Executive Certification in Competition Law and Litigation

Vertical and Horizontal Agreements

Vertical and Horizontal Agreements:

In the context of competition law, agreements can be broadly categorized as either vertical or horizontal agreements. Understanding the distinctions between these types of agreements is crucial in assessing their impact on competition in the market.

Vertical Agreements:

Vertical agreements are those made between firms operating at different levels of the supply chain. These agreements involve parties that are not direct competitors but rather have a buyer-seller relationship. Vertical agreements can take various forms, such as distribution agreements, franchising agreements, and supply agreements.

One of the key characteristics of vertical agreements is that they typically involve parties at different levels of the production or distribution process. For example, a distribution agreement between a manufacturer and a retailer would be considered a vertical agreement. These agreements can have pro-competitive effects, such as promoting efficiency and enhancing consumer welfare. However, they can also raise competition law concerns if they have anti-competitive effects.

Vertical agreements are often subject to a less strict scrutiny under competition law compared to horizontal agreements. This is because vertical agreements may have efficiency-enhancing effects that benefit consumers, such as economies of scale, increased market access, and enhanced product quality.

Examples of vertical agreements include exclusive distribution agreements, where a manufacturer grants a distributor the exclusive right to sell its products in a particular territory, and franchising agreements, where a franchisor licenses its business model to a franchisee in exchange for fees.

Challenges in assessing the competition law implications of vertical agreements include determining whether the agreement restricts competition, whether it has pro-competitive effects that outweigh any anti-competitive effects, and whether it falls within the scope of any block exemptions or safe harbors provided under competition law.

Horizontal Agreements:

Horizontal agreements, on the other hand, are agreements made between firms that operate at the same level of the supply chain and are direct competitors. These agreements are more likely to raise competition law concerns as they involve parties that would typically compete against each other in the market.

Horizontal agreements can take various forms, such as price-fixing agreements, market-sharing agreements, and bid-rigging agreements. These agreements are often considered per se illegal under competition law as

they have the potential to harm competition and consumers by reducing output, increasing prices, and limiting consumer choice.

One of the main challenges in assessing horizontal agreements is determining whether the agreement has anti-competitive effects that outweigh any potential pro-competitive benefits. While some horizontal agreements may have efficiency-enhancing effects, such as promoting innovation or enhancing product quality, they are more likely to raise concerns under competition law due to their potential to harm competition.

Examples of horizontal agreements that have been subject to competition law scrutiny include cartel agreements, where competitors agree to fix prices or allocate markets, and bid-rigging agreements, where competitors collude to manipulate the outcome of a bidding process.

Horizontal agreements are generally subject to a stricter scrutiny under competition law compared to vertical agreements due to their higher likelihood of harming competition. Authorities may use various tools, such as market analysis, economic assessments, and leniency programs, to identify and investigate anti-competitive horizontal agreements.

Key Terms and Vocabulary:

1. Competition Law: Competition law, also known as antitrust law, is a legal framework designed to promote competition in the market and prevent anti-competitive practices that harm consumers and competition.

2. Vertical Agreement: A vertical agreement is an agreement made between firms operating at different levels of the supply chain, such as a manufacturer and a retailer.

3. Horizontal Agreement: A horizontal agreement is an agreement made between firms that operate at the same level of the supply chain and are direct competitors.

4. Per Se Illegal: Per se illegal refers to conduct or agreements that are presumed to be illegal without the need for a detailed analysis of their effects on competition.

5. Cartel: A cartel is a group of competitors who collude to fix prices, limit output, or allocate markets, typically to the detriment of competition and consumers.

6. Market Sharing Agreement: A market-sharing agreement is an agreement between competitors to divide markets among themselves, which can harm competition by reducing consumer choice and increasing prices.

7. Price-Fixing Agreement: A price-fixing agreement is an agreement between competitors to set prices at a certain level, which can harm competition by reducing price competition in the market.

8. Exclusive Distribution Agreement: An exclusive distribution agreement is an agreement where a manufacturer grants a distributor the exclusive right to sell its products in a particular territory, which can have both pro-competitive and anti-competitive effects.

9. Franchising Agreement: A franchising agreement is an agreement where a franchisor licenses its business model to a franchisee in exchange for fees, which can have both pro-competitive and anti-competitive effects.

10. Bid-Rigging Agreement: A bid-rigging agreement is an agreement between competitors to manipulate the outcome of a bidding process, typically to the detriment of competition and consumers.

11. Economies of Scale: Economies of scale refer to cost advantages that a business gains as it increases its scale of operations, leading to lower average costs per unit produced.

12. Market Access: Market access refers to the ability of firms to enter and compete in a particular market, which can be facilitated by vertical agreements that provide distribution channels and networks.

13. Block Exemptions: Block exemptions are exemptions provided under competition law that exempt certain categories of agreements from the general prohibition on anti-competitive agreements, subject to certain conditions.

14. Safe Harbors: Safe harbors are provisions under competition law that provide a safe haven for certain agreements that meet specific criteria, shielding them from anti-competitive scrutiny.

15. Leniency Programs: Leniency programs are programs offered by competition authorities that provide immunity or reduced penalties to firms that come forward with information about anti-competitive behavior, such as cartel agreements.

16. Market Analysis: Market analysis is the process of assessing market conditions, competition levels, and potential anti-competitive effects of agreements to determine their compliance with competition law.

17. Economic Assessments: Economic assessments involve analyzing the economic effects of agreements on competition, consumers, and efficiency to assess their compliance with competition law.

18. Consumer Welfare: Consumer welfare refers to the well-being and benefits that consumers derive from competitive markets, including lower prices, greater choice, and higher quality products.

19. Output: Output refers to the quantity of goods or services produced by firms in the market, which can be affected by anti-competitive agreements that restrict competition.

20. Market Power: Market power refers to the ability of a firm to influence prices, output, or terms of trade in the market, which can be enhanced or diminished by vertical and horizontal agreements.

Understanding the key terms and vocabulary related to vertical and horizontal agreements is essential for practitioners in competition law and litigation to navigate the complexities of assessing the competition law implications of different types of agreements. By being familiar with these terms, practitioners can better analyze the potential anti-competitive effects of agreements and ensure compliance with competition law regulations.