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Information note to Local Authorities and other procuring entities regarding OFT Statement of Objections concerning alleged anti-competitive behaviour in the construction industry

17 April 2008

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This information note has been prepared in conjunction with the OFT's press release of 17 April 2008 announcing that it has issued a Statement of Objections (SO) to 112 companies alleged to have engaged in bid rigging activities, particularly cover pricing, in the construction sector.

In order to assist procurers, and in response to inquiries made to the OFT, this note outlines the OFT's views as to the action that might be taken by local authorities and other procuring entities as a consequence of the OFT's actions, and in particular the potential for exclusion of the companies under investigation from future tender lists.

As a preliminary point, the OFT must emphasise that it is a matter for individual procurers to consider what action, if any, they should take in their own particular circumstances, having taken appropriate legal advice as necessary.

It is important to note that no assumption should be made by procuring entities at this stage that there has been an infringement of competition law by an SO addressee. The SO sets out formal allegations and evidence, to which the addressees now have an opportunity to respond. The OFT's final decision, which is likely to be published next year, will set out the OFT's final conclusions as to whether there has been a breach of competition law in each particular instance.

The evidence received by the OFT in the course of its investigation indicates that cover pricing was a widespread and endemic practice in the construction industry as a whole. The OFT's investigation, whilst maintaining as wide a scope as practically possible, could not pursue every firm against which we have received allegations or evidence of cover pricing. In other words, it is not safe to assume that the addressees of the SO (or, ultimately, of the final decision) are the only companies that may have engaged in cover pricing. Moreover, companies that have applied to the OFT for leniency are under an obligation to put their house in order as part of their leniency agreement with the OFT and are therefore unlikely to be now engaging in cover pricing or other forms of bid rigging.

The current investigation and previous OFT decisions in the roofing sector clearly indicate to the construction industry as a whole that cover pricing is illegal and that it and other anti-competitive behaviour will not be tolerated. The OFT has published, in conjunction with the Office of Government Commerce (OGC), a guide for public sector procurers of construction. This includes, at pages 16-18, guidance as to mitigation of the risks of anti-competitive behaviour. You can download this document at

<http://www.ogc.gov.uk/documents/CP0144MakingCompetitionWorkForYou.pdf>

The OFT will continue to work with the construction industry, government and other stakeholders to ensure effective competition.

Should you have any queries, please email us at [construction@oft.gsi.gov.uk](mailto:construction@oft.gsi.gov.uk) .