

***Auction services –***

**Competition and Markets Authority investigation  
under the Competition Act 1998**

**Decision to accept binding commitments offered by  
ATG Media in relation to live online bidding auction  
platform services**

Case number 50408

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## Contents

	<i>Page</i>
1. Introduction .....	2
2. Background.....	4
3. The CMA's competition concerns .....	12
4. The CMA's assessment of the commitments.....	17
5. The CMA's decision .....	22
Annex A - Commitments given by ATG Media to the CMA .....	23
Annex B - Summary of representations made in response to the CMA's notice of intention to accept commitments, and the CMA's consideration of them .....	29

## 1. Introduction

- 1.1 In this decision, made under section 31A of the Competition Act 1998 (the ‘Act’), the CMA accepts the binding commitments offered by Turner Topco Limited,<sup>1</sup> ATG Media Holdings Limited<sup>2</sup>, ATG Media Limited<sup>3</sup> and Metropress Limited<sup>4</sup> (together, ‘ATG Media’) as set out in Annex A (the ‘Commitments’).
- 1.2 As a result of accepting the Commitments, the CMA is discontinuing its investigation into whether or not section 2(1) of the Act (the ‘Chapter I prohibition’) or Article 101 of the Treaty on the Functioning of the European Union (‘TFEU’), or both, as well as whether or not section 18(1) of the Act (the ‘Chapter II prohibition’) or Article 102 TFEU, or both, have been infringed by ATG Media in relation to the supply of live online bidding (‘LOB’) auction platform services. The CMA has made no final decision in that investigation on whether there have been any such infringements.
- 1.3 Acceptance of the Commitments does not prevent the CMA from taking any action in relation to competition concerns which are not addressed by the Commitments. Moreover, acceptance of the Commitments does not prevent the CMA from continuing the investigation, making an infringement decision or giving a direction in circumstances where the CMA has reasonable grounds for:
- (a) believing that there has been a material change of circumstances since the Commitments were accepted;
  - (b) suspecting that a person has failed to adhere to one or more of the terms of the Commitments; or
  - (c) suspecting that information which led the CMA to accept the Commitments was incomplete, false or misleading in a material particular.<sup>5</sup>
- 1.4 The remainder of this document is structured as follows:
- (a) Chapter 2 sets out the relevant background, including details of the CMA’s investigation; the undertaking under investigation; the

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<sup>1</sup> Company number: 08968154, registered in the UK.

<sup>2</sup> Company number: 06521301, registered in the UK.

<sup>3</sup> Company number: 06636047, registered in the UK.

<sup>4</sup> Company number: 01010311, registered in the UK.

<sup>5</sup> Section 31B of the Competition Act 1998.

characteristics of the relevant services; and ATG Media's relevant conduct and arrangements with auction houses.

- (b) Chapter 3 sets out the CMA's competition concerns in relation to ATG Media's conduct.
- (c) Chapter 4 describes the Commitments, summarises the representations made in response to the CMA's notice of intention to accept commitments published on 30 May 2017 and the CMA's consideration of them.
- (d) Chapter 5 sets out the CMA's decision to accept the Commitments and to make them binding on ATG Media.

## 2. Background

### The CMA's investigation

- 2.1 In August and September 2016, the CMA received two complaints<sup>6</sup> alleging that ATG Media had engaged in anti-competitive conduct in relation to the provision of LOB auction platform services. Both complaints alleged that ATG Media had imposed on certain of its auction house customers restrictions that prevented them from using a competing LOB auction platform that offered bidders a lower price. This included requiring auction houses to offer 'no less favourable terms' to bidders introduced by ATG Media's LOB auction platform than the terms that the auction house offered to bidders using a competing third party LOB auction platform or the auction house's own LOB auction platform.
- 2.2 On 22 November 2016, the CMA commenced a formal investigation under the Act, having determined that it had reasonable grounds for suspecting that ATG's practices and the agreements it has entered into with auction house customers may have as their object or effect an appreciable prevention, restriction or distortion of competition within the UK and the EU, and may constitute an abuse of dominance under the Chapter II prohibition and Article 102 TFEU.
- 2.3 In particular, the CMA was concerned that the following restrictions agreed or required by ATG Media in its dealings with certain of its auction house customers may (i) have an exclusionary effect and be capable of foreclosing competition or (ii) soften price competition between competing LOB auction platforms (or both):
- (a) exclusivity conditions;
  - (b) clauses that require the auction house concerned to offer 'no less favourable terms' to bidders using ATG Media's LOB auction platform than those available to bidders using a competing LOB auction platform or the auction house's own LOB auction platform (referred to as 'NLFT clauses'); and
  - (c) restrictions on the advertising and promotion, by the auction house concerned, of LOB auction platform service providers that compete with ATG Media.

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<sup>6</sup> One complainant was granted formal complainant status.

- 2.4 In the course of the investigation, the CMA considered these matters and undertook a number of investigative steps to gather evidence from ATG Media and from third parties, including auction house customers and other providers of LOB auction platform services. These steps included an inspection at ATG Media's premises under section 27 of the Act, sending formal notices requiring documents and information under section 26 of the Act, and obtaining information voluntarily.
- 2.5 In November 2016, the CMA received an application requesting the CMA to give interim measures directions to ATG Media under section 35 of the Act, for the purpose of preventing significant damage to the applicant while the CMA completed its investigation.<sup>7</sup> The CMA gave serious consideration to the application; however, shortly before the CMA was to make its final decision on whether to give such interim measures directions, ATG Media indicated its intention to offer commitments to address the CMA's competition concerns. The acceptance of the Commitments, addressing the competition concerns which the CMA has identified, now renders superfluous the need for the CMA to make a decision in relation to the interim measures application.
- 2.6 On 8 May 2017, ATG Media submitted, without prejudice to its position that it has not infringed the Act or the TFEU,<sup>8</sup> a draft commitments proposal to the CMA; this draft was revised following discussion with the CMA and converted into an offer of commitments from ATG Media to the CMA. On 30 May 2017 the CMA issued a notice setting out its provisional intention to accept the commitments offered and inviting those likely to be affected by the proposed commitments to make representations on them. The CMA also contacted 51 industry participants by email to inform them of the proposed commitments and the opportunity to make representations on them. The CMA received 12 representations commenting on the notice of intention to accept commitments. The representations, and the CMA's consideration of them, are summarised in Annex B.
- 2.7 The CMA has given full consideration to all the relevant material in its possession, including the representations received following the CMA's notice of intention to accept commitments, and considers for the reasons set out in this document that the Commitments (in the terms set out in Annex A) address its competition concerns in this case. The CMA has therefore decided

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<sup>7</sup> Under section 35 of the Act, the CMA can require a business to comply with temporary directions (interim measures) where: (i) the investigation has been started but not yet concluded; and (ii) the CMA considers it necessary to act urgently either to prevent significant damage to a person or category of persons, or to protect the public interest. In giving interim measures directions, the CMA can act on its own initiative or in response to a request to do so.

