

SMEs & Competition Law

Qualitative Research Report

Prepared by BDRC Continental for the
CMA

15th of May 2015



Richard Smith
Director
Tel: 0207 400 1018

richard.smith@bdrc-continental.com milena.castellnou@bdrc-continental.com

Milena Castellnou
Senior Research Executive
Tel: 020 400 0398

providing intelligence

File location/File Name/Author Initials/Support Initials/Date

Contents

	Page No.
1. Executive summary	3
2. Background & Methodology	4
2.1 Background	4
2.2 Objectives of the research	4
2.3 Methodology	4
3. Where does competition law fit within the world of SMEs?	6
3.1 Lack of awareness and misconceptions	6
3.1.1 Competition law is not on their radar	6
3.1.2 Misconceptions around competition law.....	6
3.2 SMEs examine business practices through a moral framework	7
3.2.1 There is a shared understanding that some practices are ‘unfair’ or ‘wrong’	7
3.2.2 The reputation of the business is critical	8
3.2.3 The CMA should frame competition law in the same way as businesses do	8
4. Understanding of competition law: zoom into the anti-competitive practices.....	10
4.1 The typical respondent’s journey: from total ignorance to the realisation that some of the things they have witnessed / experienced in business might be illegal.....	10
4.2. Price fixing.....	10
4.3. Market sharing.....	11
4.4. Bid rigging	12
4.5. Other anti-competitive practices	14
4.6. Sharing sensitive information	14
4.7. The perceived impact of anti-competitive practices is critical	16
4.8. The risk of being exposed varies according to sector and size	16
5. Review of current CMA materials	18
5.1 60-second summaries	18
5.2 Quick Guide to Complying with Competition Law.....	19
5.3 Competition Law Risk. A Short Guide	19
5.4 Other materials tested during the workshops.....	19
5.5 Our recommendations for information materials	20
6. Getting small businesses’ attention: best channels and vehicles	22
6.1 Best channels to reach small businesses	22
6.2 How can the CMA use internet?.....	24
7. Conclusions & Recommendations	25
7.1 What are the key challenges for the CMA?.....	25

7.2	The crime and punishment approach only works for the ‘career criminals’	25
7.3	The message must be clear, quick and unambiguous	26
8.	Appendix.....	27
8.1	Recruitment screener for the depth interviews	27
8.2	Discussion guide for the depth interviews	33
8.3	Recruitment screener for the workshops	38
8.4	Discussion guide for the workshops	43
8.5	Stimulus for the depths & workshops	47

1. Executive summary

SMEs' awareness of competition law is minimal. Most do not fully understand what these words mean, and very few of the sales people/business owners we spoke to had ever even considered that this might affect their business. However, they do have an intuitive understanding that some behaviours are wrong. Instead of referring to laws and regulations, they tend to view business practices through a moral and ethical framework. For the majority, doing business properly is a key foundation stone of their business' reputation.

Within this framework, anti-competitive practices are assessed according to the impact they have on customers. Price-fixing is the easiest practice to understand (and condemn) whilst market sharing and bid-rigging are less black and white. During the research, the authors encountered many examples of SMEs being involved, having been approached or having witnessed some of these practices.

With regards to information materials the rule of thumb is, 'the shorter and the clearer the better!' SMEs are time-poor and want to be told what they can and cannot do; grey areas where they are warned of the dangers of certain behaviours, but not provided with clear guidance should be avoided in communications with this audience. They simply encourage the audience to switch off.

Overall, the CMA is faced with a challenge in two parts:

- Getting SMEs' **attention** such that they realise that aspects of competition law are relevant to their business / their sector.
- Delivering a **clear and relevant message** that SMEs can assimilate quickly, making it clear what is allowed and what is not.

2. Background & Methodology

2.1 Background

The CMA is committed to improving levels of compliance with competition law in the UK.

Quantitative research conducted in 2014, highlighted the differences between micro, small, medium and large businesses in their understanding of competition law. Of particular concern was the degree to which smaller and medium sized businesses understood what was meant by competition law in practice.

2.2 Objectives of the research

The overall objective of the research was for the CMA to better appreciate small businesses' understanding of competition law, their compliance with it, any potential areas of non-compliance, and how the CMA could improve their understanding of anti-competitive behaviours.

More specifically the objectives included:

- Exploring where SMEs have little understanding of competition law and the activities that most place them at risk;
- Determining the kind of compliance materials/training most likely to be read and used by SMEs;
- Exploring the channels/influencers which are most relevant for these businesses; and
- Testing rough drafts and outline concepts for potential materials including messaging, presentation, language and tone.

2.3 Methodology

The research included two phases. The first phase consisted of 28 depth interviews, which were conducted face-to-face at the respondents' places of work and lasted one hour. Eight interviews were completed in and around London, four in the Midlands, four in Manchester, four in Scotland, four in Wales and four in Northern Ireland. Respondents were selected on the basis of their responsibility for sales within their organisations and included businesses from a mix of sectors and individuals with a mix of attitudes towards rules and regulations. Half worked in small businesses (10-49 employees) and half in medium sized businesses (50-250 employees).

The second phase of the research involved two workshops lasting 2.5 hours each. One took place in London and the other one in Manchester. The profile of the audiences for the workshops was the same as for the depth interviews.



3. Where does competition law fit within the world of SMEs?

3.1 Lack of awareness and misconceptions

3.1.1 Competition law is not on their radar

During the course of discussing regulations and compliance, competition law was simply not mentioned spontaneously by respondents. In the following order, SMEs' preoccupations are focussed on: industry-specific regulations, health and safety, HMRC/VAT and employment law. Competition law is something that almost all respondents had never considered.

When competition law was mentioned, there was a clear lack of awareness: many respondents had either never heard of this, or had heard of it but were unable to provide a definition.

'You'd have to enlighten me more on what you mean by competition law. To me there's nothing I'm aware of that is relevant.' (Wales, small)

3.1.2 Misconceptions around competition law

When asked about what they understand by 'competition law', a small minority mentioned monopolies or dominant positions. The word 'cartel' also came up but was not always fully understood.

'I think it's to make sure that no one company becomes dominant in one particular area of the market. ... I think it does enable smaller players in any marketplace to get what might be conceived as a fair crack of the whip, for want of a better phrase. You know, that they're not always being edged out just by the size and scope of another brand or company.' (Scotland, small)

For many, competition law is confused with other areas of regulation:

- Anti-bribery

'Competition law, anything to do with your competitors, can't accept bribes off them or accept gifts off them or hospitality maybe? I'm not too sure.' (Manchester, medium)

- Prohibition of false advertising

'Making false statements. Free beer sign outside with a very small 'Tomorrow' underneath it, might prove to be illegal, I don't know. Trying to get one over the competition. That's how I'd see it.' (London, small)

Others understand competition law as relating to the way in which businesses treat their competitors, i.e. behaving well towards them, not poaching customers, or ‘bad-mouthing’ them.

‘I’m not too sure it’s relevant. I mean we wouldn’t sit outside a competitor’s business watching who went in to see if we could phone them and give them a better price.’
(Midlands, medium)

The IFF survey data completed for the CMA last year indicated that 19% of businesses had had discussions about competition law in the past year, and 23% thought that they knew this area of the law well or very well. This qualitative work suggests that respondents tend to overestimate their knowledge of and the frequency of their discussions about competition law. From the discussions conducted, one concludes that most SMEs are actually not very clear on what ‘competition law’ means.

3.2 SMEs examine business practices through a moral framework

3.2.1 There is a shared understanding that some practices are ‘unfair’ or ‘wrong’

Rather than thinking in legal terms, SMEs consider anti-competitive practices through the lens of their own moral compass. Businesses understand the importance of preserving customers’ choice and allowing their customers to access the cheapest prices. As a consequence, most consider price fixing and market sharing as ‘morally wrong’. In smaller businesses, a ‘family ethos’ often prevails and it very much comes down to the owner’s values and opinions on the right way to do business.

