

## **Statement regarding the CMA’s decision to close an investigation into a suspected breach of competition law by some price comparison websites that offer energy tariff comparisons in relation to paid online search advertising on the grounds of administrative priorities**

**Parties:** The names of the parties to the investigation have not been published.

**Case reference:** 50332

**Case closed:** October 2016.

**Issue:** Suspected restrictions in relation to paid online search advertising.

**Relevant provision:** Chapter I of the Competition Act 1998 (CA98), Article 101 of the Treaty on the Functioning of the European Union (Article 101 TFEU).

### **Summary of closure decision**

The CMA has closed its investigation into a suspected breach of competition law by some price comparison websites that offer energy tariff comparisons in relation to paid online search advertising, on the grounds of administrative priorities. The decision to close the investigation on administrative priority grounds does not amount to a statement as to whether any party to the investigation infringed competition law, nor should any inference be made to that effect.

The original investigation was opened by the Gas and Electricity Markets Authority (referred to here as ‘Ofgem’) in October 2015. The investigation was under Chapter I CA98 and Article 101 TFEU. Ofgem transferred the investigation to the CMA on 14 June 2016 and the CMA opened a formal investigation on that date. Following a period of evidence gathering and assessment, the CMA considered whether to proceed with the investigation in light of its Prioritisation Principles.<sup>1</sup>

The CMA has decided that it is no longer an administrative priority, at this time, to continue an investigation under the CA98 in respect of this case. In reaching its prioritisation decision, the CMA has noted among other things that remedies from the

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<sup>1</sup> [CMA Prioritisation Principles](#) (CMA16).

Energy Market Investigation, which Ofgem is in the process of implementing,<sup>2</sup> seek to change the nature, and increase the level, of competition between price comparison websites in the energy markets. The CMA recognises the important role that price comparison websites perform in the energy markets and the potential detrimental impact on consumers if price comparison websites were restricted from operating effectively. Ofgem will be keeping these markets under review as they evolve.

Moreover, the CMA recently launched a [market study](#) into digital comparison tools. This will be an opportunity for the CMA to explore further the nature of competition between price comparison websites and their relationship with service providers. The CMA may revisit its priorities for further antitrust enforcement action in this area in light of further information of which it becomes aware, including what emerges in the course of this market study.

## **Potential competition concerns regarding restrictions on bidding behaviour in relation to paid online search advertising**

Although the CMA has decided not to continue with this investigation at the present time, the CMA considers that in some circumstances, agreements restricting bidding behaviour in paid online search advertising may have harmful effects on competition. This is particularly the case where one or more similar agreements include parties that collectively represent a material share of the relevant markets and, in the context of brand bidding restrictions, as a result of negative matching obligations in relation to brand terms which an advertiser would not negatively match but for the agreement.

Price comparison websites and other digital comparison tools, and the suppliers that appear on them, should ensure that their existing and future agreements which include provisions relating to bidding behaviour for search terms are, and remain, compliant with competition law.

Businesses are also encouraged to [contact](#) the digital comparison tools market study team if they are aware of possible behaviour or agreements affecting the bidding behaviour of price comparison websites in paid online search advertising which may hamper effective competition.

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<sup>2</sup> See in particular Ofgem's [Confidence Code Review 2016](#). Other remedies which may contribute to increasing the level of competition between PCWs (and energy suppliers) include for instance the [removal of certain Retail Market Review Simpler Tariff Choices rules](#) and the decision to give PCWs access upon request to the ECOES and DES database on reasonable terms and subject to the satisfaction of reasonable access conditions (see the [Energy Market Investigation Final Report](#), paragraph 20.24).