

Quick Guide to Competition Law Compliance

Protecting businesses and consumers
from anti-competitive behaviour



Quick Guide to Competition Law Compliance

Competition law is designed to protect businesses and consumers from anti-competitive behaviour. The law stimulates effective competition in order to deliver open, dynamic markets and enhanced productivity, innovation and value for customers.

All businesses must comply with competition law and there can be serious consequences for businesses and individuals (including directors) for non-compliance.

This guide provides a basic overview of the law and outlines the steps you can take to comply. It may also help you to spot when others are engaging in illegal anti-competitive behaviour. This guide also provides you with details on what to do if you think your business or a competitor is breaking competition law.

For more detailed information see **OFT1341** *How your business can achieve compliance with competition law* and **OFT1340** *Company directors and competition law*.

Things you should watch out for

There are three key things you should keep an eye out for in your own and your competitors' businesses:

- cartels
- other potentially anti-competitive agreements, and
- abuse of a dominant position.

Cartels

These are the most serious types of anti-competitive agreements, where two or more businesses agree (whether in writing or otherwise) not to compete with each other.

Cartels include agreements to:

- fix prices
- engage in bid rigging (for example, cover pricing)
- limit production
- share customers or markets.

For more information see **OFT513** *The cartel offence* and **OFT401** *Agreements and concerted practices*.

Examples of cartels

Company A and **Company B**

both manufacture widgets. They agree not to undercut each other's prices and not to sell to each other's customers.

Company C is a

manufacturing business.

A sales executive in the gadgets division of C arranges with a sales executive at **Company D** that

both businesses will increase prices by 10 per cent.



Other potentially anti-competitive agreements

Other agreements that could be anti-competitive include agreements (whether in writing or otherwise) that:

- involve joint selling or purchasing with competitors
- involve a retailer agreeing with its supplier not to sell below a particular retail price, or
- have a long exclusivity period (over five years).

For more information about how competition law might apply to agreements please see **OFT401** *Agreements and concerted practices*.

For more information on agreements between competitors see the European Commission *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements*.

For more information on how competition law provisions might apply to agreements between businesses at different levels of the distribution chain (such as suppliers and retailers), please see the European Commission *Guidelines on Vertical Restraints*.

Abuse of a dominant position

A business that enjoys substantial market power over a period of time might be in a dominant position. The assessment of a dominant position is not based solely on the size of the business and/or its market position. Whilst market share is important (a business is unlikely to be dominant if its market share is less than 40 per cent) it does not determine on its own whether a business is dominant.

A business is only likely to hold a dominant position if it is able to behave independently of the normal constraints imposed by competitors, suppliers and consumers.

Having established that a business is dominant, anti-competitive conduct which exploits consumers or tends to have an exclusionary effect on competitors is likely to constitute an abuse. Examples of the type of conduct that may fall into this category for a dominant business include:

- charging prices so low that they do not cover the costs of the product or service sold
- offering different prices or terms to similar customers without objective justification, or
- refusing to supply an existing or long standing customer without objective justification.

For all the conduct listed above it is important to consider the likely effect of the conduct on customers and on the process of competition when determining whether it would amount to an abuse.

For more information see **OFT402** *Abuse of a dominant position*.

Example of abuse of a dominant position



Domco is the leading supplier of gludgets in the UK. It has a stable 80 per cent market share. The total cost to Domco of producing a gludget is £4. Domco sells gludgets for £5 each. A competitor, **Newco**, has just entered the market, selling gludgets for £4.50. Domco decides to drive Newco out of the market. The plan is to sell gludgets for £3.50 until Newco goes out of business, and then raise prices again.

Making sure your business is compliant

There are different ways to ensure that your business complies with the law, but key to them all is instilling a compliance culture in your organisation. This means that managers at all levels of a business, from the top down, need to demonstrate a commitment to complying with the law.

We recommend that businesses use a four step process to tackle the specific risks they face.

Core: Commitment to Compliance

At the core of this process is a commitment to compliance throughout your organisation. Your board and senior management must take overall responsibility for instilling this commitment to compliance.



Step 1. Risk identification

Look carefully at your business and identify areas where you might risk breaking competition law. For example:

- Do your employees have contact with your competitors at industry events or otherwise?
- In your market, do employees move frequently between competing businesses and do you have people who have recently joined from competing businesses?
- Do your employees seem to have information about your competitors' prices or business plans?
- Are your customers also your competitors?
- Do you ever work in partnership with your competitors?
- Are you entering into exclusive contracts for long periods (five years or more)?
- Do your agreements contain joint selling and purchasing provisions with your competitors?
- Do your agreements contain requirements to share commercially sensitive confidential information, or to collaborate, with your competitors?
- Does your business impose resale restrictions on retailers that sell your products?
- Are you a business with a large share of any of the markets in which you operate?

