



# **Guernsey Competition Law**

## **A Quick Guide**

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## What this quick Guideline is about

This Guideline is one in a series of publications designed to inform businesses and consumers about how we, the Guernsey Competition and Regulatory Authority (GCRA) apply competition law in Guernsey.

This Guideline provides a brief introduction to *The Competition (Guernsey) Ordinance, 2012* (the **2012 Ordinance**).

You need to know about competition law to avoid becoming a victim of anti-competitive practices, to understand the business practices that might be considered anti-competitive, and to appreciate which mergers need to be referred to us for approval - in short, to avoid breaking the law.

More comprehensive information is available in a number of detailed guidelines we have published; details of how to obtain copies, are at the back of this Guide.

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.

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# 1 Introduction

## Why is competition important?

Open and vigorous competition is good for consumers because it can result in lower prices, new products of a better quality and more choice. It is also good for fair-dealing businesses, which flourish when markets are competitive.

## Competition law in Guernsey

In Guernsey, *The Competition (Guernsey) Ordinance, 2012*, prohibits anti-competitive behaviour, including anti-competitive agreements between businesses and the abuse of a dominant position in a market. It also requires certain mergers and acquisitions to be notified to the GCRA for approval.

### **What powers does the GCRA have?**

The GCRA has a wide range of powers to investigate businesses suspected of breaching the law. We can order that offending agreements or conduct be stopped and levy financial penalties on businesses and individuals for the breach.

### **What types of organisation are considered a 'business'?**

Throughout this Guideline, we refer to a 'business'. This term (also referred to as an 'undertaking' in Guernsey competition law) means any entity engaged in economic activity, irrespective of its legal status, including companies, partners, cooperatives, States' departments and individuals operating as sole traders.

## 2 What is prohibited?

### Anti-competitive agreements

The law prohibits any agreements, business practices and/or conduct which have a damaging effect on competition in Guernsey.

Agreements likely to be prohibited include those which:

- Fix the prices to be charged for goods or services
- Limit supply and/or production of goods or services
- Share markets out between competitors

Agreements can be formal or informal, written or verbal. An informal understanding or telephone conversation, where two competitors agree to match each other's prices, will be caught in the same way as a formal agreement between them.

The law also cover decisions made by associations of businesses as well as concerted practices, ie, cooperation which falls short of an agreement or decision.

## Cartels

Cartels are the most serious form of anti-competitive agreement. They are agreements between businesses not to compete with each other, eg, on price, discount levels, credit terms, or in respect of particular customers or in particular areas. Cartel agreements can often be verbal and may be hard to uncover.

There are a number of signs that may indicate a cartel is operating. Look out for businesses that:

- Change prices or other trading conditions in the same way at the same time
- Offer the same discounts or discount structures
- Quote or charge identical, or very similar, prices
- Refuse to supply a customer because of their location
- Use terms or phrases such as ‘the standard local charge is ...’

The presence of one or more of these signs does not necessarily mean that a cartel is operating. Some, such as similar prices or price changes at around the same time, can indicate healthy competition. However, you should be particularly suspicious where several of the signs are present.

## Examples of Cartels

- Business A and Business B both make the same product. They agree not to undercut each other’s prices and not to sell to each other’s customers.
- Sales executives from Company Alfa and Company Beta arrange to increase prices by 10 per cent.

For more information see GCRA Guideline 3 – Cartels.

## Exemptions

In certain circumstances we can grant an exemption to a business in respect of an agreement that would otherwise be considered anti-competitive. Exemptions include:

- Individual exemptions - Businesses may apply to us to exempt an agreement where the anti-competitive effects are balanced out by economic or technical progress, and consumers will share in the resulting benefits
- Block exemptions – Block exemptions can be granted which then automatically apply to the exempted categories of agreements

For more information on exemptions see GCRA Guideline 9 – Applications for Guidance and Exemptions.

## **Abuse of a dominant position**

### **What is a dominant position?**

A dominant position means that a business has market power, allowing it to act independently of competitors and customers.

Whilst market share is important, on its own it does not determine whether a business is dominant.

