

Office of Fair Trading ('OFT')

Rules of Procedure

Made by the OFT 25 April 2012

Introduction

1. The OFT is a body corporate established under section 1 of the Enterprise Act 2002. The OFT's functions are carried out on behalf of the Crown. In accordance with section 1(4) of the Enterprise Act, the OFT, in the performance of its functions, shall have regard to relevant general guidance as to governance of public functions¹ and such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to the OFT.
2. Set out below are the OFT's rules of procedure. These rules have been made by the OFT Board.² The rules of procedure shall, where applicable, be read and interpreted together with the OFT's statutory powers and functions. The meaning of certain words and phrases contained within these rules are set out in the interpretation section below.

Interpretation

3. In these rules –

'the Act' means the Enterprise Act 2002;

'the Board' means the Chairman and Members of the OFT appointed by the Secretary of State under paragraph 1, Schedule 1 of the Enterprise Act;

¹ The Civil Service Code 2006, the Nolan Principles of Public Life, the Audit Committee Handbook, the UK Corporate Governance Code, June 2010, Corporate Governance in Central Government Departments: Code of Good Practice (HM Treasury and Cabinet Office, July 2011).

² The statutory power to make these rules is at paragraph 8, Schedule 1, Enterprise Act 2002. These rules were considered by the Board at its meeting on 12 January 2012.

'clear days' in relation to a period of notice means a period excluding the day on which the notice is given and the day for which it is given or on which it is to take effect;

'Board Secretary' means the employee of the OFT who is appointed from time to time to act as secretary to the Board;

'Board Executive' means employees of the OFT who are appointed from time to time to act as an executive officer to the Board;

'Chairman' means a person appointed to hold the office of Chairman by the Secretary of State;

'Chief Executive' means the person appointed to hold the office of Chief Executive by the Secretary of State;

'Executive Member' means a Member of the OFT other than the Chairman, Chief Executive and Non-executive Members;

'Member' means a Member of the OFT appointed by the Secretary of State;

'Non-executive Member' means a Member of the OFT other than the Chairman, the Chief Executive and Executive Members;

'the OFT' means the Office of Fair Trading;

'ordinary resolution' means a resolution that is passed by a simple majority of such Members in attendance as are entitled to vote on that resolution.

The Board

4. The Board shall consist of the Chairman and no fewer than four other Members.
5. The Board will ensure that the principles of good corporate governance are observed at all times; will establish the overall strategic direction of the OFT within the policy framework laid down under the Act and the resources allocated to the OFT by HM Treasury. The Board shall ensure that the OFT as a statutory body fulfils its statutory functions and its obligations in relation to the use of public funds in accordance with all legislative provisions applicable to the OFT.
6. The Board will annually review its performance and that of its committees and will report accordingly.
7. The Board will review and, if satisfied, approve the annual plan made under section 3 of the Act, the annual report made under section 4 of the Act and the annual accounts.
8. The Board will review these Rules after two years from the date of their adoption.

Matters reserved for Board involvement

9. The matters listed in Annexe A are reserved for the involvement of the Board unless Members, employees of the OFT, or any committee of the OFT are authorised to exercise them in accordance with Schedule 1 to the Act.
10. The list of matters reserved for Board involvement does not preclude other matters or decisions that have been delegated by the Board being referred to the Board.

Board Meetings

Timing of Meetings

11. The Board shall meet at least 10 times a year.

12. Subject to paragraphs 14 to 17 below, a meeting may be called by the Chairman, by the Chief Executive, or by any two Non-executive Members.
13. Meetings may take place at the OFT's administrative offices or at any other convenient location. Any employee of the OFT or any other person may be invited to attend all or part of a Board meeting.

Notice of Meetings

14. Subject to paragraphs 12 and 15, not less than fourteen clear days' notice will be provided to Members of the meeting.
15. A meeting may, if necessary, be called on less than fourteen clear days' notice. Such shorter notice will be effective only if ratified at the meeting called on short notice by ordinary resolution of the Board.
16. Notice of a meeting can be communicated by way of writing including transmission of written notice by facsimile or by email. Such notice shall contain details of the meeting and of business to be conducted at that meeting.
17. Failure of a Member to receive notice of a meeting shall not invalidate that meeting or any business conducted at it.

