

COMPETITION LAW COMPLIANCE POLICY



This document sets out the University's policy governing compliance with competition law.

Version	1.1
Executive Sponsor	Chief Operating Officer
Officer Responsible for Policy/ Procedures	General Counsel
Consultation Process	Policy Infrastructure Project Board Executive Engagement Group
Date of Approval and Committee and/or Executive Officer	Executive Operations Group Executive
Effective Date	29 March 2021

INTRODUCTION AND CONTEXT

The University is fully committed to compliance with all laws and regulations governing its business including laws relating to fair competition. Competition law is designed to ensure that competitors compete effectively and fairly for the benefit of consumers.

Failure to comply with competition law can expose the University to a risk of fines, damages actions and other negative outcomes. In certain circumstances there can be criminal consequences for individuals. It is therefore the responsibility of, and in the best interests of, the University and all employees to ensure that they remain at all times committed to the policy of full compliance with the law.

1. SCOPE OF THE POLICY

1.1 Purpose of the Policy

The purpose of the Policy is to ensure that competition rules are followed by the University to avoid any anti-competitive behaviour arising.

1.2 What is covered by the Policy

This Policy sets out the basic rules to adhere to in order comply with competition laws including:

- the rules related to price fixing, bid rigging, market sharing or output restrictions; and
- the rules related to exchange of commercially sensitive information with competitors.

1.3 Who is covered by the Policy

All those who act on behalf of the University, including staff, must be aware of and comply with the Policy.

The Policy does not form part of any contract of employment and may be amended at any time.

The University also expects non-staff, including agents and consultants, acting on behalf of the University wherever they may be located, to adhere to competition laws.

1.4 Breach of this Policy

Any breach of this Policy and its associated procedures by staff will be investigated in accordance with the University's disciplinary procedure. A serious breach may amount to gross misconduct and could therefore result in summary dismissal.

Any breach of this Policy and its associated procedures by non-staff will be investigated and steps taken in accordance with the law and any relevant contract.

1.5 Policy Ownership

The Executive has approved the Policy, the Chief Operating Officer is the Executive sponsor and the General Counsel is the officer responsible for the Policy. Any questions about the operation of the Policy or any concerns that the Policy has not been followed should be referred in the first instance to the General Counsel.

2. THE POLICY STATEMENT

2.1 Guiding Principles

The guiding principles of this Policy are aligned to competition rules set out in competition law and are to ensure that the University will:

- be aware and meet its obligations under competition law;
- act with integrity and in the best interest of its students when engaging with other higher education providers;
- not tolerate anti-competitive behaviour in any form whether the University is directly concerned, or it is involved through the actions of others; and
- ensure that all those who act on the University's behalf including staff are suitably aware of their responsibilities under competition law and will maintain expert resources to provide the necessary instructions and advice to staff.

2.2 Procedures

This Policy is implemented by the Compliance Procedures.

3. DEFINITIONS

The terms set out in this section 3 apply to this Policy.

Abuse of dominance means where an entity with a significant market power, usually considered as having a 40-50%+ market share, unfairly exploits customers or excludes competitors.

Anti-competitive agreements mean agreements, arrangements, and concerted business practices between two or more entities which have the potential to affect/reduce competition including price fixing, bid-rigging, market sharing or output restrictions.

Benchmarking means the process for comparing performance of organisations, functions or processes with the aim of highlighting best practice.

Bid-rigging means collusive behaviour in tendering procedures, i.e. including agreements between competitors to withhold/withdraw bids or agreements to allocate bids on a rota basis. For example, which university should win the opportunity to work on a research council funded project.

CMA is the Competition and Markets Authority.

Commercially sensitive information means strategically useful information which could influence a commercial decision or strategy of a competitor(s), which is not otherwise in the public domain.

Competition law means the rules on anti-competitive agreements and abuse of dominance set out in the Competition Act 1998 and the Enterprise Act 2002 and are enforced by the CMA.