<sup>8</sup> The offering of the commitments does not constitute an admission by ATG Media of an infringement of the Chapter I prohibition or of the Chapter II prohibition or of Article 101 TFEU or of Article 102 TFEU.

to accept the Commitments in those terms. Accordingly, the CMA is discontinuing this investigation, with no decision made on whether the relevant prohibitions in the Act or the TFEU have been infringed.

### **The undertaking under investigation**

- 2.8 The undertaking under investigation, defined as ‘ATG Media’ in this document, comprises Turner Topco Limited, ATG Media Holdings Limited, ATG Media Limited and Metropress Limited, which are private limited companies incorporated in England and Wales. ATG Media’s reported group revenue for the year ended 30 September 2015 was £18.9 million.
- 2.9 ATG Media operates online auction platforms in the UK, in the rest of Europe and in the United States and Canada, which includes providing LOB online auction platform services to auction houses. These services allow bidders to bid in real time in a ‘live’ auction taking place at a physical site operated by an auction house.
- 2.10 ATG Media has operated LOB online auction platforms since 2006. It currently operates three LOB online auction platforms in the UK. These are:
- (a) the-saleroom.com (‘The Saleroom’), which focuses on auctions of antiques, art and other collectables;
  - (b) BidSpotter.co.uk (‘BidSpotter’), which focuses on industrial and insolvency auctions; and
  - (c) i-bidder.com (‘i-bidder’), which focuses on auctions of construction and agricultural equipment, catering equipment and consumer goods.
- 2.11 In addition, in 2014 ATG Media acquired Auction Evo, a company that supplied cloud-based auction management software to auction houses, and subsequently launched a new auction management software product, GAP Office.
- 2.12 ATG Media also operates an auction catalogue printing business (both online and hard copy) and publishes the Antiques Trade Gazette, which is a weekly publication (available online and in hard copy) that is targeted at people interested in fine art and antiques, founded in 1971.<sup>9</sup>

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<sup>9</sup> See: [www.antiquestradegazette.com](http://www.antiquestradegazette.com).



## **The characteristics of LOB auction platform services**

2.13 This section sets out the CMA's view of the key characteristics of the market in which suppliers of LOB auction platform services operate and a description of ATG Media's conduct and arrangements with auction houses. The purpose of this section is therefore to provide context for chapter 3, which describes the CMA's assessment of the relevant market and its competition concerns.

### ***LOB auction platform services***

2.14 Suppliers of LOB auction platform services, including ATG Media, allow bidders to bid in real time in a 'live' auction taking place at a physical site operated by an auction house.<sup>10</sup>

2.15 The LOB auction platforms are online aggregators that host live auctions run by multiple auction houses. They aim to attract (i) individual bidders to bid on their platforms, and (ii) auction houses to list live auctions for those bidders to bid in. Previously, live bidding in a physical auction was available only by attending in person or by telephone.<sup>11</sup>

2.16 In advance of an auction, prospective bidders can browse catalogues of auctions that are listed on an LOB auction platform and search for items by auction house or by type of item. If a bidder identifies an auction in which the bidder would like to participate, the bidder can bid online in real time, with some LOB auction platform suppliers offering video or audio feeds that broadcast images and sounds from the physical auction room. The staff in the physical auction room will announce bids received from the room, from telephone bidders and from bidders using LOB auction platforms to allow each bidder to adjust its bid based on other bids received. From the perspective of an auction house, the ability for bidders to bid in its auctions using an LOB online auction platform allows the auction to reach a larger bidder customer base than if the bidders were only attending in person or by telephone.

2.17 In general, LOB auction platforms generate revenues in two ways: (i) by charging auction houses a regular subscription fee or listing fee for listing their live auctions on the platform, and (ii) by charging either the bidder or the auction house a commission on each item sold through the platform during

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<sup>10</sup> Online bidding in a 'live' auction can be contrasted to online bidding in a 'timed' auction, which take place without an auctioneer calling the sale and bidders place bids at any time during a defined period by entering the maximum amount they are prepared to pay for a particular lot.

<sup>11</sup> It is also possible to bid in advance by leaving a bid with the auctioneer or LOB auction platform before the start of the auction. This is called commission bidding.

the live auction (in practice, where the commission is charged to the auction house it is typically passed on by the auction house to the bidder).

- 2.18 By way of example, in the case of a bidder using ATG Media's LOB auction platform, The Saleroom, if the bidder is successful the auction house invoices the bidder for all monies owed by the bidder, including the hammer price of the auctioned item, the auction house's commission and the commission charged by the LOB auction platform supplier. The auction house then passes on the online bidding commission to ATG Media.

### ***Two-sided nature of the market***

- 2.19 Providers of LOB auction platforms operate by allowing the development of a two-sided market – bringing together bidders and auction houses. Such providers compete for customers on both 'sides' of the market, ie they compete for registrations by individual bidders as well as for auction houses to list live auctions for those bidders to bid in. In that context, there are 'network effects' that arise from the fact that the greater the number of registered bidders on a particular platform, the more attractive it is for an auction house to list its live auctions with that platform and, similarly, the greater the number (and quality) of auction houses listing live auctions on the platform, the more attractive it is for bidders to register with the platform.

### ***Other LOB auction platforms***

- 2.20 Other LOB auction platforms active in the UK include:
- (a) BidonThis,<sup>12</sup> which launched in 2015 and has a customer base of UK-based auction houses;
  - (b) Easy Live Auctions,<sup>13</sup> which launched in 2012, provides services to auction houses predominantly in the UK, but also has auction house customers based in Ireland and in Australia;
  - (c) Invaluable,<sup>14</sup> which is a US-based auction platform that began providing UK auction houses with LOB auction platform services in 2007;

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<sup>12</sup> Operates [www.bidonthis.co.uk](http://www.bidonthis.co.uk).

<sup>13</sup> Operates [www.easyliveauction.com](http://www.easyliveauction.com).

<sup>14</sup> Platform can be accessed via [www.invaluable.com](http://www.invaluable.com) and [www.invaluable.co.uk](http://www.invaluable.co.uk).

- (d) Live Auctioneers,<sup>15</sup> which is a US-based auction platform that launched in 2002 and also provides services to UK-based auction houses;
- (e) Proxibid,<sup>16</sup> which is a US-based platform that launched in 2001 and started offering services to UK auction houses in 2014;
- (f) The Auction Room,<sup>17</sup> which launched in May 2016 and currently provides LOB auction platform services to UK auction houses; and
- (g) UK Auctioneers,<sup>18</sup> which launched in 1999 and provides LOB auction platform services to auction houses mainly in the UK, but also has a small number of auction house customers based in Ireland.

2.21 The CMA asked ATG Media’s competitors to comment on their positioning and the extent to which they compete with ATG Media and other providers. In general, respondents described ATG Media as the market leader, and while they identified four or five other platforms active in the UK, they also stated that these had different positioning and were often used by auction houses alongside ATG Media’s platforms rather than as a substitute for ATG Media platforms.

