breach.

After launching the new piano, it instantly proves to be a hit with the professional community, and orders from all around the world come in fast. To maximize marketing coverage, S sells the new product to a world-renowned star pianist for € 195'000.-.

W regards this as a breach of the Joint Production Agreement and requires S to pay the contractual penalty. S, however, argues that the provisions violate European competition law, are therefore null and void, and do not result in its obligation to pay the penalty.

Question 1: Can W demand payment of the contractual penalty from S or does W have no such claim because the respective provisions violate art. 101 TFEU?

Notes:

- Assess this question from a competition law perspective only.
- Assume that art. 101 TFEU is applicable and that a sufficient effect on trade between Member States exists; you don't have to discuss these requirements.

Company P, domiciled in Spain, is a subsidiary of S and S holds 100% of P's shares. P is active in the sale of musical instruments of all kinds and sells, among other instruments, the pianos jointly produced by S and W.

Question 2: Assume that S violates art. 101 TFEU by engaging in anticompetitive price agreements with W. Can P be held liable for the administrative fines? If so, under what conditions?

New Facts:

Company G is operating the largest database containing viewership data from film streaming services worldwide while also offering in-depth data analytics services to its professional customers that work in the film production and distribution industry. For its analyses, G uses a copyrighted AI-driven software.

Company H decides to enter G's market as a competitor and to try to provide similar services as G. It requests a license from G to access G's database and analytics tools. G turns the request down. In H's view, with this refusal, G is abusing its dominant position in the sense of art. 102 TFEU because G has an obligation to issue the requested license. H also claims that the refusal renders it too costly to achieve market access and that it, therefore, seriously harms competition.

Note: You can assume that G holds a dominant position in the market relevant here.

Question 3:

- a. Explain which competition law concept H mainly alleges to in its argumentation and which are the general rationale and requirements of this concept.**
- b. Argue whether the application of said competition law concept would result in an obligation for G to grant the license requested by H.s**