

# Cartels and the Competition Act 1998

A guide for purchasers



Competition  
law 2005

## Understanding competition law

*Cartels and the Competition Act 1998* is one of several quick guides designed to inform businesses about how the Office of Fair Trading (OFT) applies competition law in the UK. You may wish to read this together with *Competing fairly* which provides an overview of all the quick guides in the series. More comprehensive information is available in a number of detailed competition law guidelines published by the OFT in conjunction with the sector regulators. Turn to the back of this guide to find out how to obtain copies of other OFT publications.

Competition law is enforced in the UK principally by the OFT. However, in certain industries, such as gas and electricity, the sector regulators have been given 'concurrent powers' to apply and enforce competition law. Although this guide is based on OFT experience and practice, it should also be of assistance if you are dealing with one of the sector regulators. You will find a list of these sector regulators and their contact details at the back of this guide.

This quick guide provides an introduction to competition law only and should not be relied on as a substitute for the law itself. If you have any doubts about your position under the law, you should seek legal advice.

# Introduction

In the UK, anti-competitive behaviour is prohibited under Chapters I and II of the Competition Act 1998 and may be prohibited under Articles 81 and 82 of the EC Treaty. These laws prohibit anti-competitive agreements between businesses and the abuse of a dominant position by a business. Businesses that infringe competition law may face substantial financial penalties of up to ten per cent of their worldwide turnover.

Cartels are a particularly damaging form of anti-competitive activity. Their purpose is to increase prices by removing or reducing competition and as a result they directly affect the purchasers of the goods or services, whether they are public or private businesses or individuals. Cartels also have a damaging effect on the wider economy as they remove the incentive for businesses to operate efficiently and to innovate.

Detecting and taking enforcement action against the businesses involved in cartels is therefore one of our main enforcement priorities.

Although responsibility for detecting and stamping out cartels lies with the OFT, cartels often operate secretly and we rely heavily on information provided by others, notably the purchasers of the goods or services concerned. This means that purchasers in the public and private sectors have a particularly important role to play.

This guide is designed to help purchasers identify cartel activity and encourage you to bring your suspicions to our attention. You may wish to read this together with the quick guide *Competing fairly* which provides an overview of the law.

### **Definition of 'business'**

Throughout this guide, we refer to a 'business'. This term (also referred to as an 'undertaking' in our more detailed competition law guidelines) means any entity engaged in economic activity irrespective of their legal status, including companies, partnerships, Scottish partnerships and individuals operating as sole traders.

# Cartels

## What is a cartel?

At its most simple, a cartel is an agreement between businesses not to compete with each other. The agreement can often be verbal. Typically, cartel members may agree on:

- **price fixing** – the price they will charge or the discounts/credit terms they will offer their customers for goods or services
- **bid rigging** – deciding who should win a contract in a competitive tender process
- **output quotas/restrictions** – limiting the levels of products or services supplied to a market in order to increase the price, and
- **market sharing** – choosing which customers or geographic areas they will supply, or preventing competitors (eg, foreign competitors) from entering the market.

In some cartels several of these elements may be present.

## Why should cartels be broken up?

Cartels allow businesses to achieve greater profits for less effort to the detriment of consumers and the economy as a whole. For the purchasers of their goods or services this means:

- higher prices
- poorer quality, and
- less or no choice.

## How can you spot a cartel?

You are generally well placed to notice when your suppliers are deviating from normal competitive practices. There are a number of signs that may indicate that a cartel is operating. Some examples are where suppliers:

- raise prices by the same amount and at around the same time
- offer the same discounts or have identical discount structures
- quote or charge identical or very similar prices
- refuse to supply a customer because of their location, and
- use give-away terms or phrases, such as
  - ‘the industry has decided that margins should be increased’
  - ‘we have agreed not to supply in that area’, and
  - ‘our competitors will not quote you a different price.’

The presence of these signs does not necessarily mean that a cartel is operating. Some, such as simultaneous price changes or similar prices, can be perfectly consistent with normal competitive responses in the market place. However, you should be particularly suspicious where several of the signs are present.

## Where are cartels found?

Cartels can occur in almost any industry and can involve goods or services at the manufacturing, distribution or retail level. Some sectors may be more susceptible to cartels than others because of their structure or the way in which they operate. For example, a cartel may be more likely to exist in an industry where:

- there are few competitors
- the products have similar characteristics (which leaves little scope for competition on quality or service)
- communication channels between competitors are already established (eg, trade associations), and
- the industry is suffering from excess capacity or there is general recession.

