

Press release: CMA removes immunity from fines for mobility scooter supplier

It comes as the Competition and Markets Authority (CMA) announced it has decided to withdraw immunity from fines from a mobility scooter supplier it has found is likely to have broken competition law.

Mobility Limited and 2DS & TGA Holdings Limited (TGA), a mobility scooter supplier, has been under investigation since April for potentially breaking competition law by restricting its retailers from advertising prices online.

This follows a warning letter sent by the Office of Fair Trading (OFT) (one of the CMA's predecessor bodies) to several companies in the sector, including TGA, in March 2013 warning of the unlawfulness of such behaviour.

The CMA's [current investigation](#) examined TGA's agreements with 3 online retailers. It found the agreements either prevented retailers from advertising prices of TGA branded mobility scooters online or from advertising them below specified prices.

Firms that make certain agreements with other companies where their combined turnover is no more than £20 million are immune from fines under UK law. However, if as a result of its investigation the CMA considers that any such agreement is likely to break competition law, it may withdraw this immunity.

Following the withdrawal of its immunity from fines, TGA risks a penalty of up to 10% of its worldwide turnover if it restricts the freedom of retailers to advertise prices online in the future.

This is the first time immunity has been withdrawn at this early stage of an investigation.

TGA has now taken action to bring to an end the online price advertising restrictions in question. It stated it is in the process of confirming to all its retailers that they are free to advertise prices online and to decide for themselves the level of those prices. In addition, it is instituting a wide-ranging competition compliance and training programme across its business.

Ann Pope, Senior Director for antitrust enforcement, said:

The internet is an increasingly important distribution channel and people are held back from finding the best deal if retailers are prevented from advertising their prices online.

Businesses of all sizes need to take competition law seriously. We will withdraw immunity from small businesses, exposing them to the risk of fines, if we think it is necessary – particularly where

previous warnings have been ignored.

Notes

1. Section 39 of the Competition Act 1998 (CA98) provides that a party to a 'small agreement' is immune from financial penalties for an infringement of the Chapter I prohibition of CA98. Chapter I covers (among other matters) anti-competitive agreements and concerted practices between undertakings (for example, businesses) which may affect trade within the UK or a part of it and which have as their object or effect the prevention, restriction or distortion of competition within the UK or a part of it, unless they are excluded or exempt in accordance with CA98.
2. A 'small agreement' is an agreement between undertakings whose combined turnover did not exceed £20 million in the business year ending in the calendar year preceding one during which the infringement occurred and which is not a price fixing agreement. Under section 39(4), if the CMA has investigated a 'small agreement', it may make a decision withdrawing the limited immunity from penalty given by section 39(3) if, as a result of its investigation, it considers that the agreement is likely to infringe the Chapter I prohibition.
3. On 27 March 2014, the OFT issued an infringement decision finding that Pride Mobility Products Limited and certain of its retailers infringed the Chapter I prohibition of the CA98 – [see press release](#).
4. On 5 August 2013, the OFT issued an infringement decision finding that Roma Medical Aids Limited and certain of its retailers infringed the Chapter I prohibition of the Competition Act 1998 – [see press release](#).
5. The CMA is considering its next steps in the on-going investigation in light of TGA taking action to bring the restrictions to an end and to comply with competition law going forward.