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Competition Guideline: Anti-competitive arrangements

What this guideline is about

The Competition (Jersey) Law 2005 (the **Law**) aims to promote competition between businesses in Jersey. The Jersey Competition Regulatory Authority (the **JCRA**) is responsible for the enforcement of the Law.

This guideline is designed to explain to businesses the provisions in Part 2 of the Law which relate to anti-competitive arrangements. It is important businesses understand their obligations under this part of the Law.

This guideline explains the different types of anti-competitive arrangements, how to avoid these, how to apply for an exemption, and what to do if you find a business has been involved in anti-competitive arrangements. Finally, the JCRA's leniency policy is set out a chapter 12, for any businesses willing to end their participation in a cartel.

The Law provides that the JCRA may publish guidelines. Compliance with a guideline is not proof of compliance with the Law, however it may be an indicator of that. This guideline 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.

All other competition guidelines can be found here: Legislation and Guidelines | JCRA.

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1. The legal framework

The legal framework governing the anti-competitive arrangements is summarised below.

The JCRA

The JCRA is an independent body established under the Competition Regulatory Authority (Jersey) Law 2001. It is a statutory authority responsible for the administration and enforcement of the Law. The JCRA operates independently of the Government of Jersey and regulates its own procedures.

The Law

Part 2, Article 8 of the Law prohibits any arrangement between two or more undertakings that has the object or effect of appreciably hindering competition in Jersey. This chapter introduces the key terms underpinning that prohibition, which are used throughout this guideline.

Arrangement(s)

The term [1] has a broad scope and encompasses agreements and undertakings. An arrangement does not need to be in writing to fall within the Law. Nor is a physical meeting required for an arrangement to be formed. Emails, telephone calls, or other messages may constitute evidence of an arrangement where they demonstrate agreement or shared understanding about the conduct to be adopted. For example, a cartel is a form of anti-competitive arrangement that may be secretly organised through in-person meetings and/or through the exchange of information by conversations or other communications.

The definition also includes 'concerted practices'. This refers to a form of coordination whereby businesses, without concluding a formal agreement, knowingly substitute practical cooperation for the risks of normal competition. Such coordination may arise through direct or indirect contact, whether one-way or reciprocal, where the information

[1] Article 8 of the *Competition (Jersey) Law 2005* prohibits "***arrangements***" which have the "object or effect of hindering to an appreciable extent" competition. Article 1 of the Law then defines "arrangement" as meaning "any type of arrangement, agreement or understanding".

provided is capable of influencing competitors[2] market conduct and/or reveals future intended behaviour.

It is important to note that an arrangement must involve at least two separate undertakings. The Law specifies that 'at least two businesses' are needed. This has significant implications. For example, different departments within the same undertaking, such as marketing and production, cannot form an agreement for the purposes of the Law. Internal coordination within a single business does not fall within the prohibition.

Undertaking

The Law refers to an "undertaking", defined as a person carrying on a business, and includes any association, incorporated or unincorporated, that consists of, or includes, such persons.

A "business" refers to any economic activity, trade, or profession whether it is carried on for profit. This definition applies irrespective of legal form and includes companies, sole traders, partnerships, and cooperatives.

The Law applies to the States, a Minister, a body created by an Act of the States and to any States Authority, but only to the extent that such bodies are engaged in carrying on a business. The Law does not apply to these bodies when they act in any other capacity[3].

Hinder

The Law further prohibits any conduct that hinders competition to an appreciable extent. For the purposed of the Law, "hinder" is defined as preventing, restricting, or distorting[4] competition, or attempting to do so.

Appreciable extent

Finally, an arrangement must affect competition to an appreciable extent. The Law does not define 'appreciable extent', but it is generally understood to refer to an observable

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[2] In considering if a concerted practice exists, the JCRA will normally follow relevant European Community precedents. Factors may include any contact between the businesses (or parties) concerned, the nature of the information exchanged, whether the parties knowingly entered into co-operation, the level of transparency in that market and its structure.

[3] Article 4, Competition (Jersey) Law 2005

[4] Article 1 of the *Competition (Jersey) Law 2005*

impact on the competitiveness of a market, such as an increase in prices or a reduction in consumer choice.

Most importantly, the hindering of competition must occur in Jersey to be subject to the Law's provisions[5]. As a practical matter, this means that an arrangement formed outside Jersey, for example, in the UK or France, may still fall within the scope of the Law if it has an impact on competition within Jersey. Chapter 4 of this guideline explains how the JCRA will assess whether an arrangement affects competition to an appreciable extent.

What powers does the JCRA have?

The JCRA has a wide range of powers to investigate suspected infringements of the Law. It may require that unlawful agreements or conduct be stopped and levy financial penalties on businesses and individuals for breaches. Additionally, any agreement in breach of the Law is void and unenforceable, as are any related agreements.

A Note on European Union (EU) Law

Article 60 of the Law provides that, so far as possible, questions concerning competition in Jersey should be addressed in a manner consistent with the treatment of corresponding issues under EU Law[6].

Relevant sources include judgments of the Court of Justice of the European Union and the General Court, decisions and guidance issued by the European Commission, and interpretations of EU law by courts and competition authorities in EU Member States. Article 60, however, does not prevent the JCRA from departing from EU precedents where this is appropriate in light of the particular circumstances of Jersey.

2. Introduction to anti-competitive arrangements

Arrangements, agreements and contracts between businesses are a normal and important feature of how markets operate. However, certain agreements can harm competition, leading to higher prices, reduced choice, and lower quality for consumers. Fair dealing

[5] 'Law provisions', "prohibitions" and Law all mean the same thing. All these phrases refer to what is contained in the Law, and specifically to the actions and conduct *not* allowed by the Law.

[6] Consolidated version of the Treaty on the Functioning of the European Union (TFEU)

businesses are also disadvantaged when they are denied a level playing field on which to compete.

The Law therefore prohibits arrangements between two or more businesses that have the object or effect of hindering competition in Jersey, irrespective of where the arrangement is made. This prohibition covers both formal and informal agreements, as well as "concerted practices" as understood in EU law (see Chapter 1 *The Article 8 Prohibition*).

Trade associations or policy groups are not exempted. Their activities may infringe the Law if they have the object or effect of hindering competition in Jersey. Chapter 6 *Trade Associations and Professions* provide further detail on how the Law applies in this context.

What makes an arrangement anti-competitive?

The Law applies to any arrangement that has the object or effect of hindering competition, to an appreciable extent, in Jersey or any part of it. This section explains the concepts of 'object' and 'effect'. Understanding these concepts is essential, as they form the framework used by the JCRA to determine whether an agreement infringes the Law.

Assessment of 'object' and 'effect'

Object refers to a category of agreement that is, by its very nature, anti-competitive. In such cases, the anti-competitive aim of the agreement is inherent in its design. For example, agreements to fix prices have the object of hindering competition because they prevent the participating businesses from pursuing independent commercial strategies. Agreements of this kind cannot be exempted and, if identified by the JCRA, will always constitute a breach of the Law.

Effect refers to the actual or potential impact of an agreement on one or more parameters of competition in the market, such as price, output, product quality, product variety or innovation. This impact must be to an 'appreciable extent'.

Where an agreement does not have an anti-competitive object, the JCRA will assess whether it has an anti-competitive effect. This assessment considers the facts and circumstances of the case, including the legal and economic context, and involves an analysis of how the market has been affected following the conduct in question.

An agreement may have both an anti-competitive object and an anti-competitive effect[7].

Assessment of 'appreciable extent'

In determining whether an agreement hinders competition to an appreciable extent, the JCRA will have regard to the approach adopted by the EU Commission[8]. Under that approach, agreements[9] that have as their object the prevention, restriction or distortion of competition are, by their very nature and irrespective of any actual effects, considered to have an appreciable impact.[10] In practice, this means that the following types of agreement will be deemed to hinder competition to an appreciable extent:

- Where an agreement is between competing businesses and has a provision which directly or indirectly fixes prices, or shares markets (for example, by allocating customers or territories), or limits production.
- Where an agreement is between non-competing businesses, and contains any of these provisions:
    a) Restrictions on a buyer's ability to determine its resale price; or
    b) Restrictions preventing a retailer from selling to end consumers in response to unsolicited orders (passive selling[11]), or
    c) Restrictions on active or passive sales by authorised distributors to end consumers or to other authorised distributors within a selective distribution system; or

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[7] See *JCRA Welcomes Lawyers' Steps to Eliminate Scale Conveyancing Fee* (8 December 2005) (noting how a former rule fixing the scale fees had both the object and effect of appreciably hindering competition).

[8] As set out in its Notice on Agreements of Minor Importance which do not appreciably restrict competition under Article 101(1) of the treaty on the Functioning of the European Union (2014), OJ C 291, (the 'De Minimis Notice'), paragraph 1, to which the JCRA will have regard in accordance with Article 60 of the Law.

