

Closure of investigation under the Competition Act 1998 (“CA 98”)

15 March 2016

The Gas and Electricity Markets Authority (the Authority¹) has decided to close its investigation under the CA 98 into companies providing a supporting service for the energy industry – third party intermediaries (“TPI”s) / price comparison websites – on administrative priority grounds.

Ofgem announced the opening of the investigation under the CA 98 on 9 February 2015. The purpose of our investigation was to determine whether companies had engaged in an anticompetitive agreement or concerted practice through the sharing of commercially-sensitive information including on commission rates. Over the course of the investigation, we gathered information and documents using our powers under the CA 98.

In determining whether to continue with the investigation, we have applied the prioritisation criteria set out in our Enforcement Guidelines². In particular, we have considered the likely resources required to investigate the matter further in order to reach any provisional conclusion as to whether the CA 98 has been infringed. At this stage, and on the basis of the evidence gathered to date, we consider that it would be more appropriate to devote our resources to other areas of our work, rather than continuing with this investigation.

In light of these factors, we have therefore decided that it is appropriate to close this investigation on administrative priority grounds and have, in accordance with the Competition Markets Authority’s (the “CMA”) practice, sent advisory letters to relevant companies.

We have previously noted³ the important role which TPIs have to play in ensuring that energy markets function well for consumers and therefore consider it important that they comply with competition law. We wish to take this opportunity to remind all market participants involved as TPIs/PCWs in the energy sector of the importance of proper competition law compliance. We recommend that, in the first instance, market participants consult the range of material relating to competition law compliance which is available on the CMA’s website. Market participants may also wish to consult relevant publications of the European Commission, including its detailed guidance on information exchange.⁴ In applying such guidance, market participants may wish to consider who their competitors are. In addition to obvious competitors, in certain circumstances, affiliates or white label partners⁵ may be actual or potential competitors and accordingly

¹ In this document we use the terms “Authority”, “Ofgem” and “we” interchangeably.

² https://www.ofgem.gov.uk/enforcement_guidelines_12_september_2014_published_version_0.pdf

³ https://www.ofgem.gov.uk/confidence_code_review_-_january_2015_policy_decision_0.pdf

⁴ http://ec.europa.eu/competition/consultations/2010_horizontals/guidelines_en.pdf

⁵ Some TPIs operate as an affiliate of a second TPI by procuring comparison services from the second TPI, who has established price comparison technology and commercial relationships with suppliers. The affiliate will display the second TPI’s results to members of the public who seek to compare prices through the affiliate’s price comparison website. An affiliate’s price comparison website can either be hosted by the affiliate itself

the market participants should take steps to restrict the flow of potentially commercially-sensitive information to such partners. The direct or indirect exchange of potentially commercially-sensitive information with competitors could give rise to serious competition concerns.

As a member of the United Kingdom Competition Network, the Authority continues to work collaboratively with the CMA and other sector regulators on competition law matters. We note and thank the CMA for the assistance it has provided on this investigation.

For the avoidance of doubt, it should not be assumed that there has been a breach of the CA 98. Closing an investigation at this stage and in such a manner would not preclude Ofgem from reopening the investigation should circumstances arise which would justify such action. We will continue to monitor the operation of the market and take any action as appropriate.

Also for the avoidance of doubt, Ofgem's separate investigation into whether price comparison websites have breached competition law in relation to paid online search advertising, announced on 15 October 2015, is not the subject of this closure decision and, therefore, remains open.