# Anti-Competitive Activity: BSA Fact Sheet

April 2024

*This document, including the Annex, does not constitute formal advice. It is intended to raise awareness of the risks of engaging in anti-competitive behaviour. The BSA and the author accept no liability for its use.*

## Requirements at Meetings (at the BSA or elsewhere)

The BSA, its members and associates need to ensure that they do not engage deliberately or inadvertently in activities that create or contribute to breaches of competition law.

Attendees at meetings (formal or informal, virtual or face to face) ***must not*** engage in discussions of an anti-competitive nature. This includes the sharing of "competitively sensitive information" (**CSI**) between competitors, i.e. information which is of a nature that would reduce one competitor's uncertainty about another competitor's strategy in relation to some relevant parameter of competition (e.g. price, capacity, future strategy). While every circumstance is different, some examples of what may or may not be considered anti-competitive is contained in the Annex to this Fact Sheet.

If you are unsure whether a discussion may be considered anti-competitive, take advice if you can. If you can't take advice, or if you remain unsure or know or suspect that a discussion may be anti-competitive, you should exit the meeting immediately.

Treat competition law seriously. Make sure that:

- Relevant policies and practices in your business are regularly reviewed.
- You do what is necessary to ensure your staff are aware of competition law requirements.
- Where you consider it appropriate, you have a competition policy to aid training and awareness and help ensure compliance.

## Background

UK competition law prohibits two main types of anti-competitive behaviour:

- Anti-competitive agreements.
- Abuse of a dominant position.

Even informal discussions and activities can breach competition law and there doesn't have to be a formal agreement to engage in activity that is anti-competitive. Breach of competition law can lead to very heavy fines, regulatory enforcement against firms and individuals, director disqualifications and, in some cases, criminal sanctions.

The Financial Conduct Authority and the Competition and Markets Authority have concurrent competition powers in relation to financial services and claims management services. More information on each can be found here (FCA) and here (CMA).

# Annex to Anti-Competitive Activity Fact Sheet[1]

| ANTI-COMPETITIVE |
|---|
| ***Commercial Information:*** Agreeing prices, rates, fees, suppliers/customers or agreeing common approaches to these. |
| ***Future Commercial plans:*** Discussing future business plans, market strategies or future pricing intentions, even if this doesn't lead to an agreement. |
| ***Sensitive information:*** Sharing CSI. This includes (subject to the points below regarding non-sensitive or publicly available information) costs profit margins, market share data/estimates, sales volumes, production capacity and commercial plans such as marketing strategies. |
| ***Confidential information:*** Sharing commercial information normally considered as confidential. |
| ***Restrictive agreements:*** Agreeing to share or restrict markets, investment or other activities such as advertising, whether geographically or by product type. |
| ***Terms:*** Agreeing common terms and conditions in customer contracts, terms of business and similar. |
| ***Carrying on regardless of concerns:*** Participating in or remaining at a meeting where you know or suspect anti-competitive activity is being discussed. |

| GENERALLY NOT ANTI-COMPETITIVE |
|---|
| ***Publicly available information:*** Discussing matters that are already in the public domain. This could include current pricing, existing business, generally acknowledged industry trends or historic data. |
| ***Non-commercially sensitive information:*** Sharing non-commercially sensitive information (i.e. unrelated to parameters of competition between firms) including information on broad industry studies, market research and general market conditions. Or, discussing topics at a sufficiently high-level, or discussing information that is sufficiently historic, that the information has no potential strategic value. |
| ***Compliance matters:*** Discussing compliance-related matters, including interpretation of law or rules, methods of complying with regulatory requirements, good practice, financial crime prevention and training. |

| WHEN TO TAKE PARTICULAR CARE |
|---|
| ***Straying off-point:*** While discussing matters in the public domain already is ok, discussions could become anti-competitive if they stray into a discussion about future pricing/plans or participants inadvertently mention plans that could distort competition. If they do, object immediately and, if necessary (e.g. because discussions continue), withdraw from the meeting. |
| ***Industry benchmarking:*** While this can promote effective competition, it has potential to be anti-competitive, depending on (i) the nature and purpose of the benchmarking (e.g. topics such as price and |

*Please contact Elaine Morton (elaine.morton@bsa.org.uk) regarding this Fact Sheet.*

[1] This Annex contains examples – if in doubt seek legal advice

| |
|---|
| salaries should generally not be benchmarked), and (ii) the outputs received by participants (e.g. ensuring that participants do not see sensitive data about each other - use of an independent 3rd party to confidentially aggregate and anonymise data can mitigate this risk.) |
| ***Exchange of information via trade bodies:*** The BSA takes great care to ensure that information exchanged through it does not fall foul of competition law, but care does need to be exercised depending on the nature of the information being exchanged. |