

Case 51251 - Suspected anti-competitive behaviour relating to freelance and employed labour in the production, creation and/or broadcasting of television content, excluding sport

Statement regarding the CMA's decision to close an investigation on the grounds of administrative priority

The Competition and Markets Authority (the '**CMA**') has closed its investigation under the Competition Act 1998 ('**CA98**') in the above matter (the '**Investigation**') on the grounds that it no longer constitutes an administrative priority for the CMA.

For the avoidance of doubt, this does not constitute a decision by the CMA as to whether the Chapter I prohibition of the CA98 (the '**Chapter I prohibition**') has been infringed.

The decision to close the Investigation is addressed to the British Broadcasting Corporation, Hartswood Films Limited, Hat Trick Productions Limited, ITV PLC, Red Planet Pictures Limited, Sister Pictures Limited and Tiger Aspect Productions Limited, and the undertakings of which they each form part (together, the '**Parties**').

The CMA's decision to close the case on grounds of administrative priority does not prevent, pre-judge or fetter the CMA's ability, if appropriate, to open an investigation under the Chapter I prohibition in future, or to take action using its other tools.

Background

On 11 October 2023, the CMA opened the Investigation, having determined that it had reasonable grounds to suspect that the Parties, together with other businesses, had shared competitively sensitive information about the rates of pay and/or terms and conditions agreed with, or to be offered to, individuals and companies active in the production, creation and/or broadcasting of television content in the UK, excluding sports content.

The Investigation focused predominantly on communications that took place within an email forum comprised of representatives from a large number of television production companies in the UK. The CMA was concerned with the content,

frequency and timing of exchanges which related to rates of pay (as well as other terms and conditions) offered to freelance workers and employees.

As explained in the CMA's Guidance on Horizontal Agreements, depending on the circumstances, the exchange of information between businesses can be pro-competitive or competitively neutral.¹ However, when competitively sensitive information about rates of pay and terms and conditions are shared between businesses without appropriate safeguards, this can in turn reduce competition between those businesses in the recruitment and retention of staff and may ultimately leave employees and freelancers worse off.

The CMA believes it is important that businesses have a culture of competition law compliance and that everyone in a business understands what they need to do to stay on the right side of competition law. Since the start of the Investigation, the CMA has seen evidence of positive changes in industry practices, as well as enhanced competition law compliance measures being implemented by the Parties.

Prioritisation assessment under the Competition Act

At various points in an investigation the CMA considers whether continuing with the investigation meets our Prioritisation Principles² and wider objectives. The CMA generally prioritises according to the strategic significance and impact of the work balanced against the resources and risks involved, and whether the CMA is best placed to act. When deciding when and how to act, the CMA takes into account factors such as whether our work delivers tangible and demonstrable benefits, as well as having regard to the full range of options available from our toolkit, including the use of formal powers and more informal interventions (or a combination of these).

Having carefully considered the information gathered during the Investigation to date; the additional time and resources that we estimate would be required for the CMA to make a decision as to whether or not competition law has been infringed; and the changes in industry practices implemented since the launch of the Investigation, the CMA no longer considers that the Investigation warrants the continued commitment of resources.

Instead, the CMA considers that a more proportionate way of resolving the matter is to draw the Parties' attention to the CMA's concerns and the possible consequences if they fail to comply with competition law in the future, and to publish further

¹ [Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to horizontal agreements](#) (CMA184) August 2023, paragraph 8.3.

² [CMA Prioritisation Principles](#) (CMA188), 30 October 2023.

guidance to employers on how to avoid anti-competitive behaviour in labour markets as a way of increasing both general deterrence and compliance.³

The CMA has therefore decided to close the Investigation into the Parties on the grounds that it no longer constitutes an administrative priority.

It is important to note that the CMA has not reached a decision on whether the Parties infringed competition law and no assumption should be made that there has been any such infringement.

A decision to close the Investigation on administrative priority grounds does not prevent the CMA from opening an investigation in the future if its priorities change.

³ [Employers advice on how to avoid anti-competitive behaviour](#), 9 February 2023