

## **Notice pursuant to section 91(2) of the Fair Trading Act 1973 Revocation of Restriction on Agreements (Estate Agents) Order 1970**

The Secretary of State intends to make an Order (“the revocation Order”) to revoke the Restriction on Agreements (Estate Agents) Order 1970 (“the 1970 Order”). Before he makes the revocation Order he is required under section 91(2) of the Fair Trading Act 1973 (“the Act”), to publish a notice so that anyone with an interest in the matter may make representations to him.

### **The nature of the proposed provisions**

The revocation Order would revoke the 1970 Order. The 1970 Order was made for the purpose of remedying or preventing the adverse effects specified in the Monopolies and Mergers Commission report entitled: Estate Agents: a report on the supply of certain services by estate agents, (HC 127) which 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.

The 1988 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.

The Office of Fair Trading has recommended that the Secretary of State revoke the 1988 Order. Many of the societies named as acting against the public interest in the Monopolies Commission report still exist today. In 2004 the OFT completed a market study of estate agents in England and Wales. The study concluded that overall there are no structural competition problems in this market (although price competition seemed weak). The study did not find agreements or arrangements between estate agents that restrict charges

The OFT believe that 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.

Copies of the draft revocation Order may be obtained on the DTI website at <http://www.dti.gov.uk/ccp/topics2/monopolies.htm> or from [Philip.martin@dti.gsi.gov.uk](mailto:Philip.martin@dti.gsi.gov.uk)

### **Representations**

Any person whose interests are likely to be affected by the revocation Order, and who would like to make representations about it, should do so in writing to

Philip Martin, room 416, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET (e-mail: [Philip.martin@dti.gsi.gov.uk](mailto:Philip.martin@dti.gsi.gov.uk)). You should state what your interest in the matter is and the grounds on which you wish to make representations. Your representations must be received by 28 October 2005.