

## Online auction services – guidance to auction houses

### Introduction

1. The CMA has accepted ATG Media’s offer of legally binding assurances - known as ‘commitments’ - to change its business practices in the supply of live online bidding platform services. This guidance is intended to help auction houses and other businesses in this industry understand the commitments and what those commitments mean for them.

### The commitments

#### *Why has ATG Media given commitments?*

2. ATG has given commitments to resolve the CMA’s concerns that certain of ATG’s commercial practices were potentially anti-competitive. The CMA opened an investigation on 22 November 2016, suspecting that ATG Media is dominant in the market for live online bidding auction platform services, and that 3 types of business practices on the part of ATG Media might be illegally preventing or discouraging ATG Media’s customers from using live online bidding platforms that compete with ATG Media. These practices were:
  - (a) Obtaining exclusive deals with auction houses, so that those auction houses would not use providers of live online bidding auction platforms other than ATG Media;
  - (b) Preventing auction houses charging a cheaper online bidding rate to bidders using other live online bidding platforms; this was through contract clauses containing ‘no less favourable terms’ conditions, also known as ‘most favoured nation’ clauses; and
  - (c) Preventing auction houses promoting or advertising live online bidding platforms that are in competition with ATG Media.

#### *What ATG has agreed to do*

3. ATG Media, without prejudice to its position that it has not infringed the competition rules, has given commitments to remove all of the restrictions listed in paragraph 2 above, which the CMA considered might raise competition concerns.
4. ATG Media has committed to unwind any such restrictions already in place and for five years not to conclude any new agreement or arrangement, or engage in any conduct, that involves the restrictions. The full terms of the commitments can be read [here](#).
5. As with all businesses in the UK, ATG Media also remains subject to competition law in all aspects of its conduct during and after the period that the commitments apply.

## **Who will be affected by the commitments**

6. If you are an auction house active in the UK using one of ATG Media's live online bidding platforms, your terms and conditions may be changed as a result of the commitments. If so, ATG Media will be writing to you to explain any changes. You may also have an informal or oral agreement or understanding with ATG Media which is caught by the commitments and, if so, this will also change.
7. Even where your terms and conditions do not need to change, the CMA believes that the commitments will give you greater choice over which live online bidding platforms to use, including the option to use alternative platforms offering lower bidder commission rates instead of or in addition to ATG.

### ***There has been no finding of wrongdoing and the CMA's investigation has been discontinued***

8. The CMA has not taken a view on whether ATG Media has broken the law. The CMA has closed its investigation into whether the practices breach competition law because the commitments bring an end to the conduct the CMA was concerned about.
9. The commitments do not cover the provision by ATG Media of catalogue-only services or timed auction online bidding platform services.

## **Which practices are caught by the commitments and which are not?**

### ***What we mean by exclusivity deals and why we were worried about them***

10. Exclusivity generally refers to a situation where someone accepts that it will use only one provider of a service and no others. In this case, prior to the commitments, ATG Media encouraged a number of its auction house customers to use no online bidding platform other than those operated by ATG Media (which are The Saleroom, BidSpotter and i-bidder) in exchange for discounts and other incentives.
11. Exclusivity meant auction houses could not offer the services of other live online bidding platforms (including cheaper alternatives or an auction house's own platform) alongside ATG Media, or swap to other providers. Because of ATG Media's strong position in the supply of live online bidding, the CMA was concerned that this could make it harder for other suppliers to enter and expand in the market.
12. The commitments mean that from now for a period of five years, ATG Media may not ask auction houses (or incentivise them in any other way as described in paragraph 13 below) to use only its platforms and no others for online live bidding.

### ***The offering of customer discounts by ATG Media***

13. Generally, ATG Media is free to offer discounts or any other beneficial terms to its customers as it sees fit. This is a commercial decision for ATG Media.
14. However, under the commitments, ATG Media may no longer offer a discount or other benefit which is conditional in any way on the auction house agreeing to or complying with any of the restrictions set out above. Similarly, ATG Media is not permitted to impose or encourage the same kind of restrictions by charging higher

prices (including subscription prices) or withdrawing or threatening to withdraw services from auction houses in reprisal for an auction house using (or attempting to use) an alternative platform for online live bidding. Again, ATG Media may not do this at any time over the next five years.

### ***Sole use of ATG Media's live online bidding platforms***

15. Auction houses are free to decide to use only ATG Media's live online bidding platform but, because of the commitments, this is only when that is the auction house's own commercial decision and not the result of any requirement or pressure from, or agreement, understanding or arrangement with, ATG Media that prevents the auction house from deciding to use another live online bidding platform. In other words, while ATG Media remains free to recommend that an auction house only uses an ATG Media platform for live online bidding platform services, the decision on whether or not to use another platform for online live bidding is entirely up to the auction house. The commitments mean that auction houses have greater choice over which providers to use because ATG Media has agreed that auction houses will not be rewarded for solely using, or penalised for declining to solely use, ATG Media's live online bidding platform.

### ***What we mean by 'no less favourable terms' clauses and why we were concerned about them***

16. In this particular case, ATG Media required some auction houses to offer 'no less favourable terms' to bidders on ATG Media's live online bidding platforms than those available to bidders using a competing platform or the auction house's own platform.
17. In practice this meant that if an auction house used a rival platform with a lower commission rate alongside ATG Media's live online bidding platform, the auction house had to charge bidders using ATG Media the same lower commission rate, while still paying ATG Media the higher commission.
18. The CMA was concerned that auction houses were being penalised for using other live online bidding platforms and therefore may have avoided using them, meaning bidders were missing out on cheaper commission rates. As with exclusivity deals, the CMA was concerned that because of ATG Media's position in the supply of live online bidding this made it harder for alternative platforms to compete effectively in this market.
19. The commitments mean that, for a period of five years, ATG Media may not enter into this type of agreement with auction houses.

### ***Offering live online bidding through different platforms at different commission rates***

20. As a result of the commitments, auction houses will be free to offer live online bidding through a number of different platforms with different commission rates without being penalised.
21. Auction houses will also be free to promote or advertise (for example on their website or in their auction room) any live online bidding platform that they wish.
22. However, the commitments do not require ATG Media to accept advertisements on its own websites or in its own publications, including the Antiques Trade Gazette (for example advertisements for, or referring to, another live online bidding platform). This is because the CMA has not investigated refusals to accept advertisements and this

type of conduct does not form part of the competition concerns the CMA has identified and addressed by accepting the commitments. For more details please see the CMA's [decision to accept commitments](#).

## **Breaches of the commitments**

### ***What the CMA can do if there is a breach of the commitments***

23. Commitments are legally binding promises given by a business to the CMA. Commitments are legally enforceable and the CMA can take a business to court if it does not comply with its promises without a reasonable excuse. If a business fails to comply with a direction of the court, it can be found in contempt of court and can be fined or those responsible sent to prison. The CMA may also decide to continue the investigation which may ultimately result in an infringement decision imposing financial penalties.

### ***What to do if you suspect that there is a breach of the commitments***

24. Please inform the CMA as soon as possible by emailing us at [general.enquiries@cma.gsi.gov.uk](mailto:general.enquiries@cma.gsi.gov.uk) or by phone on 020 3738 6000. Please refer to the Remedies Monitoring Team in all correspondence regarding the commitments.