



HAVE YOUR SAY

Edited copy of a letter from the CMA following the NFRN's request for a market investigation referral in the newspaper and magazine industry.

MARKET INVESTIGATION

Thank you for the submission requesting that the CMA makes a market investigation reference concerning the distribution of newspapers and magazines in the UK. We appreciate that the NFRN has, for some time, had strong concerns about the distribution of newspapers and magazines in the UK, in particular, the use by publishers of Absolute Territorial Protection (ATP) agreements and practices such as copy allocation, cover pricing and sale or return. The NFRN believes that these practices have resulted in high prices and low service quality from wholesalers, as well as possible margin squeeze and cross subsidisation. Further, the NFRN submits that consumers may be losing out through reduced choice and access to magazines and newspapers.

As you know, these issues were previously considered by the Office of Fair Trading (OFT) in its market study of 2009. While finding grounds for concern in relation to some of these practices, following a consultation, the OFT exercised its discretion not to make a market investigation reference for a variety of reasons, most notably that market changes would address most of the problems (in particular the use of ATP contracts). The NFRN, however, submits that despite these expectations, the magazine and newspaper distribution markets have not changed sufficiently such that the NFRN believes the CMA should now make a market investigation reference to investigate and, if appropriate, address these issues.

We have carefully considered the matters that the NFRN has once again raised and the arguments put forward for a market investigation. Having done so, I can confirm that we do not propose to consult on a market investigation reference at this time. The decision has been taken following an assessment of our priorities against our published Prioritisation Principles.

The CMA receives intelligence concerning, and requests to investigate, a

wide range of issues, which it can consider not only through market studies and investigations, but also (or alternatively) using our competition law and consumer protection law enforcement powers. As much as we would like to do so, we do not have the resources to pursue or open formal investigations into every issue raised and so we must ensure that we make appropriate decisions about which projects and programmes of work we take on.

Market investigations are particularly resource-intensive, given a successful outcome requires wide ranging and in-depth analysis carried out within an 18-month statutory deadline.

We are also mindful that the government is currently carrying out a review into the sustainability of quality journalism in the UK (the Cairncross Review) and that the NFRN is engaging with this review on a range of concerns, including those it has raised with the CMA. We cannot, of course, pre-empt the conclusions of the Cairncross Review, but given the potential for this to consider and address similar issues to those that may be considered in any CMA market investigation in this sector, and for it to reach further and wide ranging changes to the sector as a result of this, this adds to our view that a market investigation by the CMA at this time would be inappropriate.

While we do not propose to open a market investigation at this time, given the NFRN's submission about the continued use of ATP contracts and the high degree of concern expressed that these may be having a detrimental effect, we will write to UK publishers early in 2019 to remind them of their responsibilities under UK competition law. In particular, we will note the OFT's 2008 guidance to facilitate the self-assessment of newspaper and magazine distribution agreements and that failing to properly carry out such self-assessments could leave publishers open to enforcement action under the Competition Act 1998, whether by the CMA or privately by affected parties.

We do understand that our decision not to consult on making a market investigation reference at this time will be disappointing. However, I hope this letter

helps to explain our reasons for this and that our writing to the publishers will provide at least some comfort.

*David du Parc Braham
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sector regulation, CMA, London*

RETAIL CRIME

When we met on December 11, I committed to write to you setting out how I intend to respond to the concerns you raised regarding violence and abuse toward shop workers. I am grateful to you and the organisations that attended that discussion for providing me with further information about this important issue. I have enormous sympathy for shop workers, who, in their endeavours to enforce the law can face intimidation, threats and, in some cases, violence.

As you may be aware, the National Retail Crime Steering Group has been looking at this issue. While there is some promising work which is close to fruition and will result in a comprehensive package of guidance to retail staff, the police and the Crown Prosecution Service (CPS) about how to address this issue, I think there is more we can do to respond to the concerns raised by you and those organisations who attended the roundtable. The government, therefore, intends to announce the following package when the Offensive Weapons Bill enters Committee Stage in the House of Lords:

- A call for evidence on violence and abuse towards shop workers to help ensure we fully understand this issue and consider all options for addressing it;
- Funding for the sector to run targeted communications activity to raise awareness of the existing legislation in place to protect shopworkers; and
- Refreshing the work of the National Retail Crime Steering Group on violent crime. I intend to discuss this work at an extraordinary meeting of the Group I will chair on February 7. That meeting will focus exclusively on violence and abuse towards shop workers,

In addition, you may wish to note that the Sentencing Council is reviewing its guidelines on assault and a consultation on a revised guideline is anticipated to commence this summer.

I believe that this broad package will