

Frequently asked questions

The University isn't like a commercial business - we don't have real competitors do we?

Yes, the University can have all sorts of competitors. Other education providers, public and private, can be competitors. If we are submitting a tender, other tenderers can be competitors. If we develop and sell products and services, then other businesses can be competitors. It all depends on the circumstances - but in general terms, the University is as subject to competition regulation as any other 'business'.

Where do I get advice about this stuff?

You can look at the Legal Services Web Page for basic materials at <http://www.latrobe.edu.au/legalservices> or contact Paul Jeffery, Senior Solicitor on Ext. 1595 for assistance. [The Australian Competition and Consumer Commission](#) website also has publications you might find useful.

Price Fixing 1: Can I set my prices based on what my competitors charge?

Yes, but you must not have an arrangement or understanding with your competitor as to price. Keep a record of why you made the pricing decision so you can produce it if anyone accuses you of price-fixing.

Price Fixing 2: How can I find out what my competitors are charging?

By any form of market research which does not constitute an arrangement or understanding with your competitors. Do not ask your competitor to send you a price list. Do not send them yours.

Price Fixing 3: If I am at a trade association meeting (eg: Universities Australia, Council of Australian University Libraries, Association of Heads of Australian University Colleges and Halls, Australian Booksellers Association) or some other type of meeting of competitors and the subject of prices is raised, what should I do?

Head for the nearest door, fire escape or window. Do not stay at the meeting under any circumstances. One book even recommends you spill wine on someone as you leave - this way and everyone will remember that you departed in a hurry!

Price Fixing 4: Is it okay to make pricing arrangements so long as the arrangements are not written down, or legally binding?

No. Any type of pricing arrangements, no matter how informal and whether or not you intend to abide by them, are illegal.

Price Fixing 5: Can competitors exchange any price information?

Competitors should be careful about all exchanges of price information. Some historical information (such as a historical survey or prices charged over the last year) can be exchanged provided a number of safeguards are observed. Also, information about how to calculate your own costs is fine. Please seek advice if you are intending to exchange any of this sort of information.

Price Fixing 6: Can I personally get into trouble for price-fixing?

Yes. Not only can the University be subject to the threat of prosecution and large penalties in excess of \$10 million, price fixing is now a criminal offence and persons involved in price fixing can be subject to criminal penalties, including jail terms of up to 10 years. Individuals involved in price fixing can also be exposed to penalties of up to \$500,000 per breach.

Resale Price Maintenance 1: Can't the University even recommend a price to its reseller?

Yes. However, the danger with recommending prices is that, by the actions of staff, they may be converted from a 'recommended price' into a 'specified price'. It is illegal to impose a specified price and not allow the reseller to sell below it.

Resale Price Maintenance 2: Our product is an 'image' product and we market it with a recommended price. It is important to the University that the product is not discounted because this ruins the market image. What can I do to prevent the image of the product being ruined?

Perhaps nothing. Consult Legal Services to see if there is any other way of protecting this product.

Resale Price Maintenance 3: Can I set a maximum price?

Yes.

Resale Price Maintenance 4: Can related companies agree on resale prices?

No.

Third line forcing 1: I am in charge of catering for University venues which are hired out for weddings, conferences and other events. I have been told it is illegal for me to use outside caterers as this restricts the customer's freedom to use the caterer of their choice. Since the caterer will be using the University's property and equipment, and I have a group I know and trust, I want to use the ones I know.

It is legal to use your choice of caterers provided that the customer pays for the whole of the service, including hire and catering. It is illegal for you to offer the venue on the condition that the customer independently hires and pays for a caterer nominated by you. This may seem to be a very technical difference, but it is still the difference between a legal arrangement and an illegal one. If you are not sure, contact Legal Services.

Third line forcing 2: I run a visual arts course and I want to make sure the students get the possible deal on film stock. I have negotiated a great discount, and I want to make sure that all the students take advantage of it. Can I do this?

Be careful - this could be illegal third line forcing. The students must be able to buy their film from wherever they like. You can inform them of the discount you have negotiated, and they can make up their own minds. If you have the funds, your School might consider buying film stock and then selling it to students cheaply.

Misleading conduct 1: Isn't it true that the law is 'let the buyer beware' (caveat emptor)?

No. The Act has changed this old principle of law.

Misleading conduct 2: How will I know if what I say or do is 'misleading or deceptive'?

You need to ask yourself (or someone else) whether the conduct or statement is the truth and creates a truthful impression.

Misleading conduct 3: What if I make a statement or about something in the future? What happens to me if it doesn't go as planned?

It is not an automatic disaster. You would have to justify that the statement you made was based on reasonable grounds. If you can't do this, then your statement was misleading.