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Dear Sir/Madam

CMA letter to the creative industries on competition law

The Competition and Markets Authority (CMA) is publishing this open letter for businesses and individuals who work in the creative industries. We want to draw your attention to a recent case in the sector where we [fined five businesses and a trade association over £1.5 million for breaking competition law](#).

All businesses have a responsibility to make sure they comply with the law. At the end of this letter, you will find information about steps you can take to help ensure that your business doesn't make similar mistakes.

What happened in the model agencies case

In 2016, the CMA found that five model agencies and their trade association, The Association of Model Agents (AMA), broke competition law by colluding instead of competing on the prices they charged for modelling services.

In particular, the model agencies had discussed prices for modelling services in the context of negotiations with particular customers. They also regularly and systematically exchanged confidential and commercially sensitive information. In some cases, the agencies agreed to fix minimum prices or to adopt a common approach to pricing.

For example, where one of the agencies was concerned about a low price offered by a customer, it would send an email to the others asking for comment. In one instance, the email below was sent:

"If you think this rate is wrong please reply and any other observations would be good. We have to stop this as it will spread like MEASLES!"

The trade association, for its part, played an important role in the sharing of confidential and commercially sensitive information between members through email circulars known as 'AMA Alerts'.

These AMA Alerts urged AMA members to resist the prices offered by customers because they were too low. This was sometimes set out explicitly in the alerts:

“Please look at this carefully the fee proposed for the usage requested is not appropriate and far lower than this company normally pay. Please resist - some members have indicated they are not accepting this.”

The above conduct was found to be a serious violation of competition law.

What the CMA's decision in the model agencies case means for you

The message from the model agencies case is clear: the CMA takes illegal price coordination and information sharing seriously and will investigate businesses in all industries - including those that operate in the creative sectors - if there are reasonable grounds to suspect the law is being broken.

There can be [serious consequences](#) for businesses that break competition law, including:

- Fines of up to 10% of a business's worldwide turnover
- Company directors can be disqualified from running a company for up to 15 years
- In the most serious cases involving anti-competitive arrangements, individuals may be investigated for committing a criminal offence, prosecuted and sentenced to up to five years in prison and/ or made to pay a fine
- Anyone who has suffered loss as a result of a company breaking competition law can claim damages against that company in the UK courts
- Trade associations can face penalties for breaking competition law
- The CMA can also hold a business liable just for being a member of a trade association that broke competition law
- Reputational damage can be significant and long lasting

How to ensure your business stays on the right side of the law

All businesses are responsible for ensuring that they (and those who work for them) comply with competition law and most want to do the right thing.

However, our research shows that knowledge and understanding of competition law is particularly low in the creative sector. In light of this, we recommend that you take the following steps:

- Ensure all staff know what they can and can't do, including the sorts of things which they should not discuss with competitors.
- The CMA has a range of [simple guides](#) to help businesses understand more about competition law, including a [60-second guide](#) on dos and don'ts for trade associations, as well as a [video on information sharing](#).
- There are also a range of [case studies](#) that show how other businesses have been investigated for breaking the law.
- If you think you and your business may have been involved in an illegal cartel, you should notify the CMA as soon as possible – you may benefit from [lenient treatment](#) by being the first to come forward to the CMA
- If you have information on companies in your industry that you suspect are breaking competition law, you should report this to us by calling the CMA's cartels hotline on 020 3738 6888 or emailing cartelshotline@cma.gsi.gov.uk.

Lastly, we always recommend that you seek independent legal advice if you think you or your business may be affected by any of the topics covered in this letter.

The creative industries are hugely important to the UK economy, and healthy competition ensures it stays that way. Please take time to read this letter and share our materials across your business, so that you know what to look out for.

Yours sincerely

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