[9] An agreement between competing businesses as opposed to a vertical agreement, between businesses at different levels of the production or distribution chain.

[10] See the De Minimis Notice, paragraph 2.

[11] Passive selling means selling to a customer in the absence of that customer having been marketed to by that company. An 'active sale' means a sale that has happened following targeted marketing to that customer.

d) Restrictions, agreed between a supplier of components and a buyer incorporating those components into its products, that prevent the supplier from selling the components as spare parts to end users or to independent repairers not authorised by the buyer to service or repair its products.

By contrast, where horizontal agreements only have the *effect* of hindering competition, they will not be regarded as doing so to an appreciable extent if the combined market share of all participating competitors is 10% or below in any of the markets affected by the agreement. The position in respect of vertical agreements is considered in Chapter 6 ***Vertical Agreements***.

In addition to market share, the JCRA's assessment will also consider:

- The features of the agreement itself
- The structure of the relevant market, including:
    - The number and characteristics of competitors
    - Barriers to entry
    - The characteristics of the buyers
    - The extent of buyer power and its influence on market outcomes

For more information, see Guideline 7 - Market Definition | JCRA.

Are anti-competitive agreements ever allowed?

Arrangements that are prohibited under the Law are void unless they are expressly exempted. Agreements may only be exempted if the JCRA grants an exemption or if it falls within the scope of another exemption provided by the Law.[12] In addition, an arrangement is not considered an anti-competitive arrangement to the extent that it is entered into for the purpose of, or as part of, a merger or acquisition.[13]

The JCRA may grant an exemption where an agreement delivers benefits to the market and to consumers. The four conditions that must be satisfied for an agreement to qualify for exemption are explained in Chapter 8 ***Vertical Agreements***. Guidance on how businesses

[12] See Articles 10 to 13 of the Law.

[13] See Article 15 of the Law.

may seek advice on the application of the Law and/or apply to the JCRA for an exemption is set out in Chapter 9 *Applications for Guidance* and 10 *Applications for Exemptions*.

The fact that a business may have played only a limited role in establishing a harmful agreement, may not be fully committed to its implementation, or may have participated only under pressure from others does not remove its responsibilities. Such involvement still constitutes participation in the agreement and therefore a breach of the Law.

What are the consequences of breaching the Law?

Detecting anti-competitive conduct and taking appropriate enforcement action are core objectives of the JCRA. The JCRA has an extensive statutory power to investigate businesses suspected of infringing the Law. Where an investigation establishes evidence of anti-competitive behaviour, the JCRA may impose one or more of the following enforcement measures.

Financial penalties

The JCRA may impose financial penalties of up to 10% of a business's turnover during the period of infringement, for a maximum period of three years. Further detail on the operation of the leniency regime is set out in Chapter 10 *The JCRA's leniency policy* which explains how businesses may avoid or reduce penalties. The Financial Penalties Guideline also provides an explanation of how the JCRA determines the level of fines for breaches of the Law- Financial Penalties | JCRA.

Directions

The JCRA may issue Directions requiring a business (or businesses) to terminate, modify, or otherwise address arrangements that constitute, or are suspected of constituting, an anti-competitive agreement.

Other impacts

In addition to any enforcement action taken by the JCRA, infringement of the Law may have further legal and commercial consequences for a business.

Void

Any agreement that infringes the Law is void and unenforceable. This extends to other agreements that are 'tainted' by the anti-competitive arrangement. For instance, in a vertical supply context, not only would a reseller's agreement with a manufacturer be void if it infringed the Law, but the reseller's contracts with its customers may also be rendered void and unenforceable.

Third party claims

Third parties who consider that they have suffered loss as a result of an unlawful agreement may bring an action for damages, including punitive damages, before the Royal Court of Jersey. Decisions of the JCRA may be appealed by the parties to the Royal Court.

3. Cartels

Price fixing, market sharing and bid rigging constitute the most serious forms of anti-competitive agreements. Collectively known as 'cartels', such arrangements deny consumers and legitimate business the benefits of effective competition. Cartel conduct harms consumers by increasing prices, restricting choice, and reducing quality. Cartels are prohibited under the Jersey Law, and the JCRA treats cartel activity with the utmost seriousness. This chapter explains the nature of cartels, their detrimental effects, and the measures business should take to ensure they do not become involved in cartel behaviour.

What are cartels and why are they harmful?

In simple terms, a cartel is an agreement between businesses not to compete with one another. Such agreements may be secret, oral and informal, or they may be highly organised and documented.

Cartel members may agree on:

- production levels – competing businesses agree how much to produce or supply, enabling them to increase prices, for example by restricting output.
- prices – rival businesses secretly fix prices, or suppliers agree the wholesale prices to be charged to retailers.
- limiting discounts.
- conditions of supply, such as credit terms.
- which customers they will supply (known as market sharing).
- which geographic areas they will supply (also a form of market sharing).
- who should win a tender or contract (known as 'bid rigging').

In many cartels, more than one of these elements may be present at the same time. Other forms of cartel conduct include:

- Cover pricing – a type of bid rigging in which businesses agree to submit bids that are intentionally uncompetitive, making a chosen bid appear more favourable and enabling the parties to share customers over the longer term.

- Wage fixing – when businesses that compete for the same types of workers agree to fix salaries or rates of pay.
- No-poach agreements – when businesses agree not to hire or "poach" each other's employees.

Cartels are a particularly harmful form of anti-competitive behaviour. Their purpose is typically to fix or control a market by manipulating prices and reducing competition between businesses. As a result, they directly harm purchasers of the goods or services concerned, whether those purchasers are other businesses or individual consumers. Cartels also damage the wider economy. By removing the incentive for participating businesses to operate efficiently or compete effectively, they hinder innovation, reduce productivity, and suppress economic growth. Over time, cartel conduct can undermine market confidence and distort the proper functioning of the economy.

Cartels allow businesses to achieve higher profits for less effort. For the customers of their goods or services this means:

- higher prices.
- poorer quality; and/or
- less or no choice.

Cartel agreements ultimately impose the greatest burden on end consumers and, over time, inflict broader harm on the economy, including through artificially elevated inflation.

Where are cartels found?

Cartels can arise in virtually any sector and may involve goods or services at the manufacturing, distribution or retail level. Certain industries are particularly vulnerable to cartel conduct due to their structural characteristics or operational dynamics. The risk is heightened in markets where:

- the number of competitors is limited.
- products are relatively homogeneous, leaving little scope for differentiation based on quality or service.
- input costs are transparent, predictable or widely understood.

- customers have limited bargaining power.
- established channels of communication already exist between competitors.
- the industry is experiencing excess capacity or broader economic downturns.

The presence of these conditions does not indicate that a cartel exists. Nevertheless, both customers and businesses should remain vigilant. Illustrative examples of cartel conduct are set out below.

Cartels that directly or indirectly fix prices

There are many ways in which prices may be fixed. This can include fixing specific components of a price, setting a minimum price, determining the amount or percentage by which prices are to be increased, or establishing a range within which prices must remain.

Price-fixing agreements may also extend to limiting discounts or allowances, or fixing transport charges, payments for additional services, credit terms, or the terms of guarantees.

For example, even if two companies competed on the headline price of a particular product, an agreement between them to fix the amount each charge for after-sales service would still constitute a breach the Law.

The case study below illustrates how a cartel operated in practice and how the competition authority addressed the conduct.

Case study - concrete

In 2020, the UK Competition and Markets Authority (CMA) imposed fines exceeding £15m on two major suppliers to the construction industry for engaging in illegal cartel conduct aimed at restricting competition and maintaining or increasing prices. Following the entry of a new competitive supplier, the incumbent firms coordinated their commercial behaviour through email correspondence and in-person meetings held in hotels and other locations. This coordination was further facilitated by employees moving between the competing businesses. The colluding firms exchanged commercially sensitive information, including future pricing intentions and strategic business plans. They also agreed not to compete for each other's customers on certain fixed-price contracts and

monitored one another's pricing to ensure that prices did not fall "too low". Further details are available in the CMA's published case study: Concrete companies: construction cartel - Case study - GOV.UK.

Cartels where markets are shared

Businesses may enter into agreements to divide the markets, whether by territory, customer type or size, or through other forms of allocation. Such arrangements may accompany, or substitute for, agreements on the prices to be charged, particularly where the product is relatively standardised. Any agreement of this nature is likely to have the object of restricting competition.