Procedure at meetings

18. The quorum for a meeting of the Board shall be two Non-executive Members together with either the Chairman or the Chief Executive.
19. If the Chairman is not present at a meeting, those Members present shall appoint a Non-executive Member of their number to chair that meeting.
20. Decisions made by the OFT shall be made by ordinary resolution. In the case of equality of votes, the Chairman, or in his absence the chairman of the meeting appointed pursuant to paragraph 19, shall have a second or casting vote.
21. The Board will take collective responsibility for any decision made by it and will seek to achieve unanimity in decisions. Where

Members have concerns that cannot be resolved in relation to a particular matter or a proposed action, they should ensure that these concerns are recorded in the minutes of Board meetings.

22. Only Members present at a meeting may vote. Participation will usually be in person, but in exceptional circumstances, or as agreed by the Chairman, Members may participate by telephone or video conferencing facility and be deemed to be present and constitute part of the Board for that meeting. Any Member who leaves a meeting prior to the conclusion of a meeting shall be taken to be a non-participating Member for the purpose of any decision taken by the Board during that person's absence.
23. In the case of a meeting called on short notice in accordance with paragraph 15, Members may attend meetings of the Board by telephone or video conferencing facility. Members so attending shall be deemed to be present at that meeting.
24. Any resolution capable of being passed by the Board at a meeting may instead be passed by written resolution. A written resolution must be signed by all Members. A signature transmitted by facsimile or authorisation received by email will be effective. Any such written resolution shall be deemed passed when it has been authorised by the last of the Members.

Minutes of meetings

25. Minutes of Board meetings shall be published on the OFT's website, subject to the excision of confidential material. Examples of confidential material include information the disclosure of which is prohibited or restricted by a provision of any enactment; information that is otherwise subject to a duty of confidentiality; market-sensitive information; information the publication of which could hinder the performance of the functions of the OFT; and information about individuals such as employees of the OFT.

Delegation of OFT functions

OFT committees and sub-committees

26. The Board may authorise any committee or sub-committee to perform anything authorised or required to be done by the OFT, pursuant to paragraph 12 of Schedule 1 to the Act. The Board shall receive regular reports from committees or sub-committees it has established as it shall direct.
27. The members of a committee or sub-committee of the OFT may include persons who are not Members provided that, if it is authorised to perform functions of the OFT, they are employees of the OFT. A sub-committee may include persons who are not members of the committee which established it.
28. There shall be an Executive Committee established by the Board. Membership of the Executive Committee and its terms of reference are set out in Annexe B to these rules of procedure.
29. There shall be an Audit and Risk Assurance Committee established by the Board. Membership of the Audit and Risk Assurance Committee and its terms of reference are set out in Annexe C to these rules of procedure.
30. There shall be a Remuneration Committee established by the Board. Membership of the Remuneration Committee and its terms of reference are set out in Annexe D to these rules of procedure.
31. The Executive Committee may establish sub-committees subject to consultation with the Board as provided in Annexe B.

Authorisation of individual Members and employees of the OFT

32. Save in respect of functions which the Board has reserved to itself or which it has authorised committees or sub-committees to exercise, the Chairman may authorise at any time any Member of the OFT or employee to perform the functions of the OFT, pursuant to Schedule 1 to the Act.

Obligations of Board and Committee members

General

33. The Chairman, Members, and members of Committees and Sub-Committees in carrying out their respective responsibilities must comply with the Civil Service Code,³ have regard to the principles of public life⁴: selflessness, integrity, objectivity, accountability, openness, honesty and leadership, and act at all times in the best interests of the OFT.
34. Board and Committee members shall have access to a Board Executive which is responsible for providing advice to the Board and Committee members to ensure compliance with and adherence to the rules of procedure, the Civil Service Code, the principles of public life and good corporate governance.

Conflicts of Interests

35. Members shall be subject to the procedures and guidelines for dealing with conflicts of interest made in accordance with paragraph 8 of Schedule 1 to the Act. The rules applicable from time to time are set out as Annexe F to these rules of procedure.