‘I would say I’m guided by the morality rather than the law, and now that I’m thinking about it, I think my morality is on the right side of the law, because I wouldn’t go to them and say, ‘Let’s both go ...and offer £1,000.’ I wouldn’t.’ (London, small)

‘I think the examples you gave me, it was obvious whether it was right or wrong.’
(London, small)

When talking to SMEs about the reasons why they feel that they should comply with the law, the words and phrases that came up the most were ‘ethical’, ‘doing business properly’, ‘integrity’, ‘reputation’, ‘fair’, ‘right’ vs ‘wrong’, ‘play fair’, ‘moral’ vs ‘immoral’ etc. This choice of vocabulary evidences that ethics and morals play a key role and guide decisions when dealing with all aspects of the business, including competition. Conversely, very negative language was used when referring to anti-competitive practices, in particular ‘collusion’ or ‘conspiracy’. Examples of these types of practices were also referred to as ‘a gentleman’s agreement’ or

'back scratching'. The word 'cartel' was regularly mentioned, although this posed certain issues for a minority of respondents, cartels were associated with drug trafficking, and even for those who understood its meaning in the competition law context, a cartel was often presumed to be formed of large businesses.

3.2.2 The reputation of the business is critical

In both the IFF quantitative survey and this qualitative research, the 'right thing to do' and 'reputation of the business' were amongst the most important motivations for businesses to comply with competition law. A 'level playing field' was also highlighted as an important frame, although some felt this was ambiguous as it could be interpreted as a reason to help competitors (or even to fix prices!).

Reputation of the business and ethical factors were closely linked as integrity was felt to contribute significantly to building a strong reputation. Moreover personal reputation also played a role for employees who would risk their job or careers if they were found to be involved in something illegal. This was even more top-of-mind for business owners whose name is directly associated with the business.

'We thrive on our reputation. Word of mouth is fantastic. You can only build a reputation slowly, you can destroy it instantly. Our reputation is something that I am very proud of and I wouldn't want to do anything that could risk that, so to me, that is very, very important.' (London, small)

Sanctions were certainly reckoned to have a role to play, and they were considered particularly powerful with respect to the impact that they might have on the business reputation. This said, the majority insisted on the importance of positive encouragements (the carrot) over and above the threat of sanctions (the stick).

3.2.3 The CMA should frame competition law in the same way as businesses do

In other areas of regulation, there are clear moral and ethical implications of non-compliance:

- Health and safety is there to prevent accidents and protect against injury, and conscience is just as key as compensation;
- Employment law is there to ensure fairness and justice;
- Industry regulations are there to protect the reputation of the sector.

Based on conversations with SMEs, the authors argue that competition law should be similarly framed. The message that the CMA should focus on is that this area of law is there to protect customer choice and ensure that the customer, whether a business or an individual, does not fall victim to any unfair practices. The authors also recommend using a moral and ethical tone of voice to small businesses, i.e. highlighting the moral and ethical implications of breaching competition law.

However the authors accept that this moral framework presents some challenges for the CMA at an institutional level: SMEs (who are not lawyers) prefer to see things as black and white and clear cut. However, the way competition law is described and applied by the CMA (even in simplified form) appears complex, not always clear and in shades of grey.

4. Understanding of competition law: taking a detailed look at each anti-competitive practice

4.1 The typical respondent's journey: from total ignorance to the realisation that some of the things they have witnessed / experienced in business might be illegal

In the course of the research, those responsible for sales in small and medium businesses followed a similar thought process:

1. Their first reaction was to say 'this is definitely not happening in my industry!'...
2. ... However when we prompted them and showed them mock-up scenarios or case evidence, most were able to provide examples either from their own experience, or theoretical situations that could take place in their industry.
3. A few left the research looking worried or admitting that they may have been involved in inappropriate conversations!

As previously explained, competition law is absent from SMEs' preoccupations, and respondents' first reactions were invariably to describe their industry as competitive, open and fair. However, many had actually experienced or witnessed examples of anti-competitive practices. Quite a few had been approached by competitors, and most *thought* that anti-competitive behaviour was happening, either amongst their competitors, or more often, amongst their suppliers.

When they suspected that their suppliers were involved in anti-competitive practices, SMEs accepted that they could themselves be victims of such behaviour. However, all the evidence they had was 'soft'; they only harboured strong suspicions. For example, they might have seen a contract awarded to a competitor and suspected that this was not the cheapest available, or have systematically received the same quote themselves from different suppliers. There was also a stigma around becoming the 'grass' – particularly if there was no tangible proof. Reporting a competitor or a supplier was also seen as potentially damaging the reputation of their own business; it was guilt by association.

4.2. Price fixing

Price fixing was the easiest practice for SMEs to understand. 'Price fixing' or 'price setting' was a language that business people understood, and the word 'cartel' was also mentioned in this context.

Although a few could see the advantages of it for their business, their competitors and suppliers, the industry, or even society, most understood that it was both immoral and illegal. The impact on the customer (consumer or business) was obvious: price fixing drove prices up and restricted choice. In addition to being unfair to customers, price fixing was also perceived as a bad business idea, an example of short term thinking: eventually a competitor would lower prices and those involved in the cartel would have 'shot themselves in the foot'. Interest in entering into price fixing agreements was also often limited by lack of trust: in industries where competition was fierce and cut-throat, businesses would not trust their competitors to respect such an agreement.

'I imagine price-fixing is probably the biggest no-no.' (Northern Ireland, medium)

Although businesses did not think of it immediately, they could also find examples where they had been victims of suppliers fixing prices. A few had also been approached by competitors who had suggested a price fixing agreement (and there was an inference that some respondents were actually involved in price fixing).

'I remember a competitor who actually said, 'Fancy some lunch?' I went, 'That's fine.' So my other son...who used to work here at the time, we went out to lunch with them, and as soon as he left to go to the loo, these guys said, 'We'd like to talk to you about maybe organising the pricing here. 'There's no point in us just banging our heads against each other and just race to the bottom on price'. I've gone, 'Interesting, yes.' Then (my son) came back and they shut up. I went, 'Maybe you'd just like to give some detail of that whilst (my son's) here so we can understand exactly what you're talking about. I think the word 'cartel' comes into this, doesn't it?' They were...As soon as I got back to the office, I've picked the phone up and called their legal director, who's a lovely guy, and said, 'do you know what your guys have just offered?'' (Northern Ireland, medium)

4.3. Market sharing

This anti-competitive practice was a bit more challenging and controversial for small businesses to conceptualise. 'Market sharing' did not immediately resonate with businesses, it required an example of what this would mean in practice in order for them to understand fully. Although most felt that this seemed immoral, the impact of market sharing was not as obvious to respondents as it was for price-fixing. In addition agreeing not to compete was seen as more 'passive' (and less wrong) than actively agreeing to bid rig or fix prices, it was perceived as being a 'softer offence'.

SMEs' views on market sharing again depended upon its perceived impact. When there were only a few competitors in the market and they formed a cartel, the impact on customers was obvious and this was perceived as immoral. However when there were other competitors in the market who were not a part of the cartel, the perception was that customers were still left with a choice and therefore businesses did not necessarily see what was wrong with market sharing (in a market where other choices existed): it was just seen as a strategic alliance in order to compete effectively. In a case shown to respondents involving market sharing amongst Mercedes van dealers, it was felt that a customer could have / should have gone online to find the best price available and should not have relied on the nearest dealers to supply a competitive price. And in another illustration shown, the fact that two local companies were forming an alliance against a multinational was felt to be blurring the line even more.

The examples shared by respondents highlighted that there was sometimes a fine line between helping each other out and market sharing.

'I do have someone quite close to me within this profession in a similar business to me....He was one of the original partners in the business. So we went our own ways. Without him and I specifically discussing this, I wouldn't deliberately target one of his customers and I would expect that to be reciprocated. I think that's where I kind of deviate from the rule a bit within my own kind of moral compass, like if the customer approaches me I'm happy to discuss business with them and it, of course, it gives me the out, if you like, to say if it ever did come up, 'Well, this person came to me. What am I meant to do?' (Northern Ireland, small)

4.4. Bid rigging

Most had heard of bid rigging, and many within higher risk sectors (construction and other sectors who supply very large customers) had either heard stories, assumed that it was going on, or had been approached. It was, however, only relevant where businesses participated in tenders, and where price was the only factor (or the key factor) taken into consideration. It was also seen to be based on trust and a close relationship between competitors. For most, the impact of bid rigging was clear: it resulted in higher prices and less choice for customers. Most therefore understood that it was illegal.

Bid rigging was also often associated with bribery, and there were a lot of references to 'brown envelopes'.

