

A quick guide to competition and consumer protection laws that affect your business



Understanding the laws that affect you is an important part of running a successful business. This is a quick guide to the main rules covering how you compete, how you treat your customers and how you sell.

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Competition law – an introduction

The law aims to promote healthy competition. It bans anti-competitive agreements between firms such as agreements to fix prices or to carve up markets, and it makes it illegal for businesses to abuse a dominant market position.

You need to be aware of the main rules to avoid breaking the law or becoming a victim of others' anti-competitive practices.

There are heavy penalties for infringements. Offenders can be fined, disqualified from being a director and, in some cases, sent to prison.

Under competition law, mergers between businesses can also be prevented if they might reduce competition, and uncompetitive markets can be investigated through market studies.



Competition law – what is prohibited?

Anti-competitive agreements

The Competition Act 1998 (the Act) prohibits anti-competitive agreements between businesses. In particular, you must not:

- agree to fix prices or terms of trade, for example agreeing price rises with your competitors
- agree to limit your production to reduce competition
- carve up markets or customers, for example agreeing with a competitor that you will bid for one contract and they will take another
- discriminate between customers, for example charging different prices or imposing different terms where there is no difference in the circumstances of supply.

Any agreement that prevents, restricts or distorts competition is covered (not just the types of agreement listed above). An agreement could be formal (such as legally-binding contracts) or informal (such as unwritten 'gentlemen's agreements'). The Act mainly applies to agreements between businesses with a significant combined market share. But even the smallest businesses need to avoid getting involved in anti-competitive agreements, such as cartels. The OFT can also assess whether an agreement may affect trade between EU member states.

Abuse of a dominant market position

The Act also prohibits abuse of a dominant market position. This mainly applies to businesses that have a large market share, usually 40 per cent or more.

Other factors taken into consideration in determining whether a company is dominant include the number and size of competitors and customers and whether new businesses can easily set up in competition.

The type of practices that could indicate abuse include charging unfair prices or imposing other unfair trading conditions on customers, limiting production, or refusing to supply an existing customer without an objective reason. The OFT can also assess whether an abuse may affect trade between EU Member States.

Penalties

The OFT has extensive powers to investigate suspected breaches of competition law and take action. Penalties can include fines of up to 10 per cent of a company's annual worldwide turnover. Also, directors can be disqualified, given an unlimited fine or even imprisoned.

In addition to any penalty imposed, customers and competitors may be able to privately sue companies that break the law for any losses they have suffered due to the anti-competitive actions.

Dealing with anti-competitive behaviour

We rely on complaints to help us promote healthy competition and protect the interests of consumers and fair-dealing businesses. If you suspect a competitor, supplier, customer or any other business is infringing the law, you should contact the OFT with your concerns.

There are a number of signs that may mean a business you deal with could be breaking competition law. These include:

- a supplier prevents you from selling their products at a discount
- a long-standing supplier decides, for no apparent objective reason, to stop supplying you
- you receive quotes from various suppliers that are surprisingly and unusually similar
- you enter a market and a major competitor responds by charging extremely low prices that you suspect would not cover its costs.

If a business appears to be behaving in any of these ways, it does not necessarily mean it has breached the law. In some cases the behaviour may be legitimate. However, you can contact the OFT for advice on whether the matter is likely to raise competition law issues and if appropriate, we can explain how to submit a formal complaint.

Cartels

Cartels are the most serious form of anti-competitive behaviour. They are agreements between businesses not to compete with each other.

It is a criminal offence for individuals to engage dishonestly in the most serious cartel activities:

- price-fixing
- market-sharing
- bid-rigging
- agreements to limit production or supply.

These offences carry a maximum penalty of five years' imprisonment and/or an unlimited fine.

If you think a business you deal with is involved in a cartel, you should contact the OFT by telephone, email or in writing giving us as much information as you can to support your suspicions.

Admitting participation

If you alert the OFT to a cartel you are or have been involved in, you may be dealt with under the leniency programme. Businesses may be given total or partial immunity from fines and individuals may be given immunity from prosecution.

To qualify for leniency, you have to meet certain conditions including admitting participation in the cartel, cooperating with the investigation and stopping your cartel activity immediately.



