

**OFT (10) 5th minutes**

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

**Thursday 3 June 2010**

**Present:**

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

**OFT Staff:**

Frances Barr (Items 1–10)  
Noah Curthoys (Items 3–10)  
David Leech (Items 3–10)  
Barney Wyld (Items 3–10)  
Ali Nikpay, Simon Williams, Mark Lucraft QC (Item 1)  
Clive Maxwell, Claire Hart, Luke Wainscoat (Item 3)  
Heather Clayton, Simone Higgins, Laura Phaff (Item 4)  
Heather Clayton, Simon Nichols (Item 5)  
David Fisher, David Murphy (Item 6)  
Noah Curthoys, Marcia Poletti, Ann Pope (Item 7)

**Executive Office:**

Erik Wilson (Items 1–10)  
Jennifer Halliday (Items 3–10)  
Rachel Christopher (Items 3–10)

**Item 1: Withdrawal of criminal proceedings against four current and former British Airways executives for price-fixing<sup>1</sup>**

The Board discussed the decision not to offer evidence against four current and former British Airways executives for price-fixing.

**Item 2: Board review**

In the light of the discussion under Item 1, the Board concluded that a Board-led Review should take place. The Board agreed that the Review should be chaired by Alan Giles, supported by James Hart and Philip Marsden and that the Review team would consider

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<sup>1</sup> The Board noted that in 1997, for a period of 7 months, Alan Giles was Chairman of Virgin Retail, a joint venture between WHSmith plc and Virgin Group, which ran the Virgin Megastores and Our Price retail stores.

and decide whether independent membership of the Review or independent expert advice was needed.

The Board considered draft terms of reference for the Review placed before the meeting and agreed that these should be in broad, short form. Final terms would be prepared for approval in the light of the discussion.

The Board agreed the following points relating to the Review.

The Review will be supported by a Secretary to be appointed and receive administrative support as necessary from the Executive Office, and that the Review will have access to the General Counsel or other legal advice as necessary.

The Review would carry out its task with thoroughness and fairness, adopting a flexible, even-handed and open procedure which will enable it expeditiously and economically to establish the relevant facts and to make recommendations. It will conduct an inquisitorial and not an adversarial process. The Review will seek to establish what happened and the relevant facts. It will itself gather in the relevant documents, take oral evidence from officials and External Counsel involved in the case.

The Review will operate under the OFT Board Rules of Procedure and will adhere to the principles of openness and transparency having regard to all relevant legislation and in particular the provisions of the Enterprise Act 2002.

The Review will prepare a report for the Board to consider and take such further steps as it considers are appropriate.

**Item 3: Super-complaint regarding cash ISAs**

The team presented its response to the Super-complaint presented by Consumer Focus on cash ISAs. A reasoned decision must be published by 29 June. The Super-complaint focused on three issues: switching, transparency and bonus rates.

The Board considered the team's work on this issue and agreed the recommended response.

**Item 4: Retirement Homes investigation into exit fees<sup>2</sup>**

The team presented its recent work and the Board agreed that the team should continue this investigation and return to the Board in due course.

**Item 5: Potential CA98 case**

The Board considered a presentation from the team on their response to a potential CA98 case.

**Item 6: Consumer Direct**

The team reported that in the past year, Consumer Direct (CD) running costs have been reduced by 31 per cent while maintaining call volumes. KPIs are now 87 per cent

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<sup>2</sup> Alan Cook is a fundraiser for a retirement homes charity. John Fingleton is the neighbour of, and sits on the management committee of an apartment building with, the owner of a retirement home.

against a target of 80 per cent. Work to transfer the website to Directgov is ongoing. As regards the tender process, the team now hopes to appoint one provider with the aim of saving further costs. HMT must give approval to the business case for a new contract and provider and discussions with HMT are ongoing. The Board agreed that it would consider this issue further if HMT does not approve the new contract.

**Item 7: Public consultation on the e-consumer protection strategy**

The team explained that in the July 2009 Consumer White Paper, BIS asked the OFT to develop a longer term national strategy for e-consumer protection and enforcement on the internet, following concerns that consumers are not reaping the benefits of the internet because of worries about safety and security. Further, the existing fragmented consumer enforcement landscape means that a central responsibility for this strategy could lead to economies of scale and effective development of capabilities. UK users are one of the highest participators in e-commerce and the market is particularly fast moving. The team plans to publish a consultation document on this issue in July 2010 which will contain a number of recommendations.

**Item 8: ExCo oral and written report to the Board**

**CEO**

High cost credit

The review of the high cost credit market is due to be published shortly.

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

Project Canvas

The mergers team reviewed this joint venture between a number of broadcasters to create and promote a standards-based open environment for internet-connected digital terrestrial and digital satellite television devices. It concluded that this joint venture does not qualify for investigation under the merger provisions of the Enterprise Act 2002.

Evaluation of OFT enforcement in construction sector

The OFT will publish an independent evaluation of its recent competition enforcement activities in the construction sector, which finds significant improvements in awareness and understanding of competition law and changes in business behaviour.

Update on criminal cases

There are two criminal competition and two criminal consumer cases ongoing.

**Executive Director, Corporate Services**

OBOE

The back office system (called OBOE) went live at the end of April.

Performance management

Performance management reporting has moved to Finance.

Temporary staff

A number of controls have been introduced by the Government which should bring more central control over the numbers of temporary staff.

**Item 9: New government**

The implications of the new Government for the OFT were discussed. It was noted that as well as a three per cent agreed reduction of the current budget, there are also impacts on the OFT's ability to run campaigns and use consultants. Further, there is a recruitment freeze on external appointments and the salaries of all SCS staff who earn over £58.2K will be published by the Government.

**Item 10: Minutes of the Board meeting (6 May), below the line items and AoB**

Minutes

The Board approved the private minutes of the last meeting.

The Board agreed the public minutes with minor changes.

Below the line papers

*Annual report:* The Board agreed the publication of the report subject to the Chairman's and CEO's approval of the introduction.

*Civil Service Staff Survey:* This paper was received and noted.

*Litigation: Risks and Management:* This paper was received and noted.

*The market for Insolvency Practitioners:* This paper was received; it was noted that the team had responded to comments raised at the last Board meeting.

**Rachel Christopher  
8 July 2010**