The fact that these conditions are not present does not rule out the possibility that a cartel is operating. Conversely, the fact that an industry shows some or all of these characteristics does not automatically mean that some form of cartel is operating, but you should at least be alert to that possibility.

# Bid rigging

## What about bid rigging?

Bid rigging is a form of cartel that may arise when contracts are awarded by competitive tender. Here, members of the cartel agree with each other on who should win a particular contract and at what price. The possibility of bid rigging will be particularly relevant to public sector purchasers, given their legal obligations to award certain contracts by competitive tender.

## What are the signs of bid rigging?

Although bid rigging operations are often very sophisticated in order to avoid detection, there are certain signs that you can look out for, particularly where they award contracts regularly. For example:

- do certain suppliers unexpectedly decline an invitation to bid?
- is there an obvious pattern of rotation of successful bidders?
- is there an unusually high margin between the winning and unsuccessful bids?
- do all bid prices drop when a potential new bidder (ie, who is not a member of the cartel) comes on the scene?
- is the same supplier the successful bidder on several successive occasions in a particular area or for a particular type of contract?



- are there one or more suppliers who continue to submit bids although they consistently fail to win a contract?

## **How can you tackle bid rigging?**

There are certain steps that you can take to hamper the success of bid rigging operations or to reduce the likelihood that they will occur. For example, you can:

- make any bid qualifications as broad as possible so that they can be met by the widest range of suppliers
- shop around for suppliers when inviting bids
- ask for bids to be broken down into as much detail as possible
- keep records of bids for comparison purposes
- insist that main contractors assign subcontracts through a competitive process
- seek information from bidders about their associated companies and subsidiaries, or
- obtain a signed declaration of non-collusion from each bidder and make this a term of the contract.

# Taking action

## What else can you do to help tackle cartels?

The best defence against secret cartels is to be alert to the fact that they exist and to operate an effective purchasing policy that takes this into account. You may find it helpful to make clear in your dealings with suppliers that you are well aware of the temptations of cartel activities but are on the lookout for signs of price fixing or market sharing and will bring any suspicions of such activity to our attention.

## What should you do if you have suspicions?

If you suspect that a cartel is in operation, you can telephone our cartels hotline on **020 7211 8888**. A member of our Cartel Investigations Branch will discuss your concerns with you. The more information you can provide, the better equipped we will be to take action.

If the cartel concerns one of the regulated industries (ie, communications, gas, electricity, water and sewerage, railway and air traffic services), you should contact the relevant regulator. Contact details are given at the back of this guide.

## What will the OFT do?

We have substantial powers to investigate complaints of anti-competitive activity such as cartels if we have **reasonable grounds for suspecting** that the law has been infringed. If the information you provide is sufficient to give us such grounds, we will launch an investigation.

### Further information

For further information, see the quick guide *Under investigation?* and the more detailed guideline *Powers of investigation*.

## Can your identity be protected?

In order to investigate a complaint fully, we often need to divulge the information we have obtained, and the source of that information, to the business being investigated. It may, however, be possible to protect your identity if there is good reason why this is necessary. If you are concerned about the disclosure of your identity, you should raise this at the earliest opportunity. We will discuss the matter fully with you.

## What action can the OFT take against cartels?

Cartels infringe the Chapter I prohibition in the Competition Act 1998 and may also infringe Article 81 of the EC Treaty. We can impose substantial financial penalties (of up to ten per cent of worldwide turnover) on businesses that have committed an infringement. Reporting your suspicions to us can therefore have a very real effect: not only will members of the cartel be penalised, but a very strong deterrent message will be sent to other businesses that may be contemplating cartel activity.

In addition, under the Enterprise Act 2002 it is a criminal offence for an individual to engage dishonestly in cartel activity. Individuals found guilty by a court can be imprisoned for up to five years and face an unlimited fine.

### Further information

For further information, see the OFT Enterprise Act guidance *The cartel offence – guidance on the issue of no-action letters*.

Company directors whose companies breach competition law may also be subject to competition disqualification orders, which will prevent them from being involved in the management of a company for up to 15 years.