Confidentiality

36. Members shall be subject to a general duty of confidentiality in relation to the conduct of the affairs of the OFT and comply with the relevant statutory restrictions on disclosure.⁵ The guidelines applicable from time to time are set out as Annexe G to these rules of procedure. This duty is personal and without prejudice to the commitment of the Board and the OFT as a whole to transparency and compliance with the Freedom of Information Act.

³ Civil Service Code June 2006, see http://www.civilservice.gov.uk/publications/pdf/cs_code.pdf

⁴ Nolan principles of public life are approved by HM Treasury in 'Corporate Governance in central government departments: code of good practice', July 2005.

⁵ Enterprise Act 2002, Official Secrets Act 1989, Data Protection Act 1998.

Concerns about propriety

37. Members should raise any concerns that they have about the propriety of the Board, or any Member, or the Chief Executive or any OFT employee, confidentially with the Chairman, or other Member, who will be under a duty to investigate and will guarantee anonymity.

Transparency/Freedom of Information

38. The OFT is subject to the provisions of the Freedom of Information Act, and is publicly committed to openness and transparency in relation to the conduct of its affairs and to sharing information with stakeholders where possible, in line with the Government's transparency agenda. Members shall act in accordance with the guidelines and policies relating to these matters issued or adopted by the OFT from time to time.

ANNEXES

Annexe A

Matters reserved for Board involvement

- A.1. Approval of settlement of long-term funding arrangements with HMG
- A.2. Approval of the Annual Plan and the Budget and monitoring performance in delivery of the plan and performance objectives
- A.3. Approval of Resource Accounts and Annual Report
- A.4. Approval of changes in office location and lease terms
- A.5. Approval of Market Investigation References to the Competition Commission
- A.6. Approval of Market Studies
- A.7. Review of strategy and systems for identifying and developing leadership, for succession planning, for governance and for business continuity within the organisation
- A.8. Review of the risk appetite for the organisation and the framework for assessing, managing and taking risks, to ensure that risks can be assessed, managed and taken prudently and that there is clear accountability for managing risks
- A.9. Review of strategy for the recruitment, retention and development of staff to ensure that officials are equipped with the relevant skills and guidance to perform their assigned roles effectively and efficiently
- A.10. Review of significant changes to organisational structure, governance and OFT's position within the competition and consumer regimes
- A.11. Review of matters which may significantly affect:
 - a. the reputation of the OFT or its relations with Ministers and other Government departments, courts, enforcement partners, the European Commission and national competition or consumer agencies;

- b. the evolution or development of the competition or consumer law regimes or which raise significant general issues of policy, principle or strategy for the present or future work of the OFT;

such matters (including the commencement or defence of major litigation) are to be identified through close communication between the Chairman and the Chief Executive.

- A.12. Approval of the application of the section 36 exemption (effective conduct of public affairs) under the Freedom of Information Act 2000.

Annexe B

Executive Committee Terms of Reference

Purpose

B.1. The purpose of the Executive Committee is to provide strategic leadership, management, supervision and direction in relation to the carrying out and performance of the OFT functions delegated from the Board.

Terms of reference

- B.2. The Executive Committee's terms of reference encompass all aspects of decisions that are authorised to be performed by the OFT, including in particular:
- developing annual and other performance objectives for Board approval
 - ensuring delivery of the annual plan and other agreed objectives
 - ensuring best practice in risk management, decision-making and quality control systems
 - approving substantial new work and projects
 - leading and managing staff and ensuring that all resources are used efficiently and effectively in support of flexible working; and
 - in conjunction with the Board, leading the OFT and managing its reputation.
 - The Executive Committee may establish sub-committees reporting to it after consultation with the Board. The Executive Committee shall remain accountable to the Board for the work of any sub-committee. If any sub-committee is to perform anything authorised or required to be done by the OFT, this shall require authorisation by the Board pursuant to paragraph 12 of the rules of procedure.

The Executive Committee shall recommend to the Board such changes to existing practices and systems as are necessary.

Authority

- B.3. The Executive Committee is authorised to do anything that has been authorised by the Board. This authorisation does not extend to any sub-committee of the Executive Committee other than as expressly agreed with the Board.

Membership

- B.4. The Executive Committee shall be comprised of persons appointed by the Chief Executive in consultation with the Board.
- B.5. A quorum shall be a minimum of three members one of whom must be an Executive Member.