Mergers

When two businesses merge or form a joint venture, it may reduce competition. Mergers that could substantially lessen competition can be prohibited or have certain conditions imposed.

The OFT is responsible for investigating mergers in the first instance. If we believe a merger might result in a substantial lessening of competition, we can refer it to the Competition Commission for an in-depth inquiry.

Mergers can only be investigated if they meet certain criteria. Crucially, either the business being taken over must have a turnover in the UK of at least £70 million, or the merged entity would have to have a share of 25 per cent or more of the supply of a particular category of goods or services in a substantial part of the UK. As a result, many mergers between smaller businesses are not subject to investigation.

If you are involved in a merger of any size, you may need to seek legal advice.

Market studies

The OFT studies markets that do not appear to be working well for consumers. Our role is to establish what the reasons are for this and publish the results.

Possible results of market studies include:

- enforcement action by the OFT
- a more detailed investigation by the Competition Commission
- recommendations for changes in the law
- work to educate consumers
- a clean bill of health for the market.

Most small businesses are unlikely to be directly involved in market studies. However, you or your industry body may wish to suggest ideas for market studies if you believe there is a lack of healthy competition in your sector or a sector you deal with. Visit our website, (www.of.gov.uk) where there is a form that you can complete to suggest a market study. The information that we need from you includes the nature of the problem for consumers and reasons why the problem and the market are important.



Do you offer credit?

If your business sells goods or services on credit or lends money to consumers, you almost certainly need to be licensed by the OFT. Debt collectors, debt advisors or negotiators, credit reference agencies and businesses that offer goods for hire or leasing may also need to be licensed. Similarly, those offering debt counselling or debt adjusting services should also apply to the OFT to be licensed. Since 1 October 2008 the licensing requirement has extended to those who administer agreements on behalf of others, or help individuals to locate and/or correct information held by credit reference agencies.

Under consumer credit law, you must set out credit agreements in a particular way and make sure they contain specific information, such as the amount of credit and charges and the annual percentage rate of charge (APR). There are also rules on how agreements must be entered into, and the information that must be provided to consumers before entry into, and during the lifetime of, a regulated consumer credit agreement. Further regulations on post-contract information came into force on 1 October 2008.

The OFT assesses whether you are a 'fit' and competent person to be licensed to offer credit. Once you are licensed, the OFT can revoke, suspend or change the terms of the licence if, for example, you have been convicted of an offence of violence or dishonesty, or fail to comply with the Consumer Credit Act or other consumer legislation. You need to maintain the standard of fitness to be licensed, and the OFT can impose requirements on you to address any matters that cause us dissatisfaction. We can also ask you for information or documents at any time while you are licensed.

Providing or arranging consumer credit without being licensed is a criminal offence and can result in a fine and/or imprisonment. Also, businesses may not, legally, be able to enforce a credit agreement if they are not licensed.

Advertising credit

If you advertise credit agreements or credit brokerage services, you need to comply with rules laid down in the Consumer Credit (Advertisements) Regulations.

The regulations aim to ensure consumers can compare the costs of credit so they can shop around for the best deal.

The rules are complex and detailed information is available in the OFT's booklet *Credit Advertising* and in the Frequently asked questions document on credit advertising available from the OFT website www.of.gov.uk

Information on how the Consumer Credit Act and the Financial Services and Markets Act work together is also available on the OFT and Financial Services Authority (www.fsa.gov.uk) websites.

Some of the rules covered in the regulations include:

- advertisements must be clear and use language that is not difficult to understand
- terms such as 'pre-approved' and 'interest-free' can only be included in very limited circumstances
- if you include information about the cost of credit, you must also state an overall 'typical APR'
- the typical APR must reflect the rates available to at least two thirds of consumers who are expected to enter into agreements as a result of the advertisement

- the typical APR must also be shown if you are advertising to people with credit problems, or if you are comparing your business with a competitor's
- key financial information must be shown together, with the typical APR being more prominent
- you must make clear if any security may be required.

Breach of the rules is a criminal offence and can be enforced through the courts.

