ISLE OF MAN **OFFICE OF FAIR TRADING**

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Office of Fair Trading

COMPETITION LAW IN THE ISLE OF MAN

A SHORT GUIDE FOR THE PUBLIC SECTOR

Isle of Man Government

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November 2015 **Version 1.0**

INTRODUCTION

Past dealings with those working in the public sector have shown that many people are unaware that competition law applies to some of their activities.

The 2013 Scope of Government Report set Government to fundamentally review its services and the way in which those services are delivered. This has meant that some services are being delivered differently, through the private sector and the third sector. Increasingly, Government is also looking at innovative solutions, such as trusts and not-for-profit partnerships.

These changes are resulting in more situations where Government Departments, Statutory Boards and Local Authorities are providing services in a manner which means that they are competing with, or impact upon, the private sector. The public sector is also at risk of becoming a victim of anti-competitive practices, such as unfair competition and cartel activity.

This Guide is intended to provide public servants who are involved in the design of service delivery with a basic understanding of competition law and also to help those involved with procurement of goods and services to avoid becoming the victim of anti-competitive practises.

Competition law is complex – in most cases it is not a world of black and white, but rather a world of shades of grey, where the acceptability of actions have to be judged by their impact.

The Office of Fair Trading (OFT) would prefer to use the very limited resources of its Competition and Pricing Section to educate and assist the public, private and third sectors to avoid contravening competition law, rather than dealing with the consequences of breaches.

Throughout this Guide we have provided, in green, a series of examples to illustrate what we mean. Unless otherwise stated, these are purely hypothetical.

Please remember that if you have concerns or doubts, the Competition and Pricing Section of the OFT is here to assist.

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LEGAL FRAMEWORK

Competition law in the Isle of Man is based on Part 2 of the Fair Trading Act 1996[1]. The Act prohibits anti-competitive practices which are defined by section 8(1) in the following terms:-

"a person engages in an anti-competitive practice if, in the course of business, he pursues a course of conduct which, of itself or when taken together with a course of conduct pursued by another person or other persons, has or is intended to have or is likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods in the Island or the supply or securing of services in the Island."

Part of this definition is shown in grey because section 8(8) states that these words are deleted when the definition is applied to a public authority. The Act defines a "public authority" as a Government Department, Statutory Board or Local Authority.

The first important item to note is that the provisions concerning anti-competitive practices relate to the whole of the public sector. Secondly, they apply regardless of whether the public authority is itself engaging in any commercial activity; it is enough for the actions of the public authority to have the negative effects on competition as are described.

There are other important elements within that definition:

- the anti-competitive outcome does not have to be intentional; and
- the anti-competitive outcome does not actually have to happen; it is enough for it to be likely to happen.

The definition covers actions which may cause restrictions, distortions or preventions of competition in either:

- the production, supply or acquisition of goods in the Island; or
- the supply or securing of services in the Island.

It is appreciated that the definition does not make it easy to assess whether or not a particular action may or may not be anti-competitive. In the following sections, we will endeavour to explain some of the actions which might be regarded as being anti-competitive and to suggest a practical approach. This will assist public bodies in the Island to avoid engaging in practices which contravene competition law and to identify where they may become the 'victims' of anti-competitive practices. It is important to recognise that each complaint is assessed on a case-by-case basis, and the specific circumstances may significantly vary the results.

[1] http://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1996/1996-0015/FairTradingAct1996_3.pdf

UNFAIR COMPETITION

Unfair Competition

Unfair competition results when competitors in an industry are operating on an uneven playing field. It could be due to one firm having an undue advantage over another, or due to actions taken by one firm, which harm and undermine a competitor's ability to compete. The actions leading to the unfair playing field may, or may not, have been undertaken deliberately.

This can become a particular issue where the public and private sectors compete in the same market. For example, if the public sector trading is underpinned by cross-subsidisation from non-commercial activities (e.g., from the revenue budget in the case of a Government Department or Statutory Board, or from rate income in the case of a Local Authority), the activities undertaken by the public sector have the potential to distort competition.

> Example: Local Authority A undertakes in-house cleaning of its own premises. Following budget changes, it has to reduce the net cost of operating this service, but rather than reducing staffing, it decides to undertake work in the private sector and boost revenue. Since all of the costs associated with cleaning (such as plant and materials) are paid for through the domestic rates income, it finds that it can get work by undercutting the existing private sector cleaning companies. This is unfair because Local Authority A ought to be charging an appropriate portion of the plant and labour costs to the external work.

