**Introduction to competition law**

This element introduces the broad spectrum of competition law in the UK

**Competition law**

Given its purpose, nature and scope, competition law is a **pervasive issue** for clients and competition law issues might arise in a range of different contexts. You must be mindful of its scope and its practical application. The consequences of competition law being breached can be significant.

[Diagram showing ‘competition law’ branching out into:

- Anti-competitive agreements

- Abuse of a dominant position

- Merger control

- Subsidy control]

In the UK, the key regulator across these areas of competition law is the **Competition and Markets Authority** (**CMA**). We will look at each of these areas of competition law in turn. A key piece of legislation in relation to competition law is the Competition Act 1998 (**CA**).

**Anti-competitive agreements**

Competition law controls the conditions under which companies can co-operate with each other, whether or not they are competitors and even if they are at different levels of the supply chain.

The application of the Chapter I prohibition will differ depending on whether an arrangement is classed as a 'horizontal' or a 'vertical' agreement. Agreements are classified as **vertical** if they operate at **different levels of the supply chain**. **Horizontal** agreements, meanwhile, operate at the **same level of the supply chain**.

**Abuse of a dominant position**

Abuse of a dominant position regulates business entities that are so powerful on the market that they are **capable of operating independently** of customers and competitors (and hence are ‘dominant’ within one or more of the markets on which they operate).

The Chapter II prohibition stops such companies from engaging in certain activities that would be perfectly legal for non-dominant undertakings. The conduct of powerful companies that are dominant in their markets come under close scrutiny from the competition authorities.

**Example**

If a dominant undertaking prices its products below their cost price, this may be prohibited as ‘**predatory pricing**’. For a non-dominant company, this would amount to offering an unobjectionable ‘**loss leader**’

**Merger control**

A corporate transaction will often involve the coming together or ‘merger’ of two businesses or companies: this is clearly the case with an acquisition by one company of another company or business. The CMA is responsible for assessing whether a relevant merger could lead to a substantial lessening of competition.

A merger will be a relevant merger for review by the CMA if it meets a turnover test, a share of supply test or an acquirer test (a hybrid test). If the CMA considers that the merger may lead to a substantial lessening of competition then it has the power either to block the merger or to clear it subject to conditions.

**Subsidy control**

A subsidy is a financial (or in-kind) contribution, such as a grant or a loan, paid by a public authority to a private entity that confers a benefit on the recipient, in the sense of an economic advantage that is not available to others on market terms.

This area is regulated because such payments could potentially create distortions and unfairness between: (1) those receiving the subsidy; and (2) those within the same industry who are not receiving such subsidy.

**Competition law: EU post Brexit**

Prior to the UK leaving the EU, EU competition law and enforcement (in addition to the UK’s domestic competition law and enforcement) was applicable within the UK, as an EU member state. Since 1 January 2021 (ie at the end of the transition period which followed the exit of the UK from the EU) EU competition law stopped being enforced in the UK by the CMA.

Much UK trade will obviously still continue in and with other entities within the EU, ie our closest neighbours, so EU law and enforcement continues to be relevant to much of the trade which UK entities conduct.

Section 60A CA (added on 31 December 2020) requires that UK competition law decisions must be made in line with EU competition law unless ‘appropriate’ to deviate from this.

**Competition law: penalties**

Breach of competition law can have significant consequences:

• The CMA can, for example, impose significant fines.

• Directors might individually face:

• fines;

• imprisonment and/or

• disqualification from acting as a director.

• There might also be civil liability, with those affected bringing civil claims for damages.

• Reputational damage might be significant (for both companies and their directors).

**Competition law: investigation and enforcement proceedings**

An investigation by the CMA leads to an infringement decision (assuming infringing behaviour is found to have taken place). This decision will result in a penalty or penalties from those mentioned above being applied. The prohibitions in Chapters I and II of the CA are civil in nature, and CMA proceedings to investigate and enforce these provisions are civil proceedings.

Some types of behaviour will also potentially constitute a criminal offence under the Enterprise Act 2002 (EA). Proceedings to investigate and enforce these are criminal proceedings and may be brought by the CMA together with the Serious Fraud Office.

The same type of behaviour might potentially give rise to both a civil and criminal situation. For example, a cartel is an agreement between businesses not to compete with each other. This type of agreement could infringe the civil Chapter I prohibition, and there is also a criminal cartel offence under the EA. The CMA will decide at an early stage of its involvement whether to deal with a matter as a civil or criminal investigation. Different powers and procedural rules apply to each.

**Summary**

• Competition law is pervasive and covers anti-competitive agreements, abuse of a dominant position, merger control and subsidy control.

• The Chapter I prohibition will cause anti-competitive agreements to be void.

• The CMA has powers to block or conditionally approve relevant mergers that may lead to a substantial lessening of competition.

• Consequences of breaching competition law are potentially considerable and might result in fines; civil claims for damages; imprisonment; disqualification as a director; and reputational damage.