Market-sharing means the allocation between competitors of specific territories, products/services, distribution channels, customer groups or individual customers (and agreeing as to who should / should not compete for those customers/areas). For example agreeing which university should offer which course.

Output restrictions/quotas means allocating between competitors the maximum permissible volume of business, often fixed to the respective market shares. For example, agreeing to limit the number of places available on a particular course.

Price-fixing means any agreement or understanding with competitors as to the price at which products or services will be provided. For example, agreeing what fees students should be charged.

4. ANTI-COMPETITIVE AGREEMENTS

The University must not enter into an anti-competitive agreement/arrangement with another entity. By law the following agreements are prohibited:

- price-fixing;
- market-sharing;
- bid rigging; or
- output restrictions/quotas.

It is easier to infringe the rules than you may think, an agreement/arrangement can be established from:

- an express agreement with competitors;
- a single meeting or telephone call or e-mail between competitors;
- exchanging information with competitors; or
- informal contacts and discussions.

If the University holds a dominant position in the market, the University must not engage in any behaviour which could amount to an abuse of a dominant position under competition law. Such actions could include exploiting customers through excessive prices or unfair terms, or unfairly excluding other providers from a market.

5. CONSEQUENCES OF BREACHING COMPETITION LAW

Potential consequences of breaching competition law which may include the following:

- the University could be fined up to 10% of its worldwide group turnover;
- any anti-competitive arrangements (or terms in agreements) would be automatically unenforceable;
- third parties (e.g. students or business partners) could sue the University for damages;
- directors could be disqualified for up to 15 years;
- for cartel infringements, individuals could face criminal sanctions, including fines and up to 5 years' imprisonment;
- individuals may be subject to disciplinary action, including dismissal; and
- the University could suffer reputational damage and could be blacklisted by other companies and/or for certain public contracts.

6. INFORMATION SHARING

By law, the University must not share (or receive) any commercially sensitive information with (or from) a competitor, whether directly or through an intermediary such as a working group or association.

Commercially sensitive information includes, but is not limited to:

- Unpublished information regarding fees, fee increases, about fees scholarships, bursaries or other forms of fee concession or financial assistance offered to students;
- Anticipated application numbers which are not publicly available, or unpublished actual application numbers for a specific course;
- Unpublished information regarding the grades the University will require for a place on a specified course;
- Unpublished information about the services that the University is proposing to offer to students, including any proposed changes to courses being offered;
- Confidential information about recruitment or marketing strategies;
- Confidential information about the terms on which commercial services are offered (for example to clients for conference facilities);
- Information regarding bids for funding from third parties, including whether an institution is proposing to submit a proposal for a particular funding stream or the terms of a specific bid;
- Unpublished information about the University's finances, such as projected revenue figures;
- Unpublished information about the University's costs (for example, the cost of teaching staff, or the cost of providing facilities such as laboratories, or the cost of purchasing key goods or services); or

- Details of the University's interactions with sector bodies/regulators relating to strategic matters such as programme content, funding or fees.

If a member of staff receives commercially sensitive information from a competitor, the member of staff must ensure that the University takes pro-active steps to "actively distance" itself. This will include deleting and ignoring the information, and, with the assistance of the Office of the General Counsel, writing to the competitor requesting that they take more care in the future.

7. PERMITTED DISCLOSURES

Where there is a bona-fide commercial reason to exchange commercially sensitive information with a competitor (for example in the context of a legitimate collaboration or benchmarking exercise), the University is committed to sharing this information in a correct and compliant manner to avoid the appearance of improper information gathering which would be prohibited under competition rules.

This can include entering into strict protocols to ensure that the information exchanged, and the person to whom the information is disclosed, are all strictly limited. Otherwise, steps can be taken to anonymise or aggregate information in such a way in which removes its commercial sensitivity. It is important that any benchmarking exercise conducted by an independent third party adheres to these rules so that any commercially sensitive information cannot be reverse engineered and attributed to the University.



Aston University
Birmingham
B4 7ET, UK

+44 (0)121 204 3000
aston.ac.uk

