



Competition issues in education

The Department of Business Innovation and Skills (BIS) recently published a research paper, “Competition Issues in the Further Education Sector” (www.gov.uk/government/publications/furthereducation-sector-competition-issues). The BIS paper is primarily aimed at Further Education (FE) colleges and training organisations. It offers practical guidance on competition issues highlighting how the market should operate and illustrating potential pitfalls for educational providers, particularly in light of recent reform and liberalisation of the FE sector.

FE colleges tend to operate in a local catchment area and serve their local communities. However, the guidance can also be applied more widely to schools, universities, colleges and other providers operating in the Higher Education (HE) sector.

Potential pitfalls

Whilst schools, colleges and universities may enjoy charitable status, this does not mean that they are not subject to competition law. This was clearly illustrated in 2006, when the OFT imposed fines on 50 independent schools for exchanging detailed fee information in breach of competition law¹.

The BIS paper identifies practices that education providers must adopt to avoid breaching competition law, including:

- agreeing with other providers the fees they will charge;
- circulating to other providers information about their proposed fees;
- agreeing with other providers the number of training places that they will offer in order to restrict supply; or
- engaging in conduct that restricts or prevents a new provider from entering the market

It cautions against setting up delivery models which may create a dominant position (e.g. by merging providers) or lead to an abuse of dominance in a local market (e.g. by excessive course fees, unfairly low course fees to stop a new provider entering the market, or offering discounts for multiple courses that prevent students from switching provider).

Good practice

In order to avoid such pitfalls, the BIS paper provides practical steps to support the development of competition and avoid FE providers infringing competition law, by encouraging providers to:

The BIS paper identifies practices that education providers must adopt to avoid breaching competition law, including:

- identify and respond to demand from customers and the local community (students, employers, local and national stakeholders and funding agencies);
- regularly review course fees to ensure they are competitive,
- including monitoring other organisations’ fees and testing with students how much they are willing to pay;
- consider the extent to which new delivery models may hinder student switching, restrict choice, reduce innovation or harm teaching quality; or
- ensure procurement practices are open, transparent and competitive. In particular, BIS recommends sub-contracting arrangements as a way of assisting new entrants to enter the sector

Underlying this advice is an emphasis on students being aware of their choices and ability to switch provider, greater partnership with stakeholders and diversity of supply and flexibility in FE provision.

Comment

It is clear that educational organisations are operating in a new and testing environment. With greater freedom comes a responsibility to act lawfully and competitively.

Whilst the guidance does not introduce new competition concepts, it explains how these concepts apply to the FE sector and provides examples which hopefully providers will find relevant and understandable.

The Office of Fair Trading has recently increased its focus on the education sector, partly driven by government demands

¹ See: “OFT issues final decision and imposes penalties in independent schools investigation” (<http://www.of.gov.uk/news-and-updates/press/2006/166-06>), 23 November 2006.

for greater competition in public service provision. It recently made a call for information on undergraduate higher education in England which is looking at how effectively universities compete². This could lead to a full investigation into competition in the HE sector.

Providers should ensure that they have competition compliance procedures in place and consider the impact of competition law on their commercial strategies and arrangements.

² See: "OFT launches call for information on undergraduate higher education in England" (<http://www.ofc.gov.uk/news-and-updates/press/2013/73-13>), 22 October 2013.

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