In the sectors where it occurred, bid rigging was often framed as depending on businesses' capacity and resources. For instance, if supplier A didn't currently have the capacity to complete a project, they assured supplier B that they would put in a high bid. This behaviour was framed as being a 'good neighbour' to colleagues in the same sector.

'We would know perhaps if they may have a stock overrun from a previous job which they were keen to get rid of, so they can do that quick, so we'd know that. If we know them very well, we'd go, 'No, they can have that, that's fine'. Because next week the thing might swing around onto us, and we get on very well with our competitors, and we know each other. We don't meet that often, but we're aware of each other, and we help each other out. I think the situation is scratch our back we'll scratch yours, and it's like, thanks for that, we'll do you a favour in the future. But no finances will change hands, not that I'm aware of anyway.' (London, small)

Bid rigging could also take the form of a 'fake bidder' hiding a 'real bidder', where a larger contractor not directly involved in a bidding process would get a smaller contractor to bid on its behalf, and then subcontract the work. Respondents supplied quite a few examples of price fixing in the bidding process, especially in the context of reverse auctions.

'I've had an experience like that where a competitor has approached me. We've all gone into a tender like an online bid for pricing so they've approached me saying 'Can you agree not to go below this minimum?' and I've said no. I didn't think it was right.' (London workshop)

We found that when bid rigging happens, the customer often plays a role in this. There were indeed a number of references to examples where a customer (or staff within the customer) appeared to be colluding with the supplier in order to deliberately rig a bid. This could be due to laziness (i.e. just wanting a couple of other quotes for comparison), or personal preference, in which cases staff were working around their own procurement teams and processes to reach a preferred supplier. In the case of a public tender in Northern Ireland, a respondent mentioned that those organising a tender were aware of bid-rigging but chose to ignore it. Although tendering processes are felt to facilitate more competitive markets, we heard some evidence that this was not always the case.

'The facilities manager is in cahoots with one of them. He says 'put in two estimates and then I will tell you what those are and then you go from there and if you put this slightly lower everyone can still make a profit and we've got a good deal'.' (London workshop)

4.5. Other anti-competitive practices

Although we did cover these during the depth interviews and workshops, the other anti-competitive practices seemed to be out of scope for most SMEs.

Retail price maintenance was not something that small and medium businesses felt could apply to them or other businesses of their scale, and most referred to big brands like Apple. A couple mentioned that they might be victims of this from larger suppliers. Some involved in supplying other businesses felt that they had to keep to the recommended resale price set by their supplier and they feared that they would lose the contract if they sold at a lower price. They tended to think of these practices as being unfair but not necessarily illegal.

Agreeing with competitors to limit production or supply did not seem relevant to this audience. None of the SMEs could find examples in their own industry.

Abuse of dominant position was also felt to be quite unlikely amongst small businesses. SMEs generally don't have the size and scale to abuse a dominant position, although arguably it could be done on a local basis or in a niche sector. None of the respondents could come up with examples within their industry sector.

4.6. Sharing sensitive information

When competition was not hostile, businesses did not see anything wrong with sharing information. Most of those we spoke to operated in small industries where they were well aware of their competitors and often met with them, either at trade association meetings, or trade events. Often relationships were even friendly and in some industries, SMEs helped each other. For instance in the pub or theatre industry, businesses benefited from the activity of competitors which provided choice for customers within close proximity.

'Sharing information is one of the best ways of helping someone out. You know, if you've got a better deal with somebody else, they might be our competitor, but at the end of the day they're trying to make a living. Everybody's in the same boat. You need an area that is full of pubs so that it becomes a destination. Make it an attractive area. There are certainly two publicans I can think of that would phone me on a fairly regular basis whenever it comes to increasing prices, because they don't want to be any dearer than me. So they're saying, 'Look, how much are you for a pint, or a glass of wine, or for a spirit?' It's as general as that. I'm quite happy to share that information with them.'
(Medium)

This resulted in frequent exchanges of services and information, in relation to prices but also to suppliers and customers. We heard many examples of competitors telling each other when a customer should be avoided because they were not paying.

'Say for example a customer is really doing the run-around and we feel that it's quite dangerous, and could commit fraud in terms of, you know, going round and not paying his suppliers, then we've got a little pact that we tell each other.' (London, medium)

In some industries, information about pricing was readily available to all. In others however, respondents emphasised that it was impossible to do business without being aware of the market, which necessarily resulted in gathering information (and therefore sharing) to a certain degree.

'We're all guilty of that. Definitely. You know it's the market that dictates the price but there may be times when you could supply it cheaper but you know the market's a set price so you'll sell it towards the set price. The reason you know the market's that price is because you're buying it from somebody else who's telling you what they're charging... I mean if there was no knowledge of your competitors' prices then how would you operate? You cannot operate as a single entity, you've got to know what the market value of the product is by knowing what your competitors are charging.' (Midlands, medium)

The limit of how much information can be shared was set by the interests of the business: it would in most cases be unwise to reveal the business' strategy and its future intention – the main issue here was business confidentiality: it was unethical (but not illegal) to reveal too much and was considered as unprofessional. Analogies were made with a game of chess in which each participant tries to get as much information as possible from their competitors, without in turn revealing too much about their own business.

For SMEs (and in fact all businesses) benchmarking was considered as standard practice and sales people were often put in situations where they were in a position to share sensitive information. They often failed to understand what qualified as 'sensitive information' and did not consider that this was subject to any rules or regulations. The impact of information sharing on customers was not very clear, so they didn't see what was wrong with it.

It is therefore unrealistic to ask SMEs to ‘be careful’ when talking to competitors; instead what they can and cannot do should be made clear. They need to know where the line is, but also why: if the reasons behind the rules are not made clear, they are less likely to adhere to it, especially if it conflicts with what they consider normal in business.

4.7. The perceived impact of anti-competitive practices is critical

As previously mentioned, businesses assessed the legality of a practice according to its morality. In this respect, the impact it had on customers played a major role. When describing an anti-competitive behaviour, it was therefore crucial to provide examples such that businesses could fully assess its impact. Practices having a direct impact on people’s lives were unanimously condemned. This was particularly clear with regard to a care home case study where old and vulnerable people were affected. Bid-rigging was also seen as worse when this happened in the context of a public tender as it was tax payers’ money at stake. However in instances where society could potentially benefit from price fixing, for example, businesses don’t consider such a practice as anti-competitive. In Northern Ireland, a pub gave the example of an agreed minimum price for drinks which was established for public health reasons.

‘The customer’s interests are in this case the most important and if two businesses or indeed three businesses are having any level of collusion and the customer is not having the choice of the best options available in the market, like I said particularly something that is involved in care for the elderly. That is not morally or one would hope legally right’. (London workshop)

As their impact on the market can be limited, some SMEs mentioned that competition law was not relevant to businesses of their size. There were also preconceptions around the word ‘cartel’ as the more celebrated cases generally involve large corporations such as Virgin and British Airways or energy suppliers. Indeed a minority seemed to think that they might be too small to be noticed! However, overall the authors were surprised by the general perception that some anti-competitive practices (once these were described to respondents) were felt to be just as relevant to small businesses as to large businesses.

4.8. The risk of being involved varied according to sector and size

Some industries were more at risk of adopting anti-competitive practices. In particular construction, manufacturing and transport seem to be particularly at risk. In professional

services, where products are less standardised and sales less price-driven, it seemed harder to adopt such practices.

The size of the business also mattered: very small businesses (one-man band to a few employees), which were excluded from this research, are counter-intuitively often the most at risk. Their knowledge of legal requirements more broadly was reckoned to be very low and they were felt to be too focussed on survival to worry about competition law.

'In (our) industry there is a lot of really, really good ethical companies, but it's the smaller ones that are trying to just get a living and they have been whacked with charges...and things like that, so they would work out between them just a telephone conversation or they would meet up somewhere, McDonald's or whatever, and they would look at that as just an off-the-cuff conversation.' (Manchester workshop)

The biggest businesses tended to be more aware of their legal obligations, had procedures and policies in place, and sometimes (depending on the sector) a dedicated person for compliance or human resources. This said, the authors did not observe any significant differences in attitudes or opinions between small (10-49 employees) and medium sized (50-250) businesses.