The Consumer Protection from Unfair Trading Regulations prohibit the provision of false or misleading information to consumers and this would apply equally to credit advertisements.



Comparative and misleading advertising

The Business Protection from Misleading Marketing Regulations 2008 (BPRs) came into force on 26 May 2008. They implement the Comparative and Misleading Marketing Directive (MCAD) which is aimed at harmonising legislation across the European Union relating to advertising which misleads traders.

The regulations also set out the conditions under which comparative advertising (advertising which identifies a competitor or a competitor's product) is permitted. This allows traders to understand what their obligations are when advertising their products or services to traders in other Member States.

The BPRs prohibit advertising which misleads traders. They set out what conditions are acceptable in relation to comparative advertising and require code owners (traders and bodies responsible for codes of conduct or monitoring compliance with such codes) not to promote misleading advertising and comparative advertising which is not permitted.

The BPRs replace the requirements set out under the previous Control of Misleading Advertising Regulations 1998 (CMARs) not to use advertisements which mislead other businesses or which are not permitted by comparative advertisements. Therefore, if your business was compliant with CMARs, it is likely to be compliant with the BPRs.

In general terms an advertisement can be considered misleading if it, in any way, deceives, or is likely to deceive, the trader to whom it is addressed or reaches and if, by reason of its deceptive nature, it is likely to affect their economic behaviour. If the advertisement misleads consumers and causes, or is likely to cause, them to take a different transactional decision than they may otherwise have taken, this may breach the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

An advertisement is comparative if it either explicitly or implicitly identifies a competitor or goods or services offered by a competitor. Comparative advertising is allowed, but only if it is not misleading and meets certain other conditions, which are set out within the regulations.

Unfair commercial practices

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs), came into force on 26 May 2008. The CPRs implement the Unfair Commercial Practices Directive (UCPD) which is designed to harmonise the legislation across the European Union preventing business practices that are unfair to consumers. This will make it easier for traders based in one Member State to market and sell their products and services to consumers in other Member States. It will also give consumers greater confidence to shop in the UK, and across borders, by providing a high common standard of consumer protection.

Broadly speaking, if you are treating consumers fairly then you are likely to be complying with the CPRs. However, if you mislead, behave aggressively, or otherwise act unfairly towards consumers, then you are likely to be in breach of the CPRs and may face action by enforcement authorities. In other words the CPRs are about how you act in relation to your consumers when going about your business.

The CPRs apply to any act, omission and other conduct by businesses directly connected to the promotion, sale or supply of a product (the definition of which includes services) to or from consumers; whether before, during or after a contract is made. A sufficiently close connection with the supply of a product or services to consumers may fall within the scope of the CPRs, even if you do not deal directly with consumers.

The CPRs consist of:

- a general duty not to trade unfairly by acting contrary to the requirements of **professional diligence** so as to distort the **average consumer's** decisions in relation to the product or service. This can be broadly understood as failing to act in accordance with acceptable trading practice a reasonable person would expect
- prohibitions of misleading and aggressive practices. Examples include withholding **material information** from consumers so as to impair their ability to make an informed choice, or coercing a consumer into making a decision
- 31 specific listed practices that are considered to be unfair in all circumstances and are therefore, banned. Examples include falsely stating that a product will only be available for a very limited time and therefore depriving consumers of sufficient opportunity or time to make an informed choice. Other banned practices include, various prohibitions dealing with abuse of approval schemes, refusing to leave a consumer's home when asked to do so, and operating or promoting a pyramid scheme.

Further information on the CPRs is available from:
www.ofc.gov.uk

Issuing contracts

You have a legal duty not to use unfair terms in the contracts you have with consumers.

Most standard terms are covered by the unfair contract terms legislation. In practice this means:

- certain terms are excluded - for example, 'core' terms which set the price or define the product or service are exempt provided they are in plain language
- terms do not have to be in writing
- types of term that may be found unfair include disclaimers which seek to limit liability for: death or injury, delays, faulty or misdescribed goods, and unsatisfactory services
- other common unfair terms include: those that deny the consumer full redress, impose unfair penalties, loss of prepayments, and allow businesses to vary the terms after the contract has been agreed.

