

CHUKA



UNIVERSITY

**MAIN EXAMINATION
JANUARY - APRIL 2023 ACADEMIC YEAR
DEPARTMENT OF LAW
BLAW 316 – COMPETITION LAW**

APRIL 2023

DURATION: 2 HRS

INSTRUCTIONS

Question ONE is COMPULSORY and answer any other two questions.

QUESTION 1

There are three main telecommunication companies in Sayari country providing mobile services to consumers: Ujuzi Ltd, Emboko Ltd and Sisili Ltd. Ujuzi has a market share of 40% in Sayari and enjoys market power being the most recognized brand amongst consumers who also think it is more convenient to have a mobile number from Ujuzi Ltd compared to other providers. Emboko Ltd has a market share of 15%, while Sisili Ltd has a market share of 5% in Sayari. The three companies recently met and discussed the reduction of fees for post-paid subscription contracts, and other confidential information. A week later, the Ujuzi Ltd announced the new reduced fee post-paid package. The following week, Emboko Ltd advertised an identical post-paid package. Two weeks thereafter, Sisili Ltd also advertised an identical post-paid package. Relying on the provisions of the Competition Act (2019 edition), relevant decisions, case law and the facts of this case, critically discuss:

- a) The legal implications of dominance in the Sayari telecommunications sector (7 marks)
- b) The legal position regarding the meeting that took place between the three companies. (8 marks)
- c) If any prohibited restrictive trade practices are present in the Sayari telecommunications sector. (10 marks)
- d) The steps that can be taken by the Regulator to ensure that the telecommunications sector in Sayari stays competitive. (5 marks)

QUESTION 2

Critically discuss, using relevant provisions of the Competition Act (2019 revised edition), decisions of the Tribunal and case law, the main objectives and goals for protecting competition in the national economy. (20 marks)

QUESTION 3

“For most vertical restraints, competition concerns can only arise if there is insufficient competition at one or more levels of trade, that is, if there is some degree of market power at the level of the supplier or the buyer or at both levels. Vertical restraints are generally less harmful than horizontal restraints and may provide substantial scope for efficiencies.”(European Commission, Guidelines on Vertical Restraints (2010), paragraph [6])

In light of the above quote, critically discuss relying provisions of the Competition Act (2019 edition):

- a) The presence and prohibition on horizontal restraints in Kenya. (10 marks)
- b) The distortion that cartels cause in any given sector of the economy. (10 marks)

QUESTION 4

a) Relying on the provisions of the Competition Act (2019 edition), decision of the Tribunal and Kenyan case law, critically discuss:

- a) The provisions on abuse of buyer power and how they have impacted the retail sector in Kenya. (10 marks)
- b) The circumstances in which the Authority may exempt an undertaking from certain restrictive trade practices. (10 marks)

QUESTION 5

Write elaborate notes on the following:

- a) Public Interest Concerns in Merger Control (5 marks)
- b) Five Functions of the Competition Authority in Kenya (5 marks)
- c) Minimum Resale Price Maintenance (5 marks)
- d) Concerted Practices (5 marks)