It is also possible for a public body to distort or prevent competition in a market through its actions, even though it is not, in itself, actually competing in that market – it can give an unfair advantage to a market participant.

> Example: Department A undertakes work and employs a small team of people with associated plant and equipment. It decides to privatise the work by encouraging its work force to set up a new company. In order to persuade the workforce that this is a good idea, it agrees to provide the existing plant and equipment at no cost and to guarantee the new company the existing work at 10% above market rates. The new company is also free to compete for other work against other private sector firms. Department A has created a situation where competition is distorted, because the new company is entering the market with a substantial advantage.

It is important that within markets where the public, private and third sectors compete, there is fairness and a level playing field; and in terms of section 8 of Fair Trading Act 1996, that there is no restriction, distortion or prevention of competition. Economists refer to this concept as *Competitive Neutrality in Mixed Markets.* In short, a Government Department, Statutory Board or Local Authority should not be able to enjoy a net competitive advantage simply because it is a public body.

At a policy level in the Isle of Man, the principle of competitive neutrality in mixed markets is reflected in the Scope of Government Report of the Council of Ministers[2], which in Recommendation 1, Principle 5, states:-

> ***Where possible, if public services are to compete with the private sector, competition must be fair, with special care being taken to avoid cross-subsidisation of commercial activities from revenue-funded budgets.***

Whilst this is directly applicable to Government Departments and Statutory Boards, but not Local Authorities, the reality is that Council is saying that the standard set out in section 8 of the Fair Trading Act 1996 must be met; and that it is a standard which is universally applicable. It will be noted that the Council of Ministers prefaces the principle with "Where possible". This is because there is potential in section 8 for exemptions - something which will be covered later.

Having established the principle that there should be a level playing field in mixed markets, it is necessary to consider how to determine a level playing field. Whilst the ideal situation would be that a public sector trading body should be operating similarly to a private company, this is unrealistic. It is a completely different body. If the OFT were investigating an allegation of an anti-competitive practice against a public sector trading body, it would look at the advantages and disadvantages which it had over its private sector competitors and assess whether, on balance, it was enjoying net advantages which resulted in competition being distorted. The public body should set a price for the goods or service so that it fully recovers the true competitively neutral cost (i.e., by setting a price which recovers the variable cost of providing the service, plus a reasonable allocation of fixed cost, if those fixed costs are also being used for other services over the long term. This is often referred to by economists as the competitively neutral cost).

> Example: Department A is operating a retail outlet at one of its sites. Other private sector retailers are selling similar products and complain that Department A is trading unfairly. In investigating the complaint, the OFT would evaluate the advantages enjoyed by Department A (such as free working capital and the ability to make losses), but also the disadvantages (such as, for example, higher staff costs if there are additional payments for unsociable hours resulting from public sector terms and conditions). As long as the advantages and disadvantages broadly balance, there is no unfairness.

[2] https://www.gov.im/media/628403/cominscoperesponse.pdf

CARTEL ACTIVITY AND COLLUSION

Price-Fixing

A cartel is an agreement between a group of firms or companies to control or "fix" the prices of goods. A price-fixing agreement may be oral or written, but what matters most is that the agreement will decide what price to charge consumers. It could be as simple as saying, "we will each sell at £10", or more complex by agreeing which firm will charge the lowest price, or by agreeing simultaneous price increases. Price-fixing is one of the most serious anti-competitive actions that a firm can engage in. The presence of several firms in the market creates the illusion of competition, when in reality there is none or at best only a reduced level of competition due to some element of liaison, discussion or information-sharing between the firms which affects prices.

> Example: In 2011, the UK OFT found nine companies guilty of infringing the UK Competition Act 1998 by coordinating price increases of certain dairy products. The supermarkets involved did not communicate directly with each other. This co-ordination was achieved by supermarkets indirectly exchanging retail pricing intentions with each other via the dairy processors - so called A-B-C information exchanges. Further details are available on the archived UK OFT website[3].

Bid-Rigging

Another type of cartel activity is bid-rigging, which involves firms working together to manipulate the outcome of a tender or price comparison process. Firms may take turns to 'win' a bid and can even boost their profits for the work undertaken whilst this continues.

> Example: Firms A, B and C are tendering for work. They decide between themselves who will get the job and this time it is Firm A. Firm A submits a tender which is 10% above the true competitive price and both Firm B and Firm C submit an even higher price. The recipient of the tenders believes that it has a competitive price, but that is an illusion.

