Rigged Markets – When Competition Becomes Collusion

Procurement and Supply Chain Management Made Simple.

Foreword

Procurement depends on genuine competition because buyers can only assess value when suppliers make independent commercial decisions. A tender may appear competitive because several bids arrive, yet the process is undermined if prices, territories, customers, or bidding strategies have been coordinated in advance. Genuine competition creates uncertainty for suppliers, forcing each to decide independently how hard to compete, and gives buyers confidence that the offers received reflect real market rivalry.

Value for money depends on more than the lowest initial price. Competitive pressure shapes quality, service, innovation, contractual terms and long-term supplier performance, because bidders must distinguish themselves from rivals. Where competition is weak or artificial, buyers pay more while receiving less. With gross UK public sector procurement spending reaching £434 billion in 2024/25, even a modest erosion of competitive pressure carries a significant cost to taxpayers.

Functioning markets also depend upon suppliers believing that opportunities are won through fair competition rather than arrangements between rivals. New entrants invest when they can challenge incumbents on merit, while established businesses must keep improving to retain customers. Where competitors divide markets or manipulate tenders, efficient suppliers can be excluded, and buyers lose access to the innovation, capacity and commercial tension that genuine rivalry is meant to deliver.

Procurement professionals therefore occupy an important position in protecting competitive markets. They observe pricing patterns, bidder participation, withdrawals, subcontracting arrangements and supplier behaviour across repeated competitions, sometimes spotting warning signs before regulators become involved. Their role is not to assume that unusual conduct proves wrongdoing, but to recognise when commercial patterns justify examination. Competition-law awareness sharpens procurement judgement, helping distinguish vigorous rivalry, legitimate cooperation and unlawful coordination.

Genuine competition should therefore be treated as a condition to be protected, not an outcome to be assumed. Receiving multiple tenders does not, by itself, establish that suppliers competed independently, just as cooperation between businesses does not automatically establish collusion. Effective procurement requires market knowledge, careful tender design and vigilance throughout the commercial process. Where rivalry remains real, buyers, suppliers and the wider economy all benefit.

Introduction – When Competition Becomes Collusion

Competition works when suppliers independently decide how strongly to compete, what prices to charge and what terms to offer. Rivalry pushes businesses to improve value, service and innovation, because each risks losing work to a better competitor. The position changes once suppliers shift from independent decision-making to coordination. Once competitors agree how they will behave towards customers, rivalry can become collusion, weakening the competitive process that procurement is designed to protect.

Collusion ranges from explicit agreements on prices or customers to informal understandings about who should win work. Competitors may remain separate businesses, continuing to submit apparently independent tenders, yet their decisions are no longer autonomous. The customer sees a market that looks competitive, with the elements of genuine rivalry quietly removed. That distinction between parallel commercial behaviour and coordinated conduct sits at the heart of competition law enforcement.

The danger is acute in procurement, because tendering depends on buyers receiving independent offers. In 2019 the CMA found that six office fit-out firms – JLL, Fourfront, Loop, Coriolis, ThirdWay and Oakley – had engaged in cover bidding across 14 contracts between 2006 and 2017, deliberately submitting losing bids to create an impression of rivalry. Five firms were fined over £7 million, Fourfront alone paying £4.14 million; JLL avoided a fine by reporting the arrangement first.

Legitimate competition does not require hostility between suppliers. Businesses may meet through trade associations, form lawful joint ventures, use subcontractors or cooperate where genuine efficiencies justify it. The legal concern arises when cooperation reduces uncertainty about how competitors will behave, particularly over prices, customers, territories or bidding intentions. Procurement professionals need to judge not merely whether suppliers interact, but whether that interaction preserves independent judgement and genuine competitive pressure.

Why Competition Matters in Procurement

Competition enables procurement to test whether suppliers are offering genuine value. When businesses compete independently, each has an incentive to sharpen pricing, improve quality and demonstrate stronger delivery. Buyers gain a clearer benchmark against which offers can be compared, rather than relying on a single supplier's assessment of what the market will bear. Effective rivalry, therefore, supports value for money while limiting the scope for excessive margins or complacency.

The scale of the risk is well documented. OECD guidance notes that bid rigging can materially increase procurement costs, with some studies indicating that eliminating it may reduce prices by 20% or more. Estimates of cartel overcharges vary considerably by market, methodology and period, so no single percentage range is definitive. In 2023, bid rigging accounted for close to 44% of hard-core cartel infringement decisions reported by competition authorities internationally.

