

Minutes of the Office of Fair Trading Board Meeting

Thursday 3 July 2008

Present:

Philip Collins (Chairman)
John Fingleton (CEO)
Jonathan May
Vivienne Dews
Sean Williams
Lord Blackwell
Bronwyn Curtis
Alan Giles
James Hart
Frederic Jenny
Tony Lea
Richard Whish

OFT Staff:

Kyla Brand
Colin Brown
Jackie Holland
Ali Nikpay
Sarah Northam
Omar Yaqub
Graham Winton
Barney Wyld

Executive Office:

Jennifer Halliday
Francesca Seymour (Board Secretary)
Erik Wilson

Observing:

Claire Craig (All)
Peter Haines (Items 1 & 2)

Item 1: Minutes of the last meeting (5 June) (OFT(08)6thminutes)

The minutes of the last meeting were approved.

Item 2: Work of Policy

Ali Nikpay and the policy team provided the Board with an overview of their work, which has the mission of optimizing the competition and consumer regimes to maximize the impact of the OFT's work, and making the OFT a centre of specialist expertise in both areas. It was noted that the Policy team is currently going through a period of change, with its internally-focused advisory work passing to the General Counsel's office in due course.

Ali Nikpay highlighted some of the key areas of work that had been delivered in the last year, which included the work on private actions and the implementation of the Unfair Commercial Practices Directive (UCPD), as well as the main projects for the current year. These included consumer law priorities, which were focused around the effective implementation of the Consumer Protection Regulations, competition law priorities, which included settlements, penalties and private actions, and markets priorities which were focused on the review and reform of the existing regime including international leadership, improved processes and optimal remedies.

The Board sought clarification of the impact of the changes in the consumer protection regime under the Consumer Protection Regulations and also, in terms of international leadership, of the relative work of OFT and BERR in the OECD Competition and Consumer Committees. It was also noted that the Office is creating a larger International team (now to be part of the Executive Office), including specific consumer law resource.

The Board thanked the team for their presentation, noting the difficulties faced in choosing between priorities given the limited resources.

Item 3: OFT in Scotland

The Board was updated on the OFT's ongoing work in Scotland by Kyla Brand. The role of the OFT in Scotland centres on bringing Scottish angles to the OFT's work, as opposed to being a distinct operation focusing only on Scotland.

In the time that the OFT's representative office in Scotland has been in existence, good relationships with the Scottish Government and various stakeholders have developed, and much has been achieved with limited resources not only to raise the profile of the OFT in Scotland, but

also to ensure that the Scottish interest was reflected in the OFT's work. The addition of an economist or Scots-trained lawyer on the team would provide added benefits, and could be based in either London or Edinburgh. This role of economist would provide for advocacy with other Scottish economists. A Scots lawyer would provide capability in distinctive features of law which may otherwise be a risk factor. The Board noted that the announcement of the study into Scottish Factors had been welcomed in Scotland and had generated a lot of interest.

The recent changes to the political environment in Scotland are being monitored. The Board noted that although the Scottish Parliament recognizes that competition is a tool that is good for efficiency, its overriding desire is to meet Scottish requirements, hence resulting in some tensions around issues such as alcohol pricing. The Board suggested a type of 'competition master class' in Scotland to highlight what is going on in the competition field and how this can benefit Scotland. The team said that had been considering a conference along these lines, but the main issue was how to identify and attract find the right mix for the audience.

The Board thanked the team for the job it has done in raising the OFT's profile in Scotland and looked forward to meeting stakeholders during its forthcoming visit in October.

Item 4: ExCo report to the Board

CEO

Payment Protection Insurance (PPI)

PPI looks at 2 markets: credit products (the primary market) and insurance against not being able to meet interest and repayment obligations for such products (the secondary market). The CC estimates some £1.4bn of consumer detriment in the secondary area but it is unclear how much of this is bid away in the primary market. The view of the OFT and the FSA is that this market needs structural remedies, the CC has outlines both structural and behavioural remedies. The Office of the Chief Economist is reviewing the effect of behavioural remedies in extended warranties, where there has been little effect.

