

ANTITRUST
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1. You should read the instructions, the entire exam and all of the questions before answering any of the questions.

2. Place your examination number on each page.

3. This is an open-book (but not open network), three-hour in-class examination. You may consult any materials you wish, except that (i) you may not consult anyone else and (ii) you may not search during the exam on the Internet or on any database service (such as Westlaw or Lexis/Nexis). Please do not discuss the exam with anyone until the examination period is over.

4. This examination consists of three pages. Please make sure that you have all of the pages.

5. There are three questions, with a total of 10 units for weighting purposes for grading. Each question consists of 1 to 5 units, and the weight for the question is set forth next to the question.

6. Exam answers are to be word processed or typed and MUST be double-spaced. Please begin your answer to each question on a new page.

7. Your answer should be no more than 3000 words (approx. 300 words per unit). Please provide a word count at the end of the exam.

8. Answers should be written in full English sentences and should refer to specific statute sections and cases where relevant. If an exam question is unclear, point out the ambiguity and then answer the question to the best of your ability. If you believe that there is a mistake in the exam, please see the proctor, who will contact me.

9. In answering the questions, you should assume, except as otherwise provided in the exam itself, that the applicable version of any relevant statute is that set forth in the class materials.

10. Good luck.

Question 1 (3 units)

The Nile Zindle is the leading electronic book reader. The Zindle consists of a screen and associated software and comes with free wireless access to the Zindle store. It is at that store that consumers buy individual books to read on the Zindle and they can also subscribe to electronic versions of magazines and newspapers. All of this content is encoded in a proprietary NZW format and that format is required for a book to be read on the Zindle. The Zindle is designed so that it can't read ebooks in other formats.

A competitor to the Zindle is the Ynos YReader. The YReader has a different design: it lacks wireless connectivity and instead books are downloaded to the YReader by connecting it to a personal computer. The YReader will display books in a number of formats, including a general open document format, but has not to date, supported the NZW format. Indeed, no other reader supports that format. Ynos sells ebooks for the YReader through its online YStore. To date, the Zindle has captured 85% of electronic book reader sales; the YReader 10%; and a group of other readers 5% in aggregate. ProjectG, a website devoted to public domain works, posts public-domain books in an open format. Those books are readable on the YReader but not on the Zindle.

Question: Discuss the antitrust implications of the design and marketing choices made Nile and Ynos.

**Question 2 (3 units)**

Three newspapers are sold in print nationally: *The Wall Street Journal*; *The New York Times*; and *USA Today*. No other United States newspaper is sold throughout the country. They compete with each other and of course with local newspapers. The CEO of the *WSJ* sent the following email to his counterparts at the *NYT* and *USA Today*:

“We should pool our talents to create a single national newspaper for the Zindle: business coverage from the *WSJ*; national news from the *NYT*; and sports and human-interest stories—fluff—from *USA Today*. We shouldn't make our individual newspapers available on the Zindle—doing so will just hurt print sales—but should instead create a new combined paper—*NewsNow*—to be sold only through the Zindle.”

Nile subsequently approached individually each of the three national papers with the hoping of licensing each paper. The NYT and USA Today flatly declined Nile's inquiry, while the WSJ offered to make the *WSJ* available, but only if the WSJ received 90% of the revenues associated with *WSJ* Zindle sales. Nile's standard deal was 50/50, so it declined the WSJ offer.

Subsequently, the WSJ, the NYT and USA Today approached Nile and pitched their idea for the new *NewsNow*.

Question: Evaluate.



Question 3 (4 units)

Nile believed that the Zindle offers the best technology experience of any ebook reader but recognized that with nothing to read, the Zindle is just a fancy hunk of plastic and glass. Nile has embarked on new campaign to attract content to the Zindle. Nile has typically offered publishers a 50/50 split of revenues for ebook sales revenues for the Zindle. Nile recently added a new option: a 30% Nile/70% publisher split for content made available on ebook platforms only for the Zindle.

The response to the new program was immediate. Publishers pulled their books from the YStore and switched over to the new Zindle-only option. For most publishers, this was an easy choice: they sold most of their books for the Zindle anyhow and it was far better for them to lose book sales on the other ebook readers if that got them a bigger split of revenues on the Zindle.

Ynos believed that it would be left with an empty YStore if it didn't somehow respond to the new Nile program. Ynos believed its best bet was to have the YReader support Nile's proprietary NZW format so that Ynos customers could buy books in the Zindle store and play them on the YReader.

After some work, Ynos succeeded and YReader customers quickly started buying Zindle books. But one month later, Nile changed the NZW format so Ynos customers could not read the revised NZW format. Ynos subsequently tried but failed to duplicate the revised format.

Ynos was stuck and Nile knew it. Nile then offered to license the revised NZW format to Ynos for use on its YReaders in exchange for Ynos closing the YStore. Seeing little chance otherwise, Ynos reluctantly accepted Nile's offer.

Question: Evaluate.

