**Market Allocation**

**What is Market Allocation?**

Market allocation, also known as market division or market sharing, is a concerted practice between competitors, where they agree to divide markets amongst themselves, often by geographic area, customer type, or product line, rather than competing freely. The purpose of the agreement is to eliminate or reduce competition for each competitor’s designated share of the market.

**Forms of Market Allocation**

* **Geographic Market Allocation**: it occurs where competitors agree to divide the markets based on geographic location. Competitors agree to operate in separate regions, avoiding an overlap. In such instances, competitors agree to sell only to customers in certain geographic areas and refuse to sell to, or quote intentionally high prices to, customers in geographic areas allocated to the other competitor(s). For example, two beverage companies can agree to divide the country into northern and southern regions, with each having exclusive rights to distribute in their respective region only.
* **Customer Allocation**: it occurs where competitors agree to allocate specific customers or customer groups to each other rather than competing for the same customers. Involved competitors agree to serve specific customer groups exclusively. For instance, one competitor may focus exclusively on commercial clients, while the other serves individual customers.
* **Product Allocation**: This is also known as product segmentation, whereby competitors agree to allocate specific products or product lines to each other. In this instance, companies divide markets by agreeing to specialise in certain products or services. An example is when one company focuses on selling high-end products, while the other focuses on entry-level products only.

**Prohibition of Market Allocation Between Competitors**

Competition law prohibits all agreements which cause consumer harm by way of limiting production and distribution of goods and services and fixing prices higher than their economic value. Paragraph 7 (1) of the First Schedule of the Competition Act *[Chapter 14:28]* (“the Act”) classifies market allocation as collusive arrangements between competitors. Paragraph 7 (1) (b) of the First Schedule of the Act defines *market allocation* between competitors as follows: -

*“(1) Being a producer or distributor of any class or type of commodity or service, entering into or giving effect to any agreement, arrangement or understanding, whether enforceable or not, with another person who produces or distributes a commodity or service of the same or a similar class or type—*

*(a) …*

*(b) to share the market for the commodity or service, whether the market shares are divided according to geographical area, class of consumer or otherwise;*

*(c) …*

In terms of Section 42(3) of the Act, market allocation is a criminal offence and any person who enters into, engages in or otherwise gives effect to such conduct, shall be guilty of an offence and shall be liable to a fine or imprisonment or to both such fine and imprisonment in the case of an individual, and to a fine not exceeding level fourteen in any other case.

The Commission, after establishing a case of market allocation through extensive investigations, refers the matter for prosecution and the appropriate level of fine is determined by the presiding officer.

**Anti-competitive Effects of Market Allocation**

The main objective of competition law and policy is to promote economic efficiencies using competition as one of the means to the creation of markets responsive to consumer preferences. The competition concern with market-allocation agreements is that customers experience a reduction in the number of suppliers that serve them. For the companies dividing the markets, it is easier to raise prices or reduce quality because they have less or no competition. Regardless of how a market allocation scheme is carried out, the result is a monopoly by each competitor in their designated share of the market. The practice disrupts the natural forces of competition, leading to several anti-competitive effects, such as the following: -

* Higher prices: When companies do not compete in certain territories, they can set prices without fear of being undercut by competitors, thereby exploiting consumers.



* Reduced Innovation: The absence of competition pressure stifles innovation and discourages businesses from improving products or services, as there is less incentive to improve when a company is guaranteed a certain market share.
* Limited Consumer Choice: Consumers are restricted to fewer product options, often of lower quality.
* Limited access to markets or customers: New entrants find it difficult to enter the market due to a lack of or limited competition.
* Misallocation of Resources: Market allocation can lead to an inefficient allocation of resources, as it disrupts the natural forces of supply and demand. It can also lead to a misallocation of resources, where companies invest in maintaining their allocated markets rather than improving their products or services.

**Detecting Market Allocation Agreements**

Market allocation agreements can be detected by observing unusual customer or geographic distribution, and consistent deviations from normal market behaviour. Identifying these patterns requires analysis of different market data. Competitors serving specific geographic areas exclusively, rather than competing freely and competitors serving specific customer groups or types, avoiding competition for the same clients can be red flags in detecting indicate market allocation.