Meetings

- B.6. The Executive Committee shall meet at least once a month.
- B.7. Only the persons appointed as set out above may vote. Participation will usually be in person, but in exceptional circumstances, or as agreed by the Chair of the Executive Committee a person may participate by telephone or video-conferencing facility and be deemed to be present and constitute part of the Committee for that meeting. Any member of the Executive Committee who is not present or who leaves a meeting prior to the conclusion of a meeting shall be taken to be a non-participating member for the purpose of a decision taken after the time of departure.
- B.8. The Executive Committee may invite any employee of the OFT or any other person to attend all or part of an Executive Committee meeting.

Reporting

- B.9. The Chief Executive, on behalf of the Executive Committee, shall report to the Board, on the operation and work of the Executive Committee.

Annexe C

Audit and Risk Assurance Committee Terms of Reference

Purpose

C.1. The purpose of the Audit and Risk Assurance Committee is to advise the Accounting Officer (the Chief Executive) and the Board on the adequacy of audit arrangements (internal and external) and on the implications of assurances provided in respect of risk and control, with a view to enabling the Board to assure itself of the effectiveness of the OFT's risk management system and procedures and its internal controls including business continuity and information technology.

Terms of reference

C.2. The Audit and Risk Assurance Committee's remit encompasses all aspects of corporate governance, risk management and internal control within the OFT. In particular, the Committee shall review, advise, and prepare a report, as appropriate, in relation to the following:

- the effectiveness of mechanisms employed for the identification, assessment and management of risk;
- the robustness of internal control systems, including the statements to be included in the annual report concerning internal controls and risk management;
- compliance with the Government's policies on Corporate Governance, together with such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to the OFT;
- the suitability of the whistle-blowing arrangements, whereby employees can raise concerns in confidence about possible wrong doing in financial reporting or other matters, including the proportionate and independent investigation of such matters and the appropriateness of any follow-up action;
- the effectiveness of the procedures for detecting fraud;

- the Annual Account and Trust Statement, focussing particularly on:
 - the quality of financial reporting and ensure that such reporting presents a balanced and understandable assessment of the position and performance of the OFT
 - critical accounting policies and practices, including the consistency of accounting policies on a year to year basis
 - major financial reporting issues and judgmental areas
 - the extent to which the financial statements are affected by any unusual transactions in the year and how they are disclosed
 - the propriety of major adjustments processed at year end
 - significant adjustments resulting from the audit;
- external audit reports, including:
 - meeting with external auditors at least twice a year, once at the planning stage, where the scope of the audit will be considered, and once at the reporting stage
 - discussing problems and reservations arising from the audit, and any matters the auditor may wish to discuss (where requested by the Committee, in the absence of Executive Members and any other person who is not a member of the Committee)
 - reviewing the external auditors' proposed audit opinion
 - reviewing the external auditors management letter and management's response
 - facilitating the resolution of any difference between management and the auditor regarding financial reporting;
- the effectiveness of the internal audit function in the context of the overall risk management system, including
 - the internal audit strategy and plan
 - its remit and resourcing
 - its standing and freedom from management and other restrictions
 - reviewing all internal audit reports promptly

- the adequacy of management responses to audit reports
- the performance of the internal auditor; and
- the Accounting Officer's OFT governance statement.

The Audit and Risk Assurance Committee shall recommend to the Board, Executive Committee and Accounting Officer, as appropriate, such changes to existing practices and systems as is necessary.

Authority

- C.3. The Audit and Risk Assurance Committee acts only in an advisory capacity and has no executive powers.
- C.4. The Audit and Risk Assurance Committee is authorised to investigate any activity within its terms of reference. It is authorised to seek any information it requires from any Member or employee of the OFT and all Members and employees of the OFT are directed to co-operate with any reasonable request made by the Committee.
- C.5. The Audit and Risk Assurance Committee is authorised to obtain independent professional advice (including legal advice) and to arrange for the attendance of persons who are not OFT employees with relevant experience and expertise if it considers this necessary.