5. Review of current CMA materials

The authors acknowledge that other, non-SME target audiences have given positive feedback on the materials tested and the authors do not challenge the relevance of the materials to these audiences. However, SMEs are an audience with specific needs and the materials tested provided helpful insight and direction as to what compliance material will be relevant to, and engage, an SME target audience.

5.1 60-second summaries

In terms of design, the size (one pager) and format was praised. This was felt to be the appropriate length for this audience. The bullet points were also much appreciated but the overall layout was still felt to be too busy, too wordy and overly complex. Although there was no jargon, the language was still seen as too formal, particularly according to SMEs in Manchester (fewer of whom were in white collar sectors than in London). In addition the contact details were felt to be clear, but not comprehensive enough on all of the summaries. There was some appetite for practical examples and case studies, although this needed to be balanced with the need to keep it short and clear

Some suggested highlighting the sanctions at the end as this would increase the urgency to read and challenge them. However, drawing attention to sanctions might not be the most powerful message as those who were convinced that they were not currently breaching any law might not bother reading it.

As a general observation, business people who were not familiar with this area needed more than one minute to properly read and understand each summary. Therefore highlighting the fact that it is a '60-second summary' twice on the page could make them feel that they are slow readers.

The 60-second summary on cartel infringement was deemed to be the most useful but the phrase 'cartel infringements' did not mean much to those who did not know what a cartel was. The definition of a cartel could be moved to a more central section of the page and made clearer. The CMA should not assume that businesses of this size know what a cartel is!

The summary on sharing sensitive information was the most controversial. The 'Do's & don'ts' sections were felt to be good, but the 'think before' paragraph was considered confusing: did this mean that they could have conversations with competitors or not? Where was the line?

The document also sparked some controversy as it told them not to do what they considered to be part of normal business practice, without explaining why. Many did not understand why discussing prices with competitors would be breaching competition law.

The third summary that was tested, on leniency proved to be too advanced for this audience. Leniency was a confusing topic which only made sense once the reader was already familiar with the basic principles of competition law.

5.2 Quick Guide to Complying with Competition Law

The Quick Guide tested well but would benefit from being shortened. Its format was praised: respondents liked the big print, the colours, the examples and the drawings. It was also easier to read and understand than the 60-second summaries. The step by step approach and the checklist on the risk identification page were considered useful, but respondents suggested that it should come earlier in the guide.

Although the Guide is called 'quick', it could be shortened even further! As it stands, it is too long, especially for sales people. At best it would be read by the most senior staff, who are not necessarily those most at risk. We also recommend removing references to other documents (e.g. OFT401) as this audience is unlikely to look them up, and they can be referred to the website for any further information. Finally, the second part of the guide (4 steps) might be too detailed and not relevant for the smallest businesses.

5.3 Competition Law Risk. A Short Guide

The 'Short' Guide was definitely too long for SMEs. The introduction, foreword and project team description was of no interest to businesses.

The case studies were highly valued, but there were too many of them (nine). They were also quite long and could have been summarised. Furthermore case studies involving very big businesses (RBS / Barclays and Virgin / British Airways) could also be detrimental as these gave the impression that competition law was not relevant to small businesses. Ideally, businesses would have liked to read case studies that were relevant to their sector; if not possible, generic examples involving small businesses might have worked better.

5.4 Other materials tested during the workshops

During the workshops we tested the Youtube video entitled 'Understanding competition law Chapter 2 – cartels'. Opinions were mixed, as respondents found the beginning good and clear but it moved towards the end from things that were obviously immoral towards a grey area, which confused them even more! Businesses felt that it should have been made more obvious where the line was between conversation and collusion. The drawings were appreciated but the video could have been made a bit shorter and snappier. SMEs in the North also felt that the format was too academic or corporate and not something a small businessman would immediately connect with.

The Thinglink page was useful but required too much work to get the information across as respondents had to click on the links.

For both of these materials, the challenge for the CMA is to get the attention of the audience such that they will want to click on the links.

Social media, in particular LinkedIn and Twitter were mentioned by respondents as a potential channel that the CMA could use. Therefore, a few of the CMA's tweets were tested in the Manchester workshop (see appendix). Some of the images were considered too metaphorical (for instance the head in the sand example) although respondents liked the example about risk (image of a man on a tightrope). It was noted that the suits worn in the images gave a corporate feel to the tweets and that mentioning the words 'competition law' would not work for those (many) who didn't really know what this meant.

5.5 Our recommendations for information materials

The CMA should take into account that awareness of competition law is very limited amongst this audience. However SMEs are keen to ensure that they comply with the law (even though regulations and red tape are often considered a 'pain') and that they want to 'run their business properly'. There is appetite for a one-pager summarising all of their obligations under competition law, but for this to succeed in raising awareness, such a document would have to be:

- Distributed via the right channel
- Short: small businesses have to deal with a wide range of rules and regulations in addition to their main job, which is running a business! They have very little time (and interest) and long documents (like the Quick and Short Guides) are likely to be read properly only by a minority.
- Acting as a checklist and not leaving room for ambiguity and uncertainty

Leaving them with a clear idea of what they should and should not do, which they can keep in mind when doing sales and interacting with competitors.

More generally, the authors recommend:

- Keeping it short: one page is the ideal length
- Using bullet points: checklists are valued
- Finding an attention-grabbing headline and using arresting images
- Including examples or case studies that are relevant to their size or sector
- Making sure that the CMA contact details and website are prominent

Conversely, we suggest avoiding the following:

- Using complicated vocabulary such as 'compliance' or 'infringements'
- Telling businesses to 'think before': this audience wants to know what is and is not allowed, not what the risky areas are
- Using 'competition law' in the title: it does not mean much to SMEs
- Mentioning cartels without defining the word clearly
- Including references to other documents as they can go on the website for further information.

6. Getting small businesses' attention: best channels and vehicles

6.1 Best channels to reach small businesses

Trade associations came up as the best vehicle to engage SMEs on competition law. Most of the businesses we spoke to were part of a trade association. Although micro businesses were unlikely to be able to afford the membership, those who were members were very engaged with their association and tended to rely on these for updates on rules and regulations. They would trust their association to filter and only communicate to them that which is relevant. If the CMA were able to engage with some of the thousands of trade associations (perhaps in the most risky sectors), and persuade them to circulate materials, SMEs would be likely to read them.

Trade shows might also provide a good forum for the CMA as most businesses regularly attended these. They suggested that the CMA could hold a stand there and interact directly with businesses.

Finally trade publications could be useful for the CMA to publish articles or advertise as they were one of businesses' sources of information. SMEs' level of engagement with trade publications varied greatly: some read these from cover to cover; others disposed of them without reading them.

At a broader level, accreditation organisations were powerful for those who required accreditation in order to operate. They took anything from these organisations or regulators very seriously and would carefully read everything the organisation sent. Some of these already had anti-bribery policies in place (the BBA for instance), so competition law could potentially be added to a list of regulatory requirements. We heard mentions of the following:

- BBA (British Board of Agrément) for suppliers of the construction industry
- British Retail Certification for retail businesses
- British Standards Institution
- ISO

Government bodies could allow the CMA to reach businesses across sectors. HMRC is the most obvious partner of choice, as nothing they send would be willingly ignored. Health and safety being a key concern for most businesses, a partnership between the CMA and HSE could also be beneficial.

In the private sector, insurers were mentioned as every business needs public liability insurance before starting to trade. Accountants are also a source of advice on financial matters. Businesses are unlikely to ask accountants about competition law, but if these could proactively mention it, it could increase awareness. Finally banks have regular contacts with businesses, especially start-ups.

At a grassroots level, some respondents mentioned health and safety meetings and breakfast meetings, which could provide a forum for the CMA. However reaching these would require considerable resources.

6.2 How can the CMA use the internet?

Google is the first port-of-call when businesses are looking for information. Online searches are most often triggered by specific events, for instance being approached by a competitor who suggests doing something that seems a bit wrong, or witnessing such practices amongst a competitor or a supplier. Although some claim that they would google 'competition law', search terms are more likely to be related to the specific behaviour. Search vocabulary might include words such as 'collusion', 'conspiracy', 'price-fixing / price setting' or 'gentleman's agreement'.

Social media was mentioned as a potential channel for the CMA. LinkedIn in particular plays a key role in business nowadays. Twitter also came up, although it would be more efficient if the tweets came from well-known personalities.