### ***Auction house operated LOB auction platforms***

2.22 A small number of larger auction houses, such as Christie’s and Sotheby’s, as well as a few smaller auction houses, have developed their own live online bidding capability – that is, they self-supply LOB auction platform services – generally using a third party software supplier to supply the technology (known as a ‘white label’ solution in the industry). However, a large number of auction houses in the UK use a third party LOB auction platform to enable online bidding, even where they also operate their own online bidding capability.

## **ATG Media’s relevant conduct and arrangements with auction houses**

### ***Exclusivity***

2.23 The evidence obtained by the CMA shows that ATG Media encouraged a significant number of its customers using The Saleroom, BidSpotter and i-bidder to accept ATG Media as its exclusive supplier of LOB auction platform

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<sup>15</sup> Operates [www.liveauctioneers.com](http://www.liveauctioneers.com).

<sup>16</sup> Operates [www.proxibid.com](http://www.proxibid.com).

<sup>17</sup> Operates [www.theauctionroom.com](http://www.theauctionroom.com).

<sup>18</sup> Operates [www.ukauctioneers.com](http://www.ukauctioneers.com).

services for the duration of their agreement with ATG Media<sup>19</sup> in exchange for discounts or other incentives such as free access to mirrored bidding.<sup>20</sup> The evidence indicates that agreeing exclusive terms with customers was one of ATG Media's commercial objectives and was used in response to competitive threats.

***'No less favourable terms' clause***

- 2.24 From at least July 2016, ATG Media sought to agree the NLFT clause with 19 auction houses that are customers of The Saleroom. The evidence obtained by the CMA indicates that at least some auction houses (11) agreed to the NLFT clause.
- 2.25 The NLFT clause requires auction houses to offer 'no less favourable terms' to bidders on The Saleroom than those available to bidders using a competing third party LOB auction platform or the auction house's own LOB auction platform. In particular, if an auction house wishes to offer a competing platform alongside The Saleroom that charges a lower bidder commission, that auction house must also charge bidders using The Saleroom the same lower commission. The CMA therefore considers that the NLFT clause operates as a form of 'most favoured nation' clause or across-platform parity agreement.
- 2.26 The NLFT clause, as communicated to ATG Media's customers, reads as follows:

'Bidder Users registered with the-saleroom.com will receive no less favourable terms than bidders on your own live or other online platforms used by you as follows:

the aggregate fees that you will charge to a successful bidder at an Auction whose bid is accepted via the-saleroom.com (including the buyer's premium, any internet surcharge, and any other fees excluding payment card fees) will be no greater than the lower of the following:

- a) the aggregate of the equivalent fees that you will charge to a bidder at the Auction whose bid is accepted via your own live online auction site or a site operated for you by a third party (including sites operated by yourself, operated

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<sup>19</sup> Which ATG Media submits is generally around 12 months in relation to The Saleroom. In ATG's agreements, auction houses are able to terminate the agreement with ATG with one month's notice.

<sup>20</sup> Mirrored bidding is a product offered by ATG Media that hosts the auction house's catalogues and live and timed bidding on the auction house's website.

for you by a third party or licensed to you but presented and branded as your own site, or operated by a third party for you but in which you have a direct or indirect participation whether through shares, contract, a joint venture or partnership with others or otherwise);

- b) the aggregate of the equivalent fees that you will charge to a bidder at the Auction whose bid is accepted via a third-party live online auction site. ...'

- 2.27 Correspondence between ATG Media and auction houses indicates that ATG Media expected to receive the full commission that it would usually charge to the auction house, even if bidders using ATG Media's LOB auction platform were charged a lower commission. In order to comply with the NLFT clause, if an auction house lists on another platform which charges lower commissions rates than ATG, an auction house must therefore bear an extra cost equal to the difference between the two commission rates multiplied by the number of lots sold.
- 2.28 The NLFT clause was communicated to auction houses by email and was described as a notification of change in the auction house's terms and conditions. The correspondence obtained by the CMA stated that the NLFT clause would be deemed to be accepted by the relevant auction house's ongoing use of The Saleroom.
- 2.29 In introducing the NLFT clause into its agreements with auction houses, ATG Media appears from the evidence obtained by the CMA to have generally approached auction houses that used or expressed an interest in using competing platforms charging a lower commission.

### ***Advertising and promotion restrictions***

- 2.30 In addition to agreeing the NLFT clause and exclusivity conditions with customers, ATG Media has restricted auction houses from advertising or promoting offers of competing online auction platforms. For example, evidence the CMA has obtained indicates that ATG Media asked certain of its auction house customers to remove the lower commission rate offered by a competing LOB auction platform from their websites.

### **3. The CMA's competition concerns**

- 3.1 In this chapter, the CMA sets out its preliminary views on market definition; ATG Media's market position in the relevant market; and the CMA's competition concerns arising from ATG Media's conduct.
- 3.2 The CMA's preliminary view, for the reasons outlined below, is that ATG Media is likely to have a dominant position in the market for the supply of LOB auction platform services to auction houses in the UK. The CMA is concerned that ATG Media's conduct, including through the use of restrictions of an exclusionary nature, may amount to either or both of:
- (a) one or more agreements or concerted practices that may have as their object or effect an appreciable prevention, restriction or distortion of competition prohibited by the Chapter I prohibition or Article 101 TFEU or both;
  - (b) an abuse of a dominant position prohibited by the Chapter II prohibition or Article 102 TFEU or both.
- 3.3 To assess whether ATG Media's conduct gives rise to competition concerns, the CMA has considered whether the following restrictions agreed or required by ATG Media in its dealings with certain of its auction house customers may
- (i) have an exclusionary effect and be capable of foreclosing competition or
  - (ii) soften price competition between competing LOB auction platforms:
- (a) exclusivity conditions;
  - (b) NLFT clauses; and
  - (c) restrictions on the advertising and promotion by the auction house concerned of LOB auction platform service providers that compete with ATG Media.
- 3.4 ATG Media has submitted that it believes that the evidence available to the CMA does not support the competition concerns described below.

#### **The relevant market**

- 3.5 In the CMA's preliminary view, the supply of LOB auction platform services to auction houses in the UK is likely to constitute a separate relevant market.<sup>21</sup>

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<sup>21</sup> The CMA's approach to market definition is set out in [Market definition](#) (OFT403, December 2004), adopted by the CMA Board.

