Minutes of the Office of Fair Trading Board Meeting

Thursday 6 November 2008

Present:        Apologies:
Philip Collins (Chairman)       Frédéric Jenny
John Fingleton (CEO)           
Lord Blackwell          
Vivienne Dews           
Alan Giles             
James Hart           
Tony Lea               
Philip Marsden        
Jonathan May          
Richard Whish

OFT Staff:
Claire Craig
Barney Wyld
Michael Lacaille and Kate Ivers (Item 1)
Frances Barr (Item 2)
Neil Smart (Item 3)
Barbara Hughes and Colin Brown (Item 4)
Ray Watson and Ian Edwards (Item 5)
Mary Starks, Steve Lisseter and Adrian Leigh (Item 6)

Executive Office:
Jennifer Halliday (acting Board Secretary)
Erik Wilson

Item 1:       Minutes of the Board meeting (3 October) OFT (08) 8th minutes
Subject to an amendment to page five of the full minutes, the Board approved the private and full minutes of the last meeting.

Item 2:       ExCo oral report to the Board

Executive Director, Corporate Services

Update on Spend
The OFT faces some key challenges in living within its budget. In addition to the CSR07, these arise from the significant unfunded pressures of the up-front costs of the Anti-Money-Laundering regime, the costs of the project to re-tender Consumer Direct (CD) contracts and the deficit in Consumer Credit. The Board was advised that following significant reductions in our spending, the Office is now confident it can deliver enough savings to remain within its budget (in terms of Parliamentary controls).
The Board confirmed it is content with the Office’s proposals to live within the controls on its budget, that we should aim to make further cuts to cover the impact on the Departmental Expenditure Limits and that we should continue to press HMT not to impose further cuts.

The Executive Director confirmed that the Executive will make further decisions in November and write to HM Treasury as planned.

**Consumer Direct (CD)**
The announcement of the delay in tendering for CD contracts has been made.

**Internal auditors**
The internal auditor attended a Senior Executive Team (SET) meeting to understand more fully the way risk is identified, escalated and managed by the OFT.

**Operation Committee (OpCo)**
OpCo has had three meetings to date (held fortnightly, alternating with ExCo). Its remit covers issues such as finance, spend, intelligence management systems, performance management and HR.

**CEO**

**Lloyds/HBOS**
The Board was provided with a précis of the case following the OFT’s report to the Secretary of State (SoS Lord Mandelson) for Business, Enterprise and Regulatory Reform (BERR) on 24 October. The CEO paid tribute to the OFT team and the cross-office group that produced such an impressive piece of work in such a complex case against such a challenging timetable. The Board was informed that the SoS made his decision to allow the merger to proceed on 31 October, stating that the public interest of preserving the stability of the financial system outweighed any potential anti-competitive effects of the transaction. The CEO confirmed that both the OFT report and the SoS’s decision have been published.

The CEO explained that the merger appeared anti-competitive at Phase I but that there was a possibility that it could have been cleared at Phase II with undertakings. In this vein, it is not inevitable that there was a conflict between the government’s intentions and the competition regime, rather the issue was one of time and the ‘scalability’ of the merger appraisal regime. The CEO explained the reasons why the failing-firm ‘defence’ was not accessible as, in light of the evidence, it was the OFT’s view that the government would not allow HBOS to fail. However, the case team built consideration of the failing-firm principles into the counterfactual. Finally, the CEO highlighted the submissions the OFT had received on the merger from Scotland, including a letter from the First Minister, Alex Salmond.

**MasterCard**
The CEO updated the Board on developments.
Northern Rock
In the context of the huge changes in the banking sector, the OFT has been discussing with HM Treasury the feasibility of monitoring and reporting upon the nationalised bank.

Senior Executive Team (SET) away-event
The CEO updated the Board on this event which took place on the 3 and 4 November. The event was a continuation of the development of the SET into a cohesive and collegiate leadership team by facilitating cross-office working and building upon sharing knowledge, risk and responsibility the benefits of which are already percolating into many areas of the Office’s work including Board items such as the pre-Board seminars and the new form ExCo report to the Board. The CEO emphasised that this work will continue.

Internal Q&A sessions
The CEO is reaching the end of delivering his presentation to all staff across the OFT on the challenges the Office is facing and its priorities going forward (based around the update he gave to the Board at its October meeting). The sessions have been very well received and it is encouraging to see staff posing questions relating to substance and the OFT’s external-facing mission and purpose as opposed to the questions posed at last year’s presentation which focused on internal issues.

Government staffing changes
The CEO alerted the Board to Changes within BERR and HMT at ministerial and official levels; Geoffrey Norris has moved from Number 10 to BERR and is now Lord Mandelson’s special advisor; Sir Brian Bender is to retire in March 2009 and his post is being advertised; Lord Myners appointed as Minister for Financial Services; John Kingman has been appointed Chief Executive of a UK government company UK Financial Investments Ltd to manage the government’s shareholdings in banks.