Consumers can complain about unfair contract terms to their Local Authority Trading Standards Services, the OFT, the utility, rail and communication regulators, the Information Commissioner, Which? and the Financial Services Authority.

The OFT and other enforcers have powers to stop businesses using unfair terms or recommending the use of such terms in contracts with consumers.



Selling online or at a distance

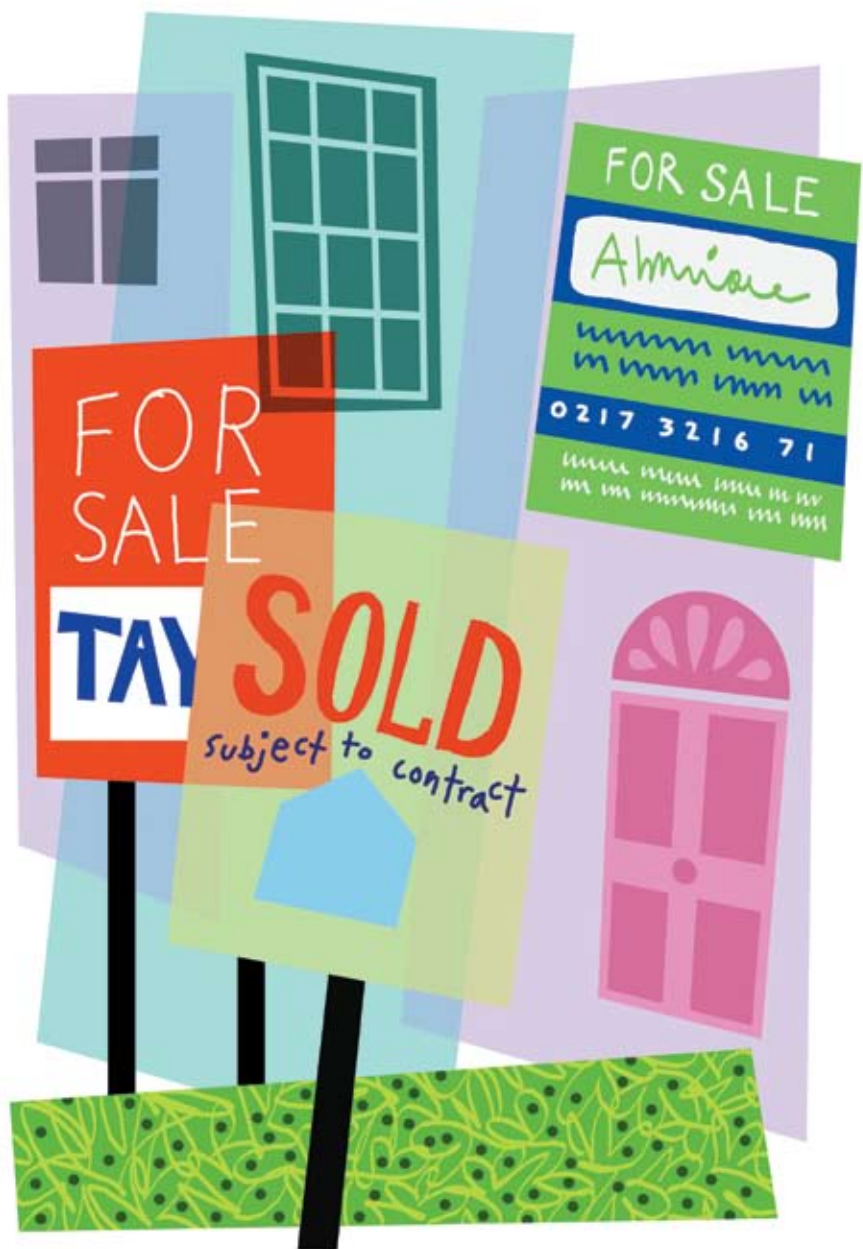
If you sell to consumers online, or sell at a distance by another method such as digital TV, mail order, phone or fax, then the Distance Selling Regulations may apply to you.