Case study – pharmaceutical firm pays competitors to stay out of the market

In 2021, the CMA imposed fines on a pharmaceutical company and its former parent company for entering into anti-competitive agreements designed to prevent potential rivals from supplying competing versions of hydrocortisone tablets. The arrangements enabled the company to maintain its position as the sole supplier and to increase prices significantly over an extended period. The CMA found that the prices of life-saving hydrocortisone tablets increased by more than 10,000% over almost a decade. The company was fined £66m for making payments to two prospective entrants to delay or prevent their market entry (constituting unlawful market sharing), and a further £155m for charging the NHS excessive and unfair prices. The two companies that accepted the payments were also fined for participating in the anti-competitive agreements.

For further details, see CMA finds drug companies overcharged NHS.

Case study – defence companies share market for hand grenades

In 2023, the European Commission concluded that two defence manufacturers had engaged in market-sharing practices within the EEA concerning the sale of hand grenades. The parties entered into an agreement allocating specific national markets between them, including a list of countries in which each company would exclusively sell its products. Under the arrangement, a party wishing to sell hand grenades in a territory

allocated to the other was required to obtain prior consent. The Commission fined one of the companies €1.2m for its participation in the cartel.

For more information, see CASE AT.40760-Hand grenades

Cartels in procurement ('Bid rigging')

Tendering and procurement processes are designed to promote open and effective competition. For this reason, collaboration between actual or potential bidders is generally prohibited, and bids must be prepared and submitted independently. Any coordination between bidders is highly likely to have both the object and the effect of restricting competition and therefore constitutes a breach of the Law.

Bid rigging occurs when members of a cartel collude to predetermine the outcome of a tender, agreeing who will win (or deliberately lose) a particular contract. This risk is particularly acute in public-sector procurement, including framework agreements and long-term contracts, which are commonly awarded through competitive tendering. Bid rigging is especially harmful because it provides unearned advantages to participating businesses while determining the integrity of the procurement processes. For example, cartel members may allocate work among themselves rather than competing, or a designated "winner" may supply goods or services at a lower quality and higher price, safe in the knowledge that no rival will submit a genuine competing bid. These practices impose significant costs on the organisation and ultimately on end users, including, in the case of public expenditure, taxpayers in Jersey.

The case study below illustrates how a bid-rigging cartel operates in practice and how a competition authority may intervene to address such conduct.

Case study – Demolition companies fined £60m for bid-rigging

In 2023, the CMA determined that 10-UK based construction firms had to participated in unlawful bid-rigging arrangements relating to demolition and asbestos removal contracts. The conduct affected both public and private sector clients, including the Metropolitan Police training college, the former Bow Street Magistrates Court, Selfridges

(London) and Oxford University, among others. The CMA found that, on at least one occasion, the firms colluded to submit bids intentionally designed to lose, either by proposing artificially inflated prices or by offering inferior service levels. This practice, known as 'cover bidding', distorts competition and can lead to customers paying higher prices, receiving lower-quality services, or experiencing delays. The 10 businesses were collectively fined over £60 million in total. In addition, four directors were held personally accountable and disqualified from acting as company directors for a combined total of nearly 25 years.

For further details, see lessons learnt after demolition companies fined over £60 million for bid-rigging

Case study – CMA probe into possible bid rigging

In 2024, the CMA opened a formal investigation after identifying reasonable grounds to suspect that several companies providing roofing and construction services, including building contractors and technical advisers had engaged in illegal collusion to rig bids for contractors funded through the government's Condition Improvement Fund (CIF). The investigation commenced with unannounced inspections at multiple business premises. These inspections were undertaken to obtain relevant evidence, including physical records and digital materials, that could substantiate potential breaches of competition law.

For further details, see CMA probes possible bid-rigging in relation to school improvement fund.

Case study – Investment banking

In 2021, the European Commission imposed fines of €28m on several investment banks for participating in a bid-rigging cartel. Between 2010 and 2015, traders in certain bonds coordinated their behaviour by agreeing to refrain from submitting bids, or by withdrawing bids or offers, in situations where they would otherwise have completed against one another. This conduct constituted a serious infringement of EU competition rules. For further details, see EU Commission USD SSA Bonds Case.

Acting against cartels as a business

Outside the context of bid-rigging, a range of additional indicators may suggest that a cartel is in operation. Where your business purchases from, or otherwise engages with, suppliers, the following behaviours may be indicative of collusive conduct:

- suppliers increasing prices by the same amount and at or around the same time.
- suppliers offering identical discounts or applying the same discount structures.
- receiving quotations or invoices that reflect identical or very similar pricing across competing suppliers.
- a supplier refusing to supply a customer on the basis of the customer's geographic location.
- The use of industry-wide justifications or statements implying coordinated behaviour, such as[14]:
    - 'The industry has decided that margins should be increased';
    - 'We have agreed not to supply in that area'; or
    - 'Our competitors will not quote a different price'.

The examples listed above are illustrative only. They do not constitute an exhaustive list, and additional indicators may suggest that a cartel is operating. It is also important to recognise that simultaneous price movements or similar pricing among competitors can, in some circumstances, reflect normal competitive dynamics. However, businesses should remain alert to patterns of behaviour across different suppliers, for example, where similar prices, product quality, or contractual terms are consistently offered by multiple firms. The JCRA advises businesses to exercise particular caution where more than one of the features outlined above is observed within the same market, as this may increase the likelihood that collusive conduct is taking place.

[14] Seeing those terms does not automatically mean that a cartel is operating. The JCRA will need to conduct a comprehensive assessment to decide if a cartel is operating - see the section on the object and effect framework in Chapter 2.

What should you do if you have suspicions?

Cartels typically operate in secret, and the JCRA welcomes enquiries from anyone in Jersey who may have information that could help identify such conduct more quickly.

If you suspect that a cartel may be operating, please contact us at competition@jcra.je. The more information you are able to provide, the better placed the JCRA will be to assess whether enforcement action may be required. Reports can be made by business, consumer or any member of the public.

The JCRA also operates a leniency policy for businesses that are prepared to cease their involvement in a cartel and report it to the JCRA. A business that ends its participation and cooperated fully may be eligible for full immunity from, or a substantial reduction in, any financial penalty that could otherwise be imposed for breaches of the Law. For further information, please refer to Chapter 10 *The JCRA's leniency policy*.

4. Examples of other types of anti-competitive arrangements

Competition in a market can be restricted in ways that are less direct or visible than price-fixing or market-sharing arrangements. Set out below are examples of other common types of agreements that may breach the Law. This list is not exhaustive.

Limits or Controls to Production or Investment

Agreements that limit or control production or investment may have the object or effect of restricting competition and, in some circumstances, may amount to cartel conduct. Only in very rare cases might such agreements[15] qualify for a JCRA exemption, and then only where clear, demonstrable consumer benefits outweigh the restrictive effects. In recent years, the European Commission has made clear that it will not tolerate so-called "crisis-cartels", that is, anti-competitive arrangements introduced to address severe industry-wide difficulties and has emphasised the continued importance of compliance with competition law[16] even in challenging economic conditions.

Joint Buying / Selling

An agreement between sellers to fix, directly or indirectly, the prices they will charge, or to sell only through particular arrangements, reduces competition between them and constitutes cartel behaviour.

Similar concerns arise in agreements between buyers. The example in the box below illustrates a buying cartel and explains why and how it was addressed by the authorities.

Case study – car manufacturers and trade bodies buyers' cartel

The CMA found that a number of major car manufacturers, BMW, Ford, Jaguar Land Rover, Peugeot Citroen, Mitsubishi, Nissan, Renault, Toyota, Vauxhall and Volkswagen, together with two trade associations, the European Automobile Manufacturers' Association (ACEA) and the Society of Motor Manufacturers & Traders (SMMT),

[15] An agreement that would otherwise be prohibited under the provisions on anti-competitive agreements may be exempted if it satisfies the conditions in Article 9 of the Law.

[16] For example, in April 2020 Commission Vestager warned businesses that the Covid-19 crisis should not be used as a shield against competition law enforcement.

participated in illegal anti-competitive agreements. The parties colluded by agreeing not to compete in procuring services for the collection and recycling of end-of-life vehicles (ELVs), effectively forming a 'buyers' cartel'. This conduct related to the free-of-charge recycling service offered to customers for vehicles with no or negative market value. The CMA also found that the manufacturers coordinated misleading advertising claims regarding the proportion of their vehicles that were recyclable. Notably, both ACEA and SMMT were involved in each of the unlawful agreements.

Following its investigation, the CMA imposed total fines of £77.6m on the participating manufacturers and associations. One manufacturer, Mercedes Benz, received full immunity from financial penalties after self-reporting its involvement under CMA's leniency policy and providing substantial cooperation throughout the investigation.

For further information, see Car industry settles competition law case - GOV.UK

Agreements that enable smaller firms to pool their purchasing requirements to increase their bargaining power and secure lower input prices may, in certain circumstances, qualify for an exemption. This is the only case where the efficiencies generated, such as reduced purchase prices are likely to be passed on to consumers and the agreement does not eliminate competition between the participating firms.