Price is only one dimension of competition. Suppliers may differentiate themselves through better specifications, faster response times, stronger account management, improved warranties or more reliable performance. Where evaluation criteria reward these factors appropriately, competitive pressure encourages bidders to develop offers that meet the buyer's wider objectives rather than simply cutting cost. Procurement can consequently use competition to improve service standards while preserving pressure on total expenditure.

Innovation is also strengthened when suppliers know that established methods will not guarantee future work. New entrants can challenge incumbents with new technologies, models or approaches, while existing providers must keep improving to defend their positions. Competitive procurement can accelerate adoption of digital systems, lower-carbon solutions and more efficient processes. Where markets become closed or predictable, that incentive *weakens, potentially leaving buyers dependent on outdated solutions.*

The prospect of future competition also influences supplier performance after contract award. An incumbent facing credible retendering has a continuing incentive to maintain service standards, control costs and protect its reputation. Where competition weakens, dependency can increase, and buyers may lose leverage in the face of underperformance. Tussell reported that the government's 39 Strategic Suppliers received around £24.7 billion in 2024/25, representing roughly 10% of its £249 billion measure of public procurement expenditure excluding capital spending. Genuinely contested retendering helps preserve competitive pressure and limits over-reliance on a narrow supplier base.

The UK Competition Law Framework

The United Kingdom's competition law framework exists to protect markets from agreements and conduct that weaken rivalry. Its principal domestic foundation is the Competition Act 1998, supported by the Enterprise Act 2002 and later legislation. Together, these measures regulate anti-competitive behaviour, provide investigative and enforcement powers, and establish serious consequences for businesses and individuals whose actions distort markets, restrict customer choice or undermine fair commercial competition.

The Enterprise Act 2002 strengthened enforcement by creating a criminal cartel offence for individuals involved in the most serious forms of collusion. Price-fixing, market-sharing, bid-rigging, and agreements to restrict output can expose participants to consequences that extend beyond corporate penalties. The Act signalled that cartel behaviour is not treated merely as poor commercial practice, but as conduct capable of attracting personal criminal liability, including imprisonment for those most directly involved.

The Competition and Markets Authority is the UK's principal enforcement body. It can investigate suspected infringements, require documents and information, conduct searches under statutory powers, impose financial penalties and pursue director disqualification. Certain sector regulators, including in energy, communications and financial services, hold concurrent competition powers, so suspected anti-competitive conduct may attract scrutiny from a specialist regulator as well as the CMA, depending on the market concerned.

Enforcement is not confined to regulatory action. Businesses harmed by anti-competitive conduct may pursue damages claims in court, while CMA decisions can themselves be challenged before the Competition Appeal Tribunal. The CMA's leniency arrangements encourage cartel participants to disclose wrongdoing and cooperate with investigations. Together, public enforcement, criminal sanctions, private actions and director consequences form a framework designed to punish infringements and deter coordination between competitors.

The Competition Act 1998

The Competition Act 1998 provides the principal domestic framework for protecting competition within UK markets. Its purpose is not to prevent businesses from competing aggressively, but to ensure that rivalry remains independent and fair. The Act targets conduct that distorts markets, including anti-competitive agreements and abuses of dominant positions. For buyers, this protection helps preserve meaningful choice; for suppliers, it establishes boundaries within which legitimate commercial competition can take place.

The Act contains two central prohibitions. Chapter I addresses agreements, decisions and concerted practices that prevent, restrict or distort competition, while Chapter II concerns abuse by businesses holding dominant market positions. These rules apply across a wide range of sectors and commercial relationships, meaning that suppliers cannot assume competition law matters only in major cartel investigations; routine pricing, distribution, cooperation and tendering arrangements may also attract scrutiny.

For procurement, Chapter I is particularly significant because competing suppliers are expected to determine their bids independently. Agreements over prices, territories, *customers, output or tender outcomes can remove the uncertainty that competition requires. Even informal cooperation may create legal risk where businesses coordinate behaviour rather than making autonomous decisions. Buyers therefore depend upon the Act to help ensure that multiple tenders represent genuine rivalry rather than an orchestrated appearance of competition.*

The Act does not prohibit every agreement that limits commercial freedom. Certain arrangements may qualify for exemption where they generate efficiencies or benefits that outweigh restrictive effects and satisfy statutory conditions. This distinction matters because legitimate collaborations, including some research or supply arrangements, can improve customer outcomes. Competition law therefore requires analysis of substance and market effect, rather than treating every commercial cooperation between businesses as unlawful or suspicious.

