

Online price restrictions: the Pride Mobility scooters case

Pride Mobility found to have infringed competition law

On 1 April 2014, the Office of Fair Trading ('OFT') was replaced by the new Competition and Markets Authority ('CMA'). The importance of e-commerce to the wider economy, and the increasing attention e-commerce attracts from competition authorities globally, was reflected in the fact that the OFT chose to focus its last decision under the Competition Act 1998 on an online market. In addition, in a speech on the CMA's first day of business, the Chairman of the new CMA identified online markets as a major CMA priority going forward. These developments herald a renewed focus on competition law compliance on all aspects of e-commerce at all levels, and a recognition of the importance of e-commerce.

Mobility scooters - online pricing

In one of its final acts, on 27 March 2014 the OFT found that a mobility scooter manufacturer (Pride Mobility Products) and a number of online retailers infringed competition law during various periods between February 2010 and February 2012.

The facts are relatively clear cut. Pride entered into arrangements with eight of its UK-wide online retailers (some of whom also operate physical retail shops) which prevented those retailers from advertising online prices below Pride's recommended retail price for certain models. The OFT concluded that these arrangements infringed the Competition Act 1998, which prohibits (amongst other things) agreements and concerted practices that have the object or effect of preventing, restricting or distorting competition.

Although the text of the decision has not yet been published, the OFT's announcement made it clear that it was concerned that these arrangements restricted competition by limiting consumers' ability to compare prices online and get value for money. In its press release, OFT Enforcement Director Gaucho Rasmussen emphasised that the internet is "a vitally important tool" to achieve price comparisons, especially in a sector where price differences for identical products can be as large as £1,000 to £3,000.

What was particularly interesting about this case is the emphasis that the OFT appears to have placed on the important role played by the internet given the nature of the products. The mobility aids market is a market where consumers may have difficulty in visiting several physical shops to make price comparisons. The agreements meant that customers who were limited to exploring their options online were forced to base their purchase decisions on limited information, and so were unable to take advantage of the best prices available.

The importance of e-commerce to these customers is not just reflected in moves to enhance online price competition, but also to ensure that products are available online. In a previous decision, the OFT had found that an agreement that prevented retailers from selling Roma-branded mobility scooters online (or from advertising their prices online) also infringed

competition law.

Although the parties escaped fines in this case, the decision sends a clear signal to online retailers. The parties have been directed to bring the arrangements to an end and to refrain from entering into the same or similar arrangements in the future. The parties will also have suffered from the financial and administrative burden of defending themselves against a lengthy investigation, and will have suffered significant reputational harm.

Renewed focus

This most recent case is just one example of the renewed focus of UK competition authorities on online markets. In particular, early in 2013 the OFT accepted commitments given by Booking.com, Expedia and InterContinental Hotels in relation to certain pricing practices in the context of the online hotel booking market.

However, the latest case provides a clear indication that the UK competition authorities are willing to turn their attention on all players in online markets, not just the largest.

Indeed, in the few months since it took over competition law enforcement from the OFT, the CMA has shown significant interest in online markets. On the CMA's first day of business, in a speech to the European Consumer Summit in Brussels, the Chairman of the CMA, David Currie, identified online markets as a major CMA priority and noted the significance of e-commerce in terms of, amongst other things, greater consumer choice and empowerment through better information. He also made it clear that the CMA will build on the past work of the OFT to stay on top of technological and market developments in e-commerce.

The CMA's annual plan also includes a commitment to conduct research into anti-competitive barriers to the development of e-commerce. This is very much in line with developments elsewhere. National competition authorities across Europe have shown a similarly high level of interest in this sector. A trend of greater scrutiny of all aspects of online markets by competition authorities is expected to continue throughout the EU.

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