

## Practice on consultation on proposed decisions in relation to market investigation references

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Building on its recent measures to increase transparency, the OFT is changing its standard practice on consulting on proposed decisions as to whether to make a market investigation reference to the Competition Commission (CC).<sup>1</sup>

Paragraph 3.6 of the OFT's guidance on Market Investigation References<sup>2</sup> sets out that the OFT will consult when it is proposing to make a reference to the CC. Normally this will be following consideration of competition issues in the course of a market study or examination of a super-complaint, or perhaps following a remedy review<sup>3</sup> in which wider market failures emerge.

In addition to consulting when it proposes to make a market investigation reference (as described in its Market Investigation References guidance), the OFT will now also consistently consult when it has provisionally decided not to make a reference in the course of:

- a market study that considers competition issues
- examination of a super-complaint that involves consideration of competition issues or
- a remedy review, where a market investigation reference has been considered as a real possibility.

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<sup>1</sup> Under section 169 Enterprise Act 2002 the OFT has a duty to consult on decisions as to whether to make a reference under section 131.

<sup>2</sup> OFT 511, paragraph 3.6.

As in the case of proposed decisions to make a reference to the CC, in these cases, the OFT will consult any person on whose interests the reference is likely to have a substantial impact, and the scope of the consultation will be informed by reference to what is 'practicable' in the circumstances.<sup>4</sup>

This policy note should be read as updating paragraph 3.6 of the OFT's guidance on Market Investigation References.

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<sup>3</sup> A review under section 92 or section 162 Enterprise Act 2002 to determine whether merger or market investigation remedies (or monopoly remedies put in place under the former provisions of the Fair Trading Act 1973) remain appropriate in the light of any change of circumstances.

<sup>4</sup> In accordance with section 169 Enterprise Act 2002.