The Chapter I Prohibition

The Chapter I prohibition of the Competition Act 1998 targets agreements between undertakings, decisions by associations and concerted practices that prevent, restrict or distort competition within the United Kingdom. Its scope is deliberately broad because anti-competitive coordination can arise through formal contracts, informal understandings or patterns of cooperation. The central question is whether businesses that should compete independently have instead substituted coordination for the uncertainty and rivalry expected within markets.

An agreement can infringe Chapter I because of its object or its effect. Some arrangements are considered harmful by their very nature, including forms of price-fixing, market-sharing and bid-rigging, without requiring extensive proof of actual market damage. Other arrangements require examination of their practical effects on competition. This distinction allows enforcement to address both obviously restrictive conduct and commercial arrangements whose competitive consequences depend upon market circumstances.

Chapter I does not render all forms of cooperation unlawful. Some agreements fall outside the prohibition or qualify for exemption where they generate efficiencies, improve production or distribution, promote technical or economic progress, and provide customers with a fair share of the resulting benefits. The distinction matters for procurement because consortium bids, research collaborations and supply arrangements can strengthen competition, whereas coordination intended to suppress independent rivalry can undermine it.

Many of the cases discussed in this article date from before the end of the Brexit transition period, when infringements were typically pursued under Chapter I alongside the equivalent EU prohibition, Article 101 of the Treaty on the Functioning of the European Union. Since 31 December 2020, Chapter I has operated as a free-standing UK prohibition, with the CMA as primary domestic enforcer. However, the underlying legal tests remain closely aligned with the earlier body of EU case law.

Cartels – Cooperation Behind the Appearance of Competition

A cartel exists when competing businesses coordinate rather than compete independently, usually to influence prices, customers, territories, output or tender outcomes. The arrangement may be explicit, informal or concealed, but its purpose is to replace genuine rivalry with cooperation that benefits participants at customers' expense. Cartels can operate behind apparently normal market activity, making several suppliers appear competitive even though important commercial decisions have been coordinated between them in advance.

Competition authorities regard cartels as particularly serious because they strike directly at the competitive process. Unlike legitimate collaboration, which may create efficiencies, cartel conduct is designed to reduce uncertainty among rivals and protect participants from competitive pressure. Customers can face higher prices, poorer service, reduced choice and weaker innovation, while efficient suppliers may be denied opportunities. The damage extends *beyond individual transactions to the market's structure and credibility.*

Bid rigging is one of the clearest examples of cartel behaviour in procurement. Competitors may agree on who should win, submit deliberately high cover bids, suppress bids, or rotate contracts among themselves. The tender process can appear compliant while the outcome has been predetermined. Buyers may believe competitive tension has delivered value for money, when in reality bidders have collectively weakened the competition that the procurement exercise was intended to create.

The construction sector has provided the starkest example in the UK. In 2009 the Office of Fair Trading fined 103 construction firms a total of £129.5 million for bid-rigging across around 199 tenders between 2000 and 2006, mostly through cover pricing; six instances also involved secret compensation payments to losing bidders of between £2,500 and £60,000. The case showed how cartel behaviour can become normalised within an industry when procurement teams examine tenders individually rather than across markets.

Cartels are difficult to detect because participants have strong incentives to conceal their cooperation. Communications may be informal, coded or conducted outside official tender channels, while bids can be designed to look independent. This secrecy increases the importance of procurement vigilance, data analysis and competition-law awareness. Treating cartel behaviour as a commercial risk helps organisations protect value, maintain supplier confidence and preserve markets in which genuine competition can function effectively.

The Criminal Cartel Offence

The Enterprise Act 2002 created a criminal cartel offence aimed at individuals who agree that businesses will engage in serious forms of collusion. These include price-fixing, market-sharing, bid-rigging and output restrictions. The offence sits alongside the civil competition regime but serves a different purpose: it can impose personal criminal responsibility where an individual helps create or implement arrangements that undermine genuine competition between businesses within markets.

Corporate liability and individual criminal liability are therefore distinct. A company may infringe the Chapter I prohibition and face substantial financial penalties without every employee involved committing a criminal offence. Conversely, the Enterprise Act focuses on particular agreements made by individuals. This distinction matters because enforcement can proceed against the undertaking under competition law, while separate criminal proceedings may be brought against the individuals involved.

