Competition law for awarding organisations: Practical risk management for confident collaboration

Awarding organisations (AOs) operate in competitive markets. As well as considering their own conduct with other AOs, they can also bring competitors together for legitimate purposes, for example, sharing best practice, promoting assessment consistency, consulting on regulatory changes, or discussing operational challenges.

Whenever competitors meet, competition law is engaged. The risk isn't theoretical. The Competition and Markets Authority (CMA) has consistently shown that informal coordination between competitors can attract serious enforcement action, even where participants view their conduct as sectoral "good practice."

This guide provides practical guidance on managing competition risk confidently.

Read on for our guidance

Lindsay Draffan
Head of Competition
T: 020 7551 7814
E: l.draffan@bateswells.co.uk

Laura Hobbs
Senior Associate
T: 020 7551 7628
E: l.hobbs@bateswells.co.uk

Jean Tsang
Partner and Head of Education
T: 020 7551 7758
E: j.tsang@bateswells.co.uk

"

Competition concerns can often arise when competitors share information that reduces uncertainty about each other's commercial behaviour. "

BatesWells

Why this matters for awarding organisations

Competition law applies to **all** organisations offering services and goods on economic markets, whether profit-making or not – this includes companies, associations, and charitable bodies. If you offer awarding, accreditation or training activities in the Further Education sector, you must comply with competition law.

Recent legislation (the Digital Markets, Competition and Consumer Act 2024) has expanded the CMA's powers and extended the extraterritorial reach of UK competition law, meaning activities overseas which affect UK markets can now be caught.

The penalties are severe:

- Organisations: fines up to **10% of worldwide turnover**
- Individuals involved in cartels: **up to 5 years' imprisonment**, unlimited fines, and director disqualification orders up to 15 years

The regulatory stakes are equally high:
Being found in breach of competition law can render an AO unsuitable to continue Ofqual recognition. This means competition issues create both enforcement and regulatory risks.

The legal framework in brief

Chapter I prohibition: anti-competitive agreements between competitors

This covers formal agreements, informal 'understandings', and even patterns of behaviour that reduce competitive uncertainty. Think price-fixing, market sharing, limiting supply, or exchanging sensitive commercial information.

Chapter II prohibition: abuse of a dominant position

This could be relevant where an AO is one of very few who offer a qualification or approval process and possibly functions as a market gateway. Think unfair terms and conditions, discriminatory behaviour, or using market position to exclude competitors from adjacent markets.

Criminal cartel offence: personal liability for individuals

Individuals who participate in hardcore cartels can face criminal prosecution. Significantly, prosecutors do not need to prove "dishonesty", they need only show that the individual agreed to cartel arrangements (such as price-fixing, market sharing, limiting supply, or bid-rigging). This makes personal liability a real and present risk for individuals involved in anti-competitive conduct.

The most common risk: information sharing

Competition concerns can often arise when competitors share information that reduces uncertainty about each other's commercial behaviour. This can happen inadvertently. For example, where an AO facilitates a conversation between either other AOs or between centres/training providers, the lead AO could find itself exposed to unwelcome interest from the CMA where participants go ‘off script’ and discuss commercial strategy.

What's commercially sensitive for AOs?

- Fees, pricing structures, and planned changes
- Discounts, rebates, or special terms for centres
- Service levels and turnaround times
- Bundling of ancillary services
- Plans for market entry or withdrawal

How problems typically emerge

The risk usually comes not from deliberate collusion, but from discussions that drift into dangerous territory:

Scenario 1: Data collection and benchmarking exercises

A trade association, AO network, or consultancy collects data from competing AOs (or centres) about commercial terms such as planned fee increases, discount structures, pricing to learners, margin assumptions, or cost data. Problems arise when:

- The data includes forward-looking strategic information (what organisations plan to do, not historical data), allowing competitors to align future behaviour;
- The data isn't genuinely anonymised i.e. the sample size is too small, regional breakdowns are too specific, or presentation allows participants to identify or infer individual competitors' submissions;
- The data is not otherwise publicly available through legitimate means; and
- The data is made available to participants in a way that reduces competitive uncertainty.

Even if presented as "sector intelligence" or "industry benchmarking," these exercises can facilitate coordination between competitors who should be making independent pricing and other commercial decisions.

Scenario 2: AO collaboration on sector-wide issues

Multiple AOs working together on a regulatory response or sector challenge begin sharing information about their commercial strategies e.g. which qualifications they plan to withdraw from, what new markets they're entering, or what service levels they'll offer. While the collaboration may have a legitimate purpose, the commercial information exchange reduces commercial uncertainty which would otherwise exist.

When is collaboration lawful?

Examples of lawful collaboration:

Technical assessment standards:
AOs working together to agree consistent approaches to assessing competence in particular awards. For example, defining what constitutes "pass" level performance in health and safety qualifications, or agreeing standardised marking criteria for written assessments.

Regulatory consultation responses:
AOs jointly responding to Ofqual consultations or proposed regulatory changes, focusing on technical feasibility, quality implications, and implementation timelines but not on how such changes would affect competitive positioning or pricing.

Sector skills and qualification development:
Working with employers and sector bodies to identify skills gaps and qualification needs, provided discussions focus on learner outcomes and market requirements, not on which AO will offer what or at what price.

Key takeaways - what you CAN and CANNOT discuss

In forums involving competitors, you **CAN** discuss:

✓ Quality standards and assessment criteria

✓ Regulatory compliance requirements

✓ Technical approaches to assessing competence

✓ Sector skills needs and qualification gaps

✓ Publicly available market data (e.g., published government statistics)

✓ General cost pressures affecting the whole sector (e.g., regulatory changes, publicly known input cost increases

You **CANNOT** discuss:

✗ Your organisation's pricing, fees, or planned changes

✗ Discounts, rebates, or commercial terms offered to specific customers

✗ Future commercial strategies or market plans

✗ Individual organisations' costs, margins, or profitability

✗ Which customers you're targeting or planning to serve

✗ Service levels, turnaround times, or commercial offerings that differentiate you from competitors

The critical distinction: Quality and technical matters are generally safe. Commercial strategy and pricing are not.

Get in touch

For advice on competition law compliance for awarding organisations, please contact:

Lindsay Draffan
Head of Competition
T: 020 7551 7814
E: l.draffan@bateswells.co.uk

Laura Hobbs
Senior Associate
T: 020 7551 7628
E: l.hobbs@bateswells.co.uk

Jean Tsang
Partner and Head of Education
T: 020 7551 7758
E: j.tsang@bateswells.co.uk

Our approach

We can help AOs design events, working groups, and joint initiatives that achieve regulatory and quality objectives while protecting independent commercial decision-making.

We can:

- Review your existing collaboration structures and identify competition risk areas
- Draft competition-compliant meeting protocols and guidance for advisory boards, working groups, and industry forums
- Provide competition law training tailored to your organisation and the awarding sector
- Design benchmarking and information-sharing initiatives that comply with competition law
- Advise on centre agreements and approval processes to ensure compliance with dominance rules
- Support you if facing allegations of anti-competitive conduct, whether from competitors, the CMA, or Ofqual