

# OFFICE OF FAIR TRADING ('OFT')

## RULES OF PROCEDURE

MADE BY THE OFT 1 NOVEMBER 2007

### 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 such generally accepted principles of good corporate governance as it reasonably regards as applicable.
2. Set out below are the OFT's rules of procedure. These rules have been made by the OFT Board<sup>1</sup>. 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;

'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 office to the Board;

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<sup>1</sup> The statutory power to make these rules is at paragraph 8, Schedule 1, Enterprise Act 2002. These rules were made by the OFT at its meeting on 1 November 2007.

'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 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, appointed by the Secretary of State.
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 provide details of such review in its annual report.
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.

### **Matters reserved for Board involvement**

8. The matters listed in Annexe A are reserved for the involvement of the Board unless members of the Board, employees of the OFT, or any committee of the OFT are authorised to exercise them in accordance with Schedule 1 to the Act.

9. 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

10. The Board shall meet at least 10 times a year.
11. Subject to paragraphs 10 to 13 below, a meeting may be called by the Chairman, by the Chief Executive, or by any two Non-executive members.
12. 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

13. Subject to paragraph 11, the Chairman, Chief Executive and other members convening a meeting of the Board shall give fourteen clear days' notice of the meeting to each member.
14. 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.
15. 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.
16. Failure of a member to receive notice of a meeting shall not invalidate that meeting or any business conducted at it.

### Procedure at meetings

17. The quorum for a meeting of the Board shall be two non-executive members together with either the Chairman or the Chief Executive.
18. If the Chairman is not present at a meeting, those members present shall appoint one of their number to chair that meeting.

19. 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 18, shall have a second or casting vote.
20. In principle 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.
21. 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 of the Board 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 of the Board who leaves a meeting prior to the conclusion of a meeting shall be taken to be a non-participating member of the Board for the purpose of any decision taken by the Board during that person's absence.
22. In the case of a meeting called on short notice in accordance with paragraph 14, 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.
23. 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

24. 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 members of the OFT staff.

## **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 of the OFT (and 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 Sub-Committee established by the Board. Membership of the Audit Sub-Committee and its terms of reference are set out in Annexe C to these rules of procedure.
30. There shall be a Remuneration Sub-Committee established by the Board. Membership of the Remuneration Sub-Committee and its terms of reference are set out in Annexe D to these rules of procedure.

### Authorisation of individual members and employees of the OFT

31. 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 is hereby authorised to 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

32. The Chairman, Members of the Board, Members of Committees and Sub-Committees in carrying out their respective responsibilities must comply with the Civil Service Code<sup>2</sup>, have regard to the

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<sup>2</sup> Civil Service Code June 2006, see [http://www.civilservice.gov.uk/publications/pdf/cs\\_code.pdf](http://www.civilservice.gov.uk/publications/pdf/cs_code.pdf)

principles of public life<sup>3</sup>: selflessness, integrity, objectivity, accountability, openness, honesty and leadership and act at all times in the best interests of the OFT.

33. 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

34. 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 E to these rules of procedure.

#### Confidentiality

35. Members shall be subject to a general duty of confidentiality in relation to the conduct of the affairs of the OFT save where the disclosure of information is authorised or required to be made by the OFT in carrying out, or facilitating the performance of, the functions of the OFT. The guidelines applicable from time to time are set out as Annexe F to these rules of procedure.

#### Concerns about propriety

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

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<sup>3</sup> Nolan principles of public life are approved by HM Treasury in "Corporate Governance in central government departments: code of good practice", July 2005.

## **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 unbudgeted capital commitments exceeding £250,000 and write-offs exceeding £100,000.
- A.4. Approval of unbudgeted ex-gratia payments and settlements involving sums exceeding £100,000.
- A.5. Approval of aggregate levels of individual items below the thresholds specified in A.3. and A.4. above, if these exceed £1 million for capital commitments and £500,000 for write-offs, ex-gratia payments and settlements.
- A.6. Approval of Resource Accounts and Annual Report.
- A.7. Approval of changes in office location and lease terms.
- A.8. Approval of Market Investigation References to the Competition Commission.
- A.9. Approval of Market Studies.
- A.10. Review of risk assessment and risk management strategy and of business continuity plans.
- A.11. Review of strategy for the recruitment, retention and development of staff.
- A.12. Review of significant changes to organisational structure, governance and OFT's position within the competition and consumer regimes.
- A.13. Review of matters which may significantly affect:
  - a. the reputation of the OFT or its relations with HMG, regulators, courts, partners, EC 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; and
  - c. such matters (including the commencement or defence of major litigation) are to be identified through close communication between the Chairman and the Chief Executive.