Since 1 April 2014, prosecutors have not needed to prove dishonesty for cartel agreements falling within the amended offence. The Enterprise and Regulatory Reform Act 2013 removed that requirement while introducing statutory exclusions and defences. The change strengthened the offence by focusing on prohibited arrangements and the individual's participation. However, criminal liability remains subject to specific legal conditions that must be assessed before conclusions are reached.

The consequences can be severe. A person convicted on indictment of the cartel offence may receive up to five years' imprisonment, an unlimited fine, or both. In England, Wales and Northern Ireland, prosecutions may be brought by the CMA or the Serious Fraud Office, or with the CMA's consent. The possibility of imprisonment distinguishes cartel offending from corporate non-compliance and reinforces why procurement-facing staff require competition-law awareness.

Successful prosecutions remain rare. The first convictions under the original cartel offence came in the 2008 Marine Hose case, in which three individuals pleaded guilty to rigging bids for marine hose supplies used in the oil and defence industries. They received prison terms of between 20 months and two-and-a-half years, director disqualifications of five to seven years, and confiscation orders totalling more than £1 million. A further conviction followed in 2015, when Nigel Snee pleaded guilty in the galvanised steel water-tanks cartel case.

The Competition and Markets Authority

The Competition and Markets Authority is the United Kingdom's principal competition regulator, responsible for investigating suspected breaches of the Competition Act 1998 and pursuing serious cartel conduct. Its role extends beyond reacting to complaints: the CMA gathers intelligence, assesses markets, opens formal investigations and decides whether enforcement is justified. In procurement-related cases, its work helps determine whether apparently independent suppliers have coordinated behaviour that restricts genuine market competition.

Once a formal investigation begins, the CMA has extensive information-gathering powers. It can issue statutory requests requiring businesses or individuals to provide specified documents and information, answer oral questions, conduct compulsory interviews, and enter business premises. In appropriate circumstances, investigators may carry out unannounced inspections, commonly described as dawn raids, and can search premises under warrant, obtaining evidence that cartel participants might otherwise deliberately conceal.

Cartel investigations often rely upon more than documents supplied voluntarily. The CMA may examine emails, messaging records, tender files, pricing information, and communications between competitors, and obtain material from customers, suppliers, and other market participants. Investigators can compare bidding behaviour across procurements to identify patterns inconsistent with independent competition. Reconstructing commercial relationships is particularly important because cartel arrangements are frequently informal, concealed and deliberately designed to leave limited documentary evidence.

The CMA can impose substantial financial penalties where it establishes an infringement of competition law and can pursue director disqualification where management conduct warrants action. It may also conduct criminal investigations into the cartel offence and, in England, Wales and Northern Ireland, bring prosecutions. Enforcement therefore extends beyond the offending business: directors and employees may face personal consequences where their involvement, knowledge, or failure to act satisfies the relevant legal tests.

Leniency is an important feature of the CMA's cartel enforcement strategy because secret arrangements can be difficult to uncover. Businesses or individuals that disclose their involvement and cooperate fully may receive immunity or reductions in penalties, depending upon timing and circumstances. The prospect of favourable treatment creates instability within cartels: each participant knows another member may approach the regulator first, making secrecy harder to maintain and increasing the likelihood of detection.

The Consequences of Breaking Competition Law

Breaching competition law can expose businesses and individuals to consequences that extend far beyond an adverse regulatory finding. The enforcement regime combines financial penalties, civil claims, director disqualification and, for certain cartel conduct, criminal sanctions. Businesses may also suffer damaged customer relationships, disrupted management attention and reduced opportunities to secure future work. The seriousness of these consequences reflects the wider harm caused when competitors replace independent rivalry with secret, unlawful coordination.

For businesses, the most immediate risk is a financial penalty of up to 10% of annual worldwide turnover. In 2023, the CMA fined ten demolition and asbestos-removal firms £59.3 million for rigging bids on 19 contracts worth over £150 million, including work for the Metropolitan Police, the University of Oxford and Selfridges. Erith received a £17.6 million penalty and Keltbray a £16 million penalty, demonstrating how collusive tendering can turn profitable contracts into major financial liabilities.