Standardisation Agreements

Agreements establishing technical or design standards can enhance production efficiency by reducing costs, improving product quality, or facilitating interoperability. They also promote technical or economic progress by reducing waste and lowering consumers' search and switching costs. However, such agreements may have an appreciable adverse effect on competition where they restrict the parties' ability to produce alternative products, limit innovation, or operate as a mechanism for excluding rivals, for example, by raising barriers to entry or imposing unjustified access restrictions.

Research and development agreements

Agreements between competitors to limit, coordinate, or jointly conduct research and development activities may impede competition, particularly where they reduce

independent innovation efforts or restrict the development of competing technologies. A relevant case study illustrating these risks is set out below.

Case study – Car Emissions

In 2021, the European Commission imposed fines totalling €875 million on several car manufacturers, BMW, Volkswagen, Audi and Porsche, for participating in unlawful collusive arrangements concerning emission-control technology for diesel vehicles. European law required manufacturers to meet minimum nitrogen oxide emission standards. Although the manufacturers cooperated legitimately on certain technical aspects to bring emission-cleaning systems to market more efficiently, they simultaneously engaged in a concerted practice to avoid competing on the performance potential of that technology. The Commission found that the manufacturers were aware that it was technically feasible to enhance the emission-cleaning systems beyond the minimum legal requirements. Nevertheless, they reached a common understanding that none of them would implement improvements that exceeded those standards. By agreeing not to compete on the effectiveness of nitrogen oxide-reducing technology, the manufacturers restricted competition on product quality and innovation. This conduct constituted a breach of EU competition rules by limiting technological development and depriving consumers of cleaner, higher-performing vehicles.

For more information, please see Car Emissions[17]

Agreements between businesses to pool resources for the development of new or innovative products may qualify for an exemption where they are likely to deliver benefits to consumers. This includes arrangements under which parties jointly conduct research and development activities and/or jointly exploit the results of such activities. Alternatively, it can also apply to agreements where the research and development is carried out by one party and financed by another party. Other factors such as the businesses' market shares

[17] Case AT.40178 – Car Emissions

and the specific terms of the agreement are also considered before an exemption can be granted in respect of research and development agreements.

Vertical Agreements

Certain types of 'vertical agreements', i.e. agreements between businesses operating at different levels of the production or distribution chain, may also restrict competition. However, many such agreements may benefit from an exemption where the relevant criteria are met. Further guidance is provided in Chapter 7 *Vertical Agreements*.

5. Information disclosure and exchange

The disclosure of information, whether through unilateral publication, provision to another business, or reciprocal exchange, may give rise to an anti-competitive arrangement where it serves to remove uncertainty in the market and thereby reduces competitive rivalry between businesses.

While the sharing of non-sensitive information, such as historic statistics, is generally unlikely to raise concerns, the disclosure of commercially sensitive information (for example, relating to current or future pricing, output, or strategic plans) may be problematic. Where such information reduces market uncertainty and consequently diminishes competition, it is likely to constitute an infringement of the Law. It does not matter that the information could have been obtained from elsewhere.

Whether a disclosure has the object or effect of restricting competition will depend on the specific circumstances of each case, including the characteristics of the market, the nature of the information, and the manner in which it is disclosed. The identity of the parties involved is also relevant, for instance, exchanges of commercially sensitive information between competitors are particularly likely to breach the Law.

As a general principle, the JCRA considers that the risk of a negative impact on competition increases where the number of businesses operating in the market is small, the disclosures occur frequently, and the information shared is confidential and commercially sensitive.

The JCRA will assess all relevant facts surrounding an information disclosure to determine whether it infringes the Law.

Specific examples of information disclosure are set out below, together with guidance on whether such practices would typically comply with the Law.

Disclosure of prices

The disclosure of information relating to current or future prices, or to elements of a pricing policy (including discounts, costs, terms of trade, etc), is highly likely to breach the Law. Such conduct is unlikely to qualify for an exemption. This is because the sharing of current or forward-looking price information can facilitate price coordination and thereby reduce the competitive pressure that would otherwise exist between businesses.

By contrast, the circulation of historic pricing information or aggregate price-trend data is generally less likely to distort competition. Benchmarking exercises organised by trade associations or groups of businesses for the purpose of promoting best practice may also have limited impact on competition. However, careful consideration must be given to the level of detail disclosed and the nature of the output produced. Where benchmarking results are insufficiently aggregate and can be reverse engineered to identify the data of individual business, the disclosure is likely to infringe the Law. The example below illustrates that even the sharing of individual components of a price, such as commission rate, can constitute an unlawful disclosure. In that case, the conduct resulted in financial penalties for the businesses concerned and caused reputational harm to the parties involved

Case study – Fixing commission rates

In December 2019, four estate agents in England were found to have infringed competition law by agreeing to fix and maintain a minimum level of commission fees for the sale of residential properties. The arrangement operated for almost seven years. Following its investigation, the CMA imposed fines totalling approximately £600,000. The penalty was reduced because one of the participating businesses applied for leniency and cooperated fully with the CMA's investigation.

The participating firms coordinated their conduct through email communications and secret meetings. Although each business was relatively small, they held strong positions in certain local markets. As a result, their agreement had a significant adverse impact on consumers in those areas, who were deprived of the competitive pressure that would otherwise have driven down commission fees. Notably, the firms had internally debated whether their conduct amounted to cartel behaviour and concluded incorrectly, that it did not, on the basis that consumers could still choose a "cheap, poorly performing agent". This reasoning was rejected by the CMA.

For further information, see Estate agents fined over £600,000 for illegal price fixing - Case study - GOV.UK

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Disclosure of non-price information

The disclosure of information relating to matters other than price may also have an appreciable effect on competition, depending on the nature of the information and the characteristics of the market concerned.

In general, the exchange of aggregated or summarised historic information, such as, past sales data, is unlikely to raise competition concerns. Similarly, the dissemination of statistical data, market research, or general industry studies will typically not have an appreciable effect on competition, provided that the information is neither confidential nor commercially sensitive. However, competition concerns may arise where the information disclosed enables the identification of sensitive data relating to specific businesses. If the information is sufficiently detailed or disaggregated such that it can be analysed to reveal the conduct, performance, or strategy of individual competitors, the disclosure may have an appreciable negative effect on competition.

Case study – Fixing pay rates

In March 2025, the CMA found that several major sports broadcasting and production companies in the UK had exchanged commercially sensitive information relating to the fees paid to freelance workers, including camera operators, sound technicians, and producers. The sharing of information that provides insight into a company's strategic intentions in a market, including information relating to pay, is considered competitively sensitive and can materially affect the level of competition. The CMA found that competitively sensitive information about freelancers pay rates had been shared on 15 occasions between various combinations of Sky, BT, IMG, ITV and BBC. In many instances, the purpose of the exchanges was to coordinate the rates paid to freelancers. The coordination was primarily facilitated through WhatsApp messages and emails.

The CMA imposed fines totalling more than £4 million on the companies involved. Businesses that cooperated with the investigation and admitted to breaching competition law received reduced penalties.

For further information see Businesses handed £4.2 million in fines following freelancer pay investigation - Case study - GOV.UK

6. Trade Associations and Professional Bodies

Membership of a trade association or professional body does not exempt any business from compliance with the Law. Collective action undertaken through an association remains fully subject to the Law, and an infringement will arise where the association's activities have the object or effect of preventing, restricting, or distorting competition in a Jersey market.

Trade Associations

A trade association, also referred to as an industry group, business association, or sector association, is an organisation established and funded by businesses operating within a particular market or industry. Such associations may promote members' interests, develop and disseminate industry information, encourage standards or provide guidance.

However, because a trade association constitutes a form of cooperation between businesses, it must take particular care not to engage in conduct that intentionally or inadvertently infringes the Law. While associations can play a constructive role in supporting standards or codes of practice, the involvement of multiple competing business increases the risk of anti-competitive behaviour. This risk is especially relevant when competitors are members of the association. A common area of concern involves the exchange of commercially sensitive information during association meetings or through association communications. Chapter 3 *Introduction to anti-competitive arrangements*, provides further detail on, how information exchange may infringe the Law.

Where anti-competitive conduct is found to have occurred within, or been facilitated by, a trade association, financial penalties may be imposed on the association itself, its members or both.

Professional Bodies

A professional body represents its members' interests. It functions may include maintaining a professional register, promoting standards, or administering a complaints and disciplinary process. As with any association of businesses, a professional body may infringe the Law if its decisions or rules have the object or effect of restricting competition.