Step 2. Risk assessment

Once you have identified all the areas where there is a risk your business might break competition law, you can then work out how serious these risks are. You can classify them any way you like. Often it is simplest to rate them as low, medium or high.

Businesses should consider assessing which employees are in high risk areas. These may include employees who are likely to have contact with competitors and employees in sales and marketing roles; whilst employees in some back-office functions may be classified as low risk.

Step 3. Risk mitigation

Set up policies, procedures and training to reduce the likelihood of the risks you have identified occurring. For example, if you have identified employees meeting competitors at conferences as being high risk, you could run training to make sure your teams know what they are, and are not, allowed to communicate to competitors about. This training could also be supported by an employee code of conduct.

What you do will depend on the risks identified and the likelihood of the risk occurring. By way of example, some businesses have found the following measures to be helpful:

Step 3 continued

- training employees in competition law
- implementing an employee code of conduct policy
- making sure employees tell you if they are joining a trade association or attending events where they might be meeting with competitors
- implementing a system where all contact with competitors is logged
- establishing a system so that employees can get advice before action (for example, legal advice on a contract)
- establishing a system for employees to report, on a confidential basis, any competition law concerns that they might have.

Step 4. Review

Review steps 1 to 3 and your commitment to compliance regularly, to ensure that your business has an effective compliance culture. Some businesses review their compliance efforts on an annual basis, others review less frequently. There may be occasions when you should consider a review outside the regular cycle, such as when taking over another business or if you are subject to a competition law investigation.

For more information on how to comply see **OFT1341** *How your business can achieve compliance with competition law.*

What happens if the law is broken?

Businesses that are found to have breached competition law can be fined **up to 10 per cent** of their annual worldwide turnover and ordered to change their behaviour.

Individuals who dishonestly engage in cartel activity can be prosecuted and sentenced to **up to five years in prison and/or a fine**.

Company directors can be disqualified from managing a company for **up to 15 years**.

For more information on fines and penalties see:

- **OFT423** *The OFT's guidance as to the appropriate amount of a penalty*
- **OFT513** *The cartel offence*
- **OFT510** *Director disqualification orders in competition cases*

What do directors need to do?

Directors need to be fully committed to compliance with competition law and should take steps to ensure their business does not break the law. The OFT suggests that all directors can, for example, ask the following questions regarding competition law compliance:

- What are our competition law risks at present?
- Which are the high, medium and low risks?
- What measures are we taking to mitigate these risks?

- When are we next reviewing the risks to check they have not changed?
- When are we next reviewing the effectiveness of our risk mitigation activities?

For more information for directors (executive and non-executive) see: **OFT1340** *Company directors and competition law*.

What do you do if you think competition law has been broken?

If you suspect a competitor, supplier, customer or any other business is infringing competition law:

- call the OFT Enquiry Line on 08457 22 44 99.

To report a suspected cartel:

- call the OFT Cartel Hotline on 0800 0851664
- email cartelshotline@oft.gsi.gov.uk

Businesses and individuals that come forward to report their own involvement in a cartel may have their financial penalty reduced or avoid a penalty altogether (under our leniency programme). To qualify for leniency, applicants must admit their involvement, co-operate fully with the OFT's investigation and stop their involvement immediately. Provided they co-operate, the applicant's directors may also avoid disqualification and its employees and officers may be granted immunity from prosecution.

The OFT is prepared to offer financial rewards for information about cartel activity (informant rewards). Additionally, individuals who come forward with information about their involvement in cartel may also be granted immunity from criminal prosecution (called a 'no-action' letter).

Businesses as well as individuals can bring a claim before a court if they have suffered loss as a result of a relevant infringement of competition law and/or seek an injunction to stop such activity (private litigation). Additionally, restrictions in agreements that breach competition law may be unenforceable.

For more information on how to complain about another business, see:

- the OFT website at <http://www.offt.gov.uk/about-the-offt/legal-powers/legal/competition-act-1998/complaints>
- **OFT451** *Involving third parties in Competition Act investigations.*

For more on the OFT leniency programme and no-action letters see:

- **OFT436** *Leniency in cartel cases*
- **OFT513** *Guidance on the issue of no-action letters to individuals*
- **OFT803** *Leniency and no-action.*

For more information on how to bring actions before the court, see:

- *OFT's quick guide to private litigation in competition cases.*

Call 0800 389 3158 for more free copies of this publication or to request a different format.

Published by the Office of Fair Trading

Printed in the UK on at least 50% recycled paper

Product code OFT1330

Edition 06/11

© Crown copyright 2009

www.oft.gov.uk