7. Conclusions & Recommendations

7.1 What are the key challenges for the CMA?

There are two interrelated challenges:

- Getting businesses to look in your direction / getting their attention
- AND THEN: Telling them something that is relevant and makes sense

The message must be both loud and relevant: if it isn't sufficiently 'noisy', they won't hear it at all, and if the message doesn't appear relevant, they will ignore it anyway.

The 60-second summaries are good but only as a tertiary strategy, once a business is aware of the issue and is looking for greater clarity. The Quick Guide is clear and tested well, but could be improved and shortened. And the Short Guide is far too detailed for this audience.

There is definitely an interest in case studies but they can fail to engage if there is insufficient perceived relevance to their sector or if the message is mixed or unclear. The care home case study is a good example: is it more wrong because of the impact on vulnerable / elderly?

7.2 The crime and punishment approach only works for the 'career criminals' in this audience

There will always be some individuals or businesses who confuse the issues of fairness and ethics and tend to see it from their perspective only ('it's all about ME'), or simply who have a deficient moral compass. As with the HMRC campaigns, the shock or fear tactic only works for those who may already be evading tax or have cash in hand, but it might work for this 'higher risk' group as a deterrent. There is also a dual audience: it serves to tell the law abiding majority that 'we're not letting people get away with it' and 'we're working in the interest of all'.

But there is little evidence that highlighting the risks of fines and other penalties will have much of an impact on those who generally believe that they conduct business in a fair and ethical manner, but who have very low awareness of competition law and therefore are at risk of straying into anti-competitive behaviour. This second group is therefore unlikely to take much notice of messages clearly intended for 'other people'. This is the case of most of the respondents who would tend to discard such messages as they are convinced that they are not breaching any law.

Rather than insisting on the sanctions, we recommend that the CMA focuses its message on risks which are more significant to the ethically minded majority. From those we tested, the strongest were 'doing the right thing' and 'risk to reputation'. Similarly the images of risk, such as the one of the man on the tightrope, played strongly. They are attention grabbing, have an emotional physical impact and are unambiguous. Shame might also be another platform for grabbing attention. In essence it is the negative outcome of risk, which implies reputation damage.

7.3 The message must be clear, quick and unambiguous

Once the CMA has grabbed SMEs' attention, it must deliver a relevant message:

1. Really 'short' for this audience, the current Short Guide is for instance way too long.
2. Simple and unambiguous, regardless of the legal complexities involved.

Amongst this audience, the CMA should be aiming to increase awareness and reduce anti-competitive behaviours. Educating or explaining in detail is a third step beyond the attention and the core message. Examples of clear and concise underlying messages include for instance the following:

- Collusion on pricing is wrong;
- Fake bidding is wrong;
- Carving up the market is wrong.

8. Appendix

8.1 Recruitment screener for the depth interviews

The screener generally worked well. 6 of the 12 cells were recruited in full.

- Details are supplied in brackets in the table below, alongside the desired specification

Following one miss-recruited business very early on, recruiters were briefed to ensure that businesses recruited were truly SMEs and not sub-divisions of larger national or international organisations.

Classification of SMEs by sector is not an exact science. On occasion during the interview it became apparent that one business recruited as being in manufacturing built and sold medical devices (health).

This questionnaire is confidential and remains property of:



Kingsbourne House, 229 – 231 High Holborn, London WC1V 7DA

J21808 CMA SME and Competition Law

Recruitment questionnaire

RECRUITMENT QUOTAS

Sector	Small businesses (10-49 employees) QS2 code 3	Medium businesses (50-249 employees) QS2 code 4
Agriculture, Mining, Utilities and Manufacturing QS3 code 1 or 2	2 (3)	2 (3)
Construction QS3 code 3	2 (2)	2 (2)

Wholesale, Retail and Transportation QS3 code 4 or 5	2 (3)	2 (2)
Accommodation and Food QS3 code 6	2 (1)	2 (2)
Information, Communication, Financial, Real Estate, Professional Services and Administration QS3 code 7, 8, 9 or 10	2 (2)	2 (2)
Education, Health and Arts QS3 code 12, 13 or 14	2 (2)	2 (0)
Total number of interviews	12 (13)	12 (11)

Location	Small businesses (10-49 employees) QS2 code 3	Medium businesses (50-249 employees) QS2 code 4
London and South East	4	4
Midlands	2	2
North of England	2	2
Scotland	2	2
Wales	2	2
Total number of interviews	12	12

ENSURE A MIX OF SECTORS ACROSS LOCATION – NO HARD QUOTA

INTRODUCTION

We are conducting a study with the aim of better understanding small businesses and the challenges they face in complying with all the rules and regulations.

Would you be willing to help us? This would involve a meeting with one of our interviewers lasting 1 hour. As a thank you for your participation, we are offering an incentive of £70.

We will be able to tell you who this study is for at the end of the interview. Please be assured that any feedback you give us will be treated as confidential in accordance with the Market Research Society Code of Conduct.

Firstly, we need to ask you a few questions to ensure that we speak to a cross-section of people.

QS1 Have you taken part in any research groups or discussions or any depth interviews for research in the past year? **EXPLAIN WHAT RESEARCH GROUPS OR DEPTH INTERVIEWS ARE IF/AS NECESSARY**

If so, how many? (PLEASE RECORD)

0 1 2 3 4 5 6 7 8 9+

CLOSE IF TWO OR MORE

QS2 How many people does your business employ full time?

Just myself	1	CLOSE
2 to 9	2	CLOSE
10 to 49	3	SMALL
50 to 250	4	MEDIUM
More than 250	5	CLOSE

CHECK QUOTAS FOR SMALL AND MEDIUM BUSINESSES



QS3 What is the principal activity of this business?
READ OUT, SINGLE CODE

PROMPT IF NECESSARY: What does the business do or make?

Agriculture, Hunting and Forestry, Fishing, Mining	1
Manufacturing.....	2
Construction	3
Wholesale / Retail.....	4
Transport, Distribution, Storage	5
Hotels and Restaurants	6
Information and Communication	7
Real Estate, Renting and Business Activities	8
Financial services, Banking, Insurance	9
Professional Services and administration.....	10
Market research.....	11
Education	12
Health and Social Work	13
Arts	14
Other (WRITE IN) _____	15

CLOSE IF CODE 11

CHECK QUOTAS

IF OTHER: CHECK WITH BDRC

QS4 Which of the following describe your role in the company? **CODE ALL APPLICABLE**

1. You set, or help to set, the strategy for how the business develops
2. You are responsible for implementing the strategy of how the business develops
3. You are responsible for sales within your business
4. You interact with clients, suppliers and/or competitors on a regular basis
5. You formulate, or help to formulate policies and training materials within the business, including those relating to compliance and legal requirements
6. All policy decisions and sales activities are made elsewhere in the group and you are not involved



IF CODED 6 ONLY – THANK AND CLOSE

MUST CODE 3 AND 4 TO CONTINUE

NO MORE THAN 12 WHO CODE 5

IF NOT CODED 3 AND 4: We are looking to talk to people who are responsible for sales within your business. Would it be possible to talk to someone in your company who meets that description?

QS5 What is your job title? **Capture in box below**

IF NOT SENIOR ENOUGH (i.e. sales rep) ASK TO SPEAK TO THE SALES MANAGER OR DIRECTOR

QS6 How much contact do you have with people that you are competing with in your industry?

- A lot of contact..... 1
- A little bit of contact 2
- No contact at all..... 3

NO HARD QUOTA BUT ENSURE A GOOD MIX

QS7 How much of a concern is health and safety to your business?

- A big concern 1
- A little bit of a concern 2
- Not a concern at all..... 3

QS8a How much would you say that you know about the rules and regulations on anti-bribery which are applicable to your business?

SINGLE CODE

1. You know most of the rules and regulations on anti-bribery
2. You know some of the rules and regulations on anti-bribery



- 3. You are conscious that you should probably know more about the rules and regulations on anti-bribery

QS8b How much would you say that you know about the rules and regulations to do with competition in your industry?

SINGLE CODE

- 1. You know most of the rules and regulations to do with competition
- 2. You know some of the rules and regulations to do with competition
- 3. You are conscious that you should probably know more about the rules and regulations to do with competition

NO HARD QUOTA BUT ENSURE A GOOD MIX

QS9 Do you agree or disagree with the following statement?

