
Restriction on Agreements (Estate Agents) Order 1970

Advice to the Secretary of State for Trade and Industry by Sir John Vickers, Chairman of the OFT

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ISSUE

1. Section 88(5) and Schedule 11(10) of the Fair Trading Act 1973 (FTA) require the OFT to keep under review Orders given as a consequence of a monopoly report by the Monopolies and Mergers Commission, or Monopolies Commission, and to advise you if we believe that changes are appropriate.¹
2. This advice relates to the Restriction on Agreements (Estate Agents) Order 1970 ('the estate agents Order').

RECOMMENDATION

3. That you revoke the Order.

TIMING

4. Routine.

BACKGROUND

5. In 1969 the Monopolies Commission found that estate agents charged fees or commission at rates published by national societies or local associations and that this restricted competition and was against the public interest.²
6. An Order was made in 1970 to address the public interest concerns. The Order makes it unlawful for two or more estate agents to make any agreement or arrangement that places restrictions on: (i) the charges or terms and conditions of estate agency services; and (ii) the advertising of charges for estate agency services. In addition, it makes it unlawful for two or more estate agents, or an association of estate agents, to make any agreement or arrangement under which a person is to make any recommendation of charges for estate agency services.

¹ This duty remains in force by virtue of paragraph 14 of Schedule 24 of the Enterprise Act 2002.

² Monopolies Commission (1969), Estate Agents: a report on the supply of certain services by estate agents, Report 127.

ASSESSMENT

7. Many of the societies named as acting against the public interest in the Monopolies Commission report still exist today.
8. In 2004 the OFT completed a market study of estate agents in England and Wales.³ The study concluded that overall there are no structural competition problems in this market (although price competition seemed weak).⁴ The study did not find agreements or arrangements between estate agents that restrict charges.
9. Since the Order was made the Competition Act 1998 and the Enterprise Act 2002 have come into force. The practices which the Order addresses, as far as they have anti-competitive objects or effects, are now likely to be subject to the Competition Act 1998 and/or the cartel provisions in Part 6 of the Enterprise Act 2002. The possibility of fines for breach of the Competition Act 1998 is likely to be a significant deterrent to any reversion to past practices.

CONCLUSION

10. We consider that the Order is no longer necessary and should be revoked. Any reversion to the old practices is likely to be subject to the Competition Act 1998 and/or the Enterprise Act 2002.

³ OFT (2004), Estate agency market in England and Wales, OFT693.

⁴ The report explained weak price competition was a result of: (i) sellers focussing on the net return, not just the agent's fee; (ii) the lack of shopping around by sellers; and (iii) sellers not appreciating the size of the fee when it is quoted as a percentage.