

Summary

Information about the photocopier and photocopier leasing industry and the OFT's investigation of this sector in 1994.

Request

1. Why the OFT did not refer the photocopier industry to the Monopolies and Mergers Commission in 1994?
2. Whether the OFT has been monitoring the behaviour of the photocopier industry since 1994? And if so why no action has been taken even though the Department of Education has drawn attention to aberrant behaviour?
3. In the light of the aberrant behaviour highlighted by the Department of Education, what the OFT plans to do to manage this situation.

Response

We are treating your request for information in accordance with the terms of the Freedom of Information Act 2000 (FoIA). Under section 1(1) of FoIA, anyone making a request for information to the OFT, as a public authority, is entitled to be informed in writing whether it holds that information, and if so, to be supplied with it. The third part of your request (and second part of your second request) is addressed in the section below 'Additional matters'.

Why the OFT did not refer the photocopier industry to the Monopolies and Mergers Commission in 1994?

The OFT's report *Photocopier Selling Practices* (published March 1994) (the 1994 report) does not provide any direct information in relation to this issue and I have not been able to review the files from this investigation. However, the OFT's 1994 *Annual Report* does comment at page 21 that:

'The office equipment industry and the leasing industry both responded positively to these suggestions [the recommendations in the report] by developing amendments to their codes of practice and introducing lease and service proposal sheets. It appears that the controversial cost-per-copy contracts have now virtually ceased to be used'.

This suggests that the amendments to the codes of practice, the introduction of service proposal sheets and the ceasing of cost-per-copy contracts by the industry was sufficient to remedy the concerns that the OFT had at the time.

Whether the OFT has been monitoring the behaviour of the photocopier industry since 1994?

I can confirm that the OFT has not carried out any specific investigation under its formal powers of investigation available to it under the Fair Trading Act 1973 or, post 2000, the Competition Act 2000 or Enterprise Act 2002,¹ subsequent to the publication of the 1994 report, or any sector specific monitoring of the photocopier industry since 1996 (please see my further comments on the issue of monitoring below).

However, the OFT does appear to have done some follow-up work in the period following the publication of the 1994 report. For instance, the OFT commissioned a telephone survey in November 1995 which was subsequently carried out in March/April 1996, with the findings being announced in March 1997. While we have not been able to track down a copy of either the survey or its findings, it is mentioned in OFT *Annual Report* for 1995, 1996 and 1997.

The *Annual Report 1995* (pages 16-17) comments as follows:

'An independent telephone survey into the experiences of users in the acquisition of photocopiers was commissioned in November. Concentrating on leases and service contracts entered into since January 1995, the survey was designed to find out how far firms hiring out photocopiers had acted on the recommendations in the OFT's March 1994 report *Photocopier Selling Practices*

¹ The Consumer Credit Act 1974 (and its successor the Consumer Credit Act 2006) does not enable the OFT to make a reference to the Competition Commission.

(AR-94, p 21). It is planned to publish the findings of the new survey in the spring of 1996'.

The *Annual Report 1996* (pages 19-20) adds that:

'In March and April an extensive telephone survey of recent acquirers of photocopiers was undertaken in order to gauge the response of the photocopier-leasing industry to the highly critical OFT report published in March 1994 (AR-94, p 21). This research found that the levels of customer satisfaction were generally high, although some dealers had evidently still not responded adequately to the report's call for greater transparency. It was also clear that lease proposal sheets (which the report had recommended as a way of ensuring that all the relevant information was given to prospective customers before they committed themselves) were not working as originally intended. In many cases such sheets were handed to customers only when they were about to sign or, on occasion, even after they had done so. At the year's end, the OFT was discussing with the industry what, if any changes needed to be made'.

The comments in the subsequent *Annual Report 1997* (page19) suggest that the OFT remained concerned:

'In March, the OFT formally announced the findings of the survey it had carried out in the previous year (AR-96 p 19). Coupled with the reduction in the number of complaints received, the survey results indicated that the selling practices of the photocopier industry as a whole had improved significantly and that there had been a major effort by the industry to clean up its leasing and service agreements since the OFT had published its original highly critical report in March 1994 (AR-94, p 21). It was clear, however, that vigilance in this area was still necessary, and the OFT announced that it would consider any fresh evidence of continuing consumer detriment on a case-by-case basis within the terms of the Consumer Credit Act 1974.

The OFT also warned of the dangers of using so-called 'contract busters' – often former photocopier salesmen – who make extravagant claims for their ability to extricate clients from existing contracts, frequently with the aim of selling them an alternative. Discussions about the use of proposal sheets

founded because within the industry itself, there was no consensus on this subject. Nevertheless, the issue remained under active consideration at the end of the year'.

We have not been able to identify or track down any further information in relation to this part of your request. This suggests that there is no formal monitoring in place. This is not unusual though, as the OFT focuses its efforts and resources on deterring and influencing behaviour that poses the greatest threat to consumer welfare and intervenes in order to protect consumer welfare and, in the process, drives higher productivity growth. We also recognise the need to avoid imposing unnecessary burdens on business which means that the OFT does not, as a general proposition, typically put in place specific monitoring for particular sectors of the UK economy unless it is absolutely necessary to do so.

Additional matters

The second part of your second query - **And if so why no action has been taken even though the Department of Education has drawn attention to aberrant behaviour?** – and your third query - **In the light of the aberrant behaviour highlighted by the Department of Education what the OFT plans to do to manage this situation** – do not fall to be considered under the FoIA.

While the OFT recognises the importance of the issues that you are raising with us it is not able to investigate every issue that is brought to its attention. In order for the OFT to determine which issues it will investigate, it applies prioritisation principles. More information on the OFT's prioritisation principles can be found on the OFT's website (www.of.gov.uk). The OFT continually gathers intelligence, including databases holding details of consumer complaints and its work is prioritised in part on information, or evidence, gathered from such sources or directly from consumers (as in this case).

The *1997 Annual Report* refers to the Consumer Credit Act, and there is always the possibility of revoking a consumer credit licence for an organisation which provides photocopiers to consumers (but not to large businesses) on credit or hire if the conduct of the licensee is such that the OFT considered it no longer fit to hold such a licence. Further, since 1997, the OFT has been granted a range of new enforcement options under the Consumer Protection from Unfair Trading Regulations 2008

(CPRs)/Business Protection from Misleading Marketing Regulations 2008 (BPRs), for dealing with mis-selling or misrepresentation and this legislation may be more appropriate to the photocopier industry.

If the evidence suggests that the excessive costs in relation to photocopiers are a consequence of competition or consumer problems, then these are potentially issues that the OFT might address. In this regard, the OFT has done a lot of advocacy work on procurement in the public sector details of which can be found on the OFT's website. Broadly, this indicates the relationship between public procurement and competition.

Alternatively, the Department for Education (DfE) may be better placed and able to educate schools in relation to good procurement practice in relation to photocopiers. In this context, we note in particular the final paragraph of DfE's report on *Improving Efficiency in Schools*:

'But it is our role to equip to equip schools with information and tools to secure the best value for money and the savings they need. The DfE website provides a range of information and online tools for improving schools' efficiency, and links to support available elsewhere – www.education.gov.uk/schools/adminandfinancefinancemanagementt/b0069984/vfm/.