

CMA'S RENEWED INTEREST IN TRADE ASSOCIATIONS

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Antitrust, Competition and Trade Alert

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The Competition and Markets Authority (CMA) recently released a blog post authored by Simon Nichols, CMA Project Director. It acts as a stark reminder of the importance of competition compliance and the consequences of breaching the law. The post is addressed directly to trade associations and poses the following question: are you complying with competition law?

The post highlights how trade associations consistently come under scrutiny by competition authorities around the world. It underlines the CMA's concern with trade associations' and their members' compliance. Certainly the message is clear; the CMA is watching trade associations closely.

The CMA also calls on members of trade associations to be alert to potential anti-competitive behaviour within their association, and to actively check that their association is compliant. The CMA emphasised that discussing salary benchmarking and industry responses to economic or market change between competitors are areas of particular compliance risk.

FAIR WARNING

The CMA refers to a number of previous cases where trade associations and their members have breached competition law:

- In 2016, five modelling agencies and their trade associations were fined £1.5 million for colluding on prices. The association facilitated exchanges between its members of confidential, price-sensitive information via email alerts, some even urged members to reject the pricing in order to force a higher price.
- In 2015, a local trade association, three estate agents and a newspaper publisher were fined over £735,000. The trade association introduced a rule which prevented its members from advertising their fees or discounts in the local newspaper. The local newspaper agreed to facilitate this prohibition, and also extended it to prevent non-member agents from advertising.
- Also in 2015, an organisation for private eye surgeons was fined £382,500 for sharing commercially sensitive information amongst competing consultants and recommending their fees for insurers.
- In January 2018, the Showmen's Guild of Great Britain was forced to change its membership rules to make them more transparent and objective.

In each case the CMA also issued an open letter to the industry concerned, the links to which can be found on the blog.

ARE YOU COMPLYING WITH COMPETITION LAW?

The CMA acknowledges that knowing what is and isn't acceptable can be difficult, particularly when attending a trade association meeting (formal or informal) where talking about your business is expected.

Below is some brief guidance from the CMA on how to stay compliant:

- Write an industry-specific competition compliance policy and ensure all members are familiar with it and are provided with an updated copy at regular intervals.
- Ensure that the standard terms and conditions written for the trade association are clear, easy to understand and fair to consumers or customers.
- Ensure that any criteria for admission to a trade association are transparent, objective, proportionate and non-discriminatory.
- Never issue formal or informal pricing recommendations.
- Do not discuss current or future pricing or any company sale information such as stock level, production capacity or volume.
- Non-confidential information that is already in the public domain may be discussed with competitors.

For more detailed and tailored advice, please contact Neil Baylis or Jennifer Marsh.

THE BACKGROUND LAW

The primary legal source for the CMA's authority is found in Chapter 1 of the Competition Act 1998. It states that all agreements, decisions or practices of or between undertakings, which may affect trade and that prevent, restrict or distort competition are illegal, and any agreement in breach is automatically void.

Areas of particular concern are: fixing prices or trading conditions; limiting or controlling production, markets, technical development or investment; and sharing or allocating markets and customers.

However, if the agreement, decision or practice contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the benefits, there may be an exception to this rule against anti-competitive agreements.

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