



## Our policy on... Competing Fairly

# For all Kantar people

**Kantar does business in a globally competitive market.**

**We welcome this competition as it gives our clients choice, stimulates our own innovation and fosters ever greater client focus.**

**We celebrate when we win and learn valuable lessons when we lose.**

**We never indulge in anti-competitive behaviour. Not just because it's illegal, but because it's the right thing to do.**

This short policy outlines what constitutes anti-competitive behaviour, what practices to avoid and what to do if you suspect Kantar or another company in the market is doing the wrong thing. It uses real-world examples to illustrate how the law is applied, and the potential penalties at both the individual and business level.

Different jurisdictions give different names to their laws regulating markets, some refer to it as competition law, others as anti-trust. Essentially, they all seek to prohibit practices that attempt to fix the market in any way.

As some jurisdictions in which we work give their competition authorities the right to enter business premises unannounced to seek evidence of anti-competitive practice, informally known as "Dawn Raids," it also outlines what you should do in the event of such a visit.



# 01

## Anti-competitive and illegal behaviours involving Competitors

- Agreements, written or verbal, between two or more competitors who agree **not to compete** directly or to actively exclude others from a market or sector
  - **For example:** Acme Inc. and Betacorp agree that Acme Inc. will submit a tender in response to a tender from a client and Betacorp will not. The positions are then reversed when the next RFI is issued. This deprives the client of two competitive bids and reduces choice.
- Agreements between companies not to enter each other's markets
- Where multiple companies form an agreement to operate their businesses in a non-competitive way. This is known as **Cartel Behaviour**. A business will breach the law if they agree to:
  - **Bid rigging:** When companies collude on bids or decide beforehand which company should win the contract
  - **Fix prices:** Where two or more companies don't actively compete to sell their services and products at differentiated prices but intentionally fix the same price for the same service, removing choice from customers, consumers or buyers of their products and services
  - **Dividing markets** or customers and agreeing not to approach each other's customers
  - **Sharing commercially sensitive information** such as prices, customer data or operating costs
- **Hiring and recruiting practices:** Agreements and discussion with other employers relating to current or prospective employees are prohibited
- Agreements with a business upstream/downstream of you
  - **For example:** where company Acme Inc. uses its size to force a supplier to charge higher prices to its competitor, Betacorp.
- Resale price maintenance, long-term exclusivity:
  - Where a company controls the prices at which its products are re-sold or supplied down the chain
  - Where a company forces a key supplier into a long-term exclusivity arrangement preventing it from working with other competitors.
- Group boycotts, where two or more competitors refuse to sell to, purchase from, or deal with a third party, such as a customer or supplier.

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## 02 Anti-competitive and illegal behaviour by way of joint bidding practices

Agreements between two competitors to jointly submit a bid to a customer tender is generally illegal.

This is subject to certain exceptions, which can be assessed by asking the following questions:

- Could either of the competitors bid for the contract alone?
- Could either of the competitors expand its capacity to meet the bid alone?
- Would the customer accept either of the competitors fulfilling part of the bid?

If the answer to all these questions is “no”, then the competitors can generally submit a joint bid.

If the answer to any question is “yes”, each of the competitors must submit separate bids.

### Practical steps:

- Personnel involved in the joint bid should be contractually bound by a clean team agreement to limit access to competitively sensitive data on a need-to-know basis only
- Should the customer wish to negotiate the price, each of the competitors party to the joint bid must separately decide on their pricing for each of their respective complementary products or services
- Any contract with competitor pricing information should be redacted as appropriate when sharing with the other party
- Similarly, to the extent there is a common invoice for both competitors party to the joint bid, competitively sensitive information should be redacted.

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### 03 Anti-competitive and illegal behaviour through our own behaviour as a business

If a business is regarded as a dominant or major player in a given market there are additional legal guard rails in place to prevent it abusing its market position. Typically, a business is regarded as dominant if it has 40% or more market share of a specific market, sector or vertical.

In such cases dominant players must:

- Avoid specific abuses including:
  - Raising prices
  - Aggressively locking in clients for multi-year deals with year-on-year excessive prices rises with no option to switch out
  - Using their size and leverage against suppliers
- Avoid exclusionary behaviours including margin squeeze, predatory pricing, loyalty rebates, refusal to supply and tying/bundling
- Avoid exploitative behaviours such as excessive pricing and price discrimination
- Avoid terminating a customer contract unless there is a valid business reason.

These behaviours are illegal and prohibited in every country in which Kantar does business.

It should be remembered that being market dominant is not of itself prohibited, but abusing that dominance is.