In general you are required to:

- give potential customers certain information in advance, such as your name and address, the goods you are selling or the services you are providing, the price (including all taxes), delivery cost, delivery arrangements, and customers' right to cancel
- send customers an order confirmation giving information such as your postal address and cancellation arrangements
- allow customers a seven working-day cooling-off period during which they can cancel their contract with you.

There are some exceptions to the regulations.

For more information visit: www.offt.gov.uk



Estate agency

The OFT has a duty to supervise the working and enforcement of the Estate Agents Act and if you are engaged in estate agency work you must comply with the Act. The OFT can take action against those who do not comply – we can warn them about their behaviour or ban them from estate agency work.

Your charges

You must give clients clear written information about your fees prior to any contractual obligation. This should include how much they will be charged and when payments will be due. If you don't know the exact amount of fees, you must explain how they will be calculated. You should also give details of any additional charges, for example the cost of advertising in local newspapers.

If you don't know the exact amount of additional charges, you must give an estimate and explain how they will be calculated. You must also explain certain terms you may use in your contracts such as 'sole agency', 'sole selling rights' and 'ready, willing and able purchaser' in the exact wording prescribed in law.

Your duties

You must tell your clients in writing and prior to any contractual obligation if you intend to offer any services to prospective purchasers.

You must also tell clients promptly and in writing:

- of all offers made on their property (unless they inform you in writing that they are not interested in receiving offers of a certain type)
- if you or someone connected to you, has a personal interest in a property you are marketing, you also have to declare this promptly and in writing to potential buyers.

You must not discriminate against a potential buyer who does not want to take up other services you provide (for example, the potential buyer may not wish to obtain a mortgage or some other form of financial product from you). Nor must you misrepresent the details or existence of any offer or the existence or status of any potential purchaser (for example, you should not advise your client that a prospective purchaser is a 'cash' buyer if they need to arrange a mortgage).

Other services

If you – or someone connected to you – has offered other services to potential purchasers who have had offers accepted, you must tell your clients promptly and in writing about these services.

Redress schemes

With effect from 1 October 2008 persons engaging in estate agency work in relation to residential property are required to join an approved estate agents redress scheme. Details of scheme that are currently approved are available on the OFT website: www.of.gov.uk/ears

Consumer codes of practice

Your business could improve its reputation for customer service by signing up to a code of practice that has been approved by the OFT under the Consumer Codes Approval Scheme (CCAS).

A code of practice is a set of rules that businesses agree to follow. It is usually operated by a trade association or similar body, known as the code sponsor. If the sponsor can prove the code meets the OFT's criteria, we can approve the code. Businesses that have agreed, by signing up to an OFT approved code, to trade by the rules of that code, can then use the 'OFT Approved code' logo in their marketing.

By approving consumer codes, we give consumers a way to identify businesses that have pledged to treat them fairly if they have a problem, and we encourage businesses to deliver high standards of customer service.

We have approved a number of codes, and are keen to encourage new applications from code sponsors.



Who to contact at the OFT

General enquiries

If you have a general question about the work of the OFT or any of the regulations we enforce, please contact us as follows:

Telephone: 08457 224499

Email: enquiries@oft.gsi.gov.uk

Write: Enquiries, Office of Fair Trading, Fleetbank House,
2-6 Salisbury Square, London EC4Y 8JX

Cartels

If you suspect one of your competitors, suppliers or customers is part of a cartel, contact our cartel hotline.

Telephone: 0800 085 1664

Email: cartelshotline@oft.gsi.gov.uk

To admit to being part of a cartel and apply for leniency, telephone 020 7211 8117.

Consumer credit licences

For information about consumer credit licences, including licence application forms:

Telephone: 020 7211 8608

Email: enquiries@oft.gsi.gov.uk

Website: www.oft.gov.uk/creditlicences

OFT publications

We produce a wide range of material about the legislation mentioned in this guide, including fact sheets and in-depth guidance:

You can download and order publications from:
www.oft.gov.uk/publications

Our website holds a wealth of easy-to-access information about the legislation outlined in this guide. You can:

- order publications
- download guidance material
- read the latest OFT news
- see reports on market sectors.

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Published by the Office of Fair Trading
Printed in the UK on at least 50% recycled paper
Product code OFT911
Edition 10/08

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