Membership

- C.6. The Audit and Risk Assurance Committee shall be comprised, so far as possible, of Non-executive Members. In circumstances where this is not possible, the Committee shall be comprised of at least two Non-executive Members and at least one co-opted member who is not an employee of the OFT. The Committee shall have the power to co-opt a person or persons with appropriate specialist qualifications and/or experience subject to the approval of the appointment by the Board.
- C.7. A Non-executive Member or other independent co-opted member shall chair the Audit and Risk Assurance Committee.
- C.8. A quorum shall be three members.

C.9. The Chair of the Audit and Risk Assurance Committee shall be rotated on an appropriate cycle to provide for objectivity in the long term and to avoid over or under representation of particular aspects of the OFT's business and administrative interests.

Meetings

C.10. The Audit and Risk Assurance Committee shall meet at least four times a year.

Reporting

C.11. The Chair of the Audit and Risk Assurance Committee, on behalf of the committee, shall report once a year to the Accounting Officer, and inform the Board, on the findings and conclusions of the Committee for the past year.

Access Rights

C.12. The Head of Internal Audit and the senior member of the External Audit team have the right of access to the Audit and Risk Assurance Committee and shall normally be present at meetings (as attendees rather than members).

Annexe D

Remuneration Committee Terms of Reference

Purpose

D.1. The purpose of the Remuneration Committee is to make final recommendations to the Board on all aspects of remuneration decisions for the OFT's senior civil servants in accordance with the guidance in the Pay Strategy and with particular regard to equal opportunities. As such, the Committee may also be known as the SCS Pay Committee.

Terms of reference

D.2. The Remuneration Committee's terms of reference are:

- to ensure that the OFT's senior civil servants are rewarded fairly and differentially according to their contribution to the OFT, both in achieving their objectives and in developing their competencies, skills and knowledge
- to keep under review the criteria for allocating individuals to performance tranches and awarding bonuses
- to determine the performance tranche and, where applicable, bonus distribution for SCS staff, taking account of the OFT's overall performance and recommendations of line managers; and
- to monitor the operation of the system and provide a report of recommendations on pay decisions.

Authority

D.3. The Remuneration Committee acts only in an advisory capacity and has no executive powers.

Membership

D.4. The Remuneration Committee shall comprise the Chairman, and at least two Non-executive Members. The Chairman shall act as Chair to the Remuneration Committee.

Meetings

- D.5. The Remuneration Committee shall meet at least once a year.
- D.6. The Chief Executive, and the senior OFT official responsible for human resource issues including staff pay and reward, may attend meetings of the Committee.

Reporting

- D.7. The Chair of the Remuneration Committee, on behalf of the Committee, will report once a year to the Board, on the findings, conclusions and recommendations of the Committee for the past year.

Annexe E

Finance and Risk Committee Terms of Reference

Purpose

- E.1. The purpose of the Finance and Risk Committee (FRC) is to review the OFT's Finance and Risk management strategy, framework, processes and performance. It will review the Office's financial state and current risks, ensuring that the right financial information and risks are being escalated to the Executive Committee, the Audit and Risk Assurance Committee and the Board at any given time. It will scrutinise specific financial information and risks, looking at appropriate actions, mitigations actions and assurance loops in detail. The Executive Committee retains overall responsibility for all finance and risk matters.
- E.2. The Audit and Risk Assurance Committee retains a control and verification function across a broad remit, which includes corporate governance, risk management and internal control.

Status

- E.3. The Finance and Risk Committee is a sub-committee of the Executive Committee and is the decision-making body for a range of financial and risk issues, acting under delegated authority from the Executive Committee. In addition, it provides a forum for the detailed discussion of matters which will be taken to the Executive Committee at the discretion of the Executive Director, Corporate Services.

Remit

- E.4. The Finance and Risk Committee's remit includes:
- reviewing periodic financial reports paying particular attention to critical financial/budgetary controls
 - reviewing financial forecasts and advise on measures necessary to ensure spend is within control totals and meets requirements of regularity and propriety

