

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

**Thursday 5 June 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

**Apologies:**

Richard Whish

**OFT Staff:**

Frances Barr  
Matthew Bennett  
Heather Clayton  
Christine Cryne  
Cavendish Elithorn  
David Fisher  
Sadrul Islam  
Gover James  
Peter Lukacs  
Robert MacDougall  
Alastair Mordaunt  
Sarah Northam  
Simon Pritchard  
Omar Yaqub  
Barney Wyld

**Executive Office:**

Jennifer Halliday

Francesca Seymour (Board Secretary)

Erik Wilson

**Item 1: Minutes of the last meeting (1 May) (OFT (08)5<sup>th</sup> minutes)**

Both the minutes of the last meeting were approved subject to minor changes.

**Item 2: Ongoing investigation**

The Infrastructure team, joined by Sarah Northam (API), informed the Board on an ongoing investigation. The Board would be updated at the July meeting.

Additional update: Housebuilding

The Board was updated on progress made on the Housebuilding study. Findings thus far have been as the team envisaged. The report is on target for publication in September.

**Item 3: Banks**

The Banks team presented developments in the work on the market study.

**Item 4: Work of the Mergers Group**

Simon Pritchard and Alastair Mordaunt provided the Board with an overview of the work of the Mergers group, including a retrospective of the past three years, and an overview of how the group's caseload has evolved since the regime came into force under the Enterprise Act 2002 in April 2003.

On caseload, the team noted that while case numbers had reduced from a peak of more than 200 in 2005/6 to around 120 cases per year, the proportion of complex cases (using cases that go to Case Review Meeting as a reasonable proxy) had increased from around 16 per cent in 2004/5 to around 20 per cent last year. The team felt that fewer straightforward cases were now being notified to the OFT, which they welcomed – the key benefit of the UK voluntary regime being that benign cases need not be notified to the OFT, and for its part, the OFT has no desire to spend time reviewing such transactions. Resources have therefore been focused

on the increasing portion of 'hard' cases, which has led to a continuing phase of challenge and development for the Mergers team.

The team was not applying a higher threshold for the reference test than it had in the past nor was it taking a more lenient stance on remedies. The team considered that one possible explanation for the decline in references to the Competition Commission was a combination of: the competition bar and clients taking note of OFT decisional practice and entering into and structuring deals that are amenable to OFT clearance (with or without remedies), and a lower tolerance by companies to undertake a CC inquiry, which is costly and time consuming. The Board asked if this situation regarding referrals was likely to reverse with the current economic climate giving rise to restructuring deals that could increase concentration, and the team agreed that this might happen.

Going forward, the team will continue to focus on case delivery, with an emphasis on speed, scalability and transparency - three areas where the team believes the OFT is already performing strongly compared to peer regimes, but recognises there is still more work to do, and where the OFT can continue to improve.

On evaluation, the Board was advised that Amelia Fletcher's team has already looked at mergers generally, but will be looking at the impact of imposed remedies in the future. The team is also publicly consulting on our revised mergers procedure guidance; the Joint Working Party of the Law Society (JWP), the City of London Law Society (CLLS) and around a dozen law firms are among those to whom the team has also visited and presented on the key changes and developments in the guidance.

#### **Item 5: Consumer Direct post 2010**

The Board was asked to consider the options for suppliers and centres post 2010. It was presented with background on the role of Consumer Direct, which fits in well with the Government's transformation agenda and is becoming more of a consumer 'hub'. Those on a low income and vulnerable consumers are particular targets for the service, which is estimated saves a mean of £730 of consumer detriment per contact. The relationship with Trading Standards is integral to providing a viable service.

The Board agreed with the purpose of CD, and the targeting of lower income, lower socio-demographic and elderly groups, but felt that the message could be better articulated for use with stakeholders. On suppliers and contracts, the Board agreed after discussion that the best course would be to prepare a definitive specification of our requirements for tenderers and leave tenderers in the market to propose solutions in terms of numbers of suppliers and centres that meet that specification.

## **Item 6: ExCo report to the Board**

### **Executive Director, Markets and Projects**

Nothing to add to the written report.

### **Executive Director, Policy and Strategy**

#### Private Actions

The private actions team are working with BERR to resolve outstanding issues by 16 June. It was confirmed that a fourth session Bill was now not likely.

#### NAO Review

Interviews with the NAO review team across the OFT are well underway. The team has also met with several Board members.

#### Market studies event

This was considered to have been a great success, with a series of presentations from some 31 presenters. It was attended by a mix of stakeholders, including government departments, regulators, business representatives, law firms and consumer groups.

### **Head of Litigation**

#### Ferndale

Ferndale's application for judicial review in a case relating to the existing supermarket Code of Conduct, has been refused.

## Banks

The banks have been granted leave to appeal on UTTCRs. The OFT is not appealing the judge's decision on the use of plain language.

## Vance Miller

Vance Miller (a kitchen supplier) had been sentenced to six months in (accumulated to a two year suspended sentence with other offences) and awarded a £90,000 fine and ordered to pay £30,000 in costs to the OFT. This follows a series of earlier convictions for his poor dealings with consumers.

## **Executive Director, Corporate Services**

### Second charge lending

OFT has agreed to undertake a review of second charge lending, which will include looking at evidence on re-possession rates.

### Capital and End of Year flexibility (EYF)

On capital funding, it has been agreed to take a minimalist approach, using existing reserves, to any additional building work required on Fleetbank House. A project to look at back-office IT will also come out of capital funds, which will also look at the knowledge management project.

The first call for EYF will be Consumer Direct/Consumer Voice, subject to the outcome of the discussion taken earlier at Item 5.

## **Director of Communications**

### Communications strategy

A strategy for Communications will come to the Board in October/November. The key point likely to emerge from this is that the stakeholder strategy needs to fit with the wider project looking at transparency of the organisation generally.

Sale and lease back

This market study has been announced.

**Item 8: Points from below the line items**

There were no 'below the line items'.

**Item 9: Any other business and future agenda items**

Freedom of Information request

The Board approved the minute of the conference call covering this matter.

**Francesca Seymour**

**Board Secretary**

**9 June 2008**