Geographic Market Sharing

This behaviour involves firms agreeing which geographic areas to serve and it is anti-competitive as it constitutes an agreement which allows firms to avoid competing. Consumers may well be harmed in the process as they believe they are receiving value for money.

> Example: Firm A and Firm B are two of the largest suppliers of wholesale products on the Island. Rather than competing fiercely with one another on price, they decide that life will be easier for both of them if they came to an agreement not to compete. It is decided that Firm A will serve consumers in the North and West and Firm B will serve consumers in the East and South. The result is that both firms are inclined to reduce their focus on keeping prices to a minimum, or service levels high, as they know that the other will not steal business if prices creep upwards or quality of service falls.

[3] http://webarchive.nationalarchives.gov.uk/20110810175209/http://www.oft.gov.uk/news-and-updates/press/2011/89-11

The most likely way in which a public authority will come into contact with cartel activity, is by being a victim of it.

In order to ensure probity and fairness in the allocation of contracts, public sector bodies seek goods and services through open competition, tenders and price quotations. Those responsible for public sector procurement need to remain vigilant to the risk that the private sector firms which appear to be operating within a competitive process may have rigged the market.

Cartel agreements are usually secret, oral and often informal. By its very nature, cartel activity is difficult to identify, but there are some danger signs:-

- Only one tender document has provided the expected level of detail, whilst the others are merely cobbled together with prices set at a higher level. This could indicate the one tenderer chosen to win the job having costed it, and the other tenderers ensuring that their prices are higher than this.
- Surprising or unexplained failure to return a tender, which may be the result of an agreement between suppliers not to compete with each other. That said, it is important to recognise that firms that work to a high standard will more than likely be the ones facing higher demand from customers. In this respect, failure to return a tender may simply indicate that the contractor was too busy to undertake further work.
- Over a period of time, identifiable patterns emerging as to who is successful in a series of tenders could indicate that the cartel participants are taking turns and engaging in rotation of work.
- Unsuccessful tenderers ending up as sub-contractors to the successful tenderer, without this having been declared at the tender stage.
- When a new business enters the market, there is a sudden drop in prices. This could indicate that the new entrant has reintroduced competition back into the market and the reduction in market power for the cartel participants has weakened their position.
- Prices, rebates or discounts from different suppliers being very similar or identical could indicate that the suppliers are agreeing what to charge. On the other hand, in many markets, a firm's costs will be similar to their competitors' and changes in underlying cost may affect all competitors in the market. Similar prices may also indicate healthy competition as it would be rare to find two products which competed closely to be priced very far apart.

Whilst a public sector body is more likely to be a victim of cartel activity, it could also be a participant and would then itself be subject to competition law.

> Example: Local Authority A meets with private companies operating car parking facilities in the main town centre. The local authority and companies agree on what they believe to be a sensible car parking charge. Private and Government car parking bays are now exacting the same price. This is also collusive behaviour as it removes consumers' ability to "vote with their feet" by removing their custom from a car park if prices rise to a level higher than those consumers are willing to pay. It also removes fair competition between car parks.

ENGAGING COMPETITION LAW?

As mentioned earlier, competition law is complex and this section is designed to help build a picture when competition law should be considered. This Guide is not designed to highlight every situation. In order to assess whether competition law comes into play, it is useful to answer the following questions at an early stage:-

- **Is there a market or the potential for there to be a market?** Given that the outcome which section 8 addresses is the restriction, distortion or prevention of competition and that competition happens in a market, the absence of a market means that there is no engagement of competition law.

  Example: The Department of Health and Social Care provides primary health care through a network of GPs. There is no scope for GPs to compete with each other for business so the system is not a market. Equally it is unlikely that it will become a market. Activity by GPs is therefore unlikely to engage competition law.

  Example: Department A provides tree surgery services both within Government and on a fee basis to the private sector. There are also private companies providing services to domestic and commercial customers. Tree surgery is a market. Activity by Department A is likely to engage competition law.

When considering whether there is the potential for a market, you should also consider what would need to happen to create such a market in the future, if one does not exist right now.

- **Is the purpose of the proposed approach to generate profit?** If it is, then there is a market, because even if there are no other participants at present there is clear commercial potential.

- **If there is a market, does the proposed approach contain anything which might be considered an anti-competitive practice?** This Guide summarises some of the more significant practices that may be anti-competitive. It is particularly useful to identify whether your proposal involves trading in a mixed market.

