

From: Ann Pope

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Dear Sir/Madam

CMA open letter to estate agents on choosing online property portals

The Competition and Markets Authority (CMA) is writing to estate agents to remind them that, when an estate agent makes a commercial decision about its choice of online property portals, the law requires that it makes that decision without colluding with estate agents that are its competitors.

The CMA is taking this step after becoming aware that estate agents in some local areas may have made a collective decision to join the OnTheMarket portal and, at the same time, to remove their business from other portals that compete with OnTheMarket.¹

The CMA has already been in contact with some agents and trade associations in this regard. However, given some evidence that such collusion may be happening between estate agents in more than one local area, we are issuing this open letter to all estate agents, advising them that this kind of conduct may break competition law and that agents engaging in it could therefore face significant fines. Separately, the CMA will be contacting individual estate agents it suspects may have been involved in this potentially anti-competitive collusion.

What estate agents need to know

The number and identity of online portals on which estate agents list their properties is an important aspect of competition between estate agents, and the choice of portal should be decided independently and not agreed with competitors.

Competition law tackles agreements, arrangements or conduct that weaken competition or aim to do so. Effective competition benefits consumers and businesses through downward pressures on price and through spurs to increased quality, innovation and efficiency. Where estate agents enter into agreements or

¹ The CMA has no reason to write to OnTheMarket in this connection at this time.

arrangements that restrict competition between them, this can lead to artificially inflated prices, reduced service quality and innovation and limited consumer choice.

If an estate agent discusses with its competitors its commercial intentions or agrees to make joint decisions with them (such as which supplier or portal to go with), this may break competition law.

The CMA would like to highlight three important points for estate agents in this context:

- (1) Jointly agreeing with your competitors to restrict which suppliers you will deal with is likely in many cases to be unlawful.** The decision as to whether an estate agent will or will not use the services of a particular property portal must be determined by that estate agent alone (or by its parent company), and not by, or as a result of, collusion or discussions with competing estate agents.
- (2) The CMA continues to monitor the conduct of estate agents.** This follows the CMA's decision in 2015 that an arrangement on the [advertising of estate and lettings agents' fees](#) breached competition law, and the CMA's subsequent competition law [compliance work with the property industry](#).
- (3) The consequences of breaking competition law can be severe.** Estate agents that are found to have breached competition law can be fined up to 10% of their annual worldwide turnover, and directors of such companies can be disqualified from UK company directorships 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 agreements between estate agents to fix prices or allocate markets, may be prosecuted under the criminal cartel offence and, if convicted, 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 estate agents and other businesses across the property industry to 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.

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. There is a range of material on the CMA's website to help businesses comply with the law, including:

- a series of [animated videos explaining different types of anti-competitive practice](#) that can be illegal, and

- guidance on [effective compliance programmes](#).

If you believe that you or your business may have been involved in an anti-competitive agreement or arrangement, then you can find information on how to report this [on the CMA's website](#),² or by contacting us on 020 3738 6000. If you think you have been involved in a cartel, then you may even benefit from [lenient treatment](#)³ 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
Senior Director, Antitrust

² <https://www.gov.uk/government/publications/report-anti-competitive-or-market-issues-to-the-cma>

³ <https://www.gov.uk/cartels-confess-and-apply-for-leniency>