- reviewing OFT's spend to ensure money and other resources are used properly and efficiently, meeting OFT's fiduciary responsibilities
- reviewing finance and risk related policies, processes and procedures
- requesting and reviewing reports on financial and risk aspects of individual projects
- reviewing measures to prevent fraud and reduce financial risks
- reviewing OFT's risk management strategy, developing its risk appetite statements and recommending the risk appetite to be adopted
- overseeing the development of the risk and assurance framework and reviewing the risk assurance processes, particularly in relation to the sign-off of the governance statement and reviewing these at least annually
- reviewing the corporate risk register to ensure it includes the top risks and any/all emerging risks and suitable assessments and mitigations
- ensuring that the right and current risks are being escalated to the Executive Committee and the Board via a corporate risk register and that the changing risk landscape is being regularly reported
- exploring individual risks, mitigating actions and assurances in some detail and adjudicating on the corporate risk register regularly to ensure consistency, particularly in risk scoring
- reviewing local risk registers for quality, consistency and effectiveness.
-

Membership

E.5. The member of the Finance and Risk committee comprises:

- Executive Director – Corporate Services (Chair)
- Executive Director – Markets and Projects
- Finance Director
- Director of Litigation

- Director, Executive Office
- Director, Communications.

E.6. The Head of Internal Audit may also attend.

Meetings

E.7. The Finance and Risk Committee shall meet at least four times a year.

Annexe F

Conflicts of Interest: Guidelines for the OFT Board

Introduction

- F.1. A conflict of interest arises where a Member has a private interest which might influence, or be perceived to influence, that Member's judgement in carrying out his public duties. A Member's judgement may be influenced by financial interests or non-financial interests.
- F.2. The purpose of these guidelines is to ensure that actual or potential conflicts of interest are identified in advance and are avoided or managed in a way so that they do not:
- enable decisions of the OFT or the decisions and discussions of the Board to be impugned or criticised; or
 - damage the reputations of the OFT, the Board or individual Members.
- F.3. It is intended that these guidelines will:
- (i) so far as possible, prevent conflicts of interest from arising; and
 - (ii) ensure that any actual or potential conflicts of interest that do arise are managed in such a way that the independence and integrity of the decisions of the OFT and of the decisions and discussions of the Board are neither compromised nor perceived as being compromised.

While these guidelines expressly address those actual or potential conflicts of interest that can be readily anticipated, it is not possible to provide a comprehensive list of all of the actual or potential conflicts of interest that might arise. Therefore:

- these guidelines must be interpreted and applied with regard to their spirit and purpose; and
 - if there is any doubt as to whether a conflict of interest may arise, the matter should be raised with the Chairman and/or the Counsel to the Board directly or through the Board Executive.
- F.4. Each Member is responsible for his or her own compliance with these guidelines and with the law. Advice is available from or through the Board Executive or the Counsel to the Board.

Scope

- F.5. The guidelines apply to both Executive and Non-executive Members. Members are required to register in advance (and keep such registration up to date) certain interests in relation to themselves, their spouses, partners, and dependents under the age of 18 ("Family") and to disclose other interests as and when they may become relevant.
- F.6. Registrable interests are primarily, but not exclusively, financial interests (as set out in paragraphs F.7 to F.10 below). Disclosable interests arise primarily, but not exclusively, from business and personal connections, friendships, pursuits, interests and contacts (as set out in paragraphs F.11 to F.15 below).

Registrable Interests

- F.7. Members must register the following interests of themselves and their Families:
- (i) relevant Securities
 - (ii) remunerated employment, office or profession
 - (iii) other regular sources of income or remuneration from business, professional or public activities or interests
 - (iv) directorships, whether remunerated or not; and
 - (v) membership of public bodies (hospital trusts, governing bodies of universities, colleges and schools, and local authorities), trusteeships (of museums, galleries and similar bodies), and acting as an office holder or trustee for pressure groups, trade unions and voluntary or not-for-profit organisations.

Registration of (i) is only required for current interests. Registration of (ii)-(v) must cover both current and recent (at least the last two years) interests.

- F.8. 'Relevant Securities' means shares, stocks, debentures or bonds (including interests, options or rights in or over any such securities) held by the Member or any member of his Family (including trust holdings) other than:

(i) units or interests in collective investment schemes or holdings in investment trusts or managed funds, bonds, policies or similar vehicles (including pension schemes, plans and policies) where investments are made and managed by professional managers in a significant number of enterprises without the Member's involvement in investment decisions; and

(ii) securities held under arrangements where the investment decisions are made by a professional investment manager, such as a stockbroker or bank, who has absolute discretion as to purchase, sale and management of the investments and where the Member has no involvement in such decisions.

