



## THAMES WATER: COMPETITION LAW COMPLIANCE FACT SHEET



Competition law affects the ways in which Thames Water deals with its competitors, customers, or suppliers. If we commit a breach of competition law, the consequences could be extremely severe. For this reason, it is very important for key Thames Water employees, contractors or alliance partners to have an understanding of competition law. This handout provides a brief overview of how to stay on the right side of competition law.

**Anti-Competitive agreements:** under competition law, agreements, and arrangements, which prevent, restrict or distort competition, or are intended to do so, are illegal. This applies to all formal or informal agreements (including so-called “gentlemen’s agreements”), whether written or oral. **The most serious example of an anti-competitive agreement is a cartel**, where businesses secretly agree on behaviour, which means that the market is no longer fully competitive. Examples of agreements that may be forbidden include agreements to fix prices or to divide up markets between competitors.

Typically, **cartels** involve competitors agreeing on:

- prices;
- discounts;
- which customers they will supply;
- which areas they will supply; and/or
- who should win contracts or tenders (so-called “*bid rigging*”).

Be aware that Thames Water may itself be the victim of anti-competitive agreements or behaviour on the part of our competitors, contractors or suppliers. If, for example, you notice:

- similar or identical prices or terms of business being offered by rival suppliers; or
- surprising bids or failure to bid;

Please contact Thames Water Legal

Thames Water representatives often deal with other water companies. **Other water companies must be regarded as potential competitors to Thames Water.**

**Even in the absence of a cartel, information exchange between competing firms can be a serious competition law problem.** Each competitor must independently set the policy which it intends to adopt on the market.

**Do exercise caution** when dealing with other water companies.

Authorities enforcing competition law are suspicious about the possibility of commercially-sensitive information being exchanged at **trade association meetings**. As such, it is critical to exercise caution when attending meetings at which competitors are present.

You **must not**:

- discuss prices, capacity, opportunities or customers with our competitors. This includes any discussion about subcontractors or alliance partners and their terms of business, including prices they are charging;
- participate or remain in any meeting with competitors where there is any discussion about whether, where, to whom, or at what price any of them will sell to third party customers;
- agree to divide or share markets or business opportunities with competitors, or agree not to do business or pursue business opportunities with certain customers;
- give preferential terms to a competitor as a customer in exchange for an agreement to withdraw from one of our markets;
- agree to behave in a certain manner on the market in exchange for payment of a higher price or more favourable terms; or
- together with competitors, refuse to do business with a party (e.g. an inset provider or a water supply licensee).

**Do not disclose** or share any confidential or sensitive information about us, our customers, or our intentions, including any of our:

- sales details;
- revenues;
- volumes; and/or
- marketing initiatives;
- future products or services;
- business opportunities or intentions.

With any competitor, customer or supplier, **you can**:

- discuss regulatory issues;
- discuss matters of general interest to the industry, such as regulatory changes, government or European policy and industry lobbying; and
- obtain information about our competitors from customers provided that the information is obtained as a legitimate part of the negotiation of the sales-purchase contract which you are seeking to enter in to.

**Abusive conduct:** Competition law also prohibits the abuse of a dominant position. Due to the strong position that Thames Water occupies in many of the markets in which it operates, we must be careful not to exploit our position in the way we deal with certain customers or potential customers, or some of our suppliers (e.g. forcing competitors out of the market).

There are particular competition law risks arising from dealing with inset applicants, water supply and sewerage licensees or contractors' seeking to use the self-lay option for new connections, since, in these cases, our customer is in direct competition with us.

If we are approached for an **inset application or self-lay connection**, we **must** ensure that:

- where we are asked for statutory quotes for the same development, we apply the same level of service to the statutory quote as we would normally. The terms of such an agreement should be non-discriminatory and applied in a consistent manner;
- we do not insist on different material choice merely because a customer or developer is using self-lay or insets to supply the site;
- charging structures are applied in a non-discriminatory manner;
- all quotations are delivered as soon as possible and (as far as reasonably practicable) in line with timescales for any other connection quotation. To do otherwise could lay us open to accusations that as a result of our delay, the customer has no choice but to use the statutory quotation; and,
- when dealing with contractors who are laying water mains in connection with self-lay applications or on behalf of an inset applicant, we use the same standards that are in place for our own contractors.

**The consequences of breaching competition law are extremely serious:**

- heavy fines - up to 10% of annual turnover (£200 million);
- imprisonment of employees involved;
- disqualification of directors or other senior personnel;
- unenforceability of infringing agreements;
- third party damages claims;
- damage to reputation/share price from adverse publicity;
- instant dismissal for employees involved.

**Dawn Raids:** Ofwat, the Competition and Markets Authority, the European Commission, and the Serious Fraud Office are all empowered to investigate possible infringements of both UK and EU competition laws. This power extends to conducting unannounced inspections (or "dawn raids") at Thames Water premises or, in some cases, employees' homes, or cars.

There are a number of key '**Dos** and **Don'ts**' when a **Dawn Raid** occurs:

**Do ensure that officials are accompanied** at all times.

**Do co-operate** throughout, subject to the limits of the investigator's powers.

**Do ensure confidentiality** is maintained at all times. Discussions on the imparting of information should only be carried out on a need to know basis.

**Do request that any confidential information is not disclosed** by the inspectors to third parties without your consent and substantiate your claim for confidentiality in writing after the raid.

**Do seek to withhold privileged documents** or documents not relevant to the investigation (when in doubt as to the status of a document seek advice from the internal lawyers or our external lawyers).

**Do keep a full note** of everything that happens (where the investigators go, all questions and answers, which documents they look at and points of dispute).

**Do keep a copy of all documents copied** or removed by investigators and ask the investigators to sign an inventory before they leave.

**Do always try to have a lawyer present**, particularly if the investigators wish to question you.

**Don't be hostile**, obstruct the investigation, or mislead the investigators.

**Don't answer questions**, beyond where a document can be found and what it relates to, without legal advice or that you consider may result in self-incrimination (i.e. confession of a breach of competition laws), without first seeking legal advice.

If materials are secured at Thames Water premises by inspectors, **don't break seals**.

**Don't make jokes** or off-the-cuff comments because they can be misinterpreted.

**If you have any concerns or queries, please contact a member of Thames Water Legal [redacted] or [redacted] from [redacted].**