The authorities could do more to help businesses comply with rules and regulations that affect them.

SINGLE CODE

- Strongly agree 1
- Agree 2
- Neither agree nor disagree 3
- Disagree 4
- Strongly disagree..... 5

NO HARD QUOTA BUT ENSURE A MIX (i.e. not all to strongly agree)

IF ELIGIBLE:

I'd like to arrange for one of our executives to come out to talk to you face to face about your business and the challenges that you face in complying with rules and regulations. The interview would last about 1 hour and we would pay you **£70** for your participation.

COMPLETE CONTACT DETAILS BELOW:

**COMPLETE RESPONDENT DETAILS IN CLEAR CAPITALS,
INCLUDING STD TELEPHONE CODE**



NAME: _____

ADDRESS: _____

TEL NO: _____

EMAIL: _____

APPOINTMENT DATE & TIME: _____

NOTES / SPECIFIC TRAVEL INSTRUCTIONS:

IF DEPTH: ENSURE TAKE AND CHECK FULL ADDRESS WITH POSTCODE AND ANY TRAVEL INSTRUCTIONS. PLEASE CONFIRM INTERVIEW IS TO BE CONDUCTED AT ABOVE ADDRESS.

NOW GO BACK AND CHECK THE QUESTIONNAIRE BEFORE SIGNING THE DECLARATION.

RECRUITER'S DECLARATION: I certify that this interview was conducted with a person previously unknown to me, that this interview was conducted according to the provisions of the MARKET RESEARCH SOCIETY'S 'CODE OF CONDUCT' and the briefing instructions from BDRC/PRS, and this has been checked.

RECRUITER'S NAME & SIGNATURE: _____

DATE: _____

8.2 Discussion guide for the depth interviews

21808 CMA SMEs & Competition Law Depths Discussion Guide

INTRODUCTION (5m)

- Moderator to explain the purpose of interview; the identity of the client will be revealed at the end of the interview.
- There are no right or wrong answers, we are interested in their honest views and experiences, everything will be kept confidential and cannot be used to incriminate them.
- Seek permission to record for an accurate summary of what is discussed.

CONTEXT: THE BUSINESS & ITS ENVIRONMENT (10 min)

Capture details of:

- The business – sector, scale, stage of development, geographical focus etc.
- The respondent – experience, role in the business, background etc. *Confirm that the respondent is responsible for sales within his business*

How does the business operate in its environment?

- How would they describe the environment in which they operate (*Do not probe on competition, the objective is to see what words they spontaneously use*)
- What are the businesses' strategies and challenges?
- Do they meet / interact with their competitors?
 - If yes: when, where and how?
 - What kind of relationships do they have?
 - Do they share any information? *Probe on type of information shared, occasions when information is shared, get specific examples.*

RULES & REGULATIONS (5 min)

What comes to mind first when we mention Government rules and regulations? *Probe on other areas to see if competition law is mentioned and when.*

- Is there any priority area when it comes to rules and regulations? Why?
- What impact do these rules & regulations have on the business?
- How do they comply with them? Do they have policies in place? Do they organise training for staff members?

Information on rules & regulations:

- How do they find information about rules & regulations?
 - If online search: what do they search for? Any website in particular?
- Who would they go to for advice? *Probe for trade associations / accountant / legal counsel.*
- What would trigger the decision to look for information?

COMPETITION LAW (20min)

What are the first things that come to mind when we mention 'competition law'? What is their understanding of what competition law is?

When do they think about competition law? Are there any specific occasions when this becomes more top-of-mind?

Do they think that the business is operating in a fair and competitive environment?

- Focus on their suppliers / customers / competitors: would they say that the market is open and dynamic?
- Probe with the definition of competition law: *Competition law is designed to protect businesses and consumers from anti-competitive behaviour. The law stimulates effective competition in order to deliver open, dynamic markets and enhanced productivity, innovation and value for customers.*

Does that resonate with them?

In practice, how does competition law impact the business?

- Any positive or negative impact of complying with the rules?
- What impact does it have on them when competitors (*probe especially on larger businesses*) are not compliant?

Reasons for complying with competition law:

- What encourages businesses to comply with competition law? Probe for push and pull factors
- Show positioning statements [each statement printed on an A4 page, and spread across the table]: which one resonates the most? Why?

Understanding of competition law: (Spontaneous, not prompted)

- What are the main rules of competition law applicable to their business?
- What is allowed / not allowed? *Probe for examples of real-life situations*
- Is anything unclear?
- What prevents them from understanding competition law? (*It could be time, interest, legal jargon etc.*)
- How compliant would they say that their business is? And other businesses in their industry?

Testing knowledge of competition law: (Prompted)

- Are they familiar with the following anti-competitive practices: (*Probe on any that we not mentioned spontaneously before*)
 - Deliberately sharing customers
 - Rigging who gets a contract
 - Fixing prices with competitors
 - Agreeing with competitors to limit production or supply
 - Sharing sensitive information
- What do they think of these risky practices: (*Probe on any that we have not mentioned spontaneously before*)
 - Discussing prices/strategy with competitors
 - Attending events or conferences where other competitors are present

- Agreeing not to target a competitor's customers
- Being part of a trade association where there are specific rules on how to conduct business

Do they have any policies in place within the business to ensure compliance with competition law?

- If yes: what are they?
- Is any training provided to the staff?

Sources of information:

- How did they learn what they know about competition law?
- If they wanted to find out more, where / who would they go to?
 - If online search: what do they search for? Any website in particular?
 - *Probe for trade associations / accountant / legal counsel.*
- Any previous experience of exposure to information websites / materials?

MATERIALS TEST (15min)

Reveal that the research is for the CMA.

- Do they know what the CMA is? What is its role?
- Have they ever come across the CMA website or its information and guidance materials before?
 - If yes: what do they remember from it? What did they think about it?

Ask for examples of information materials that have been particularly impactful, either addressed to businesses or consumers

- What works / does not work?
- What kind of format do they prefer?
 - Online
 - Printed
 - Interactive
 - An app?

Show one of the 60-second summaries [to be rotated: each of the 4 '60-second summaries' will be tested at least 6 times]

- What is their first impression?
- Is it clear? Informative?
- Is it useful to their business?
- Did they know everything or learned something?
- What do they think of the language used?
- And the format?
- Is there anything that should be improved?
- Would they recommend it to others staff members or anyone else?

Show one of the short guides [To be rotated: each of the 2 guides will be tested 14 times – print the whole guide but ask respondents to flick through it, not to properly read it]

- What is their first impression?
- Does it seem relevant to them?
- What do they think of the format?
- Would they be interested in reading it? Is it too long / too short?
- Would they only use it for their own information or as a training material for other staff members?

CONCLUSIONS (5min)

Overall what do they think of the CMA materials?

Is anything missing?

Do they get their attention / raise their interest?

Do these information materials encourage them to comply with competition law? Do they appeal for the right motivations? *Probe on the push / pull factors mentioned beforehand.*

Did reading all of this change your perception of how compliant your business / other businesses in your industry are? *Probe on areas that seemed a bit unclear when discussing their understanding of competition law earlier.*

If there is one piece of advice you could give the people for whom we are doing this research which would help businesses like yours understand more about anti-competitive behaviour, what would it be?

8.3 Recruitment screener for the workshops

This questionnaire is confidential and remains property of:



Kingsbourne House, 229 – 231 High Holborn, London WC1V 7DA

J21808 CMA SME and Competition Law

Recruitment questionnaire for workshops

RECRUITMENT QUOTAS

London workshop – Tuesday 24th of March 6.30 – 9pm

- 12 recruits for 10 respondents
- 6 small and 6 medium businesses (QS2)
- No more than 2 respondents per sector (QS3)

Manchester workshop – Thursday 26th of March 6.30 – 9pm

- 12 recruits for 10 respondents
- 6 small and 6 medium businesses (QS2)
- No more than 2 respondents per sector (QS3)

INTRODUCTION

We are conducting a study with the aim of better understanding small businesses and the challenges they face in complying with all the rules and regulations.

Would you be willing to help us? This would involve a group discussion with other businessmen like yourself, lasting 2.5 hrs. As a thank you for your participation, we are offering an incentive of £100.

We will be able to tell you who this study is for at the end of the discussion. Please be assured that any feedback you give us will be treated as confidential in accordance with the Market Research Society Code of Conduct.