F.9. Before dealing in Relevant Securities, a Member must disclose the intention to deal to the Board Secretary, giving at least 24 hours notice. The Board Secretary may inform and consult with the Chairman. The Board Secretary will record the disclosure of the intention to deal in a confidential register.

F.10. The register is available for scrutiny by the public and will be available on the OFT website. Each Member is responsible for keeping his or her entries in the register up to date.

Disclosable Interests

F.11. From time to time Members may have or become aware of interests which do not require registration, but which in the context of a particular matter or issue before the OFT or the Board could nonetheless give rise, or be perceived as giving rise, to a conflict of interest.

F.12. These interests typically arise from a business interest, business or personal connections, friendships, pursuits and contacts of the Member and the Member's Family; in certain cases, such as where relationships are close, or where personal and business interests are intermingled, might also arise from connections and friendships of siblings or parents.

F.13. A Member must disclose to the Board Secretary any disclosable interest as soon as the Member becomes aware that they may cause a conflict—for example, on receipt of an agenda.

F.14. In considering whether to disclose such an interest, the Member may be assisted by the following questions:

- Has the Member become aware of the existence of a material holding in a relevant party of securities held by the Member or the Member's Family under arrangements described in paragraph 8(ii) above?
- Does the Member or any member of their Family have, or recently had (i.e. within the past two years), any material business or other pecuniary relationships or connections with a relevant party?
- Does the Member or any member of their Family have, or recently had any other relationships, connections or contacts with a relevant party, the existence of which could suggest the possibility of bias on the part of the Member?
- Has the Member or any member of their Family taken a public position that might be seen as compromising his/her ability to deal objectively with a matter that is before the OFT or its Board?

F.15. 'Relevant party' would include but not be limited to:

- a company under investigation
- a complainant (whether private individual, company or business or consumer association)
- companies in the same industry as companies under investigation
- companies chosen for consultation
- regulators of companies under inquiry; or
- government departments or other public bodies, whose regulations or codes of practice are of interest to OFT's work.

It also includes persons who are interested in, or involved with, any of the above.

F.16. A Member who becomes aware of an actual or potential conflict in relation to a matter which does not arise from a registrable interest must disclose the interest to the Board Secretary prior to taking part in any discussion or decision on the matter.

F.17. If in doubt as to whether or not there may be a conflict of interest, Members are advised to inform the Board Executive or the Chairman or the General Counsel in order to provide an opportunity to determine an appropriate response.

Procedures for handling interests

F.18. Prior to distributing any agenda or written paper on any matter or issue, the Board Secretary should identify so far as possible from the registrable interests of Members and from disclosable interests previously recorded in respect of Members, any Member who may have an actual or potential conflict of interest in relation to the proposed decision or discussion. The Board Secretary should consult the Chairman as necessary and should alert both the Chairman and that Member as to the nature of the actual or potential conflict and avoid giving any details of the matter or issue to that Member unless and until approved by the Chairman.

F.19. In relation to any actual or potential conflict of interest, whether arising from a registrable or disclosable interest, the Chairman, having consulted the General Counsel and other Members where he considers it necessary, will have the power to decide whether:

- the interest is one that is reasonably likely to influence the Member's performance of his/her function; and
- whether in the opinion of a fair-minded and informed observer, the interest would suggest a real possibility of bias on the Member's part.

If having considered both questions the Chairman is satisfied that it is appropriate, the Member may be permitted to participate fully or in a limited capacity in a decision or discussion. If the Chairman is not satisfied, the Member shall withdraw from further participation in the decision or discussion in question.

In the event of the Chairman having an actual or potential conflict of interest, whether arising from a registrable or disclosable interest, the General Counsel will have the same powers as the Chairman would in deciding whether, or in what capacity the Chairman may participate.

Records of conflicts of interest

F.20. In addition to maintaining the register of registrable interests and recording the handling of conflicts in the minutes where appropriate, the Board Secretary will keep a permanent record of all disclosable interests submitted by Members. The record will also indicate whether the matter was considered to give rise to a conflict of interest, whether the Member who made the disclosure withdrew from the decision or discussion in question and the extent to which he or she had access to any written papers on the matter.