Examples of decisions by a professional body that may infringe the Law include:

- Recommendations on prices or fees that, in practice, result in fixed or standardised prices or fees
- Restrictions on competitive advertising
- Rules limiting the types of business structures or service providers permitted to operate, thereby hindering innovation or market entry

A professional body or association may apply for an exemption if it considers that its arrangements meet the statutory criteria. The same procedure and assessment standards apply as for any other business seeking an exemption. The applicant organisation must provide evidence demonstrating that the criteria outlined in Chapter 10 *Applications for Exemption* are satisfied.

Can a code of conduct breach the Law?

A code of conduct is generally intended to enhance market outcomes. For example, it may promote best practice or establish procedures for handling consumer complaints and providing redress. Where the market is competitive and the code does not address pricing or other matters capable of influencing competition, it is unlikely to raise concerns under the Law. However, rules governing admission to, or removal from, membership of a trade association or professional body must be transparent, proportionate, non-discriminatory, and based on objective criteria. Requirements that do not meet these standards may constitute a breach of the Law.

Can technical standards ever breach the Law?

Associations and professional bodies may play a role in the negotiation and promotion of technical standards in an industry. As noted in Chapter 6 *Examples of other types of anti-competitive agreement*, this may limit members' ability to be innovative, potentially restricting competition. Where the adoption of standards significantly increases barriers to entry, the resulting impact on competition may be appreciable. Similarly, certification schemes or quality labels may restrict competition if they are not reasonable, proportionate, and accessible to all businesses on a non-discriminatory basis. Where manufacturers are required to comply with additional obligations concerning the products they may purchase or supply or are subject to restrictions on pricing or marketing as a condition of participation, such schemes may infringe the Law.

Consequences of infringement

The consequences mirror those applicable to any commercial undertaking: contracts may be rendered void; the JCRA may impose financial penalties of up to10% of the total worldwide turnover of ***each*** undertaking active in the market affected by the infringement; and third parties may pursue claims before the Royal Court of Jersey.

7. Vertical Agreements

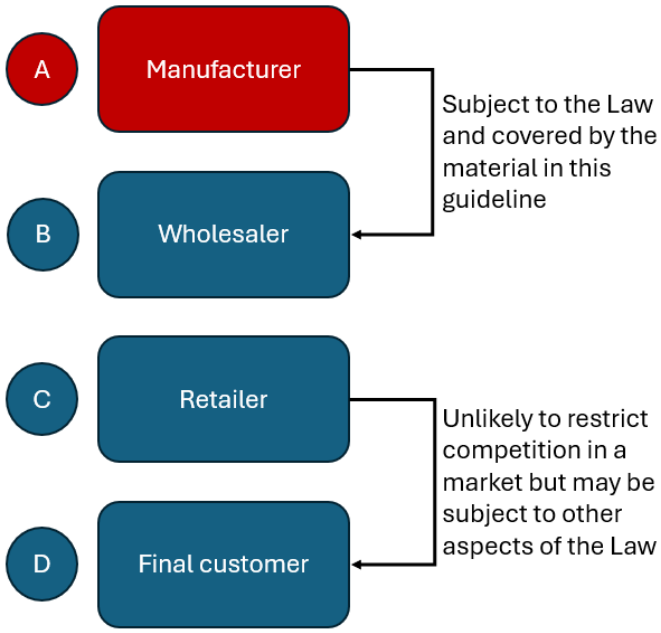
This chapter sets out the provisions of the Law relating to vertical arrangements, that is agreements between businesses operating at different levels of the supply chain and which do not compete with one another. The Law prohibits arrangements that have the object or effect of preventing, restricting, or distorting competition in Jersey. Businesses may, however, apply to the JCRA for an exemption where an arrangement would otherwise fall within the prohibition.

Common forms of vertical agreements include:

- exclusive purchase agreements;
- exclusive distribution agreements;
- selective distribution agreements;
- franchise agreements; and
- exclusive supply agreements.[18]

Distribution agreements between manufacturers and wholesalers or retailers are typical examples of vertical agreements. Sales to final customers who do not possess market power, and which solely determine the price and quantity of goods or services supplied, generally do not restrict competition and typically fall outside the scope of the Law's prohibition on anti-competitive agreements. See the diagram below.

[18] See the Appendix for a brief explanation of each of these types of agreements.



Transactions between A and B would generally fall within the scope of the Law and are therefore covered by the material in this guideline. By contrast, transactions between C and D (and any sales directly by A to D) i.e., final sales to consumers are very unlikely to restrict competition in a market, although they may be subject to other aspects of the Law[19].

It is important to emphasise at the outset that the mere fact an agreement falls within the scope of the Law does not mean it infringes the Law. The Law only applies to vertical agreements that have the object or effect of hindering competition in Jersey. Furthermore, certain, vertical agreements that may otherwise fall within the prohibition may still qualify for an exemption.

Agency Agreements and Distribution Agreements

As noted above, genuine agency agreements fall outside the scope of the prohibition on anti-competitive agreements where the agent can, in substance, be regarded as forming part of the same economic undertaking as the principal.

[19] If, for example, the retailer was a dominant firm and sold the good or service at excessively high prices. See Guideline 5 - Abuse of a Dominant Position

Whether an agent is considered part of the same business as the principal depends on the extent of the financial or commercial risk the agent assumes in relation to the activities conducted for the principal.

There are two types of relevant risk:

- risks directly linked to the contracts concluded by the agent on the principal's behalf, such as the financing of inventory or stock
- risks associated with investments specifically required for the activity for which the agent has been appointed, including investments that constitute irrecoverable or sunk costs

If the agent bears neither of these categories of risk, or only an insignificant proportion of them, in relation to the activity it performs on behalf of the principal, the agent will be regarded as forming part of the same business as the principal rather than operating as an independent undertaking. In such circumstances, the agreement between them falls outside the scope of the Law, as it is not considered to be an agreement between two separate businesses. The financial risks arising from the agent's role as an intermediary, for example, the fact that the agent's remuneration depends on its effectiveness in performing the principals' instructions, are not relevant in this context.

In addition to the assumption of risk, a number of practical indicators may assist in determining whether an agreement constitutes a genuine agency agreement:

Does title to the goods sold pass from one business to the other?	If so, then the agreement in question is likely not to be an agency agreement
Does the business selling the goods pay for the costs of sales, advertising, marketing and transportation?	If so, then the agreement in question is likely not to be an agency agreement. This does not prevent an agent from arranging transport of goods to the Channel Islands, so long as these costs are ultimately paid by the principal.

Does the business selling the goods provide after-sales service that is not fully paid for or reimbursed by the other business?	If so, then the agreement in question is likely not to be an agency agreement.
Is the agent required to make major market-specific investments in equipment, premises, or training?	If so, then the agreement in question is likely not to be an agency agreement.
Does the business selling a product assume third-party liability for any damage the product may cause?	If so, then the agreement in question is likely not to be an agency agreement.

Finally, although individual agency agreements fall outside the scope of the law, concerns may nonetheless arise where multiple principals that otherwise compete with one another appoint the same agent in Jersey. Such arrangements may facilitate coordinated conduct among the principals, particularly through the exchange of commercially sensitive information via the common agent, which could give rise to separate concerns under the Law.

Subject to the basic parameters outlined above, a vertical agreement will only fall within the scope of the Law where it has the object or effect of preventing, restricting, or distorting competition in the supply of goods or services within Jersey[20].

In assessing vertical agreements, the JCRA will have regard to the European Commission's Guidelines on Vertical Restraints[21] and relevant EU case law. These sources inform, but do not bind, the JCRA's analysis. The JCRA may depart from EU precedent where circumstances specific to markets in Jersey justify a different approach.

[20] Article 8 of the *Competition (Jersey) Law 2005* prohibits arrangements which have the "object or effect of ***hindering*** to an appreciable extent" competition. Article 1 of the Law then defines "hinder" as meaning "prevent, restrict or distort".

[21] EU Commission Guidelines on Vertical Restraints

Types of vertical agreements

Resale Price Maintenance or Vertical Price Fixing

The prohibition on price fixing-fixing agreements under the Law applies equally to vertical agreements. Accordingly, a manufacturer may not determine a reseller's prices or require adherence to minimum resale prices[22]. For these purposes, 'prices' includes practices such as setting a re-seller's margin; setting the maximum discounts that a re-seller may apply; making payments from a manufacturer (such as rebates) conditional on a re-seller maintaining minimum prices; or the use of intimidation, threats, etc. to pressure a re-seller to maintain a minimum price.

We are likely to consider vertical agreements containing any such restrictions as having the object of hindering competition. Furthermore, the presence of these restrictions is likely to prevent the agreement from meeting the criteria necessary to qualify for an exemption.