- 3.6 As explained in chapter 2 above, suppliers of LOB auction platform services operate by allowing the development of a two-sided market by bringing together bidders and auction houses. Such providers compete for customers on both ‘sides’ of the market, ie they compete for registrations by individual bidders as well as for auction houses to list live auctions for those bidders to bid in. The CMA has, therefore, considered the substitutability of alternative products and services available to customers on both sides of the market – ie to individual bidders and to auction houses.
- 3.7 In that context, the CMA has considered the substitutability of a range of alternative sales channels available to bidders (including alternatives for bidding in live auctions held by auction houses, such as telephone bidding, commission bidding, and bidding in person, as well as sales through online auction platforms and other online sales channels) and to auction houses in the UK, including options for self-supply and white-label solutions (where the LOB technology is provided to an auction house by a third party software supplier).
- 3.8 Based on that assessment, the CMA’s preliminary view is that:
- (a) the alternative sales channels available to bidders are not readily substitutable for LOB auction platform services, as there are significant differences between each of these alternative channels and bidding live online in an auction taking place in real time at an auction house; and
  - (b) the alternative sales channels available to auction houses, namely self-supply or a white-label solution, are not readily substitutable with LOB auction platform services, given (i) the higher costs and risks involved in developing such alternative solutions; and (ii) the fact that these alternative solutions do not perform any marketing or aggregation functions (that is, they do not bring any new bidders to the auction houses).
- 3.9 As regards the geographic scope of the market, the CMA notes that nearly all the platforms offering services to UK auction houses are based in the UK (including through subsidiaries), and the evidence obtained by the CMA suggests that competitors based abroad are not an adequate alternative to a UK platform for UK-based auction houses, given their predominantly overseas bidder customer base. Accordingly, the CMA’s preliminary view is that the geographic market for the supply of LOB auction platform services to auction houses is the UK.

## ATG Media's market position

- 3.10 When considering whether an undertaking holds a dominant position, the CMA examines whether that undertaking has substantial market power.<sup>22</sup> The assessment of market power is a matter of degree which will depend on the circumstances of each case. In assessing the existence and degree of market power, the CMA will consider the strength of any competitive constraints that may prevent an undertaking from profitably sustaining prices above competitive levels.<sup>23</sup> Competitive constraints may include existing competitors, potential competition, and buyer power.<sup>24</sup>
- 3.11 The CMA has reached the preliminary view that ATG Media is likely to have a dominant position in the relevant market. This preliminary view is based on a number of factors including ATG Media's high market share in the relevant market, the relative market positions of competing LOB auction platform services suppliers (which have significantly lower market shares than ATG Media), the views of market participants (including competing suppliers and auction house customers, which have included some auction house customers informing the CMA that they cannot afford to risk their relationship with ATG Media), ATG Media's own conduct and the views set out in certain of its internal documents.
- 3.12 Furthermore, the CMA has reached the preliminary view that there are barriers to entry and expansion in the relevant market such that ATG Media is currently faced with only a limited degree of potential competition. In particular, it is necessary for new entrants to be of a sufficient scale on both 'sides' of this two-sided market in order to be effective competitors. This is because of the 'network effects': the greater the number of registered bidders on a particular platform, the more attractive it is for an auction house to list its live auctions with that platform and, similarly, the greater the number (and quality) of auction houses listing live auctions on the platform, the more attractive it is for bidders to register with the platform. New entrants therefore have to invest in developing their platform and establishing a 'network' (ie a client base) of sufficient scale on both sides of the market.
- 3.13 Therefore, in the CMA's preliminary view, ATG Media is likely to have a dominant position in the market for the supply of LOB auction platform services to auction houses in the UK.

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<sup>22</sup> *Abuse of a dominant position* (OFT402, December 2004), adopted by the CMA Board, paragraph 4.11.

<sup>23</sup> *Assessment of market power* (OFT415, December 2004), adopted by the CMA Board, paragraph 3.2.

<sup>24</sup> *Assessment of market power* (OFT415, December 2004), adopted by the CMA Board, paragraph 3.3.



## Competition concerns identified by the CMA

- 3.14 Given the apparent strength of ATG Media's position in the relevant market, the CMA is concerned that ATG Media's practices and contractual provisions may restrict competition by: (i) foreclosing the market to competitors and new entrants and thereby restricting the degree of competition (actual or potential) on the market (including by limiting their ability and incentive to grow); and (ii) softening price competition between competing platforms, reducing choice for consumers and deterring rival LOB auction platforms from competing with ATG Media on price.
- 3.15 In particular, with regard to ATG Media's practices and contractual restrictions, the CMA is of the preliminary view that:
- (a) The **exclusivity conditions** may be capable of foreclosing ATG Media's competitors by hindering them from selling to auction houses that are contractually obliged to use no other LOB auction platform supplier than ATG Media. Exclusivity conditions prevent even the limited use of more than one LOB auction platform while an auction house is under contract and restrict the number of auction house customers available to new entrants at any given time. The foreclosure effects are likely to be stronger if alternative LOB auction platforms are not able to replace ATG Media entirely for any individual customer's demand and, in the context of a two-sided market where network size and growth will affect the attractiveness of a new LOB auction platform, this may represent a barrier to entry even where the exclusivity is of relatively short duration.
  - (b) The **NLFT clauses** may be capable of foreclosing ATG Media's competitors given that such restrictions are likely to discourage the use by auction houses of competing LOB auction platforms. The CMA's preliminary view is that the NLFT clause replicates the incentives and effects of an exclusivity condition by *de facto* imposing a financial penalty on those auction houses seeking to list auctions on a cheaper LOB auction platform, alongside ATG Media, in the following way:
    - (i) If an auction house uses a competing LOB auction platform alongside ATG Media's LOB auction platform, and is offered a lower commission rate to its bidders by that competing LOB auction platform, the effect of the NLFT clause is that the auction house must charge bidders using ATG Media's LOB auction platform the same lower commission rate as it charged those using the competing LOB auction platform, while still paying ATG Media the higher commission.

- (ii) This extra cost, namely the difference between the two commission rates multiplied by the value of the lots bought by the bidders who continue bidding through ATG Media, therefore operates in a manner similar to a penalty for breach of exclusivity.

The CMA is of the preliminary view in this case that the risk of foreclosure is increased because a significant number of ATG Media's bidders are likely to remain loyal to ATG Media, even if a cheaper platform is available, given the presence of strong network effects. Moreover, faced with an NLFT clause, rivals to ATG Media may instead decide to charge the same (higher) commission rates as those charged by ATG Media so as to enable the auction house to list without incurring any penalty; therefore incentives to charge lower fees could be reduced as a consequence of the operation of the NLFT clauses and this may soften competition between alternative platforms.

- (c) The **restrictions on auction houses advertising and promoting** rival LOB auction platforms may contribute to reinforcing the barriers to entry and expansion in the relevant market and further entrenching ATG Media's market position, in particular when implemented in combination with exclusivity conditions or NLFT clauses and, therefore, may exacerbate any foreclosure effects.

3.16 Finally, the CMA's preliminary view, based on the evidence obtained and, particularly, ATG Media's internal documents, is that ATG Media used its market position to agree the restrictions described above with a targeted group of its auction house customers as part of a strategy to prevent certain rival LOB auction platforms from developing into effective competitors.

