

**Minutes of the Office of Fair Trading Board Meeting**

**Wednesday 1 April 2009**

**Present:**

Philip Collins (Chairman)  
John Fingleton (CEO)  
Lord Blackwell  
Jonathan May  
Vivienne Dews  
Frédéric Jenny  
Alan Giles  
James Hart  
Tony Lea  
Philip Marsden

**OFT Staff:**

Barney Wyld  
Claire Craig  
Frances Barr (Items 1, 2 and 4)  
David Leech (observing)  
Ali Nikpay, Jackie Holland, Justin Woodward and Carmen Suarez (Item 2)  
Chris Jenkins (Items 2 and 4)  
David Fisher, Kate Pitt and David Murphy (Item 3)  
Cavendish Elithorn and Peter Lukacs (Item 4)

**Executive Office:**

Jennifer Halliday (Board Secretary)  
Erik Wilson

**Item 1: ExCo oral and written report to the Board**

**CEO**

**MasterCard**

The European Commission has just announced publicly that an agreement has been reached with MasterCard in relation to the case on multi-lateral interchange fees (MIF's). As a result of the three undertakings given by MasterCard (i) on how the MIF will be calculated, (ii) to repeal the scheme fee increase it announced in 2008, and (iii) to introduce transparency measures, the Commission has stated it does not intend to pursue MasterCard either for non-compliance with the Commission's 2007 decision, or for infringing the antitrust rules by increasing its scheme fees or by reintroducing a cross-border MIF.

## CEO Meetings

The CEO reported his recent meetings.

## Banks test case

A press notice to be published on Friday will announce that the OFT will focus its investigation into unarranged overdraft charges on three banks - Lloyds TSB, HSBC and Clydesdale.

## US visit

The Board was updated on the CEO's meetings in the US last week.

## **Executive Director, Markets & Projects and Policy & Strategy**

### Newspaper and Magazine Distribution (NMD)

The Secretary of State has agreed to the OFT's advice to remove the Code of Practice in relation to the distribution of national newspapers. The Code will be revoked following a transition period, which is intended to give wholesalers a chance to amend their current terms and conditions, many of which include provisions from the Code. The public announcement will also remind stakeholders that they have 28 days to respond to our consultation on the proposed decision not to make a market investigation reference of the newspaper and magazine market to the Competition Commission.

The Board was updated on a number of other key cases and associated risks.

## **Executive Director, Corporate Services**

### Budget

At the end of the financial year we are comfortably within relevant control totals (figures will not be finalised by HMT until the end of April). The Board was updated on ongoing budget management.

### Consumer issues

The Board was updated about various announcements and initiatives across Government regarding policies addressed at helping the consumer. The OFT is liaising closely with OGD's and many of these issues are of direct relevance to the OFT and its work.

## **General Counsel**

- Following the Court of Appeal judgment in the Personal Current Accounts test case, the banks have been granted leave to appeal to the House of Lords (the Court of Appeal previously refused to grant such leave).
- A hearing was held in Scotland in relation to the purchase of one of the companies involved in the Dairy investigation.
- Foxtons – the OFT's appeal unanimously upheld by the Court of Appeal and the cross appeal of Foxtons dismissed. The details of the judgment are embargoed till handing down (Thursday 2 April).

## **Chairman**

The register of Board members' interests is up to date and live on the internet.

### **Item 2: Horizontal Co-operation Agreements**

The purpose of the paper and presentation was to update the Board and seek its views and comments on workstreams underway to address possible need for (more) guidance on what forms and manner of co-operation between businesses is permissible under competition law.

The team emphasised the importance of the European dimension (a lot of the questions will engage Article 81(3) of the EC Treaty) especially in light of current review of the Modernisation Regulation and individual Block Exemption Regulations. We are engaging closely with the Commission to influence the debate.

As well as existing guidance, the OFT has three main tools via which it can provide more guidance/direct policy:

- (i) decisions
- (ii) opinions
- (iii) informal advice.

The Board considered this an important issue and thanked the team for bringing it forward. It noted that what was needed was generic practicable guidance, especially since in the current climate, many businesses who may have never considered such co-operation are now actively so doing and may have difficulty in self-assessing their agreements.

It was noted that firms are less concerned with fines than the risk that their agreements are void.

The Board was not persuaded of the case for increased use of informal advice unless this advice was published, public benefit depends on our analysis being available.

### **Item 3: Consumer Direct Strategy**

The purpose of the paper was to: outline the key features of the strategy to improve the delivery of CD until 2017, describe the increasingly important role CD plays in the OFT's consumer policy work, provide an update on the interim project, which will ensure continuity of service until 2011, and outline a number of issues which will inform the development of CD into the future, in particular the relationship with local authority Trading Standards Services (TSS) and the Government's service transformation agenda.

The team emphasised that the strategy is predicated on the assumption that adequate funding will be made available in the next spending review to enable OFT to continue to support CD.

The team outlined the key features of the strategy. The Board noted that CD and the data it collects offers many opportunities to the OFT and we should be aware and agile. The team recognises the opportunities but stressed the importance of selecting which to pursue carefully to ensure focus is not lost and CD strategy is clearly aligned to the OFT's core business. The Board stated that the strategy must be evidence-based and joined-up to work across the office (for example, Office of Chief Economist). The team will do more work on cost estimates and reassess risks and mitigations.

#### **Item 4: Ordnance Survey**

The OFT published its market study on the commercial use of public information (CUPI) in 2006. This estimated that greater commercial exploitation of information assets held by the public sector could generate £500m of additional value for the UK economy. One of the key concerns outlined in the CUPI report was that some public sector bodies hold effective monopolies in certain types of valuable information (for example, mapping data), and that it can be difficult for third parties to access this information for commercial reuse. In the report we outlined particular concerns in relation to some government Trading Funds, notably Ordnance Survey (OS), including:

- Outright refusal to license its information for certain uses that overlap or are similar to current OS products
- Discrimination between its partner licence terms and its internal freedom to exploit its data, and
- Potential margin squeeze, where the upstream part of the business may be bearing a disproportionate amount of the costs of the business, with no internal transfer pricing for data.

The team explained the work that had been done since the report. In particular, despite significant investment by the OFT throughout the CUPI study and following its publication (engaging with OS, potential competitors, the Shareholder Executive and sitting on the steering group) it seems that the proposals made as a result of the OFT study will not be fully acted upon. On the basis of the limited information we have been given by OS, we believe they will not adequately address these concerns.

The team updated the content of the Board paper following discussions held in the past week with the Shareholder Executive. The Shareholder Executive has asked the OFT to play a monitoring role over OS and 'hold it to account'.

The Board was invited to consider the risks and options for next steps, including the possibility of a market investigation reference to the CC. The decision on how to take the issue forward will be taken at Executive level.

**Item 5: Minutes of the Board meeting (5 March) OFT (09) 3<sup>rd</sup> minutes and below-the-line items and any other business**

The Board approved the private and public minutes of the last meeting subject to minor amendments.

The Board noted the below-the-line item on the review of local and regional media markets. The Board will be updated in May.

**Financial services strategy**

The Board was provided with a copy of the latest draft of the strategy in advance of its publication, intended for 7 April. This strategy fulfils the commitment made in the pre-budget report and outlines the OFT's plans for oversight and monitoring of the sector, as well as ongoing work. One of the aims of the consultation is to challenge the idea that the problems in the sector are the result of 'too much competition. The Board suggested that the team should revisit some of the questions to render them more explicit and challenging before publication.

Jennifer Halliday  
**Board Secretary**  
**8 April 2009**