  Example: In the last example, Department A provides tree surgery services both within Government and on a fee basis to the private sector. There are also private companies providing services to domestic and commercial customers. There are both public and private sector participants, so it is a mixed market.

- **If the proposed approach involves competing in a mixed market, is that competition fair?** It is important that this question is answered fairly rather than trying to identify why a particular proposed approach might be justified. Arguably,

one of the biggest risks is that the public sector service is benefiting from a hidden subsidy. If the true cost is identified and a reasonable profit margin added, the possibility of competition being unfair is reduced.

- **Does the public body have to bid for contracts?** Any activity in which a public body bids for a contract or participates in a competitive tendering process is a competitive business activity.

Whilst these types of questions remain relevant at all times, they are most effective if asked at an early stage.

IS COMPETITIVE TENDERING COMPULSORY?

Whilst other legislation may place obligations on public authorities to put work or services out to tender (for example, Government Departments and Statutory Boards are bound by the Government's Financial Regulations), there is nothing in the Fair Trading Act 1996 which does so. A public authority is free to make its own decisions regarding whether it wishes to retain services in-house or look at privatisation and outsourcing options. However, if a public authority chooses to put a service out for competition, then the 1996 Act does require the authority to do so in a fair manner.

> Example: During a review of services, Department A decides that it will continue to undertake the repair of fences using its employed staff. That decision does not trigger competition law.
>
> Example: During a review of services, Department A decides that it will negotiate with local authorities to transfer the repair of fences to the local authority for each area. There is no competition as the authority which is to undertake a particular segment of the work is limited to the local authority for the relevant district, so there is no trigger for competition law.
>
> Example: During a review of services, Department A decides that it will put its fencing services out to tender and produces a tender specification. It allows its in-house team to tender for the work. It receives three tenders, all of which are fully compliant with the specification. The lowest tender is from Firm B, whilst the highest price is from the in-house team. It is decided that, to avoid inconvenience (and for no other valid reason, such as quality of work), Department A will give the work to the in-house team. Department A is at risk of engaging competition law, because there is an illusion of competition and Firm B was entitled to a fair outcome from that competition.
>
> Example: During a review of services, Department A decides that it will put its fencing services out to tender. Before it does so, it is approached by its in-house team which proposes to form a new company to carry out the fencing services and use the existing equipment owned by Department A. The in-house team has submitted a tender price which takes into account a fair proportion of the cost of overheads for the work. It is decided to award the contract to the in-house team. Provided that there are safeguards which limit the use of the Department's equipment to its own jobs, there should be no engagement of competition law.

Competition is not just about who provides the lowest price. Competitors may also prevail through quality and service levels. This means that competitive tender outcomes do not always result in the lowest priced company receiving the work. If a company which is not the lowest priced, but does offer assurances to provide the highest quality of work, wins a tender, this can be a competitive outcome.

EXEMPTIONS

In very limited circumstances, it is possible that it may be beneficial to allow a course of conduct that might otherwise be considered to be an anti-competitive practice. Section 8 of the Act allows the Council of Ministers to grant exemptions:-

(2) For the purposes of this Part, a course of conduct does not constitute an anti-competitive practice if it is excluded for those purposes by an order made by the Council of Ministers.

(3) An order under subsection (2) —

(a) may limit the exclusion conferred by it by reference to a particular class of persons or to particular circumstances;

(b) without prejudice to the generality of paragraph (a), may exclude the conduct of any person by reference to the size of his business, whether expressed by reference to turnover, as defined in the order, or to his share of a market, as so defined, or in any other manner; and

(c) shall not have effect unless it is approved by Tynwald.

(4) For the purpose only of enabling the Council of Ministers to establish whether any person's course of conduct is excluded by virtue of any such provision of an order under subsection (2) as is referred to in subsection (3)(a), the order may provide for the application, with appropriate modifications, of paragraph 6 of Schedule 3 (provision of information).

To date, the Council of Ministers has never made an Order under section 8(2), though it is an option that is open if a sufficiently strong business case can be made.

FURTHER INFORMATION

It is appreciated that this is not an easy area of law. The OFT has a small Competition and Pricing Section and, whilst they will happily guide you through the issues and assist you to make an informed decision based on a good understanding of the relevant precedents, they are not in a position to offer an authoritative opinion as to whether a particular proposal is or is not anti-competitive.

