

From: Ann Pope  
*CMA Acting Executive Director for  
Enforcement*

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Dear Sir/Madam,

### **CMA letter to the property industry on competition law**

In May 2015, the Competition and Markets Authority (CMA) found that an association of estate and lettings agents, three of its members and a newspaper publisher had broken competition law by agreeing to restrict the advertising of fees and discounts in a local newspaper. Each of the companies admitted that it had broken the law and they were collectively fined over £735,000.<sup>1</sup>

The CMA has sent warning letters to a number of estate and lettings agents that it has reasonable grounds for suspecting have been connected with this association and consequently may have broken the law. In addition, we are issuing this open letter to the property industry to raise awareness that this type of activity is illegal and that businesses may face significant fines if they engage in it.

### **What you need to know**

Competition law exists to protect businesses and consumers from anti-competitive behaviour. Where businesses enter into agreements that restrict their ability to compete with each other, this can lead to artificially inflated prices, reduced innovation and limited consumer choice. Overall, reduced competition can lead to a lower quality of service.

Consumers drive competition where they are able to shop around through access to readily available and accurate information about the products or services they are seeking and the various offers available in the market. Therefore, the provision of clear and accurate information on prices, products and services plays an important role in driving competition between businesses as it encourages and empowers consumers to seek out the best offers available for a particular product or service, which in turn drives sellers to be more competitive.

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<sup>1</sup> Further information on the investigation can be found on the CMA's [case page](#).

In this case, the members of the trade association agreed that they would not advertise fees or make any reference to their fees or discounts in a local newspaper, and certain members also agreed to prevent other agents from advertising or referring to their fees or discounts in that newspaper. Under pressure from certain agents, the newspaper agreed to reject any advertisements from agents that contained references to fees or discounts.

The CMA found that agreeing not to advertise estate or lettings agent fees or discounts, or to prevent other agents from advertising fees or discounts, can make it harder for property owners to assess which agents offer the best value for money or the best service. This can reduce price competition between competing agents and contribute to keeping estate and lettings agents' fees artificially high. In addition, it may make it harder for new estate or lettings agents to enter the market and compete effectively with established businesses.

The CMA would like to highlight three important points from this case:

- **Agreeing with your competitors to restrict the advertising of fees is likely to be unlawful.** The advertising of prices is a fundamental way for businesses to compete with one another and attract new customers. A business can choose what price to charge and whether or not to advertise its prices, but this decision must be taken independently of its competitors or other companies such as newspapers or property portals.
- **Trade associations can break competition law.** Whilst trade associations can offer many legitimate benefits, where they take actions that limit the commercial freedom of their members, for example by restricting the form or content of their advertising, this can risk breaking competition law. The association, as well as its members, can be fined for breaking competition law, and members cannot avoid liability by hiding behind the association.
- **The consequences for breaking competition law can be severe.** Businesses that are found to have broken competition law can be fined up to 10% of their annual worldwide turnover and company directors can be disqualified for up to 15 years where their conduct in relation to such a breach makes them unfit to be concerned in the management of a company. In addition, individuals involved in certain very serious cartel activity, such as price-fixing, may be found guilty of the criminal cartel offence and could go to prison for up to five years and/or have to pay an unlimited fine.

### **How to find out more**

The CMA is keen to work with businesses across the property industry to explain the implications of this case and ensure they understand what they need to do to comply

with the law and can recognise where they may be at risk of breaking it. The CMA is also keen to promote the lessons from this case to trade associations and their members so that they understand the particular risks that they face when attending meetings or conferences.

There is a range of guidance on the CMA's website to help businesses comply with the law, including an at-a-glance [60-second guide](#) on dos and don'ts for trade associations, as well as a one-page summary of this case. Having an effective compliance programme can help businesses identify if they are at risk of breaking the law and take steps to remedy the situation. The CMA has [published guidance](#) on effective compliance programmes.

If you believe that you or your business may have been involved in an anti-competitive agreement, then you can find information on how to report this [on the CMA's webpages](#), or by contacting us on 0203 738 6000. If you think you've been involved in a cartel, then you may even benefit from [lenient treatment](#) by coming forward to the CMA.

We hope that this letter helps you understand how competition law applies to your business and how to make sure you are competing fairly.

Yours faithfully,

Ann Pope  
*CMA Acting Executive Director for Enforcement*