

Competition

This newsletter summarises the key legal issues that a business needs to consider when dealing with competitors.

Breaching competition law

- Competition law is designed to ensure that companies compete fairly with each other.
- Failure to comply with competition law can have serious implications for a business, including large fines.
- Certain serious breaches of competition law may also expose an individual to the risk of criminal prosecution.
- Businesses can be exposed to claims that may exceed any fines imposed on them.

Cartels

All forms of cartel activity are strictly prohibited. A “cartel” describes any organisation or arrangement between at least two competitors that is designed to reduce competition between them and so increase prices or profitability beyond the level that could be achieved competitively. The main examples of cartel activity are:

- **Price fixing.** Any understanding or agreement about price levels or increases can constitute price fixing. Even a statement to a competitor like “we intend to increase prices next year”, can constitute unlawful price fixing. Unlawful price fixing includes:
 - setting minimum or target prices for particular customers or sales in general.
 - co-ordination of the timing of price increases.
 - agreeing any aspects of trading conditions such as discounts, margins, rebates, credit terms, advance payments, minimum prices and list prices.
- **Bid rigging.** This is when businesses agree the outcome of a tender or pitch process amongst themselves, either by:
 - deciding in advance which company will bid;
 - who will bid the best price; or

If you would like to discuss any of the matters raised in this newsletter please contact:-

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The information in this newsletter is not meant as a substitute for advice on particular issues and is written in general terms. You should seek specific advice before taking any action based on the information in this newsletter.

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This newsletter outlines the law as it stands at the date of writing in January 2016.

- what the tender process should be.

Bid-rigging eliminates fair competition from a tender or pitch process and so removes the customer's free choice. It will almost certainly lead to the customer paying higher prices.

- **Market sharing.** This may involve an agreement to allocate particular customers or sales territories to individual cartel members.
- **Information exchange.** A business must not agree to share confidential or commercially sensitive information with competitors, for example:
 - prices;
 - margins;
 - customers; or
 - sales information

This could lead to co-ordinated commercial behaviour and is therefore illegal.

- Other forms of information exchange may be permissible. For example, if the information provided is historical (and has no value in predicting future commercial behaviour), anonymised, aggregated, independently compiled and public.
- **Limiting output or sales.** Sales or production quotas are often used to control the market position of cartel participants and maintain artificially high prices.

If you become aware that the business is involved in any cartel activity or you are approached by a competitor to participate, take legal advice immediately.

Other forms of co-operation

Several other forms of co-operation with competitors may breach competition law. To be safe, always take legal advice before doing any of the following:

- Joint purchasing agreements.
- Research and development agreements.
- Specialisation agreements (where competitors agree to specialise in the production of certain types of goods).
- Standardisation agreements (for example, where companies agree basic technical standards for products).

- Joint advertising.
- Joint sales.

Each of these can be prohibited if the objective or effect is to reduce competition. However, they may be permissible if, for example, there are customer benefits that outweigh any anti-competitive effect.

