



Technical factsheet: accountants and competition law

Competition law promotes fair trading between businesses and outlaws agreements between firms that seek to reduce or avoid competition. This factsheet, produced by the UK's official competition body, the Competition and Markets Authority, summarises key aspects of competition law and makes a few practical suggestions on how accountants can encourage businesses to stay on the right side of the law.

The [Competition and Markets Authority](#) (CMA) is an independent, non-ministerial government department. It seeks to enforce competition and consumer law to make markets work well for consumers, businesses and the economy.

The CMA's chief executive, Andrea Coscelli, recently explained why competition between firms matters: 'I strongly believe that dynamic competition brings about the most innovative products and services, the widest choice and the best value for money to the benefit of consumers,' he said.

'Our focus is, and must remain, ensuring that the operation of markets and businesses allow for the emergence of new, innovative business models and market players, and that consumers get a good deal.'

Key issues

Agreements between two or more firms that seek to deprive consumers of the benefits of competition are known as 'cartels'. Cartels are illegal. They are a form of cheating that rips customers off and ultimately deprives them of a fair deal.

The bar for engaging in cartel activity is very low: even one conversation with a competitor where sensitive commercial matters are discussed can be illegal. And the consequences for engaging in such conduct are very serious – both for businesses and individuals.

Common forms of cartel behaviour are:

- price fixing
- bid rigging
- market sharing
- exchanging competitively sensitive, commercial information.

Price fixing is when businesses agree on what prices – or other price-related terms such as credit terms or discounts – to offer customers so that competition with one another is avoided. This can mean higher prices for customers. Also, some businesses may tell retailers that they must sell at a certain price. This is known as resale price maintenance and it is anti-competitive.

Bid rigging is when two or more competitors work together on bids that they are supposed to be submitting independently. This will generally be to ensure that whoever wins does so at a price that would be higher than the price delivered by a competitive bid or at a lower quality than would otherwise be the case in a competitive tender process.

Market sharing is where two or more firms agree, for example, not to go after each other's customers, or decide which territories each business will 'take'. This can lead to less choice and higher prices. The customers of businesses involved in such activity are likely to end up overpaying or getting a lower quality service as a result.

Information exchange It is illegal for a company to supply or exchange, with one or more other firms, competitively sensitive information: for example, future plans on prices, bids and customers to target.

Knowledge of competition law

Do businesspeople know enough about competition law? Research commissioned by the CMA suggests not:

- Only 57% of those polled know that it is illegal to fix prices and 41% don't know that attending a meeting where rivals agree prices is illegal.
- Over half (59%) don't know that agreeing to split up and share customers with competitors is illegal.
- Just under half (48%) don't know that bid rigging is illegal.
- Around 6% of businesses have provided competition law training for their staff.

There are, nonetheless, very serious consequences for breaking competition law for both businesses and individuals.

Consequences of law-breaking

The repercussions of getting caught in a cartel are serious and can include:

- financial fines of up to 10% of their company or group's turnover
- director disqualification for up to 15 years
- lawsuits from those who have suffered harm from law breaking, ie third-party damage claims
- reputational damage

- in the most serious cartel cases, individuals can face imprisonment of up to five years.

Since 2015, the CMA has issued over £150m in fines following investigations into anti-competitive practices.

In one case in April 2019, five fit-out firms were fined a total of over £7m for participating in cover bidding. Typically, cover bidding involves companies agreeing with each other to place bids that are deliberately intended to lose the contract, thereby reducing the intensity of competition. This type of illegal behaviour can lead to customers paying an artificially inflated price or receiving poorer quality services. This case affected 14 contracts with different customers, including a City law firm and a further education college.

Other recent fines include:

- £2.6m for water tank firms that formed a cartel, agreeing to fix the price of tanks, dividing up customers and rigging bids for contracts
- £3.4m for two of the main suppliers of bagged charcoal and coal for households in the UK for taking part in market sharing and illegal bid rigging.

The CMA sees the enforcement of competition law as central to its purpose and will continue to take robust action where it finds that competition rules have been breached. In May 2019, there were 30 ongoing anti-competitive conduct investigations across a range of sectors, from construction to pharmaceutical and estate agents.

Cutting the consequences: leniency

The CMA offers a leniency programme for firms and individuals that offer evidence or information about cartels they took part in. Cooperation with the CMA may lead to no penalties or reduced penalties for the firm. It may also lead to protection from criminal prosecution and director disqualification for individuals.

Subject to meeting certain conditions, the first business to inform the CMA about a cartel that is not already being investigated may receive:

- immunity from any fines
- protection from criminal prosecution for all of its cooperating employees, both current and former
- protection for its current and former directors from director disqualification, provided they cooperate.

Firms should therefore contact the CMA as early as possible; only the first to come forward may secure these benefits.

A business can still apply for leniency even if they are not the 'first in'. Depending on how much value the applicant brings to the investigation, they may benefit from a reduction in fines as well as protection for cooperating employees and directors.

Coming in for leniency is the only way that a firm can have a reduction in the fines that they will face. For those firms that come in first, and before the CMA commences an investigation, they may not be fined at all and their employers may not be prosecuted for the criminal cartel offence or have their directors disqualified, provided that they cooperate.

Leniency conditions

Firms applying for leniency must:

- have a solid reason to suspect the existence of the cartel and have a genuine intention to confess
- provide the CMA with all the relevant information about the cartel – including its own role – and cooperate fully with the CMA’s investigation.

To benefit from total immunity from fines, the applicant must not have coerced others to join the cartel. Businesses and individuals should always seek independent legal advice in the first instance. They can also approach the CMA on a confidential no-names basis to find out more about leniency before committing further.

Firms considering leniency should also gain advice from their own lawyers.

Whistleblowing

Whistleblowing is aimed at individuals who are not participating in a cartel but who have information about one. The CMA can offer a reward of up to £100,000 to an individual who provides assistance as part of its whistleblowing programme. The CMA follows a legal framework to protect people who report wrongdoing and will do everything within its power to protect an individual’s identity if they state that they want to remain anonymous.

What you can do to promote best practice

Accountants play an important role to businesses as ‘trusted advisers’. They should not try to replace lawyers, but they should know as much about competition law as a firm’s managers and directors ideally should. They can encourage business leaders to plug any dangerous knowledge gaps concerning competition rules.

To help assess a client’s risk of breaking competition law, the CMA would advise accountants to encourage their clients to ask a number of questions:

- Do your client’s leaders and employees recognise what anti-competitive behaviour looks like? If so, how seriously do they take it?
- Does your client know what the potential penalties are for breaking competition law?
- Do they have systems in place to deal with competition law risks, appropriate to their size and nature?

If the answers to the above questions are mainly 'no', you need to point them to CMA guidance and encourage them to seek specialist legal advice.

There is a range of CMA quick guides and resources to help businesses better understand competition rules and recognise the risky business behaviours they should avoid at bit.ly/gov-com-law.

A new online reporting form at bit.ly/cma-rep-form makes reporting cartels quicker and easier.

For more information on what a cartel is, go to: gov.uk/stopcartels or call the CMA cartels hotline on 020 3738 6888.

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