**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 and managing the OFT's reputation.

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.

**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 three members.

**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 may participate by telephone or video-conferencing facility and be deemed to be present and constitute part of the

Committee for that meeting. Any person 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 of the Executive Committee 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.

## **Audit Sub-Committee Terms of Reference**

### **Purpose**

C.1. The purpose of the Audit Sub-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 in the OFT.

### **Terms of reference**

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

- the effectiveness of mechanisms employed for the assessment and management of risk;
- the robustness of internal financial control systems;
- 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 Resource Account;
- the internal audit strategy and plan;
- internal and external audit reports, including the external auditor's management letter;
- the adequacy of management responses to audit reports;
- the performance of the internal auditor; and
- the Accounting Officer's statement of internal financial control.

The Audit Sub-committee shall recommend to the Board, Executive Committee and Chief Operating Officer, as appropriate, such changes to existing practices and systems as is necessary.

### **Authority**

C.3. The Audit Sub-Committee acts only in an advisory capacity and has no executive powers.

C.4. The Audit Sub-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 Audit Sub-Committee.

- C.5. The Audit Sub-Committee is authorised to obtain independent professional advice (including legal advice) and to arrange for the attendance of persons who are not members of OFT staff with relevant experience and expertise if it considers this necessary.

### **Membership**

- C.6. The Audit Sub-Committee shall be comprised, so far as possible, from independent Non-executive members of the Board. In circumstances where this is not possible, the Audit Sub-Committee shall be comprised of at least one Non-executive member of the Board and at least two independent members or members who have been co-opted. The Audit Sub-Committee shall have the power to co-opt a member or members with appropriate specialist qualifications and/or experience subject to the approval of the appointment by the Board.
- C.7. A Non-executive or an independent member shall chair the Audit Sub-Committee.
- C.8. A quorum shall be three members.
- C.9. The Chair of the Audit Sub-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 Sub-Committee shall meet at least three times a year, normally in March, June and November.

### **Reporting**

- C.11. The Chair of the Audit Sub-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 Audit Sub-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 Sub-Committee and shall normally be present at meetings (as attendees rather than members).

## **Remuneration Sub-Committee Terms of Reference**

### **Purpose**

D.1. The purpose of the Remuneration Sub-Committee is to make final recommendations to the Board on pay decisions for the OFT's senior civil servants in accordance with the guidance in the Pay Strategy and with particular regard to equal opportunities.

### **Terms of reference**

D.2. The Remuneration Sub-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 Sub-Committee acts only in an advisory capacity and has no executive powers.

### **Membership**

D.4. The Remuneration Sub-Committee shall be comprised of the Chairman, the Chief Executive and two Non-executive Members. The Chairman shall act as Chair to the Remuneration Sub-Committee.

### **Meetings**

D.5. The Remuneration Sub-Committee shall meet at least once a year.

### **Reporting**

D.6. The Chair of the Remuneration Sub-Committee, on behalf of the Sub-Committee, will prepare a report once a year to the Board, on the findings, conclusions and recommendations of the Sub-Committee for the past year.

**Conflicts of Interest: Guidelines for the OFT Board**

**Introduction**

- E.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.
- E.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;
- E.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.
- E.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**

- E.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.

E.6. Registrable interests are primarily, but not exclusively, financial interests (as set out in paragraphs E.7 to E.10 below). Disclosable interests arise primarily, but not exclusively, from business and personal connections, friendships, pursuits, interests and contacts (as set out in paragraphs E.11 to E.15 below).

### **Registrable Interests**

E.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.

E.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.

E.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.

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

### **Disclosable Interests**

E.11. From time to time Board 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.

E.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.

E.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.

E.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?

E.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.

- E.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.
- E.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**

- E.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.
- E.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**

E.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 Board 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.

E.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**

E.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.

## **Confidential Information: Guidelines for the OFT Board**

### **Introduction**

- F.1. During the course of their work on the Board, Members will come into possession of confidential information which 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.
- F.2. 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.
- F.3. The misuse of price-sensitive information is an offence under the insider dealing legislation. The disclosure of confidential information is an offence under the Act and other legislation which OFT administers.

### **Insider dealing legislation**

- F.4. 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. Board 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 7 years imprisonment and/or an unlimited fine.

### **Confidential information under the Enterprise Act 2002 and other legislation**

- F.5. Members must 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. 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. An offence under Part 9 is punishable by up to two years imprisonment and/or an unlimited fine. There are similar statutory restrictions on disclosure in other legislation administered by the OFT.