Recommended retail prices or the imposition of Maximum Resale Prices

In contrast to vertical price-fixing or establishing minimum resale prices, a manufacturer's recommendation of a resale price to a re-seller or establishing a maximum resale price that a re-seller cannot exceed, are practices that are generally not seen as having the object of hindering competition. Such practices must instead be assessed in light of their actual or potential effects in the market before determining whether they are anti-competitive. The distinction between a manufacturer merely recommending a resale price and effectively enforcing a re-seller's adherence to such a price, however, can be subtle, and will often depend on the level of economic pressure the manufacturer is able to exert on the re-seller.

Exclusive agreements are always more potentially problematic than non-exclusive ones

As a general principle, exclusive agreements in a vertical context, such as exclusive purchase or distribution agreements, tend to raise more significant concerns than non-exclusive agreements[23]. This is because effective competition may be compromised if

[22] Throughout this section, the terms 'manufacturer' and 're-seller' are used. The use of these terms is for ease of reference, and the principles discussed herein apply equally to other vertical relationships.

[23] An exclusive agreement includes agreements where a customer agrees to purchase all, or a substantial part, generally 80% or more) of its total requirements of a given good or service from a single seller. It also

suppliers are 'tied' to certain re-sellers through exclusive obligations, or where re-sellers agree to sell only one manufacturer's product. This principle does not, however, mean that exclusive agreements are necessary anti-competitive or incapable of qualifying for an exemption. Exclusive distribution agreements can play an important role in ensuring the effective supply of goods or services into the market, or in preventing one re-seller from 'free riding' on the investments made by another. The Law permits us to take such matters into account when assessing a specific agreement. Furthermore, the fact that an agreement is non-exclusive in form does not mean that it automatically falls outside of the restrictions in the Law if it could in fact have an anti-competitive effect in Jersey[24].

Exclusive supply obligations generally are viewed as more restrictive for dominant suppliers than non-dominant suppliers

This chapter has focussed on the applicability of the Law to common vertical agreements between businesses. It should be noted, however, that the Article 16 prohibition on abuse of dominance may also be applicable to certain forms of conduct in relation to vertical agreements.

The competitive impact of the duration of an exclusive supply agreement may depend on the market power of the supplier. Where a supplier holds a dominant position in a relevant market, even an exclusive agreement of limited duration may hinder competition. Conversely, exclusive agreements entered into by suppliers with a market share of 30% or less will generally not be regarded as hindering competition, provided they do not contain hard-core restrictions such as vertical price-fixing.

Further guidance on how competition law applies to dominant businesses is contained in Guideline 5 - Abuse of a Dominant Position.

Restrictions on Inter-Brand competition are usually more problematic than those on Intra-Brand competition

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includes agreements where a manufacturer agrees to provide a good or service through a single re-seller in Jersey.

[24] Such a situation could arise, for example, if a manufacturer sells a product into Jersey through an agreement that is expressly non-exclusive, but the extent of the product's demand in Jersey means that the manufacturer is highly unlikely to appoint more than one re-seller in practice.

A core objective of competition law is to ensure that consumers have access to a diverse range of goods and services. Accordingly, vertical agreements that restrict the distribution of a particular brand of a product may not hinder competition if there are many competing brands in the market.

Generally, a manufacturer should not require a re-seller to purchase additional products or services from it as a condition for the re-seller purchasing the desired product or service from the manufacturer

For example, a re-seller seeking to purchase a manufacturer's photocopiers should not be required to also purchase paper from the manufacturer as a condition for purchasing the photocopiers.

A manufacturer can require a re-seller to purchase the given good or service that is subject to a supply agreement solely from the manufacturer in limited circumstances

Exclusivity in an agreement does not give manufacturers a general right to force purchases upon re-sellers, however exclusive purchasing obligations may be allowed in agreements in certain circumstances. For example, if the parties share of the market share is less than 30% and the duration of the exclusivity is less than 5 years.

Non-compete agreements in vertical agreements

Non-compete agreements within vertical agreements may be justified where they are necessary to protect commercially sensitive information transferred from the manufacturer to the re-seller, or to ensure that the re-seller remains appropriately focused on promoting the manufacturer's product or brand. However, they must also be limited in scope and duration[25].

Communications between re-seller and supplier under a supply agreement

In general, a re-seller is allowed to help a manufacturer protect and enforce its intellectual property rights by reporting potential infringement of such rights to the manufacturer. A manufacturer is also generally allowed to gain market intelligence through its re-sellers.

[25] For example, the EU guidelines note that any non-compete obligations should not be indefinite and in general should not exceed 5 years. .

However, concerns may arise in this area if several competing manufacturers contract with the same re-seller. In this scenario, the re-seller may need to have adequate internal safeguards in place to ensure that commercially sensitive information about one manufacturer is not passed to other manufacturers.

Exemptions and Guidance

There are circumstances under which a vertical agreement in Jersey may qualify for an exemption from the prohibitions on preventing or hindering competition set out in the Law. Further detail on the circumstances in which an exemption may apply is set out in Chapters 8 and 9.

8. Applications for Guidance

The Law in Jersey permits businesses to seek guidance from the JCRA on whether proposed conduct may constitute an anti-competitive arrangement or an abuse of dominant position. Guidance may only be requested in respect of future conduct and cannot be sought in relation to mergers or acquisitions.

Applicants must pay to request guidance; the current minimum fee is £5,000, more depending on complexity, to be received by the JCRA before advice is given.

When submitting a request for guidance, applicants must ensure that all information provided is true, accurate, and complete to the best of their knowledge and belief. It is an offence under the Law to knowingly or recklessly provide the JCRA with information that is false or misleading. The JCRA may withdraw any guidance issued if it is based on information that is inadequate, incomplete or misleading.

How to make an application

An application for guidance under Article 43 of the Competition (Jersey) Law 2005 must be submitted in writing and signed by an authorised representative of the applicant. The application must provide details of:

- The proposed course of action, including a copy of any agreement(s) the parties intend to sign
- The parties involved
- The products or services involved
- The rationale for seeking guidance, including the reasons why the parties consider that the proposed conduct may raise compliance issues under the Law
- The industry or market potentially affected by the proposed conduct (for more information see Guideline 7 - Market Definition | JCRA);
- An explanation on how competition operates in the relevant industry or market, including, information on market shares, capacities etc. and the identity of the parties' main suppliers and customers, possible new entrants, and what possible substitute products exist

- All documents prepared by or for the parties analysing the effect of the proposed course of action on markets or competition, including any financial data; and
- Local turnover for the parties for the last two years; and any arguments the parties wish to make that the proposed course of action does not infringe the Law, together with supporting evidence.

The confidentiality of information and documents submitted with an application for guidance is subject to the protections set out in the Law. Applicants are not required to disclose information or documents that are protected by legal professional privilege. Where it is necessary to share an application with other parties, including competitors, the JCRA will request a non-confidential version suitable for disclosure to third parties. The JCRA may also request additional information, or indicate that less information is required, depending on the circumstances of the case.

Guidance will normally be provided within four weeks of a full application being received, subject to the complexity of the matter. As noted above, the JCRA may request further information, where necessary. Any delay in providing requested information will result in a corresponding delay in the issuance of guidance.

Procedure

The JCRA will consider the information provided in the application and may request additional information or documents where necessary. The Law provides that, if any information reasonably required in order to issue guidance is not provided within a reasonable time, the JCRA is not obliged to proceed with the application. Any request for further information will specify the date by which a response is required. The JCRA may also require the applicant to attend one or more meetings to explain the application and to answer questions.

Guidance will be provided in writing and will remain confidential to the applicant. A public version will also be published on the JCRA's website, but only where the JCRA concludes that the proposed conduct does not infringe the Law. Prior to publication, the JCRA will consult with the applicant to ensure that any commercially sensitive information is removed.

Effect of guidance

If the JCRA issues guidance indicating that a proposed course of action is unlikely to breach the Law, the JCRA must not open an investigation into that course of action unless one or more of the following conditions applies:

- There is reasonable cause to suspect that a material change in circumstances has occurred since the guidance was issued.
- There is reasonable cause to suspect that the information on which the guidance was based was incomplete, false or misleading in a material way.
- There is reasonable cause to suspect that the course of action constitutes a breach of the merger and acquisition provisions of the Law.
- A complaint is received in relation to the course of action, whether before or after its implementation by the parties.

Other informal approaches

Parties may, in addition to the formal procedures set out above, contact the JCRA on an informal basis to seek clarification regarding the Law and its potential application to particular circumstances. Such informal engagement may be made by letter, email, or phone, either directly or through their advisers. Any information provided to the JCRA in this context is subject to the statutory protections from disclosure detailed in the Law.

The JCRA is not obliged to respond to an informal approach and retains full discretion as to whether, when, and in what manner it provides a response. Any response given in an informal context does not constitute binding guidance and does not limit the JCRA's statutory functions.