Executive Director, Markets & Projects and Policy & Strategy
National Audit Office Report
The Executive Director updated the Board on progress which is the follow up to the NAO Report of 2005. The OFT has had the opportunity to comment on the factual accuracy of the report. The Board will be updated again in December.

OFT/Competition Commission (CC)
The Board was updated on the agenda for the OFT Board and CC Council off-site on the 20 and 21 November. Board members will receive a briefing pack in advance of the event.

Delivery in October
The Executive updated the Board and applauded the hard work of respective teams on the significant number of high-impact outcomes that the Office has delivered in October. These include: the Construction Recruitment Forum; Newspaper and Magazine Distribution; Sale and Rent Back; Lloyds/HBOS; Scottish Milk and four significant merger cases – Stilton cheese and hospital phones references, Co-op/Somerfield UIL’s and up-front buyer remedy in Air France KLM/VLM.
Chapter II Competition Act 1998 case
The Board was informed of the Executive’s decision to open a case into a possible infringement of Chapter II of the Competition Act 1998.

Chairman
Evaluation of the Board visit to Scotland in October
The Board agreed that the visit was highly successful. They also agreed that consideration will be given to future Board meetings being held outside London but in 2010/11. The Board is keen to return to Scotland to follow-up on the important work achieved last month but the timing needs to be considered carefully in the light of the budgetary situation.

Director, Communications
Media
The Board was informed of the publication of the OFT’s Prioritisation Principles and a report by Frontier Economics on environmental standards and voluntary agreements. The Director emphasised the successful launch of the three strands of the Newspaper and Magazine Distribution project which included a stakeholder event attended by over 60 interested parties.

General Counsel
The Board was updated on 2 key cases currently subject to judicial review and the Banks test case in the Court of Appeal where the hearing finished on 5 November.

Item 2: ExCo Report to the Board (quarterly version)
The Chairman emphasised that this is still dynamic work in progress and that the volume of this month’s report is due to the fact that it is the first of the quarterly versions which includes operational information and review of progress against Annual Plan and CSR07 commitments. Subject to some clarificatory questions on a case and the EU Consumer Rights Directive, the Board is happy with content with the direction and will convey any points of detail to Claire Craig and Erik Wilson.

Item 3: Draft Annual Plan 2009/2010
The Board received a draft of the OFT’s Annual Plan 2009/2010 upon which the OFT has a statutory obligation to consult. The Board was advised the reasons underlying the changes to the current Annual Plan: focus on outcomes rather than public announcement of specific outputs allows the flexing and scaling of our priorities (specific deliverables will be contained and tracked in internal business plans); integrating the CSR07 performance framework with the OFT’s commitments emphasises alignment and avoids repetition. The Board welcomed the changes and rationale, in particular the increased external focus. The Board approved the publication of the draft for consultation.

Item 4: Consumer Enforcement Review
In response to the Board’s desire to learn more about the OFT’s consumer work, it received a presentation of the review carried out of consumer enforcement work. This was a qualitative and quantitative analysis carried out through stakeholder interviews, interrogating internal databases and examining historic materials. The key
findings concerned the need for enhanced partnership working; improved internal communication; better intelligence gathering and prioritisation; development of new techniques and intervention methodologies; and specialist enforcement resources.

Item 5: Work of the Consumer Credit Group and the new Credit Regime
The Board received a presentation on the Group which noted its significance within the OFT in terms of staff, budget and workload volume, outlined the Group's objectives and explained its risk-based approach to its licensing activities. It outlined the fundamental changes to the regime resulting from the Consumer Credit Act 2006 (in force since April 2008). The team informed the Board of its strategic focus based on the OFT's extensive experience of credit licensing and the actions now being taken in the high-risk areas as well as in the context of the irresponsible-lending project.

The Board was informed of the action being taken to reduce the backlog in processing which the team confirmed it hoped to be cleared by the end of the calendar year. The team alerted the Board of the significant shortfall in applications for consumer credit licences (representing the lowest rate of applications for over 30 years - currently running at only 76% of projections, despite conservative assumptions) which is of particular concern given that the regime has been self-funding since April 2008. The Board asked about the quality of the information on which we are basing projections. The team acknowledged that better data were needed and its intention to do a review of key areas including, inter alia, examining the possibility of ending paper applications which are costly and time-consuming not least due to higher levels of inaccuracy than in on-line applications which automatically prevent submission until accurate.

Item 6 New market study
The Board approved a proposal for a market study. The Board posed questions regarding the scope and timing of the study and emphasised the importance of clearly outlining the theory of harm at an early stage, as well as considering potential remedies. The Board recommended that the team liaises closely with other government departments to carefully refine scope. Finally, the Board emphasised that the public presentation and timing of this study will be crucial. The team confirmed that they will be working closely with the Communications team ahead of public announcement which is planned for January 2009.

Item 7: Any other business and future agenda items
Nil

Jennifer Halliday
(Acting) Board Secretary
19 November 2008