Regulatory fines do not necessarily end financial exposure. Customers and other parties that suffer loss due to anti-competitive conduct may seek damages, potentially adding substantial civil liabilities to regulatory penalties. A buyer that paid inflated prices because suppliers *colluded may therefore seek compensation for the resulting overcharge. Agreements infringing competition law can also be unenforceable, creating further contractual uncertainty around commercial arrangements built on the prohibited conduct itself.*

Directors can face consequences independently of penalties imposed upon their companies. Competition disqualification orders or undertakings can prevent an individual from acting as a company director for up to 15 years. Following the demolition cartel investigation, former Erith director David Darsey was disqualified for 5 years and 10 months, and Michael Cantillon for 7 years and 6 months. Such sanctions show that responsibility can carry severe and lasting personal consequences.

Individual involvement in serious cartel conduct can cross into criminal liability, as the Marine Hose case discussed earlier demonstrates. Price-fixing, market-sharing, bid-rigging and output restrictions may constitute the criminal cartel offence under the Enterprise Act 2002, with conviction carrying up to five years' imprisonment, an unlimited fine, or both. Criminal proceedings therefore differ fundamentally from corporate competition enforcement, exposing those personally involved to punishment that can affect both liberty and finances.

Competition infringements can also curtail access to public procurement opportunities. Under the Procurement Act 2023, established cartel infringements can engage mandatory exclusion grounds, while potential competition-law infringements may engage discretionary exclusion grounds. Qualifying suppliers may also be entered on the central debarment list, preventing participation in covered public procurements for up to five years. A supplier may therefore face consequences long after the original conduct occurred, particularly where remedial action fails to demonstrate that recurrence is unlikely.

Reputational damage may prove equally difficult to contain. Competition investigations are public, often lengthy, and capable of associating an organisation's name with price-fixing, bid-rigging or market manipulation for years. Customers may reconsider relationships, employees can lose confidence and lenders or investors may reassess governance standards. Management time, legal costs and compliance remediation add further burdens beyond the fines imposed by regulators.

Price Fixing

Price fixing occurs when competitors agree, coordinate, or otherwise align the prices or commercial terms they will offer rather than deciding them independently. The arrangement may concern headline prices, discounts, margins, fees, surcharges, credit terms or planned increases. In procurement, suppliers might agree minimum tender prices or determine how far each will discount. Such coordination eliminates genuine price competition and can force buyers to pay more than the market would otherwise charge.

Price fixing does not require every participant to charge the same amount. Competitors may agree a pricing formula, minimum margin, discount ceiling or sequence of increases while still submitting different figures. The commercial effect can be equally damaging because independent decision-making has been replaced by coordination. Buyers may therefore see apparently varied tenders that conceal an underlying agreement governing the range within which suppliers are prepared to compete.

A clear domestic example involved four Berkshire estate agents – Michael Hardy, Prospect, Richard Worth and Romans – who for almost seven years fixed minimum commission rates for residential sales across Wokingham, Winnersh, Crowthorne, Bracknell and Warfield. The CMA fined the first three companies a combined £605,519 in 2019; Romans avoided a fine by reporting the arrangement. Local homeowners were left unable to negotiate competitive rates or genuinely shop around.

Market Sharing

Market sharing occurs when competitors agree to divide customers, contracts, sectors or categories of work rather than compete freely for them. Each business may be allocated *particular clients, product lines or types of opportunity, with the understanding that rivals will not challenge its position. The arrangement can preserve existing relationships and margins, but it does so by removing choices that customers would otherwise expect from an independently functioning competitive market.*

Such agreements do not need to allocate every customer or eliminate all rivalry. Competitors may respect selected accounts, avoid bidding for certain contracts or agree that one supplier will concentrate on a particular sector while another pursues different work. The market can still appear competitive because businesses remain active elsewhere. What matters is that decisions about whom to pursue are influenced by coordination rather than each supplier's independent commercial judgement.

The precast concrete drainage cartel shows how entrenched market sharing can become. Between 2006 and 2013, FP McCann, Stanton Bonna Concrete and CPM Group divided customers, fixed prices and exchanged sensitive information, building a combined market share approaching 100%; the CMA fined them over £36 million. Customers included engineering and construction firms and local and national government. The bidding indicators that can help flag such allocation are addressed in the companion article on detecting suspicious bids.

Geographical Market Sharing

Geographical market sharing occurs when competitors agree that particular regions, counties, or territories will effectively be allocated to designated suppliers. Rather than independently deciding where to compete, businesses avoid challenging one another within their allocated areas. Customers may still receive bids and see several firms operating nationally, yet genuine rivalry is weakened locally. The arrangement protects established positions, reduces competitive pressure and can allow prices or margins to remain artificially high.