Banks

The Board received a copy of the Executive Summary of the market study report at the table, and was asked to provide comments on the tone and style to Barney Wyld. The study does not propose anything about remedies, as the team wishes the banks to come forward with proposals

once they have considered our findings and conclusions and then to engage with us.

Kangaroo

This is BBC and Channel 4's new 'video on demand' project. There is not enough evidence to conclude that this merger would not have a detrimental effect on the market and it has been referred. There has been some media criticism about the OFT's referral to the CC by Michael Grade.

Construction Recruitment Forum (CRF)

The Board had received a paper tabled 'below the line' following up on the paper that came to the Board in June. Penalties policy is the subject of the pre-Board seminar in September and of a subsequent Board review later in the year.

Head of Litigation

Morrisons

Negotiations on costs are still ongoing.

Vance Miller (Kitchens)

Mr Miller has appealed the judgment of 'contempt of court' and against his 'excessive' sentence. This case will be heard in the Court of Appeal in October.

Cityhook

There will be a High Court hearing in November on the OFT's decision to close the Cityhook case on administrative grounds.

Executive Director, P&S/M&P

National Audit Office (NAO) Review

The NAO has completed its field work. The skeleton of the report is due in August, with the first draft due in September. The non-executive directors who had been interviewed thought that the NAO was generally supportive of the progress made by the OFT.

Hampton

The Hampton compendium report (which brings together all the reports of the regulators together) has been issued.

Housebuilding

An update on progress in this study was published in June.

Consumer Law Review

The team has met with the Better Regulation Executive team to discuss this review, on which we had put in a high-level response on issues of principle. The Board noted that the review had been driven by the Better Regulation agenda and came at a time of substantial change in consumer law as a result of the commencement of the Consumer Protection Regulations.

Executive Director, Corporate Services

Staff news

Christine Cryne has tendered her resignation with effect from 1 October. Interim arrangements are being considered while a decision on the post and how it and the CD central team fit best within the OFT.

Resource Accounts and Finance

The accounts will be signed off by a sub committee of the Board, namely Tony Lea, Alan Giles and Lord Blackwell via conference call, and confirmed at the September meeting.

The Board noted that a minimal refurbishment of Fleetbank House will take place, freeing up the first floor as rental space. There has been some interest in this regard, but no firm commitment by any party as yet.

Director, Communications

Commercial Use of Public Information (CUPI)

The Government has issued its response to the CUPI work. There has been a supportive, albeit muted, media response.

Campaigns

Going forward, the team plans to make more of a combined/integrated use of Consumer Direct for campaigns.

Chairman

Meeting with Angel Guerria

The Chairman had met Angel Guerria, Secretary General of OECD over lunch. This opportunity was used to emphasize the value of the work of the OECD Competition and Consumer Committees and the support that it provides and the opportunities for greater horizontal working within OECD.

Item 5: Board Away Day Note

The Chairman had received informal comments on the Away Day from the Board which had confirmed the value of the event. Other than a fuller reflection of the discussion on a couple of items, which the Chairman would incorporate, the Board had no other comments on the note of the meeting.

The 2009 away day will be held over 1 – 3 April. The Board was asked to submit any views on the structure for this event directly to the Chairman.

Item 6: Points from below the line items

Construction and Recruitment Forum

This was discussed under Item 4.

Audit Committee Report

The Audit Committee had met that morning, and its Chairman reported back on the key issues from the meeting.

Item 7: Any other business and future agenda items

Newspaper and Magazine Distribution

The Board agreed that the presentation on NMD prior to the Board meeting was informative. A shorter presentation, thus allowing more time for discussion would be more welcome for future topics.

Francesca Seymour
Board Secretary
4 July 2008