This guidance supplements the TPO Codes of Practice and has been drafted to help agents meet their obligations under the law and the Codes. The content is in a form prepared with input from the Competition and Markets Authority.

Subject to any applicable exclusions or exemptions, Section 2 of the Competition Act 1998 prohibits (among other matters) agreements or concerted practices between undertakings, or decisions by associations of undertakings, which have as their object or effect the prevention, restriction or distortion of competition and which may affect trade within the UK (or a part of the UK). This is known as the Chapter 1 prohibition.

Why this guidance?
In May 2015, the Competition and Markets Authority (CMA) found that an association of estate and lettings agents, some of its members and a newspaper publisher had broken competition law, imposing penalties totalling over £735,000 on these companies. Separately, the CMA has received complaints that other associations of estate agents and local newspapers may be engaging in similar practices, and it is clear that many agents are unclear how competition law applies to their business.

This guidance is to assist the industry to understand their obligations under competition law. If agents enter into agreements that restrict their ability to compete with each other, this can lead to consumer detriment in the form of artificially inflated prices, reduced innovation and limited consumer choice. In addition, reduced competition can lead to an overall lower quality of service.

This guidance reflects updates to the TP O Code of Practice for Residential Estate Agents and it is therefore expected that the industry will apply it. Non-compliance with the practice may not only result in sanctions from the CMA (including financial penalties, disqualification of directors and potential criminal sanctions), but may also result in a breach of the Code of Practice, rendering the agent ultimately with a disciplinary action through the established TP O Disciplinary and Standards Committee (DSC) process. The DSC has a range of sanctions including recommending expulsion from the scheme.

This guidance focuses on two particular aspects of the Codes of Practice and the standards laid out in the Codes in relation to:

- General obligations
- Advertising for new business

The principles of approach
i) All agents must comply with the prohibitions contained in the Competition Act 1998. In particular, agents must not enter into agreements that have the object or effect of preventing, restricting or distorting competition between them. The term ‘agreement’ has a wide meaning for the purposes of competition law, covering all agreements, whether or not they are legally enforceable, written or oral.

ii) Agents must be free to compete for new business on any aspect of their service, including fees, discounts or value offerings. An agreement that restricts an agent’s ability to advertise its prices makes it harder for consumers to find the best offer available. This can reduce price competition between competing agents and contribute to keeping estate and lettings agents’ fees artificially high. It can also make it harder for new businesses to enter the market.

iii) All agents must ensure that advertisements for their services in any printed or online media or other promotional material are truthful, accurate and not misleading to consumers.

iv) Agents must take decisions on the content of their advertisements independently of their competitors, including whether to advertise their fees, charges or any additional costs, or any special offers, discounts or other value offering.

v) If an agent decides to join an estate agents’ trade association, or other formal or informal association of competitor estate agents, it must ensure that the rules of membership for that association do not restrict its freedom to decide the appropriate content of their advertisements or restrict other elements of competition between them, which can result in consumer detriment such as making it harder for them to find the best offer available.

vi) Whether or not in the context of a trade or other association, agents must not prevent or attempt to prevent other agents from using truthful, accurate and not misleading advertising, in any medium, to win business, subject to the prohibition on using unfair methods for canvassing for new business contained in the Code of Practice. You should refer to the Business Protection from Misleading Marketing Regulations 2008.

Note that: Competition Law applies to all natural or legal persons engaged in economic activity, regardless of their size, legal status or the way in which they are financed. Businesses that have been found to have breached competition law may be liable to financial penalties of up to 10% of their annual worldwide turnover. Agreements or decisions that breach the Chapter 1 prohibition are automatically void and unenforceable. The CMA has the power to request the court to disqualify a director of a company that has breached the Act for up to 15 years where their conduct in relation to such a breach makes them unfit to be concerned in the management of a company. In addition, individuals involved in certain very serious offences, such as price-fixing, may be found guilty of the criminal cartel offence and could go to prison for up to five years and/or have to pay an unlimited fine.