## **4. The CMA's assessment of the Commitments**

- 4.1 In order to address the CMA's competition concerns (as described in chapter 3), and without prejudice to ATG Media's view that it has not infringed relevant prohibitions in the Act or the TFEU, ATG Media has offered to the CMA the Commitments.
- 4.2 Following public consultation on the intention to accept commitments in this case, the CMA considers that the Commitments address the competition concerns it has, for the reasons set out below. In coming to this conclusion, the CMA has given full consideration to all the relevant material in its possession, including the representations received following the CMA's notice of intention to accept commitments.

### **The Commitments**

- 4.3 In the Commitments offered, ATG Media has undertaken not to engage in any conduct or enter into any agreement or arrangement that:
- (a) restricts auction houses from using or contracting with any competing supplier of LOB auction platform services;
  - (b) restricts auction houses from charging bidders using a competing supplier of LOB auction platform services fees, commissions or other forms of remuneration that are lower than those charged to bidders using an ATG Media LOB auction platform; or
  - (c) restricts auction houses from advertising or promoting the services of a competing LOB auction platform, including on/in an auction house's own website/publications or on/in any third party websites/publications (but not on/in any website/publication owned or operated by ATG Media).
- 4.4 As a consequence, ATG Media has offered, for the duration of the Commitments, to refrain from agreeing any exclusivity arrangements, NLFT clauses or advertising restrictions with its auction houses customer.
- 4.5 ATG Media will inform those of its auction house customers with which it has engaged in conduct or entered into (or sought to enter into) any agreement or arrangement of the type prohibited by the Commitments that: (i) ATG Media will not seek to engage in any such conduct, or enter or enforce any such agreement or arrangement and (ii) ATG Media will amend any existing agreement or arrangement to ensure it complies with the Commitments.
- 4.6 In order for the CMA to monitor ATG Media's compliance with the Commitments effectively, ATG Media will:

- (a) confirm in writing to the CMA that it has given effect to the Commitments and provide a list of the auction houses that it has informed;
- (b) provide information and documents as requested by the CMA for the purpose of monitoring the Commitments;
- (c) submit an annual compliance statement at the end of each year in which the Commitments remain in force;
- (d) inform the CMA as soon as possible of any breach of the Commitments and take all actions that are reasonably required to remedy any such breach; and
- (e) maintain and produce any records that the CMA may specify in writing that relate to the operation of the Commitments.

4.7 ATG Media has offered the Commitments for a period of five years.

#### **Representations made in response to the CMA's notice of intention to accept commitments**

4.8 The CMA received 12 representations in response to the notice of intention to accept commitments from ATG Media. The representations came from auction houses and competing LOB auction platforms, as well as one provider of services related to LOB auction platforms and one industry body. Broadly, most of these welcomed the Commitments but some raised certain concerns or suggested that the Commitments should be extended to include additional aspects, in particular relating to the following:

- the scope of the restriction on using competing LOB auction platforms;
- the desirability of promoting awareness of the Commitments among auction houses so as to ensure compliance by ATG Media with the Commitments;
- the ability of competing LOB auction platforms to advertise in the *Antiques Trade Gazette*; and
- the use of bidder data by auction houses.

4.9 A summary of the responses received is set out in Annex B.

## The CMA's assessment of whether the Commitments address the competition concerns

### *The CMA's Guidance*

- 4.10 The CMA's guidance on its investigation procedures under the Act<sup>25</sup> (the 'Procedural Guidance') and the guideline on competition law application and enforcement<sup>26</sup> (the 'Enforcement Guideline') state that the CMA is likely to consider it appropriate to accept binding commitments only in cases where (a) the competition concerns are readily identifiable, (b) the competition concerns are addressed by the commitments offered, and (c) the commitments are capable of being implemented effectively and, if necessary, within a short period of time.<sup>27</sup>
- 4.11 The CMA will not accept commitments where compliance with such commitments and their effectiveness would be difficult to discern or where the CMA considers that not to complete its investigation and make a decision would undermine deterrence.<sup>28</sup>

### *The CMA's assessment*

- 4.12 The CMA has carefully considered and assessed the Commitments as well as the representations made in response to its notice of intention to accept commitments, as summarised in Annex B, to determine whether the Commitments address its competition concerns.
- 4.13 On the basis of that assessment, the CMA considers that this is an appropriate case for commitments and that the Commitments offered by ATG Media address its competition concerns. This is for the following reasons:
- **The competition concerns are readily identifiable:** As explained in chapter 3 above, the CMA is concerned that ATG Media's exclusivity conditions, NLFT clauses and other restrictions on auction houses advertising and promoting rival LOB auction platforms may be capable of restricting, and likely to restrict, competition in the relevant market by (i) foreclosing the market to competitors and new entrants and thereby restricting the degree of competition (actual or potential) on the market (including by limiting its competitors' ability to grow); and (ii) softening price

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<sup>25</sup> [Competition Act 1998: Guidance on the CMA's investigation procedures in Competition Act 1998 cases](#) (CMA8, March 2014).

<sup>26</sup> [Competition law application and enforcement - incorporating the Office of Fair Trading's guidance as to the circumstances in which it may be appropriate to accept commitments](#) (OFT407, December 2004), as adopted by the CMA Board.

<sup>27</sup> Paragraph 4.3 of the Enforcement Guideline and paragraph 10.16 of the Procedural Guidance.

<sup>28</sup> Paragraph 4.5 of the Enforcement Guideline.

competition between competing platforms, reducing choice for consumers and deterring rival LOB auction platforms from competing with ATG Media on price.

- **The CMA considers that the Commitments offered by ATG Media address the competition concerns:** The Commitments will effectively remove any exclusivity conditions, NLFT clauses and any restrictions on auction houses to advertise or promote rival LOB auction platforms on/in the auction house's own website/publications or on/in any third party websites/publications, in ATG Media's agreements or arrangements with auction houses. The Commitments will also prevent ATG Media from entering into any other such agreements or arrangements, or engaging in equivalent conduct, for the duration of the Commitments. The CMA's view is that, accordingly, the Commitments fully address the CMA's competition concerns (as set out in chapter 3 above).
- **The Commitments offered are capable of being implemented effectively and, if necessary, within a short period of time:** ATG Media has undertaken to act in accordance with the Commitments it has offered from the date the CMA notifies ATG Media of its decision to accept the Commitments. ATG Media will comply with the Commitments within 10 working days of being notified by the CMA of its decision to accept the Commitments by informing in writing those auction house customers with which ATG Media has entered into (or sought to enter into) agreements or arrangements falling within the scope of the conduct proscribed by the Commitments. Moreover, the Commitments contain compliance and reporting requirements that allow the CMA effectively to monitor compliance.

4.14 The CMA considers that the Commitments' duration of five years will allow an opportunity for rival platforms to establish themselves and expand market share in the UK and to make any investments that may be required to ensure that they can continue to compete on the market after the expiry of the Commitments. As a result the CMA considers that a duration of five years is appropriate for the Commitments to address the competition concerns identified by the CMA. Furthermore, ATG Media will remain subject to competition law for the duration and after the expiry of the Commitments.