## **Further information**

For further information, see the OFT Enterprise Act guidance *Competition disqualification orders*.

Independently of any action we may take, third parties that consider they have been harmed as a result of an infringement (eg, customers) may have a claim for damages in the courts.

## **Does the European Commission have a role to play?**

Where a cartel covers more than three EU Member States, the European Commission may take over the case. However, we will have an opportunity to comment on any decision the European Commission proposes to take. Where the European Commission is dealing with a case, we will help put you in touch with the appropriate officials in Brussels.

# Where can you get further information?

You can order free copies of our publications by phoning **0800 389 3158** or emailing **oft@ecgroup.uk.com**  
You can also download our publications from **www.oft.gov.uk**

## Quick guides

This booklet is one of a series of quick guides designed to inform you about how we apply competition law in the UK. *Competing fairly* gives an overview of the law while the other guides cover specific areas.

*Competing fairly* (OFT447)

*How your business can achieve compliance* (OFT424)

*Under investigation?* (OFT426)

*Cartels and the Competition Act 1998* (OFT435)

*Leniency in cartel cases* (OFT436)

This information is available in other formats and languages on request.

## CD-Rom on compliance

We also provide a CD-Rom called *Compliance matters!* (OFT723) explaining the importance of compliance.

## **Competition law guidelines**

Detailed information on the Competition Act 1998 and Articles 81 and 82 of the EC Treaty is given in a series of guidelines we have published in conjunction with the sector regulators. The titles shown below are currently available:

*Agreements and concerted practices* (OFT401)

*Abuse of a dominant position* (OFT402)

*Market definition* (OFT403)

*Powers of investigation* (OFT404)

*Concurrent application to regulated industries* (OFT405)

*Enforcement* (OFT407)

*Trade associations, professions and self-regulating bodies* (OFT408)

*Assessment of conduct (draft)* (OFT414a)

*Assessment of market power* (OFT415)

*Vertical agreements* (OFT419)

*Land agreements* (OFT420)

*Services of general economic interest exclusion* (OFT421)

*OFT's guidance as to the appropriate amount of the penalty* (OFT423)

*Modernisation* (OFT442)

## Enterprise Act guidance

We produce a series of booklets on various parts of the Enterprise Act 2002. The two mentioned in this quick guide are:

*Competition disqualification orders*  
(OFT510)

*The cartel offence: guidance on the issue of no-action letters for individuals*  
(OFT513)

You can find a full up-to-date list of our Enterprise Act guidance at **[www.oft.gov.uk/Business/Legal+Powers/Enterprise+Act/publications.htm](http://www.oft.gov.uk/Business/Legal+Powers/Enterprise+Act/publications.htm)**



## Dealing with the OFT

Individuals, businesses and their advisers are entitled to be treated with courtesy, respect and in a non-discriminatory manner. If you have a concern or complaint about our procedures, you may contact us by phone (phone **OFT Enquiries** on **08457 22 44 99**) or write to us setting out your concerns. Complaints in writing should be sent to us at:

Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8JX

## Sector regulators

Office of Communications (OFCOM)  
Riverside House  
2a Southwark Bridge Road  
London SE1 7DB  
Tel: 020 7981 3000  
**[www.ofcom.org.uk](http://www.ofcom.org.uk)**

Gas and Electricity Markets Authority  
(OFGEM)  
9 Millbank  
London SW1P 3GE  
Tel: 020 7901 7000  
**[www.ofgem.gov.uk](http://www.ofgem.gov.uk)**

Sector regulators continued over the page

Northern Ireland Authority for Energy  
Regulation (OFREG NI)  
Brookmount Buildings  
42 Fountain Street  
Belfast BT1 5EE  
Tel: 028 9031 1575  
**ofreg.nics.gov.uk**

Office of Water Services (OFWAT)  
Centre City Tower  
7 Hill Street  
Birmingham B5 4UA  
Tel: 0121 625 1300  
**www.ofwat.gov.uk**

Office of Rail Regulation (ORR)  
1 Waterhouse Square  
138-142 Holborn  
London EC1N 2TQ  
Tel: 020 7282 2000  
**www.rail-reg.gov.uk**

Civil Aviation Authority (CAA)  
CAA House  
45-59 Kingsway  
London WC2B 6TE  
Tel: 020 7379 7311  
**www.caa.co.uk**



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