

Land agreements and competition law

A overview of how competition law applies to land agreements

Competition law is designed to protect businesses and consumers from anti-competitive behaviour. All businesses need to comply with competition law and there can be serious consequences for businesses and individuals that don't comply, including financial penalties.

Anti-competitive land agreements are prohibited under Chapter I of the Competition Act 1998 and Article 101 of the Treaty for the Functioning of the European Union (TFEU). Further, anti-competitive agreements are void and cannot be enforced.

For more detailed guidance see OFT1280a The application of competition law following the Revocation of the Land Agreements Exclusion Order.

What is a land agreement?

Land agreements are, for the purposes of this guide, agreements between businesses which create, alter, transfer or terminate an interest in land. This includes situations where two businesses enter into a lease agreement, or where one business sells property to another business.

In either situation, one party may impose a restriction on the way in which land may be used, or how a right over land may be exercised.

When is a land agreement anti-competitive?

There are many legitimate reasons why the parties to a land agreement may impose or agree to restrictions regarding the use of land. The OFT expects that only a minority of restrictions will infringe competition law.

Two main types of land agreements are more likely to restrict competition:

- If competitors enter into an agreement which restricts the use of land with the aim of sharing or carving-up markets. This type of agreement will constitute a serious infringement of competition law.
- Some agreements may need to be examined in more detail in order to determine whether they present any competition law risk. This includes restrictions which make it more

difficult for competitors to enter a market where the land is used, or protects a party from competition from their rivals. For example, where:

- a landlord and its lessee agree that the landlord will not allow access to its land to any competitors of the lessee
- a party seeks to prevent its competitors accessing land in a particular area by entering into a lease agreement that restricts the commercial activities that a lessee is permitted to carry out on the leased premises
- a party imposes a restriction on the sale of land which restricts the future use of the land, in order to prevent its competitors from using this land.

A land agreement which appreciably restricts competition may be exempt from the provisions of UK and EU competition law, where the agreement gives rise to benefits which outweigh the restrictive effects of the agreement.

What steps should businesses take?

Businesses should consider seeking legal advice on any agreements which they believe may raise competition law concerns and may need to alter or amend agreements as appropriate.

Where can I find more information?

For more detailed guidance on land agreements see OFT1280a - The application of competition law following the revocation of the Land Agreements Exclusion Order.