In determining whether an activity has the potential to contravene competition law, it may be helpful to consider UK and EU case law. However, if doing so, it must be borne in mind that the Isle of Man operates within its own competition law regime and is not strictly bound by UK and EU rules. Competition law is constantly evolving, as economists and competition lawyers build on past experience to help increase expertise and knowledge in the field. For this reason, it cannot be guaranteed that the outcome of a case today will be the same one reached tomorrow.

The Competition and Pricing Section Team may be contacted at:

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A further source of useful advice about issues relating to the procurement of goods and services by the public sector is the Procurement Division of The Treasury:

Procurement Division
The Treasury
Government Office
Buck's Road
Douglas
Isle of Man
Telephone (01624) 686433
email Treasuryadmin@gov.im

Whilst through this Guide and any additional advice, the OFT will seek to assist in understanding and interpreting the requirements of Part 2 of the Fair Trading Act 1996, neither this Guide nor any additional advice should be taken or understood to represent an authoritative statement of the law and readers are encouraged to seek their own legal advice.

APPENDIX

FURTHER EXAMPLES OF PRACTICES THAT MAY BE ANTI-COMPETITIVE

Exclusive Contracts

An exclusive contract is an arrangement where a supplier enters into an arrangement for a retailer to be the sole vendor of its products. Many exclusive contracts have no negative effect on competition or consumers, but exclusive contracts may be used to prevent competitors from entering the market and, in those circumstances, they can become anti-competitive.

> Example: Garage A is appointed as the Island dealer for Brand B cars. As part of the contract, Brand B will only supply its cars to that dealer. The purpose of this exclusive contract is to ensure that Brand B customers have good sales and service support. This exclusive contract is unlikely to be anti-competitive for two reasons: firstly, a customer may choose to buy any other make of car; secondly, a customer may choose to buy a Brand B car from a dealer in the UK and import it himself.

> Example: Firm A is the sole importer of fresh fish into the Island. Firm B operates a chain of four high quality fish restaurants in key locations around the Island. Firm A and Firm B enter into an arrangement where Firm A will not supply fish to any other specialist fish restaurants and in return Firm B will only purchase from Firm A. Firm C wants to open a new fish restaurant but, because of the arrangement, it cannot obtain supplies from Firm A and it will therefore be faced with the increased difficulty and cost of importing its own fish. The arrangement between Firm A and Firm B has set a barrier to entry for Firm C and may well be anti-competitive.

Tying and Bundling

Bundling is the practice of selling two or more goods available together. Tying is a form of bundling and occurs when a firm makes the sale of one item conditional on the sale of another item, making only the tied items available separately. Many firms engage in tying and bundling (such as bundling razors with razor blades) and this does not concern competition authorities, provided the firm in question is competing within a competitive environment. The main concern with this practice is that it can be used to leverage monopoly power across markets and, when it is, it can become anti-competitive.

> Example: Firm A is the supplier of the leading brand of baked beans which holds a market share of over 80%. Firm A also produces soup, but in the soup market there are many competitors and Firm A has only a 20% market share of soup supply. Firm B is the Island's main supermarket chain with a 75% market share. Firm A agrees to supply beans to Firm B at a discounted price, provided that it also stocks only soups from Firm A. Not only does the arrangement allow Firm B to increase its margins, it limits consumer choice and

reduces competition in the soup market by foreclosing the market to potential competition within the main retailer outlet. This practice is likely to be anti-competitive.

Resale Price Maintenance

Resale price maintenance generally involves a manufacturer imposing restrictions on the minimum price that retailers can charge. The main concerns with resale price maintenance are that it can help to facilitate collusion at the retail level or weaken retail competition.

Example: In March 2014, the UK OFT found a mobility scooter manufacturer (Pride Mobility Products), plus a number of retailers, guilty of infringing the UK Competition Act 1998. The arrangement in question prevented retailers from advertising prices online below Pride's recommended retail price, meaning consumers looking to "shop around" before purchasing would be unlikely to find a cheaper price online and so would pay the recommended retail price, believing this to be a competitive price. The UK OFT concluded that the arrangement limited consumers' ability to compare prices and gain value for money and was therefore deemed anti-competitive. Further details are available on the archived OFT website[4].

Most Favoured Nation Clauses

Most favoured nation clauses involve agreements between firms, which state that the supplier will not offer any other retailer a cheaper price, without also offering that cheaper price to that retailer also. A most favoured nation clause may be used to restrict competition at the retail level, since the supplier is no longer able to offer secret discounts to retailers – the inclination is that prices will remain high. There are several investigations currently taking place in the UK and Europe into the online hotel booking market regarding most favoured nation clauses.