Here are some recent real-life examples of anti-competitive behaviours and the resulting legal sanctions:

- **Tying/bundling:** The customer is forced to take a second product in order to obtain the one it desires, or they are discounted together. A major internet company was fined €4.3 billion for this practice in 2018
- **Refusal to deal:** Access to an essential input, technology or distribution network, without which it would not be possible to compete in a market (e.g. access to essential patent, platform or data). This can lead to foreclosure from a market. A major software provider was fined €467 million for interoperability issues recently
- **Predatory pricing:** Selling below cost to drive out competitors. A major chip manufacturer was selling its chips to exclude a rival, was fined €242 million and lost on appeal in 2021
- **Discriminatory pricing:** Taking advantage of a consumer's dependence on your product or service by forcing them to pay more than other consumers. A European hotel group was fined €6.678 million for operating price discrimination between consumers from different EU member states
- **Rebates:** Exclusivity rebates are considered abusive. Exclusivity rebates require customers to obtain all or most of their requirements from a dominant supplier. Another major chip manufacturer (different from above) was the dominant supplier of CPU chips for computers provided substantial rebates in return for exclusivity resulting in a €1.06 billion fine.

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## 04 Potential consequences

The risks of breaking these laws are high.

### For Kantar:

- Fines up to 10% of its global turnover
- Reputational damage
- Follow-on damages claims (these can be up to treble the original fine in the USA).

### For individuals:

- Criminal sanctions: Individuals who engage in cartel activity can be sentenced up to 5 years' imprisonment and risk extradition to another country
- Director disqualification: Individuals can be disqualified from being a director of a company for up to 10 years
- Employment: Engaging in anti-competitive behaviour counts as gross misconduct which can lead to termination of employment.

Any breach of this policy may result in disciplinary action being taken including, in serious cases, potential dismissal or termination of a contingent worker's engagement. This policy is not part of your employment contract or contract for services and Kantar can change or update it from time to time.



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### 05 Do's and don'ts

By following the guidance outlined below you'll ensure you're not engaging in anti-competitive behaviour:

- Do not exchange competitively sensitive information with competitors. Competitively sensitive information includes:
  - Pricing, especially future price movements
  - Customers' data
  - Renewals or contracting information
  - Go to market/strategic plans
- Do not share customer sensitive information between customers
- Do not ask customers/competitors for future pricing plans
- Do not report any confidential sales data or similar of customers or other third parties. Rely on publicly available sources of data instead
- Do not solicit information from old friends or colleagues who work for competitors
- Do observe these rules while attending industry networking events
- Do continue to rely on public sources or professional consultants for competitor intelligence
- Do alert Legal in the event of any communication from a competitor that could be viewed as expressing a desire to "soften" competition, "work together", "think of the big picture", or "long term for the industry"
- Do remove yourself from any conversation that turns to the discussion of a prohibited subject
- Do seek prior approval from Legal before engaging in trade association activities, strategic alliances, joint arrangements, industry surveys, or other activities that could involve meetings or communications with competitors
- Do consult Legal if you are considering entering into an exclusive arrangement with a customer or supplier
- Be careful about the claims you make in writing – see further guidance below
- If in any doubt whatsoever, contact Legal.



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### 06

## Anti-competitive Behaviour and written materials

Competition authorities have the power to collect documents, including emails, without notice so you should take care to avoid making exaggerated claims that could be misread as being anti-competitive.

Don't overstate the significance of Kantar's competitive position, production, or marketing strategy, e.g., making a statement such as "dominant position," "this will cripple the competition". Don't use language that falsely suggests collusive conduct, e.g., "industry agreement" or "industry policy."

Anti-competitive behaviour can and does lead to criminal and civil sanction.

### 07

## What to do if you suspect something is going wrong

If you encounter a situation that causes you concern in regard to this policy you should tell your line manager immediately.

Line managers who have a concern reported to them should seek guidance from Kantar's **Legal** and **Compliance teams** immediately.

You can also use Kantar's confidential **Right to Speak Service** to report a concern anonymously if you prefer.



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## What to do in the event of a "Dawn Raid"

As mentioned earlier, many countries have empowered their competition authorities and/or regulators to make unannounced site visits to the premises of businesses to investigate suspected anti-competitive behaviour. Such visits are known as "Dawn Raids", but in reality can take place at any time of the day or night.

Receiving such a visit can understandably be disconcerting for colleagues present in the building when government agents arrive.

By following the guidance set out to the right you'll ensure that Kantar responds appropriately and effectively to the visit.



- Greet visiting authorities courteously
- Politely request a copy of the search warrant and/or any other documents authorising the visit
- Check the identification of authorities executing the visit, and show them into one room until legal counsel arrives
- Until legal counsel arrives, assure that the regulators that we intend to give all assistance to them
- Contact your local Legal team and notify [legal@kantar.com](mailto:legal@kantar.com), Kantar Group General Counsel and Group Marketing Director
- Notify all Kantar colleagues on site of the visit
- Make no statements or admissions, do not speculate about the visit, or email each other about the visit
- Where allowed by the terms of the warrant, a Kantar colleague should accompany each visiting agent and keep a record of their actions
- Don't attempt to conceal or destroy any material requested by the visiting agency. This includes social media messages, like WhatsApp
- Don't speak to anyone outside Kantar about the raid, including the media
- If visiting authorities fix seals preventing entry to certain rooms, please consider additional security measures to ensure the seal will not be breached.

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