Firstly, we need to ask you a few questions to ensure that we speak to a cross-section of people.

QS1 Have you taken part in any research groups or discussions or any depth interviews for research in the past year? **EXPLAIN WHAT RESEARCH GROUPS OR DEPTH INTERVIEWS ARE IF/AS NECESSARY**

If so, how many? (PLEASE RECORD)

0 1 2 3 4 5 6 7 8 9+

CLOSE IF TWO OR MORE

QS2 How many people does your business employ full time? **BY THIS WE MEAN YOUR COMPANY AS A WHOLE, NOT JUST YOUR CURRENT DEPARTMENT / FRANCHISE**

Just myself 1 **CLOSE**
 2 to 9 2 **CLOSE**
 10 to 49 3 **SMALL**
 50 to 250 4 **MEDIUM**
 More than 250 5 **CLOSE**

CHECK QUOTAS FOR SMALL AND MEDIUM BUSINESSES

HALF OF RESPONDENTS TO BE SMALL AND HALF TO BE MEDIUM BUSINESSES IN EACH WORKSHOP

QS3 What is the principal activity of this business?
READ OUT, SINGLE CODE

PROMPT IF NECESSARY: What does the business do or make?

Agriculture, Hunting and Forestry, Fishing, Mining 1
 Manufacturing..... 2
 Construction 3
 Wholesale / Retail..... 4
 Transport, Distribution, Storage 5
 Hotels and Restaurants 6
 Information and Communication 7
 Real Estate, Renting and Business Activities 8
 Financial services, Banking, Insurance 9
 Professional Services and administration..... 10
 Market research..... 11
 Legal services 12
 Education 13
 Health and Social Work 14
 Arts 15
 Other (WRITE IN) _____ 16



CLOSE IF CODE 11 or 12

CHECK QUOTAS – NO MORE THAN 2 PER SECTOR IN EACH WORKSHOP

IF OTHER: CHECK WITH BDRC

QS4 Which of the following describe your role in the company? **CODE ALL APPLICABLE**

- 7. You set, or help to set, the strategy for how the business develops
- 8. You are responsible for implementing the strategy of how the business develops
- 9. You are responsible for sales within your business
- 10. You interact with clients, suppliers and/or competitors on a regular basis
- 11. You formulate, or help to formulate policies and training materials within the business, including those relating to compliance and legal requirements
- 12. All policy decisions and sales activities are made elsewhere in the group and you are not involved

IF CODED 6 ONLY – THANK AND CLOSE

MUST CODE 3 AND 4 TO CONTINUE

NO MORE THAN 6 PER WORKSHOP WHO CODE 5

IF NOT CODED 3 AND 4: We are looking to talk to people who are responsible for sales within your business. Would it be possible to talk to someone in your company who meets that description?

QS5 What is your job title? **Capture in box below**

IF NOT SENIOR ENOUGH (i.e. sales rep) ASK TO SPEAK TO THE SALES MANAGER OR DIRECTOR

QS6 How much contact do you have with people that you are competing with in your industry?

- A lot of contact..... 1
- A little bit of contact 2
- No contact at all..... 3

NO HARD QUOTA BUT ENSURE A GOOD MIX



QS7 How much of a concern is health and safety to your business?

- A big concern 1
- A little bit of a concern 2
- Not a concern at all..... 3

QS8a How much would you say that you know about the rules and regulations on anti-bribery which are applicable to your business?

SINGLE CODE

- 4. You know most of the rules and regulations on anti-bribery
- 5. You know some of the rules and regulations on anti-bribery
- 6. You are conscious that you should probably know more about the rules and regulations on anti-bribery

QS8b How much would you say that you know about the rules and regulations to do with competition in your industry?

SINGLE CODE

- 4. You know most of the rules and regulations to do with competition
- 5. You know some of the rules and regulations to do with competition
- 6. You are conscious that you should probably know more about the rules and regulations to do with competition

NO HARD QUOTA BUT ENSURE A GOOD MIX

QS9 Do you agree or disagree with the following statement?

The authorities could do more to help businesses comply with rules and regulations that affect them.

SINGLE CODE

- Strongly agree 1
- Agree 2
- Neither agree nor disagree 3
- Disagree 4
- Strongly disagree..... 5

NO HARD QUOTA BUT ENSURE A MIX (i.e. not all to strongly agree)



IF ELIGIBLE:

I'd like to invite you to take part in a group discussion with other businessmen like yourself about the challenges that you face in complying with rules and regulations. The discussion would last 2.5hrs and we would pay you **£125** for your participation.

COMPLETE CONTACT DETAILS BELOW:

**COMPLETE RESPONDENT DETAILS IN CLEAR CAPITALS,
INCLUDING STD TELEPHONE CODE**

NAME: _____

ADDRESS: _____

TEL NO: _____

EMAIL: _____

APPOINTMENT DATE & TIME: _____

NOTES / SPECIFIC TRAVEL INSTRUCTIONS:

NOW GO BACK AND CHECK THE QUESTIONNAIRE BEFORE SIGNING THE DECLARATION.

RECRUITER'S DECLARATION: I certify that this interview was conducted with a person previously unknown to me, that this interview was conducted according to the provisions of the MARKET RESEARCH SOCIETY'S 'CODE OF CONDUCT' and the briefing instructions from BDRC/PRS, and this has been checked.

RECRUITER'S NAME & SIGNATURE: _____

DATE: _____



8.4 Discussion guide for the workshops

21808 CMA SMEs & Competition Law Workshops Discussion Guide

INTRODUCTION (15m)

- Moderators to introduce themselves and the clients and explain the purpose of the group discussion
- Clients to be introduced as from the Competition and Markets Authority - The CMA's role is to ensure that markets work well (and productively) for the good of consumers and businesses, across all types of industry sector.
- There are no right or wrong answers, we are interested in their honest views and experiences, everything will be kept confidential and cannot be used to incriminate them.
- Explain that the discussion will be audio / video recorded.
- Get respondents to introduce themselves: name / job role / brief description of their business and sector in which it operates / how competitive it is

WARM-UP WITH SELF COMPLETE SCENARIOS (20 min) – *whole group*

Moderator explains that we will give them a number of scenarios to look at, of situations that can happen in a business context.

For each scenario:

- Respondents are each given two A4 pieces of paper on which they should individually complete the boxes:
 - What's the effect of this action/activity?
 - 'Why should I care?'
- Once everybody has written down their thoughts, discuss as a group:
 - What did they write down and why?
 - What's going on here? What would they call this practice in your industry?
 - Is this something that they have done themselves or have seen other businesses in their industry do, whether competitors, suppliers or customers?
 - Why are these practices illegal? Why are they immoral? Is there a difference?

CASE EVIDENCE (30min) – *in 2 subgroups and as a whole group*

Moderator explains that we are now going to show evidence from real cases of anti-competitive practices, and distributes an A3 page presenting the case study and the evidence (without naming the anti-competitive practice directly or mentioning the sanctions).

Someone from the CMA presents briefly the context.

Case study 1 for subgroup 1, case study 2 for subgroup 2 and case study 3 to be shown to both subgroups after the finish looking at the 1/2.

For each case study in subgroup:

- First discuss the evidence
 - How would they call the practice described?
 - Why is this not allowed?
 - What impact does it have on consumers or other businesses?
- Afterwards show them another A3 page presenting how this breaks the law and why it is not allowed.
 - Does this differ from what they originally thought?
- CMA to detail the actual / potential sanctions and other consequences on this case
 - Are the sanctions fair?
 - Do sanctions affect the way they view the practice?

As a whole group:

Ask each subgroup (one spokesperson per subgroup) to present to the other one their case studies, including:

- The story
- The evidence
- The sanctions adopted

BRIEF EXPLANATION OF THE MAIN ANTI-COMPETITIVE PRACTICES (10min) – *as a whole group*

Someone from the CMA (if possible, or the moderator otherwise) presents each of the main anti-competitive practices described in factual, non-labelled terms (i.e. setting the price at which someone else is allowed to sell your product / discussing how much you intend to bid on a project with others who are also bidding).

- Is this new to anyone or was this something they were familiar with?
- What would they call this practice?

EXAMPLES OF POTENTIAL ANTI-COMPETITIVE PRACTICES IN THEIR INDUSTRY (20min) – *in pairs and as a whole group*

Ask respondents to form pairs (if possible by sector, or by size of business) and pick a couple of areas where you think anti-competitive practices happen or might happen in your industry.