4.15 The CMA considers that accepting commitments in this case would not undermine deterrence. The change to ATG Media's business model practices in having to abandon any exclusivity and NLFT clauses as well as the restrictions on promotion and advertising in order to address the CMA's competition concerns will, in the CMA's view, send a strong signal to other

businesses deterring them from engaging in such practices particularly where they are targeted at weakening new entrant challengers.

- 4.16 The CMA also considers that by accepting commitments in this case it is able to resolve its competition concerns quickly, which can be particularly important in online markets to facilitate entry and expansion by challengers with innovative business models and new technologies.<sup>29</sup>
- 4.17 The CMA has carefully reviewed and given full consideration to the representations received. In the light of its review and consideration of those responses, the CMA has concluded that it is not necessary to require any modification of the Commitments, for the reasons set out in Annex B. Broadly, representations welcomed the Commitments as addressing the competition concerns identified by the CMA, but some respondents raised certain issues which the CMA has duly considered. For the additional reasons explained in Annex B, the CMA remains of the view that the Commitments are effective and address the competition concerns identified by the CMA in this case.
- 4.18 The Commitments do not preclude the CMA from taking further enforcement action in relation to other suspected breaches of competition law or with regard to other related markets, if there are reasonable grounds to suspect that they raise competition concerns and harm consumers.

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<sup>29</sup> As set out in the CMA's [Annual Plan 2017/18](#), online and digital markets are a strategic priority for the CMA.

## **5. The CMA's decision**

- 5.1 In the light of the above, the CMA considers that the Commitments, in the terms set out in Annex A, address the competition concerns it has identified in this investigation and that it is appropriate to accept the Commitments.
- 5.2 Accordingly, the CMA has decided to accept the Commitments.
- 5.3 As a result of the acceptance of the Commitments, the CMA is discontinuing its investigation, with no decision made on whether relevant prohibitions in the Act or the TFEU have been infringed.
- 5.4 The acceptance of the Commitments, addressing the competition concerns which the CMA has identified, now renders superfluous the need for the CMA to make a decision on whether to give interim measures directions to ATG Media (see paragraph 2.5 above).

**Signed:**

**Michael Grenfell**

**Executive Director, Enforcement**

**For and on behalf of the Competition and Markets Authority**

**Date: 29 June 2017**



## **Annex A:**

### **Commitments given by ATG Media to the CMA**

#### **Case 50408: Auction services**

#### **Introduction**

1. ATG Media agrees to make the following Commitments, on condition that they are accepted by the CMA in a Commitments Decision.
2. The Commitments are being offered by ATG Media under section 31A CA98 in order to bring the CMA's investigation to a close by addressing the CMA's competition concerns.
3. The giving of the Commitments by ATG Media does not constitute an admission of any wrongdoing by ATG Media. In particular, ATG Media has not been the subject of any CMA infringement decision or statement of objections and nothing in these Commitments may be construed as implying that ATG Media agrees with any concerns identified by the CMA in its investigation relating to the supply of auction services, including in a Commitments Decision.
4. These Commitments are without prejudice to ATG Media's position should the CMA or any other party commence or conduct proceedings or other legal action against ATG Media.

#### **Definitions**

5. For the purposes of these Commitments the following definitions apply:
  - (a) **ATG Media** means Turner Topco Limited (Company number: 08968154) and any current or future Subsidiary, including ATG Media Holdings Limited (Company number: 06521301), ATG Media Limited (Company number: 06636047) and Metropress Limited (Company number: 01010311), that operates a Live Online Auction Platform;
  - (b) **ATG Media Live Online Auction Platform** means any Live Online Auction Platform operated by ATG Media, including, for the avoidance of doubt, the-saleroom.com, i-bidder.com and BidSpotter.co.uk;
  - (c) **Auction House** means an auction house in the UK;
  - (d) **CA98** means the Competition Act 1998;

- (e) **CMA** means the Competition and Markets Authority;
- (f) **Commitments** means the commitments given by ATG Media hereunder pursuant to section 31A CA98;
- (g) **Commitments Decision** means a formal decision by the CMA under section 31A CA98 to accept these Commitments such that section 31B CA98 applies with respect to the CMA's investigation in Case 50408 relating to the supply of auction services;
- (h) **Competing Live Online Auction Platform** means a website providing Live Online Auction Platform Services that is not operated by ATG Media, including (for the avoidance of doubt) such a website operated by an Auction House or by a supplier of Live Online Auction Platform Services other than ATG Media;
- (i) **Compliance Statement** means the statement to be provided by ATG Media to the CMA at the end of each year in which the Commitments are in force in the format set out in the Appendix to the Commitments;
- (j) **Effective Date** means the date on which ATG Media receives formal notification of a Commitments Decision;
- (k) **Live Online Auction Platform** means a website which is primarily targeted at providing Live Online Auction Platform Services to Auction Houses and their customers;
- (l) **Live Online Auction Platform Services** means services provided via a website to:
  - (i) Auction Houses, giving them the opportunity to list online the details of physical public auctions in the UK, for the purposes of receiving online bids in real time at such live auctions; and
  - (ii) online bidders, giving them the opportunity to register and bid in real time, using the internet, in a live auction taking place at a physical site in the UK operated by an Auction House;
- (m) **Subsidiary** means a subsidiary as defined in section 1159 of the Companies Act 2006; and
- (n) **Working Day** means any day other than a Saturday, Sunday or any other day that is a public holiday in England.

## The commitments

6. ATG Media will not engage in any conduct or enter into any agreement or arrangement that:
  - (a) restricts any Auction House from using or contracting with any Competing Live Online Auction Platform for the provision of Live Online Auction Platform Services;
  - (b) restricts any Auction House from charging fees, commissions or any other forms of remuneration to online bidders using a Competing Live Online Auction Platform that are lower than the fees, commissions or any other forms of remuneration charged to online bidders using an ATG Media Live Online Auction Platform; or
  - (c) restricts the freedom of any Auction House to advertise or otherwise promote the services and products offered by any Competing Live Online Auction Platform, including on that Auction House's own website or in that Auction House's other publications or on any third party website or in any third party publication (but not, for the avoidance of doubt, any website or publication owned or operated by ATG Media).
  
7. In order to give effect to the Commitments, ATG Media will:
  - (a) within ten (10) Working Days starting from the first Working Day after the Effective Date, inform in writing each Auction House in respect of which it has engaged in any conduct or entered into (or sought to enter into) any agreement or arrangement as referred to in Clause 6 that:
    - (i) ATG Media will not seek to engage in any conduct and will no longer operate or otherwise enter into or enforce any agreement or arrangement of the type referred to in paragraphs (a) to (c) of Clause 6; and
    - (ii) ATG Media amends any existing agreement or arrangement between it and that Auction House to ensure that such agreement or arrangement complies with Clause 6;
  - (b) within fifteen (15) Working Days starting from the first Working Day after the Effective Date, confirm in writing to the CMA that it has complied with Clause 7(a) of the Commitments and provide the CMA with a list of the Auction Houses that it has informed under Clause 7(a).