Depending on the circumstances, the JCRA may require the parties to submit a formal request for guidance or for an exemption in respect of the conduct, or proposed conduct, described.

9. Applications for Exemption

The Law allows any party to an arrangement or proposed arrangement that might infringe Article 8 to apply to the JCRA for an exemption. To note, exemptions cannot be granted for mergers, acquisitions or abuses of dominant position.

Applicants must pay to request guidance; the current minimum fee is £5,000, more depending on complexity, to be received by the JCRA before advice is given.

Requirements for exemption (granted by the JCRA)

The JCRA may not grant an exemption to an anti-competitive arrangement unless it is satisfied[26]:

- The arrangement is likely to improve the production or distribution of goods or services, or to promote technical or economic progress in the production or distribution of goods or services.
- Consumers of those goods or services will receive a fair share of the resulting benefits.
- The arrangement does not impose terms on the participating businesses that are not indispensable for achieving the objectives described above.
- The arrangement does not afford the participating businesses the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.

The applicants must provide evidence that all the above listed conditions are met.

Block Exemptions granted by the Minister

The Minister for Sustainable Economic Development may, after consulting with the JCRA, issue **block exemptions** which exempt particular categories of agreements. Such exemptions are designed to provide greater certainty to businesses.

Agreements which fall within a category specified in a block exemption are automatically exempt from Article 8(1) of the Law and do not need to be notified to the JCRA. A block exemption may impose conditions or obligations on the parties. Where those conditions or

[26] Article 9 of the Competition (Jersey) Law 2005

obligations are not complied with, the exemption is likely to cease to apply, placing the business at risk of infringing the Law.

Vertical arrangements that satisfy criteria set out in the Vertical Arrangements Block Exemption Order, may be presumed compatible with the Law. The block exemption applies to vertical arrangements between a supplier and buyer for the purchase or sale of goods or services in Jersey. It also applies to vertical arrangements, including franchise agreements, that contain provisions relating to the assignment to a buyer, or use by a buyer, of intellectual property rights to the extent such rights are ancillary and directly related to the use, sale or resale of goods or services by the buyer or its customers.

The block exemption applies only where:

- The market shares of both the supplier and the buyer do not exceed 30%.
- The agreement does not contain any hardcore restrictions, as defined in the block exemption.

Small Business Exemptions

The Minister may, after consulting with the JCRA, determine that small businesses are exempt from the prohibition in Article 8(1) of the Law.

A small business may be defined by reference to:

- turnover, earnings, market share or similar measures; or
- number of employees.

Any exemption granted in respect of small businesses may be subject to conditions or obligations. Where those conditions or obligations are not complied with, the exemption may cease to apply, and the business may be at risk of infringing the Law.

How to make an application for an exemption

An applicant may first request an informal meeting with the JCRA to discuss whether a proposed exemption application is necessary.

An application for an exemption must be submitted using the form available on the JCRA's website and must include:

- details of the agreement or arrangement, including a copy of any agreement(s) the parties have signed or intend to sign.
- details of the parties involved.
- details of the products or services involved.
- details of the industry or market that might be affected by the agreement or arrangement, (for more information see Guideline 7 - Market Definition | JCRA);
- a description of how competition works in the industry/market affected, for example, how vigorous competition is and who the main participants are (including information on market shares, capacities etc., and the identity of the parties' main suppliers and customers, possible new entrants, and what possible substitute products exist).
- all documents prepared by or for the parties analysing the effect of the agreement or arrangement on markets or competition, including any financial data.
- what clauses of the agreement or arrangement the applicants think may be anti-competitive and why; and
- evidenced reasoning as to why the parties believe that the agreement or arrangement satisfies all four criteria for exemption.

The application must be signed by an authorised representative of the applicant. Information and documents submitted as part of an application are protected in accordance with the confidentiality provisions set out in the Law. The applicant must clearly identify any information it considers to be confidential and provide reasons why such information should not be disclosed to third parties. Where information is not identified as confidential, the JCRA will treat both the applicant and, where different, the person to whom the information relates as having consented to its disclosure.

A decision on an exemption application will normally be issued within four weeks of receipt of a complete application, although the timeframe may vary depending on the complexity of the matter.

Procedure

As with applications for guidance, the JCRA will consider the information submitted and may request additional information or documents where necessary. Any such request will specify the date by which a response is required. The JCRA may also require the applicant to attend one or more meetings to explain the application in greater detail and to address any questions arising from it.

The Law requires the JCRA to publish details of an exemption application as part of a public consultation process and to consider any representations received. A notice of the application will be published in the local press and on the JCRA's website. The JCRA may also contact other industry participants, e.g. competitors, customers, suppliers and trade associations, concerning the application and the potential effect of an exemption on competition.

The JCRA will consider the information provided by the applicant together with any representations received from third parties when determining whether an exemption would meet the four criteria referred to above.

If an exemption is granted, whether unconditionally or subject to conditions or obligations, the decision will be published on the JCRA's website. Additionally, the JCRA may publish decisions to not grant an exemption. Where an application for an exemption is not granted, the JCRA is likely to conclude that the arrangement hinders competition to an appreciable extent, is therefore prohibited and will issue an infringement decision to this effect.

Imposing conditions or obligations

The JCRA may attach conditions or obligations to an exemption. An exemption may also be granted for a specified duration or may take effect from a future date.

Conditions or obligations may be imposed where this is necessary to ensure that the exemption does not give rise to anti-competitive effects. Examples include:

- A situation in which a particular product raises specific competition concerns. In such cases, an exemption man be granted on the condition that the product likely to lessen competition is excluded from the agreement or arrangement.

- A situation in which the agreement or arrangement delivers benefits required under the Law but contains a restrictive clause that could eliminate competition. In these circumstances, an exemption may be granted subject to the removal of the restrictive clause.

Effect of an exemption

Where the JCRA grants an exemption in respect of an agreement or arrangement, it may not take enforcement action in relation to that agreement during the period of the exemption. This is the key benefit of being awarded an exemption by the JCRA. However, note that an exemption ceases to have effect if the businesses breach a condition or obligation. Furthermore, the JCRA may withdraw an exemption, vary or remove a condition or obligation, or impose additional conditions or obligations if:

- there are reasonable grounds to believe there has been a material change in the circumstances since the exemption was granted; or
- there are reasonable grounds to suspect that the information on which the decision was based was incomplete, false or misleading in a material particular; or
- there has been a failure to comply with a condition or obligation.

A failure to comply with a condition or obligation may be brought to the JCRA's attention through a complaint from a third party or by any other means.

Key Differences between Guidance and Exemptions

Aspect	Guidance	Exemption
Coverage	Any planned course of action that may breach prohibitions regarding anti-competitive arrangements or the abuse of a dominant position.	Planned or existing arrangements that may breach the provisions regarding anti-competitive arrangements. No exemption is possible in relation to the abuse of a dominant position or the mergers and acquisitions provisions.

Confidentiality	A public version of the guidance that concludes that the planned course of action will not infringe Laws will be published.	The Laws require that the JCRA publishes details of exemption applications and decisions of exemptions that have been granted.
Legal Certainty	Provides parties with guidance on the potential applicability of the prohibitions regarding anti-competitive arrangements or abuse of a dominant position. However, guidance is no bar to action if the JCRA receives a complaint or to a third party civil action.	If granted, an arrangement is exempt from the Law. An exemption may be withdrawn in particular circumstances e.g. the terms of the arrangement materially change or if the conditions subject to which the exemption was granted are not being complied with by the businesses in question.
Fee	A minimum of £5,000, more depending on complexity.	A minimum of £5,000, more depending on complexity.
Time	Guidance will normally be provided within 4 weeks.	A decision will usually be provided within 4 weeks.
Consequences of Negative Decision	Guidance that the planned course of action could infringe the Law remains confidential between the JCRA and the applicant.	A refusal to grant an exemption will be published, in addition to an infringement decision under the prohibitions regarding anti-competitive arrangements

10. The JCRA's leniency policy

Leniency refers to a business voluntarily disclosing its participation in a cartel to the JCRA and providing relevant information about the cartel. In return, the business may receive full or partial immunity from any financial penalty that the JCRA could otherwise impose for a breach of the Law arising from cartel conduct. This results in the business paying either no penalty or a reduced penalty compared with other cartel participants, provided it complies with all directions issued by the JCRA. Failure to comply with these conditions many result in the full financial penalty being imposed.

The JCRA considers it is in the public interest to grant favourable treatment to businesses which bring the existence of cartels to its attention, in addition to cooperating fully with the investigation.

The chapter explains the policy for businesses involved in a cartel that are considering applying for leniency and outlines the application process.