Genuine geographic specialisation – often shaped by transport costs, depot locations or regional capacity – can look outwardly identical to coordinated territorial allocation. Distinguishing the two requires examining the underlying commercial rationale rather than the headline pattern of who bids where. The specific bidding and pricing indicators that can help make that distinction are addressed in greater detail in the companion article on detecting suspicious bids.

The CMA treats territorial allocation as a form of market sharing because competitors decide collectively where each will compete. Its cartel guidance identifies agreements that restrict marketing or sales to particular territories or customer groups as potentially unlawful. For buyers, recurring geographic patterns warrant examination alongside pricing, participation, and supplier communications, though no single pattern proves collusion without convincing evidence of coordination.

Customer Allocation

Customer allocation occurs when competitors agree not to pursue one another's established customers or contracts, effectively dividing demand between themselves in advance. Instead of each supplier independently deciding which opportunities to pursue, businesses preserve existing relationships through mutual restraint. The customer may still believe several suppliers are available, but genuine rivalry has been weakened because competitors have agreed, formally or informally, not to challenge one another aggressively for particular accounts.

Such arrangements can be subtle. A supplier may submit an intentionally weak quotation for a rival's customer, decline opportunities it would normally pursue, or avoid offering discounts that could win the business. In return, the competitor may behave similarly elsewhere. This reciprocal restraint can stabilise prices and customer relationships for cartel members while depriving buyers of the lower prices, better service or innovation that genuine competitive pressure might otherwise produce.

A clear UK example involved Thomas Armstrong (Timber) Ltd and Hoffman Thornwood Ltd, suppliers of furniture parts to well-known manufacturers including Silentnight. The CMA found that the companies had agreed not to compete on price and to divide customers between themselves; BHK (UK) Ltd also admitted its involvement and received leniency. Fines totalling £2.8 million were imposed in 2017, showing how customer allocation can operate alongside price coordination and bid manipulation within a single cartel.

Procurement teams should therefore examine the full pattern of a relationship rather than assume that long-standing supplier loyalty reflects normal market preference. The specific bidding and tendering indicators that can help identify customer allocation are addressed in the companion article on detecting suspicious bids. The furniture parts case is a reminder that such arrangements can persist for years before being uncovered – typically through a leniency application rather than through buyer detection alone.

Output and Capacity Restrictions

Output and capacity restrictions arise when competitors agree to limit what they produce, supply or make available to customers. By coordinating volumes, businesses can reduce market supply, support higher prices or avoid the commercial pressure created by excess capacity. Such arrangements may concern production quotas, factory utilisation, service availability or planned expansion. Competition law treats output limitation seriously because customers lose the benefits that independent supply decisions would otherwise create.

The competitive harm can be significant even where prices are not expressly fixed. If suppliers collectively restrict output, scarcity may push prices upwards, weaken buyers' negotiating power and reduce incentives to improve efficiency. Competitors may also agree not to expand capacity, to postpone investment, or to withdraw particular products. These arrangements can stabilise market shares and margins, effectively replacing commercial rivalry with coordinated decisions about how much supply the market will receive.

Not every production or capacity agreement is unlawful. Competitors may sometimes cooperate legitimately where joint production, shared infrastructure or capacity arrangements create efficiencies that could not be achieved independently. The CMA's horizontal agreements guidance recognises that production agreements require assessment of wider competitive effects. The critical distinction is whether cooperation improves efficiency while preserving rivalry, or whether output is deliberately restricted to suppress competition or manipulate market conditions.

The CMA's investigation into P&O Ferries and DFDS illustrates that distinction. The companies operated a capacity-sharing agreement on the Dover–Calais route, allowing freight customers booked with one operator to travel on the other's vessels. The CMA raised competition concerns but accepted binding commitments in August 2022 rather than finding a cartel infringement, recognising the agreement's material benefits for freight customers alongside the need for safeguards.

Procurement teams should weigh capacity behaviour alongside pricing and bidding patterns, recognising that coordinated shortages can be difficult to distinguish from genuine cost pressures or supply chain disruptions. As with market sharing, the specific behavioural indicators are addressed more fully in the companion article on detecting suspicious bids; the essential safeguard here is testing capacity claims against independent market evidence rather than relying on supplier assurance alone.

