

# 5 TOP TIPS ON COMPETITION AND COLLABORATION

## A Mini Guide



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# Introduction

You want to collaborate with another organisation and create positive impact but are worried about falling foul of competition law? Well, you shouldn't be.

Read our '5 Top Tips on Competition and Collaboration' and be more informed about what you can do (as well as what you must avoid...)



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# #1 Understand what competition law prohibits and why

There can be a lot of **misconceptions** about what competition law makes difficult or prevents happening. In a nutshell, UK competition law (or antitrust as it can also be called) makes anti-competitive agreements and practices between different organisations unlawful – that means agreements which are potentially or actually harmful to competition for goods and services in the UK. These agreements have a negative impact on users/consumers throughout the supply chain as well as on other organisations who are competing fairly. Penalties for breach can be severe.

## What does that mean?

It's true that there is a focus on anti-competitive agreements which could lead to price increases (and, let's face it, not many of us want to be ripped off) but other aspects are important too such as agreements leading to reduced choice, quality and innovation. The flip side is that agreements which do have **beneficial or positive impact** on consumers should be compatible with competition law. In tandem with that, exemptions can be available.



## #2 Look at your collaboration from the outside

So, you've decided you want to collaborate with another competitor. What's the purpose of it and how would it look if seen from the outside? If it's clear that your intention is purely to increase your profit through fixing the price of a product or service (and not competing on price with your fellow collaborator as would usually happen), or you want simply to increase your respective share of your product sales in a certain region by agreeing not to step on each other's toes, instinct should tell you that sounds a little underhand. Common sense should also tell you that such arrangements would get a poor reception if they became known to the wider public.

On the other hand, if you've decided to **pool your knowledge and resources** to create an innovative new packaging product which is made from sustainable materials, is recyclable and will be sold at cost plus fixed overheads (and perhaps some reasonable profit being generated and ploughed back into developing similar products), that's likely to get a positive reception from consumers. The key point is that essentially anti-competitive behaviour must not be dressed up as something it isn't.

## #3 Don't share commercially sensitive information

This one might catch you out but you must **avoid sharing commercially sensitive information** with your working partners. The type of information we mean here includes future pricing, customer details and commercial strategy relating to **your** organisation. It's likely of course that it will be necessary to share information in respect of the specific collaboration in order to achieve create your positive objective. However, **you must not share information relating to other products and services** which sit outside your collaboration.

There can be grey areas here so you need to tread lightly and pay close attention to the context. Note too that sharing publicly available information is not unlawful.



## #4 Keep an eye out for useful guidance

Compliance with competition law means awareness and self-assessment of particular arrangements (and there is always the option of seeking help from a friendly lawyer where the compliant path is not obvious). Unfortunately, there is no magic external 'approval' process but we are seeing more active engagement by regulators and increasing practical guidance which gives a positive nod to certain types of collaboration, particularly where these promote environmental and sustainability initiatives. These include R&D in green technology; sharing logistic capability to reduce carbon emissions; and initiatives to improve biodiversity.

## #5 Consider a joint venture

Finally, consider whether a formal joint venture between your two organisations is an effective way forward. This would need to be operationally independent, deal with the 'parents' on an arm's length basis (after start-up) and intend to be long-lasting. It might sound like quite a radical move but these collaborations have the great advantage of not being caught by the prohibition on anti-competitive agreements at all as the joint venture would be one organisation. This last tip would however require some legal input although it could be well worthwhile, particularly for ground-breaking ideas.

## To sum up

Improve your knowledge of competition law rather than shy away from it and apply a dose of common sense to decide what is or isn't 'fair play'. How would you describe your collaboration to the general public and could you feel, genuinely, that it would have a positive effect on them? If you can answer 'yes' to that question, you're well on your way to compliant collaboration.

## Get in touch



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