F.21. The record will be kept confidential and will not be disclosed save where there is:

- a requirement for disclosure for the purposes of managing actual or potential conflicts; and/or
- any statutory or legal obligation to disclose the information; and/or
- an appeal or judicial review (or realistic threat of appeal or judicial review) of the decision in question on the basis that a conflict was not properly handled, and the Chairman decides that disclosure of the record would be appropriate.

Compliance

F.22. The Board Secretary will confirm with new Members that their interests have been registered. Notwithstanding paragraph 10 above the Board Secretary may from time to time ask current Members to confirm that their registered interests are up to date and that they have complied with these guidelines.

Annexe G

Confidential Information: Guidelines for the OFT Board

Introduction

- G.1. The OFT receives substantial amounts of information in its work to ensure that markets work well for consumers and that work is underpinned by the proper application of the principles of confidentiality, integrity and accessibility to such information. The reputation of the OFT, its effectiveness and efficiency will be put at risk if it fails to manage information appropriately. Accordingly, the OFT has developed guidelines and policies on dealing with information which Members should be familiar with and comply with.
- G2 During the course of their work on the Board, Members will come into possession of information which may be confidential, subject to statutory restrictions on disclosure and may also be price-sensitive. In order to preserve the reputation of the OFT, it is essential that Members do not misuse such information by passing it to third parties or by using it themselves to their advantage nor otherwise disclosing it contrary to statutory or legal restrictions.
- G.3. Particular care should be taken to avoid disclosing to any third party or otherwise acting on any discussions or decisions within the OFT the substance of which has not yet been made public. For example, discussions or decisions about pending market studies, market investigation references or competition or consumer enforcement cases or about the OFT's policy or strategy in relation to certain issues or sectors may be both confidential and price sensitive.

Insider dealing legislation

- G.4. The misuse of price-sensitive information is an offence under the insider dealing legislation.
- G.5. The Criminal Justice Act (CJA) 1993 makes it a criminal offence for an individual who has information as an insider to deal in securities (including shares, debentures, warrants and options) on a regulated market. Members who gain access to price-sensitive

information through their membership duties will be considered an 'insider' under CJA 1993. A Member who has unpublished price-sensitive information on any company, and either deals in the securities themselves, arranges for someone to deal in the securities on his/her behalf or passes the information on to someone or encourages someone else to deal will be committing an offence. The insider dealing offence under CJA 1993 is punishable by up to seven years' imprisonment and/or an unlimited fine.

Confidential information under the Enterprise Act 2002 and other legislation

G.6. Inappropriate disclosure of information may give rise to criminal proceedings under the Enterprise Act. Under the Act, a Member who discloses information provided to the OFT in connection with the exercise of its functions will be committing an offence, unless the disclosure is permitted by Part 9 of the Act. This contains certain specific 'gateways' under which information may be disclosed by the OFT, particularly, for instance, so as to enable the OFT itself or its enforcement partners to perform statutory functions. An offence under Part 9 is punishable by up to two years' imprisonment and/or an unlimited fine.

G.8 There are statutory restrictions on disclosure in other legislation administered by the OFT such as the Data Protection Act 1998, and the Official Secrets Act 1989. Other statutory provisions may also be relevant to disclosure of information such as the Freedom of Information Act 2000 and the Human Rights Act 1998.

G7 If Members handle information about individuals, they should have particular regard to the need to comply with the Data Protection Act. They will be processing personal data, and as such subject to the Act's requirements, if

- they obtain, hold, record, disclose or carry out work on information that relates to living individuals—including, for instance material containing expressions of opinion about people or giving an indication of intentions towards them—and
- the individuals in question can be identified, whether because they are named in it, or because their identity can be

established by reference to other information in the OFT's possession.

All processing of personal data has to be fair, lawful and meet one of certain conditions under the Act. The legislation makes stricter provision where the personal data involved are "sensitive" because they touch on such issues as the individuals' ethnicity, beliefs and opinions, health, sexual orientation, involvement in criminal proceedings, or trade union membership

- G.7 Members must also ensure that they do not disclose to any person information received by the OFT where such information has been provided to the OFT on a confidential basis.