- Find an example of what each of the main anti-competitive practices would look like in their industry – bring it to life as much as possible.

Present to the whole group their examples for each of the anti-competitive practices:

- Are there any practices which are easier to relate to certain industry / some that are irrelevant?
- Have they actually observed any of these examples in their industry?
- Why would they want / not want to adopt such practice?
- Which ones do they struggle the most with? Is anything unclear?
- How should the CMA describe this practice so that it's easy to understand?

Probe on the practices not mentioned by anyone.

IMAGE & METAPHOR ASSOCIATION (20min) – *individually and as a whole group*

Moderator spreads the images on the table and asks each respondent to pick one (or 2) which represents what we have been talking about for more than 1hr: competition law and anti-competitive practices.

Once respondents have all chosen an image, moderator asks them to put their image on the flipchart one by one, and to explain why they chose it. *We will group the images by themes if similarities arise.*

MATERIALS TEST (30 min) – *as a group*

Before showing materials ask for examples of materials in whatever form that have succeeded in influencing their behaviour / making them think.

Moderator to give example of driving at speed (as discussed).

- What, if anything has succeeded best in capturing their attention?
- Why did it work
- What was the format?
- How could this format be adopted for tonight's topic?

Show different examples of materials:

- You tube video
- Think-link example
- 60 second summary on cartels
- Quick guide to complying with competition law
- Manga example

60-sec summary & manga and quick guides will be tested in subgroups and we will ask a spokesperson to present them to the other subgroup.

Probe around:

- What is their first impression?
- Is it clear? Informative?
- Too long / too short?
- Is it relevant / useful to their business?
- Did they know everything or learned something?
- What do they think of the language used?
- And the format?
- Is there anything that should be improved?
- Would they recommend it to others staff members or anyone else?
- Where would they expect to find this?

After seeing all of them:

- Which one works better for them?
- Which one would they use to train their staff?
- Is anything missing?

If they were looking for more information on competition law and were unable to find it online, which of the advisers or associations that they use would they go to first?

- E.g. accountant, bank, small business adviser, trade association etc.

Which of these advisers or associations are best placed to make sure they know about competition law? Why?

CONCLUSIONS (5min) – as a whole group

Did this discussion change their perception of how compliant their business / other businesses in your industry are?

The CMA is there to stop anti-competitive behaviour and to take action where necessary. But part of their role is to make sure that businesses understand competition law so that they avoid breaking it through ignorance.

If there is one piece of advice you could give the CMA which would help businesses like yours understand more about anti-competitive behaviour, what would it be?

8.5 Stimulus for the depths & workshops

60-second summary

Avoiding cartel infringements: advice for company directors



How can directors help companies avoid breaking competition law?

Non-executive directors have an important role in challenging company executives about their compliance with competition law.

These are some of the questions you need to ask:

- What are our present competition law compliance risks?
- What are the high, medium and low risks?
- What measures are we taking to mitigate these risks?
- When are we next reviewing the effectiveness of our risk mitigation activities?

As a director, you should ensure that the company has taken measures to make sure relevant staff know, and are regularly reminded, that:

- the company must comply with competition law
- they must not discuss competitively sensitive information with the company's competitors, especially
 - the prices at which the company or its competitors will sell, or how it will bid for tenders
 - where or to whom the company sells

and that there may be consequences for staff who do. If they have done any of these things, or suspect someone else in the company has, they can and must report it to an independent and trustworthy person in the company (such as the company secretary or in-house lawyer). There will be consequences if they don't.

Directors of companies that breach competition law can be disqualified for up to 15 years



What is a cartel and how does being involved affect you?

In simple terms, a cartel is an agreement between businesses not to compete with each other. The agreement is usually secret and often informal.

Cartels are a particularly serious breach of competition law. Individuals involved in cartels can go to jail for up to five years. Businesses that breach competition law can be fined up to ten per cent of turnover.

Report a cartel

T: Cartels hotline
020 3738 6888
E: cartelshotline
@cma.gsi.gov.uk

For more information on compliance and leniency:
www.gov.uk/cma

These materials do not constitute legal advice and should not be relied upon as such.

60-second summary

September 2014

60-second summary

Competitors' information: how to limit your competition law risks



What do you and your staff need to know?

Complying with competition law is good business practice. Long-term compliance saves money by avoiding the potential for fines and significant damage to a company's reputation.

Being part of discussions of certain aspects of business with competitors and suppliers may risk a breach of competition law. Discussions might take place in meetings, by phone or email, or face to face. Below are several key points you should always bear in mind in those situations, however they arise. And remember - if you have any doubts, seek legal advice.

Don't

- discuss with competitors your business's future:
 - pricing intentions, including rebates or discounts
 - commercial strategy, such as what, and to whom, you plan on selling and/or on what terms
- disclose any of your customers' future pricing plans to other customers
- remain in any situation, professional or social, in which any competitor discusses their future pricing plans or other competitively sensitive information. Leave and seek the advice of a lawyer.

Think before

- disclosing your business's current or historical cost or pricing information to a competitor
- discussing general conditions in your industry or projected industry pricing trends with your competitors. Such discussions will not always break the law, but risk doing so.

You can

- discuss with your competitors historical and aggregated industry pricing or cost trends (which don't allow individual players' pricing or costing to be identified). But be careful: don't be part of discussions on future costs or prices, and don't remain in a meeting on them
- have friends in competing businesses - just keep these tips in mind.



What is competitively sensitive information?

Competitively sensitive information covers any non-public strategic information about a business's commercial policy. It includes, but is not limited to, future pricing and output plans. Historical commercial information is far less likely to be sensitive, particularly if individual businesses' commercial activities cannot be identified in it.

Why does this matter?

The consequences of breaching competition law can be very serious for you and your business.

For more information on compliance and leniency:

www.gov.uk/cma

These materials do not constitute legal advice and should not be relied upon as such.

60-second summary

Leniency: information for businesses and individuals



What is Leniency and how does it work?

There can be serious consequences for businesses and individuals who have been involved in a cartel including fines, director disqualification and even jail. But by informing the CMA and cooperating with our investigation, you may be able to avoid these.



Subject to meeting certain conditions, the first business to inform the CMA about a cartel that is not already being investigated will receive:

- guaranteed immunity from any fines
- guaranteed protection from criminal prosecution for all of its cooperating employees (both current and former), and
- guaranteed protection for its cooperating directors from director disqualification

Applicants should therefore contact the CMA as early as possible – only the first to come forward will be guaranteed these benefits.

A business can still apply for leniency even if they are not the 'first in'. Depending on how much value the applicant brings to the investigation, they could benefit from a reduction in fines as well as protection for some or all of their cooperating employees.

What are the conditions for applying for leniency?

In all cases, the applicant must:

- have a solid reason to suspect the existence of the cartel and have a genuine intention to confess, and
- provide the CMA with all the relevant information about the cartel – including its own role - and cooperate fully with the CMA's investigation.

To benefit from total immunity from fines, the applicant must not have coerced others to join the cartel.

Businesses can approach the CMA on a confidential no-names basis to find out more about leniency before committing further.

Being involved in a cartel can have serious consequences. Leniency can help protect you and your business.

What is a cartel and how does being involved affect you?

In simple terms, a cartel is an agreement between businesses not to compete with each other. The agreement is usually secret and often informal.

Cartels are a serious breach of competition law. Individuals involved in a cartel can go to jail for up to five years. Businesses can be fined up to ten per cent of turnover and their directors may be disqualified from acting as company directors.

To discuss and apply for leniency:
T: 020 3738 6833

For more information on compliance and leniency:
www.gov.uk/cma

These materials do not constitute legal advice and should not be relied upon as such.

Quick Guide to Complying with Competition Law

Protecting businesses and consumers from anti-competitive behaviour





Competition Law Risk

A Short Guide



Where does a chat with your competitors cross the line?



Richard Whish
PROFESSOR OF LAW, KING'S COLLEGE LONDON

Understanding competition law Chapter 2 - Cartels

OFT corporate
Subscribe 141

11,936

Where's the line between chatting and forming a cartel?



Smaller businesses don't get a free pass on competition law



A single meeting can be enough to find yourself part of a cartel