Information Exchange

Information exchange can restrict competition when rivals share commercially sensitive material that reduces uncertainty about how each intends to behave. Future prices, discounts, margins, bidding intentions, costs, capacity plans, customer strategies and sales forecasts are particularly sensitive because they can reveal decisions that competitors should determine independently. Once businesses know how rivals are likely to act, competitive pressure may *weaken even without an explicit agreement to fix prices for customers.*

The risk depends heavily on the nature, timing and detail of the information exchanged. Future-facing, current and company-specific information generally raises greater concern than historical, aggregated or publicly available data. A competitor that learns of another supplier's intended price increase, planned tender strategy or spare capacity can adjust its own behaviour accordingly. The result may be less aggressive competition, because the uncertainty that ordinarily forces businesses to anticipate rival responses has been reduced.

Information can be exchanged directly through meetings, emails, messaging applications or telephone calls, but indirect routes carry similar risk. Trade associations, consultants, customers, benchmarking exercises or digital platforms may act as intermediaries through which competitors obtain sensitive intelligence. The legal analysis therefore looks at substance rather than the communication channel: businesses cannot avoid competition-law concerns simply because commercially sensitive material passed through a third party rather than directly between rivals.

The CMA's 2025 decision on UK government bonds shows how easily this can happen even in sophisticated financial markets. Traders at Citi, HSBC, Morgan Stanley and the Royal Bank of Canada shared sensitive pricing information about gilt auctions in private one-to-one Bloomberg chats between 2009 and 2013. The four banks were fined over £104 million; Deutsche Bank avoided a fine by reporting its own involvement first. Gilts finance UK public spending, underlining that this risk extends well beyond any single sector.

Procurement professionals need to consider the information they release during market engagement and tendering. Publishing one bidder's confidential pricing, indicating competitors' likely approaches or disclosing supplier-specific capacity can inadvertently reduce competitive uncertainty. Transparency remains important, particularly in public procurement, but it should not become a mechanism for competitors to monitor one another's strategies. Buyers should separate information needed for fairness and accountability from material that could facilitate coordinated behaviour.

Trade Associations, Industry Meetings and Informal Networks

Trade associations and industry meetings perform legitimate functions: representing sectors, developing standards, raising policy concerns, and allowing businesses to discuss common challenges. The risk lies not in the forum itself but in what happens inside it. Discussions of future prices, customers, output, capacity, or bidding intentions can quietly tip a legitimate gathering into a channel for coordination, and a routine-looking agenda offers no protection if what is actually discussed is competitively sensitive.

Informal networks create similar risks because unlawful coordination does not require a meeting or a written agreement. Conversations over dinner, messaging groups, telephone calls or conference discussions can become problematic if competitors reveal sensitive plans or encourage mutual restraint. The CMA advises trade associations to prevent such exchanges and expects members to leave and report meetings where competitively sensitive information is raised; an informal or social setting offers no legal protection.

A practical example arose in 2015 when the CMA fined an association of estate and lettings agents, three member firms and a newspaper publisher more than £735,000. The association restricted members from advertising fees or discounts in a local newspaper, while two agents extended the arrangement to non-members. The case showed that trade bodies can themselves facilitate anti-competitive conduct when their rules restrict members' independent competition for customers.

Businesses should therefore treat industry participation as a compliance issue rather than a reason to avoid legitimate engagement. Associations can reduce risk through clear competition policies, disciplined agendas, recorded minutes and firm rules against sensitive discussions. Representatives should challenge inappropriate exchanges immediately and, *where necessary, leave. Procurement professionals should apply similar caution during market engagement, ensuring that supplier forums do not inadvertently become opportunities to share strategies or coordinate behaviour.*

From Conversation to Concerted Practice

An unlawful arrangement need not appear in a contract, memorandum or written cartel agreement. Competition law looks at what businesses actually do and understand, not simply what they document. Competitors can cross the line through conversations, repeated signals or shared expectations about future conduct. Where contact replaces independent commercial judgement with coordination, the absence of signatures or formal wording does not prevent the behaviour from becoming legally significant.

A concerted practice can arise where competitors knowingly reduce uncertainty about one another's future conduct without reaching a conventional agreement. One business may reveal intended prices, bidding plans, customers, or capacity, while another adjusts its behaviour in response; the disclosure need not even be reciprocated to be legally significant. The central question is whether competitive decisions remain genuinely independent once contact of this kind has taken place between rivals.