Examples of conduct that may be considered an abuse by a business in a dominant position include:

- Charging excessively high prices
- Charging prices so low that they do not cover the costs of production and therefore attempt to drive competitors out of the market
- Refusing to supply a customer without due cause
- Offering different prices or terms to different customers when there is no difference in what is being supplied
- As a dominant supplier, insisting that customers cannot deal with other suppliers of the same good or service, or offering certain loyalty rebates or discounts
- As a dominant customer, restricting suppliers from supplying to any other customer
- Tying and bundling – requiring or enticing buyers to purchase a second product in addition to a dominant first product

### **Example of abuse of a dominant position**

Company A is the leading supplier of widgets on the Island. It has a 75% market share. The variable cost of Company A producing a widget is £100. Company A sells widgets for £150. Company B has just entered the market, selling widgets for £125. Company A decides to drive Company B out of the market. The plan is to sell widgets for £75 until Company B goes out of business, and then raise prices again.

### **Guidance**

Businesses may seek formal guidance from us on whether a particular agreement is likely to be considered an anti-competitive arrangement, or whether particular conduct is likely be considered an abuse of a dominant position.

## Mergers and Acquisitions

Mergers can bring benefits to the economy and help businesses and markets to grow. Whilst most mergers have little effect on competition, some can harm competition and result in, for example, increased prices, decreased quality or choice for consumers or less innovation.

The reason for requiring certain mergers to be approved is therefore to protect consumers from these undesirable outcomes.

There are certain situations in which we **must** be notified of and approve a merger **before it takes place**. These criteria for notification are set out in GCRA Guideline 6a – Mergers and Acquisitions – substantive assessment, and in the respective legislation.

These criteria are purely thresholds for notification for approval; they do not imply that the merger is necessarily problematic or will be automatically blocked by us.

## Applications

We encourage businesses considering a merger to approach us for an informal discussion before submitting a formal application. Applications for approval should be made on our Merger Application Form which can be downloaded from our website.

## Fees

We charge a fee to cover the cost of processing a merger application. Fees vary depending on the value of the acquired business and the level of competition concerns raised.

For more information see GCRA Guideline 6b – Mergers and Acquisitions - procedure.

### 3 How do I make a complaint?

We rely on complaints to help us to enforce the competition laws. If you suspect that a business is infringing the law, please contact us to discuss your concerns.

There are a number of signs that may indicate a business is breaching the law. These include:

- A long standing supplier suddenly decides, for no apparent reason, to stop supplying you
- You received the same quote, or unusually similar quotes from different suppliers
- A supplier refuses to sell you the product you want unless you also buy a separate and unconnected product
- You approach a number of suppliers and find that only one is willing to supply the goods in your part of the island
- A supplier refuses to let you sell their products at a discount
- You have recently entered the market and a major competitor has responded by charging prices so low you suspect they are not covering their costs.

The fact that a business is behaving in any of these ways does not necessarily mean it has breached the law. In some cases the behaviour in question may be a legitimate response to strong competition in the market.

### **What if I am not sure whether a business is breaching the law?**

If you are unsure whether or not to make a complaint please contact us to discuss the matter in more detail. Our contact details can be found on page 21.

### **What information will I have to provide?**

Once you have contacted us to discuss a complaint, we may ask you to provide us with more information.

We prefer that, whenever possible, information is provided in writing. This enables us to carry out an initial assessment of your complaint as quickly as possible.

### **Is my complaint confidential?**

To investigate a complaint fully, we often need to reveal the information we have obtained, and the source of that information, to the business being investigated. However we will protect your identity as far as possible, and we will get your consent before we disclose your identity to any third party.

If you consider that the information you provide might seriously damage your commercial interests if it is disclosed, you should clearly mark it as confidential, and explain to us why it should be treated as such. We do not accept blanket requests for confidentiality.

For more information on making complaints please see GCRA Guideline 8 – How to make a complaint.

### **What happens to my complaint?**

We will first check that the complaint can be dealt with under competition law or whether it should be handled by another body such as Trading Standards.

We will try to advise you within 30 days as to whether your complaint raises issues which justify further work.

We may launch a formal investigation if we have reasonable grounds for suspecting that the law has been breached. We do not have to investigate possible infringements. In deciding whether to launch a formal investigation, we will consider whether this would be appropriate, taking into account our resources and other priorities.

In all cases, we will let you know how we are dealing with your complaint, give you a contact name, and will keep you informed of any progress. You may contact us for an update at any time.