## Duration

8. The Commitments shall apply for a period of five (5) years commencing on the Effective Date.

## Reporting and compliance

9. As of the Effective Date, ATG Media will not in any way circumvent, by actions or omissions, the Commitments, including by selling, assigning or otherwise transferring any part of ATG Media's Live Online Platform Services business to any other entity within the ATG Media corporate group as a result of which that entity would do anything that is prohibited by the Commitments.
10. ATG Media will co-operate fully with the CMA for the duration of the Commitments and in particular:
  - (a) will provide to the CMA promptly any information and documents that the CMA requests for the purposes of enabling the CMA to monitor the implementation and operation of the Commitments or, if necessary, the enforcement of the Commitments; and
  - (b) may be required by the CMA to keep, maintain and produce those records specified in writing by the CMA that relate to the operation of the Commitments or any provision of the Commitments.
11. ATG Media will deliver a Compliance Statement to the CMA at the end of each year in which the Commitments remain in force in the form set out in the Appendix to the Commitments. The first Compliance Statement shall be delivered to the CMA on the first anniversary of the Effective Date or, if that date is not a Working Day, on the first Working Day after that date. The second, third, fourth and fifth Compliance Statements shall be delivered to the CMA on the relevant anniversary of the Effective Date or, if that date is not a Working Day, on the first Working Day after that date.
12. Should ATG Media at any time become aware of any breach of any provision of the Commitments, ATG Media will:
  - (a) as soon as possible after becoming aware of any such breach, take all actions that are reasonably required to remedy the breach and to comply with the Commitments; and
  - (b) inform the CMA about the breach and provide an explanation of the circumstances in which the breach arose and the steps ATG Media has taken to remedy the breach within seven (7) Working Days starting from

the first Working Day after the date on which ATG Media became aware of the breach.

13. The CMA may take action in accordance with its statutory powers should it become aware of any non-compliance by ATG with the Commitments.
14. Any communication from ATG Media to the CMA relating to the Commitments shall be addressed to: *[insert contact/address]* or by email to *[insert email]* or such other postal or email address as the CMA may direct in writing.

## **Review**

15. Without prejudice to the generality of section 31A(4)(b) CA98, ATG Media may request that the CMA reviews (with any such review being at the CMA's discretion) the Commitments with a view to releasing or modifying the Commitments where there has been a material change to the reasons and/or facts on which the Commitments Decision is based and where the CMA has reasonable grounds for believing that its competition concerns no longer arise.

Signed for and on behalf of Turner Topco Limited, ATG Media Holdings Limited, ATG Media Limited, and Metropress Limited

Signature:

Name:

Title:

Date:

**Appendix: Case 50408 – Auction services**  
**Compliance statement relating to commitments given by**  
**ATG Media**

I, *[insert name]*, confirm on behalf of Turner Topco Limited, ATG Media Holdings Limited, ATG Media Limited, and Metropress Limited (together, 'ATG Media') that:

1. Subject to any matters reported under paragraph 2 below, in the period from *[insert date]* to *[insert date]* (the 'Relevant Period'):
  - (a) ATG Media has complied with the Commitments offered by it and accepted by the CMA on *[insert Effective Date]*;
  - (b) no breach of any of the Commitments has occurred; and
  - (c) no action has been taken by ATG Media that might prejudice compliance with the Commitments.
2. As required by Clause 12 of the Commitments, the CMA has been informed of any breaches of the Commitments that have occurred during the Relevant Period.
3. ATG Media remains in full compliance with the Commitments and will continue to provide to the CMA any information and documents as the CMA may require for the purpose of monitoring or enforcing compliance with the Commitments in accordance with Clause 10 of the Commitments.

Signed for and on behalf of Turner Topco Limited, ATG Media Holdings Limited, ATG Media Limited, and Metropress Limited:

Signature:

Name:

Title:

Date:

## **Annex B:**

### **Summary of representations made in response to the CMA's notice of intention to accept commitments, and the CMA's consideration of them**

1. This annex summarises the key issues raised in the representations made in response to the CMA's notice of intention to accept commitments, together with the CMA's consideration and assessment of them.
2. The CMA received 12 representations, from auction houses, competing LOB auction platforms, providers of services related to LOB auction platforms and industry bodies. Broadly, most of these welcomed the Commitments but some raised certain concerns or suggested that the Commitments should be extended to include additional aspects, in particular relating to the following:
  - the scope of the restriction on using competing LOB auction platforms;
  - the desirability of promoting awareness of the Commitments among auction houses so as to ensure compliance by ATG Media with the Commitments;
  - the ability of competing LOB auction platforms to advertise in the *Antiques Trade Gazette* newspaper; and
  - the use of bidder data by auction houses.
3. Each of these points is addressed in more detail below, along with some other comments made in the representations.

#### **Scope of the restriction on using competing LOB auction platforms**

4. Some representations expressed concerns that that the Commitments do not prevent ATG Media achieving exclusivity through 'indirect' means that give incentives to auction house customers to agree to exclusivity - for example, by ATG Media charging higher prices (including subscription prices) or withdrawing or threatening to withdraw services from auction houses in reprisal for the actual or intended use of alternative LOB auction platforms; or by offering preferential rates or better conditions to auction houses that use ATG Media exclusively.
5. The CMA considers that any such behaviour, agreement or arrangement would constitute a breach of clause 6(a) of the Commitments, which prohibits any conduct, agreement or arrangement, by ATG Media that restricts (that is,

in any way prevents, prohibits or limits) in any form whatsoever an auction house from using a competing supplier.

6. Clause 6(a) of the Commitments, therefore, prevents ATG Media from sanctioning, penalising, preventing or restricting an auction house from using or contracting with other LOB auction platforms, and prohibits any form of incentives (whether financial or otherwise) being offered or granted to auction houses to deal with ATG Media exclusively. ATG Media has confirmed to the CMA in writing that it agrees with this interpretation.
7. ATG Media is, in any event, also obliged by clause 9 not to circumvent the Commitments offered.
8. The CMA therefore considers that clause 6(a) of the Commitments adequately addresses the concerns raised in the representations as regards ATG Media's ability to restrict auction houses using or contracting with competing LOB auction platforms and that the Commitments are effective in addressing the competition concerns identified by the CMA.