Example: In September 2014, the UK Competition and Markets Authority (CMA) determined that most favoured nation agreements between price comparison websites and private motor insurance providers were anti-competitive. The case led the CMA to distinguish between wide most favoured nation clauses (those that state prices may not be lower on any other price comparison website) and narrow most favoured nation clauses (those that state prices may not be lower on the insurer's own website). The CMA determined that wide most favoured nation clauses restricted competition, as they led to consumers being unable to find cheaper prices on any other price comparison website. As a result, the wide most favoured nation clauses were prohibited. Further details are available on the CMA website[5].

Price Discrimination

Price discrimination involves charging sub-groups of consumers different prices, where the cost of supply is the same. In the majority of cases, price discrimination will be pro-competitive. If price

[4] http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/news-and-updates/press/2014/23-14

[5] https://www.gov.uk/government/news/cma-publishes-final-motor-insurance-order

discrimination were illegal, firms would be forced to charge a single price to all consumers. Price discrimination allows companies to provide the goods or services to a group of consumers who value the product less highly, at a lower price. Without this ability, these consumers would not be served as, in order to reduce any price, prices charged to all consumers would need to fall. In some cases, however, price discrimination may be anti-competitive – particularly if the discrimination is targeted, with the intention of preventing rivals from entering the market.

> Example: Firm A is the monopoly supermarket chain in the island, with one store in each town. Firm B decides to enter the market and sets up two stores, one in Ramsey and one in Douglas. Consumers in these two towns therefore have a choice of where to shop, whereas consumers in other towns do not. Firm A responds to the entry of Firm B by aggressively pricing below cost in Douglas and Ramsey only. Prices in other towns rise slightly so that overall revenues are unchanged for Firm A. Firm B is unable to compete with Firm A's prices and so exits the market. Firm A has successfully managed to maintain its monopoly position in the market by price discrimination only in the areas it faces competition, in order to foreclose it. The approach of Firm A is potentially anti-competitive.

Predatory Pricing

Predatory pricing involves charging a price below cost, with the intention of driving competitors out of the market. Once the competitor has exited the market, the firm can then raise prices above competitive levels or benefit from a monopoly in order to increase profit and recoup the losses incurred during the period of predatory pricing. This behaviour constitutes an anti-competitive practice since it distorts the market structure and has the incentive of abusing monopoly power by charging consumers prices above competitive levels.

> Example: In 2002, the UK OFT found a Scottish Newspaper (Aberdeen Journals) guilty of infringing the UK Competition Act 1980 by deliberately incurring losses on sales of advertising space within its free weekly newspaper, in order to remove its new competitor from the market. By removing competition, they were protecting market share and preventing competitive downward pressure on advertising rates. Further details are available on the archived UK OFT website[6].

[6] https://web.archive.org/web/20030220000343/http://www.oft.gov.uk/News/Press+releases/2002/PN+58-02+OFT+fines+scottish+newspaper+publisher+for+predatory+pricing.htm

Margin Squeeze

When a firm operates as both a manufacturer and retailer, there is potential for it to engage in the practice of the margin squeeze. This usually involves dominant wholesale firms applying pressure on retailers' margins in an attempt to drive them out of the market. It will either involve predatory pricing at the retail level (by pricing below cost) or excessive pricing at the wholesale level (by pricing at higher than competitive prices). This practice can be anti-competitive if it prevents competition from a viable competitor who could bring benefits for consumers.

> Example: Airport A is privately owned and also owns and operates its own airline (Airline A). Airport A is the only airport on the Island, meaning that competing airlines must gain access to slots at the airport in order to provide a rival service to Airline A. Airport A decides to make the price of booking a slot so high that other airlines cannot afford to set up rival airline services, as it is unprofitable. Airline A is now free to operate as a monopoly and charge high prices to Island residents without competition. It has leveraged its market power into the airline market from the airport market. This would almost certainly be considered anti-competitive.

FURTHER READING

Organisation for Economic Co-operation and Development (OECD): *Competition Assessment toolkit*[7]

UK Office of Fair Trading (former): *Competition in Mixed Markets: ensuring competitive neutrality*[8]

UK Office of Fair Trading (former): *Public Bodies and Competition Law*[9]

[7] http://www.oecd.org/daf/competition/45544507.pdf
[8] http://www.oft.gov.uk/shared_oft/economic_research/oft1242.pdf
[9] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284407/OFT1389.pdf