

Chapter 5B

Cost cap for rent-to-own agreements



5B.4 Policies and procedures for establishing benchmarked prices

5B.4.1

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A RTO firm must:

- (1) establish, implement and maintain clear and effective policies and procedures to enable it to establish **benchmark**ed prices under ■ CONC 5B.2.2R, ■ CONC 5B.2.4R and ■ CONC 5B.2.8R;
- (2) set out the policies and procedures in (1) in writing, and have them approved by its *governing body* or *senior personnel*;
- (3) assess and periodically review:
 - (a) the effectiveness of the policies and procedures in (1); and
 - (b) the **RTO firm's** compliance with those policies and procedures and with its obligations under ■ CONC 5B; and
- (4) in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the **RTO firm's** compliance with its obligations.

Obligations in competition law

5B.4.2

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RTO firms are reminded of their obligations to ensure compliance with competition law (including the prohibitions against anti-competitive agreements and abuse of a dominant position in Chapters 1 and 2 of the Competition Act 1998 and the criminal cartel offence in Section 188 of the Enterprise Act 2002 as amended by the Enterprise and Regulatory Reform Act 2013). Those obligations include:

- (1) not entering into any agreements with other firms where the agreement has as its object or effect an appreciable prevention, restriction or distortion of competition – for example to agree sale prices or to allocate customers. For example, if a **RTO firm** director called another **RTO firm** or a non-**RTO firm** and agreed to sell their products at a certain price, this would be restrictive of competition and illegal. The individuals involved could also be prosecuted for the criminal cartel offence; and
- (2) not disclosing to, or accepting from, competitors any commercially sensitive information such as pricing or price planning, customer or market information or company strategy. For example, if a **RTO firm's** employee met or called another **RTO firm's** employee to find out any current or future pricing information whatsoever, that was not otherwise publicly available, whether for the purpose of attempting

to fulfil any obligation under these *rules* or not, that could be illegal anti-competitive activity, even if the recipient of the information stayed silent.

5B.4.3

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RTO firms should also note the following points.

- (1) The disclosure or receipt of commercially sensitive information may amount to a breach of competition law and could lead to infringement findings and fines not only in relation to the firm disclosing the information but also in relation to other firms receiving the information.
- (2) A person commits the criminal cartel offence if they agree with one or more others to make or implement (or cause to be made or implemented) certain prohibited cartel arrangements relating to two or more businesses, namely price fixing, market sharing, bid-rigging, and limiting output. The maximum penalty on conviction for the criminal cartel offence is five years imprisonment and/or an unlimited fine.
- (3) It is the responsibility of each firm to assess its own position under competition law (for example by taking its own legal advice) and to ensure all its staff are compliant with competition law and in particular that they know what is, and is not, lawful practice.
- (4) Relevant guidance on competition law has been published by the Competition and Markets Authority.

[**Note:** for example, see:

Competition Law Risk a Short Guide at:

<https://www.gov.uk/government/publications/competition-law-risk-a-short-guide>

Limiting risk in relation to competitors' information at:

<https://www.gov.uk/government/publications/limiting-risk-in-relation-to-competitors-information>

Quick Guide to Complying with Competition Law at: <https://www.gov.uk/government/publications/how-small-businesses-can-comply-with-competition-law>.]