### **Promoting awareness of the Commitments**

9. Some representations contended that, in addition to the requirements set out in clause 7 of the Commitments, ATG Media should undertake to publicise more widely its obligations under the Commitments. In particular, it was suggested that ATG Media should write to all of its auction house customers (and not only those with whom it has engaged previously regarding the restrictions referred to in clause 6 of the Commitments) to inform them of the Commitments, their implications, and how to complain in case of a breach of the Commitments to the CMA. It was also suggested that the Commitments should be publicised in the *Antiques Trade Gazette* (a trade publication which is owned by ATG Media). One representation further suggested that the CMA should engage directly with the auction house industry to clearly publicise the cessation of the anti-competitive conduct. Another suggested that ATG Media should inform all present and future customers that there are no restrictions to their use of alternative platforms.
10. Having carefully considered these representations, the CMA is of the view that the proposed version of the Commitments do not require modification, but that the CMA should take steps to promote awareness of the Commitments. The CMA considers that clause 7, along with the reporting and compliance obligations in clauses 9 to 14 and the additional steps that the CMA proposes to take, are sufficient and proportionate to promote awareness of the Commitments so as to give effect to the Commitments and ensure compliance by ATG Media. In particular, the CMA notes that:



- (a) ATG Media is required under the Commitments to write to all auction houses in respect of which it has engaged in any of the behaviour referred to in clause 6 of the Commitments, including those auction houses in relation to which ATG Media has sought to enter into a restrictive agreement or arrangement but was unsuccessful. In addition, ATG Media has confirmed to the CMA in writing that, in order to be sure of complying with the requirements of clause 7 of the Commitments, it will write to each one of its live bidding auction house customers to inform them of the Commitments.
- (b) The CMA will be publishing details about the Commitments (including the procedure for reporting suspected breaches) in a press notice and on the case webpage. The CMA will also publicise the decision to accept Commitments via social media. In addition, the CMA will be directly contacting over 50 affected businesses, including over 40 auction houses and all of the other LOB auction platforms listed in paragraph 2.20 of the decision, to increase awareness that the Commitments have been accepted and are now in force and binding on ATG Media.
- (c) A key aim of the Commitments is to ensure that competing LOB auction service platforms are not foreclosed. The platforms therefore have a strong interest in ATG Media's compliance with the Commitments. If ATG Media were to attempt to breach the Commitments, for example by insisting on exclusivity or an NLFT arrangement, the CMA considers that competing LOB auction platforms would have both the knowledge and the incentive to bring the fact that this would breach the Commitments to the attention of the auction houses concerned or of the CMA.

### **Competing platforms' ability to advertise in the Antiques Trade Gazette**

- 11. Some representations expressed concern that clause 6(c) of the Commitments does not require ATG Media to accept in the *Antiques Trade Gazette* (a trade publication owned by ATG Media) advertisements from, or referring to, a competing LOB auction platform. It was noted that the *Antiques Trade Gazette* is an important advertising medium for bidding services and that it is common practice for the *Antiques Trade Gazette* to refuse to run advertisements from or referring to competing LOB auction platforms. One representation contended that ATG Media, in its view, is dominant in the market for advertising in the auction market, or at least is dominant in the closely connected market for the supply of LOB auction platform services, and that such practice may be considered abusive.
- 12. The CMA notes that this type of conduct does not fall within the scope of ATG Media's conduct that the CMA has investigated to date in this case and does

not form part of the competition concerns the CMA has identified (see chapter 3 of the decision).

13. In line with the CMA's prioritisation principles,<sup>30</sup> the CMA does not propose to investigate ATG Media's practice relating to advertisements in the *Antiques Trade Gazette* at this time, taking into account the impact, strategic significance, likelihood of a successful outcome, and resource implications of any such further investigation. In particular, an investigation into this concern would require the CMA to consider matters which were not part of the current investigation such as, for example, the extent to which ATG Media has market power on a market for advertising in the auction market, and whether ATG Media's practice amounts to an abuse of dominance, for example through a refusal to supply, that cannot be objectively justified.
14. The CMA notes that, in any event, ATG Media remains subject to competition law in respect of all aspects of its conduct and is required to self-assess to ensure that its conduct complies with competition law.
15. Accordingly, the CMA considers that clause 6(c) does not undermine the effectiveness of the Commitments in addressing the CMA's competition concerns as these have been identified and set out in chapter 3 of the decision.

#### **Use of bidder data by auction houses**

16. Three representations suggested that the Commitments should require ATG Media to give its auction house customers the right to use, for their own marketing purposes, bidder data collected by ATG Media when a bidder uses ATG Media's LOB auction platforms. They stated that ATG Media does not allow auction houses access to such data, with ATG Media claiming that the data were subject to data protection and similar regulations. It was also put to the CMA that auction houses had a right to this data, in particular by virtue of the terms and conditions of the relevant auction house, which bidders agree to when using ATG Media's LOB auction platforms.
17. The CMA notes that this type of conduct also does not fall within the scope of ATG Media's conduct that the CMA has investigated to date in this case and does not form part of the competition concerns the CMA has identified (see chapter 3 of the decision).

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<sup>30</sup> [Prioritisation principles for the CMA](#) (CMA16, April 2014).

18. Again, in line with the CMA's published prioritisation principles,<sup>31</sup> the CMA does not propose to investigate the concern raised by representations relating to the use of bidder data by auction houses further at this time, taking into account the impact, strategic significance, likelihood of a successful outcome, and resource implications of any such further investigation. In particular, the CMA would be required to consider matters that were not part of the current investigation such as, for example, whether ATG Media's practice in relation to the use of bidder data by auction houses amounts to an abuse of a dominant position and, if that were found to be the case, that it cannot be objectively justified.
19. The CMA again notes that, in any event, ATG Media remains subject to competition law in respect of all aspects of its conduct and is required to self-assess to ensure that its conduct complies with competition law.
20. Accordingly, the CMA considers that the effectiveness of the Commitments in addressing the CMA's competition concerns as set out in chapter 3 of the decision is not undermined by not extending the Commitments to deal with this point relating to the use of bidder data.

## **Other comments**

### ***Monitoring trustee***

21. One representation suggested that the CMA should appoint an independent monitoring trustee to ensure compliance with the Commitments. The CMA does not consider that the Commitments are so complex as to require monitoring by an independent trustee. In addition, the CMA believes that auction houses and other competing LOB auction platforms would be able to detect a breach by ATG Media of the Commitments (see paragraph 10(c) above), such that it would not necessitate further monitoring by a monitoring trustee. The CMA therefore concludes that so that it would be unnecessary and disproportionate to impose such a requirement.

### ***Duration***

22. Two representations expressed concern about the duration of the Commitments. One of them suggested that the duration should be ten years instead of five on the basis that the pace of change in the auction house industry can be slow. The other argued that ATG Media should commit indefinitely.

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<sup>31</sup> [Prioritisation principles for the CMA](#) (CMA16, April 2014).

23. The CMA remains of the view that a duration of five years is appropriate, for the reasons set out in paragraph 4.14 of the decision. The CMA notes that, in any event, ATG Media remains subject to competition law, not only for the duration of the Commitments, but also after the expiry of the Commitments.

## **Conclusion**

24. Having carefully considered all representations, for the reasons set out above, the CMA remains of the view that the Commitments address its competition concerns and are capable of being implemented effectively and within a short period of time and of being adequately monitored for compliance by ATG Media.