This is particularly relevant in procurement because suppliers may communicate in ways that appear casual. A discussion about who intends to bid, which customer is regarded as another firm's territory, or what price level the market should support can influence tender behaviour. Even without an explicit promise, participants may understand how they are expected to act – a shared understanding that can weaken rivalry while leaving little documentary trail for buyers to discover.

The CMA's evidence in recent cases illustrates how such conduct is proved without a written agreement. In the precast concrete drainage cartel, investigators relied on covertly recorded meetings; in the UK government bonds case, the decisive evidence was a handful of one-to-one Bloomberg messages exchanged on specific dates. Neither case turned on a signed contract – both turned on what the parties said to each other and how their subsequent market behaviour changed as a result.

Summary – Legitimate Cooperation or Illegal Collusion?

Legitimate cooperation between businesses can strengthen competition by combining capabilities, spreading risk, or enabling suppliers to pursue opportunities they could not pursue alone. Joint ventures, consortium bids and shared production arrangements may create efficiencies, expand capacity or encourage innovation. Competition law does not prohibit collaboration merely because competitors work together. The critical question is whether cooperation improves market outcomes without unnecessarily reducing the independent rivalry customers would otherwise receive.

Consortium bidding provides a clear example in procurement. Two suppliers may lawfully submit a joint tender where neither could meet the contract requirements alone, perhaps because one lacks geographic coverage, specialist expertise or sufficient capacity. Problems arise where capable competitors form a consortium primarily to avoid competing against each other. The commercial rationale, the proportionality of the arrangement and the effect on remaining competition therefore require careful assessment before collaboration is assumed to be benign.

Subcontracting can also be entirely legitimate. A prime contractor may appoint another supplier because specialist skills, resources or additional capacity are genuinely required to perform the contract. Concern increases when supposedly independent competitors coordinate before tendering, agree on who will win, and compensate the other through subsequent subcontract work. The subcontract itself is not unlawful; the competition risk lies in whether it forms part of an arrangement designed to manipulate the bidding process.

Benchmarking and information sharing can similarly support efficiency when businesses *compare historic, aggregated or anonymised performance data. Organisations may learn from industry standards without revealing commercially sensitive strategies. The position changes when benchmarking exposes future prices, margins, customer intentions, capacity or tender plans. Information that enables rivals to predict one another's behaviour can turn an apparently useful exercise into a mechanism for sustaining coordination between competitors.*

Supply-chain cooperation often requires businesses to exchange information, coordinate logistics or develop common technical standards. These arrangements can lower costs, improve resilience and deliver benefits to customers when limited to what is necessary for the collaboration. The CMA recognises that many business collaborations are lawful and can promote growth. Participants should nonetheless avoid extending cooperation into unrelated pricing, customer allocation or market-sharing decisions that each business should continue to make independently.

The dividing line is therefore based on substance rather than labels. Calling an arrangement a joint venture, consortium, subcontract or benchmarking project does not protect conduct intended to suppress rivalry. Procurement professionals should ask whether the parties genuinely need to cooperate, whether restrictions are proportionate and whether each remains free to compete elsewhere. Legitimate collaboration creates capability or efficiency; illegal collusion removes uncertainty and protects competitors from genuine competitive pressure.

Additional articles can be found at [Procurement and Supply Chain Management Made Simple]. This site looks at procurement and supply chain management issues to assist organisations and people in increasing the quality, efficiency, and effectiveness of their product and service supply to the customers' delight.

Further Reading

- *Competition and Markets Authority, "Cheating or Competing?" – competition law compliance campaign, gov.uk*
- *Competition and Markets Authority, cartel and Chapter I case decisions cited in this article, gov.uk/cma-cases*
- *Competition and Markets Authority, guidance on horizontal agreements and cartel prosecution, gov.uk*
- *Competition Act 1998, legislation.gov.uk*
- *Enterprise Act 2002, Part 6 (the cartel offence), legislation.gov.uk*
- *Procurement Act 2023 and Cabinet Office guidance on exclusion and debarment, gov.uk*
- *OECD, Guidelines for Fighting Bid Rigging in Public Procurement (2025 update), oecd.org*
- *House of Commons Library, "Procurement statistics: a short guide," commonslibrary.parliament.uk*
- *HM Treasury, Public Expenditure Statistical Analyses 2025*
- *Whish, R. and Bailey, D., Competition Law, Oxford University Press*