For more information businesses may wish to:

- Seek legal advice; and
- Contact the JCRA to seek confidential guidance.

What are the consequences of engaging in cartel activity?

- **Financial penalty:** a business found to have engaged in cartel activity may be subject to a financial penalty. As set out at the beginning of this guideline, the JCRA may impose a fine up to 10% of the business's worldwide turnover generated during the period of the breach, up to a maximum of three years. In determining the appropriate and proportionate level of penalty, the JCRA will consider the specific circumstances of the case, including the duration of the business's participation in the cartel and the nature of its role within it.
- **Directions:** instead of, or in addition to, a financial penalty, a business may be issued with a direction which requires it to undertake any action the JCRA considers appropriate to bring the cartel activity to an end.

- There may also be **other consequences** such as reputational damage, regulatory implications and being sued for damages by those who have suffered from the cartel.

Leniency does not mean the business faces no consequences for its conduct

Leniency granted by the JCRA applies only to breaches of the Competition Law and can only reduce the financial penalty that the JCRA itself may impose. It does not remove or limit any other legal or commercial consequences arising from the infringement. A business that receives leniency remains fully liable for any civil claims brought by third parties, including actions for damages before the Royal Courts of Jersey.

The JCRA is under no obligation to accept or consider a leniency application, even where similar applications have been made to competition authorities in other jurisdictions in relation to the same or comparable conduct. Any immunity or leniency granted by the JCRA does not exempt the business concerned from penalties that may be imposed by competition authorities outside Jersey, such as in the EU and UK.

Types of leniencies

JCRA has full discretion as to whether full or partial immunity is granted. Decisions are made on a case by case basis. To apply for leniency, the conditions below must be satisfied.

Full immunity

Full immunity is unlikely to be granted where a business acted as the cartel leader or instigator. Full immunity is guaranteed to be available only when the following three conditions are satisfied:

- The JCRA has not yet commenced an investigation into the cartel.
- No other member of the cartel has already applied for leniency.
- The information provided enables the JCRA to conduct a targeted investigation in connection with the alleged cartel and/or establishes a breach of the Law.

Partial immunity

A business will not be granted full immunity if it has previously admitted involvement in a cartel or if the JCRA has already begun an investigation into the cartel. In such cases, the business may still apply for leniency and may still receive a reduction in the financial penalty.

A business may qualify for a reduction of up to 100% of the financial penalty where:

- it provides information which significantly progresses the investigation; and/or
- it provides key information that enables a breach of the Law to be established.

The JCRA assess each leniency application individually, taking account of when the business came forward, the evidence already available at that point, and the value and relevance of the information provided. Therefore, partial immunity is not guaranteed to be available - in some cases, the JCRA may decide that it would not be in the public interest to grant leniency. The JCRA will take this decision before or at the time when we issue the draft infringement decision.

The final amount of the reduction will be determined at the end of the investigation, to be sure that the conditions attached to leniency have been adhered to; if the business has not complied, it will not benefit from any reduction of the financial penalty.

Conditions of leniency

For full or partial immunity to be granted, the business must satisfy the following conditions from the time of the application:

a. Information – the business must provide the JCRA with all the information, documentation, correspondence and other evidence it has regarding the cartel activity. The business must not conceal or destroy any information, documentation, correspondence or other evidence at any time.

b. Co-operation – the business must cooperate fully with the JCRA from the point of the application through to the conclusion of any investigation, decision and appeal. Cooperation includes adding meaningful value to the investigation, responding promptly and comprehensively to requests, and making relevant employees and directors available for interview.

c. Confidentiality – the business must keep confidential and not disclose to any third party any information regarding an enquiry or application for immunity (whether or not we grant this) or any information provided by the JCRA in relation to an enquiry or application for immunity or any subsequent investigation. The business is still allowed to share information with legal counsellors if seeking external legal advice in relation to their involvement in the cartel.

d. Termination – the business must cease its participation in the cartel. The JCRA will discuss with the business how to end its involvement in a way that does not alert other cartel members. In some circumstances, the JCRA may direct the business to delay ceasing participation temporarily to avoid signalling that the cartel is under investigation.

e. Admission – If the JCRA investigates and reaches a provisional finding of cartel activity and therefore a breach of the Law, the business must admit it has engaged in cartel activity. If a business does not admit its involvement following the conclusion of our investigation, then leniency will be withdrawn.

Disclosure

The JCRA recognises that a business may be concerned about the disclosure of its identity as a volunteer of information. The JCRA will therefore endeavour to keep the identity of a business granted immunity or leniency confidential throughout the course of our investigation until the issue of a draft infringement decision. Such a decision will then be freely available to the public, through our website.

Applying for leniency

This chapter sets out the process of a leniency application. The application has the following stages:

Stage 1 - Considering leniency

Stage 2 - Initial enquiry

Stage 3 - Formal application; and

Stage 4 - Co-operation.

Stage 1 - Considering leniency

Before applying for leniency, businesses may wish to seek legal advice if they suspect that they may have engaged in cartel activity.

Before reaching a decision, the business will usually need to carry out internal enquiries to determine whether there is evidence of cartel conduct. These enquiries must be handled discreetly. Apart from seeking legal advice, the business should keep the matter strictly confidential to avoid alerting employees or other cartel participants that a leniency application is being considered.

The business should also take immediate steps to secure any evidence of the cartel activity so that it cannot be tampered with, for example, by employees that may not want their involvement known.

Stage 2 - Initial enquiry

A business may contact the JCRA on a confidential basis to establish whether immunity could be available in its circumstances. At this early stage, the JCRA does not require the identity of the business. Instead, the JCRA will ask for high-level information such as the market involved and the nature of the suspected cartel activity. No documents need be disclosed at this time, although the business should be able to indicate what evidence it holds and could supply if it proceeds with a formal application.

Once the initial information has been assessed, the JCRA will determine whether leniency is available and, if so, whether full or partial immunity may apply. This assessment is typically completed within two working days.

To make an enquiry for leniency, a business may contact us on **+44 (0)1534 514990.**

Stage 3 - Formal application

If the JCRA confirms that leniency is available, the business must submit a formal application package. This will normally include all documents in the business's possession that relate to the cartel, together with a leniency statement setting out a detailed description of the cartel conduct.

To apply, the *minimum* required information and documentation required is:

1. The leniency statement, including:
    - the name and contact details of the business making the application for immunity or leniency.
    - details of the other cartel members, including business name, the names of key individuals and their location.
    - a detailed description of the affected relevant market (see Guideline 7 - Market Definition | JCRA).
    - the duration of the cartel and the duration of the applicant's participation; and
    - the nature of the cartel conduct, including how it operates, its aims, activities and the estimated market volumes affected by the cartel.
2. All records and documents available to the applicant that evidence the cartel, particularly recent material, such as:
    - copies of relevant emails, meeting minutes, telephone records, diary entries, travel records and correspondence (SMS, WhatsApp, iMessage, Facebook messenger, etc.) between cartel members and facilitators
    - copies of any relevant internal reports, memos; and
    - copies of any relevant tender documents, supply agreements, or supporting notes that confirm collusion or e.g. meeting actions before submitting tenders.

The term *facilitator* refers to any business or individual who was not a cartel member, but who assisted the cartel or enabled it to operate. Where any documents or records are not in English, the applicant must provide both the original version and English translation.

3. If the cartel arrangements were entered into outside Jersey: details of how and by whom the cartel arrangements were given effect in Jersey, in terms of good(s) and/or services supplied in or into Jersey.
4. Details of the information storage system used by the applicant, including:
    - the types of storage sources of data held
    - where electronic storage systems such as computer servers are held; and
    - the changes to those systems over the past ten years that may affect the ability to recover electronic documents such as emails.
5. Information of any past or simultaneous immunity or leniency applications, detailing dates and the relevant jurisdiction/s.

The application package must be submitted using:

Email: Competition@jcra.je or

By post: Jersey Competition Regulatory JCRA, 2nd Floor Salisbury House, 1 - 9 Union Street, St Helier, Jersey, JE2 3RF

Stage 4 - Co-operation

Once the JCRA has reviewed the application package, it will inform the business of the next steps. If an investigation has not already been opened, the JCRA will decide at this stage whether to commence a formal investigation into the suspected cartel activity. Where a formal investigation is launched, the JCRA will require the business to sign a letter confirming that it understands and accepts its ongoing obligation to cooperate as a condition of leniency. Cooperation is a central requirement of the leniency policy. The JCRA expects businesses to take a constructive and proactive approach throughout the investigation in return for any immunity or reduction in penalties.

This includes responding promptly to requests, providing access to relevant individuals and information, and assisting the JCRA in establishing the facts efficiently and accurately.

11. Contact us

Should have any questions regarding this guideline, please contact us on 01534 514995 or competition@jcra.je