## 4 What investigation powers are there?

We have a wide range of powers to investigate suspected breaches of the laws. We can require the provision of documents and information from businesses suspected of committing a breach as well as from their competitors, customers or suppliers.

In the first instance we write to the business asking for the documents, information or explanations we need and give a deadline for it to be provided.

In extreme cases, where businesses fail to respond or provide an inadequate response to our request, or where we have concerns that evidence might be destroyed, eg, in a cartel case, we can apply to the court for a warrant to enter and search premises to obtain the information we need.

## 5 What actions can be taken?

### Decision and directions

If, as a result of our investigation, we consider that the law may have been breached, we will write to those concerned to explain the case against them and give them a chance to respond, both in writing and by meeting with us in person.

If we subsequently decide that there has been a breach of the law, we will notify the businesses concerned and publish the decision on our website. We may also issue a statement to the media.

Alternatively, we may conclude that there are no grounds for action. In this case we will notify those concerned and may publish a decision to that effect on our website.

### Interim measures

In certain urgent circumstances, ie, where there is a real danger of serious, irreparable damage to a business, or to protect the public interest, we may require a business to comply with a direction, eg, to stop a certain activity, while we complete our investigation.

## **6 What happens to businesses that break the law?**

### **Financial Penalties**

Businesses that infringe competition law can be fined up to ten per cent of their annual turnover during the period of the breach, up to a maximum of three years.

We have published guidance explaining how we will set a financial penalty and will have regard to this when setting penalties.

For further information on how we determine financial penalties see GCRA Guideline 12.

### **Other Consequences**

We can require businesses to terminate or modify an agreement considered to be anti-competitive.

We can require the business to stop or change its behaviour if we decide that it is abusing its dominant position.

We can require businesses to unwind mergers and acquisitions, to sell part of the acquired or merged business, or to modify the way they conduct their business.

We publish all our decisions on our website and may publicise them to the local media.

## **7 Can I appeal a decision made by the GCRA?**

Yes. You can appeal a decision we make in the Royal Court.

## **8 What about damages?**

Where a third party (such as a competitor or customer) has been affected by conduct which infringes competition law, they can take civil action in the courts to stop the behaviour and / or seek damages either in addition to, or instead of, making a complaint to us.

## 9 Is there a leniency policy?

Cartels are the most serious form of anti-competitive agreement.

We are prepared to offer lenient treatment to businesses that come forward with information about a cartel in which they are involved. Under our leniency policy, members of cartels may have their financial penalty reduced substantially or they may be able to avoid a penalty altogether.

To qualify for leniency, a business must fully cooperate with our investigation and stop their involvement in the cartel from the time they come forward.

Although leniency may result in the business avoiding or receiving a reduced financial penalty, the business has still breached the law and any related agreements are void and unenforceable.

### How to ask for leniency

If you want to know whether leniency is available and could be granted to your business, you may informally approach the GCRA for advice. We will not use information provided in this respect for any other purpose.

## 10 Confidentiality

We will keep information we receive in respect of a leniency application confidential, subject to its use to conduct an investigation of the alleged cartel.

For further information see GCRA Guideline 13 - Leniency Policy.

## **11 Why is compliance important for my business?**

One significant reason why a business should comply with competition law, apart from being seen as doing business ethically, is the potentially high cost of non-compliance, which may include:

- Financial penalties
- Agreements being void and unenforceable
- Claims for damages
- Adverse publicity

### **What steps should my business take to ensure compliance?**

There are different ways to ensure that your business complies with the law, but key to them all is instilling a compliance culture in your business. This means that managers at all levels of a business, from the top down, need to understand the law and demonstrate a commitment to compliance.

### **Compliance programmes**

There is no standard compliance programme. However, there are four main features that must be included as a minimum for a programme to work effectively. They are:

- the support of senior management
- appropriate policies and procedures
- training
- regular evaluation

For further information see the GCRA publication - A Guide to Compliance.

## How can I find out more?

Please contact us if you have a question about the competition law or if you suspect that a business is breaching the laws and wish to complain or discuss your concerns.

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## Publications

All our publications, including the detailed guidelines we publish covering specific areas of the laws, can be downloaded from our website: [www.gcra.gg](http://www.gcra.gg).