Minutes of the Office of Fair Trading Board Meeting

Thursday 5 February 2009

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

OFT Staff:
Barney Wyld
David Leech (observing)
Frances Barr (Items 1- 4 and 6)
Sonya Branch (Items 1 and 2)
Claire Craig (Items 1, 2, 5 and 6)
Heather Clayton (Items 2 and 3)
Tony Donaldson, Debbie Samosa and Veronica Mansilla (Item 2)
Mary Starks, Simon Nichols (Item 3)
Andrea Appella (Item 4)
Sophia Bhatti (Item 6)

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

Item 1: ExCo oral and written report to the Board (quarterly version)

CEO
NAO Report

• Publication is expected to be in March.

Key strategic issues

• The current macro-economic and political climate is increasing the focus on and pressure for short-run, immediate, ex ante, high-profile interventions as opposed to light-touch, ex-post, long-run measures which cut across
competition and consumer powers and competencies. The OFT needs to be proactive and responsive to these changes.

CEO Meetings
The CEO reported his recent meetings.

Sonya Branch (Senior Director Markets & Projects) covering update from Executive Director, Markets & Projects and Policy & Strategy (Jonathan May)

- The Board was updated on a number of key cases and associated risks.

Executive Director, Corporate Services

OFT finance issues

- In managing the current year spend to ensure we are within control totals, and principally in light of an HMT decision on a VAT issue, we have concluded we have some room to make some very modest reversals of some previously imposed budgetary cuts. It was confirmed that these will be in areas where it eases the transition to next year's budget, and will principally be capital and non-staff items and will not be on 'new initiatives' or additions to staffing levels.

Consumer Credit Licensing Fees

- We are liaising with officials at BERR and HMT on fees.

Human Resources (HR)

- HR is working on exit interview data and will update the Board in due course.

Director, Communications

- E Newsletter letter was launched and we have received very positive feedback.

- Scams awareness month launched and the OFT hosted a Parliamentary reception on the evening of 3 February which was well-attended by MP’s and TSS alike, despite adverse weather conditions. Gareth Thomas MP, Ron Gainsford and Philip Collins all spoke at the event. Activities will be ongoing throughout February.
General Counsel

- Following Vance Miller’s breach of the 'stop now' order, a £90k fine and a six-month suspended sentence (29 May 2008) Mr Miller appealed. The Court has dismissed his appeal and awarded OFT costs.

Item 2: Financial Services Strategy Development

The Board received a short presentation which highlighted the main issues to seek the Board’s input on the strategic approach we should be taking.

The Board was asked to give a view on the balance and trade-off between: short-run v. long-run; consumer v. competition; and acting v. influencing (including choice of powers/intervention methods). The Board recommended that, given uncertainties, we need to retain our ability to be flexible and responsive.

The Board discussed key challenges going forward and agreed we could usefully develop and offer our initial views on what kind of market structure(s) would deliver benefits across the board; not 'answers' or 'solutions' but informed and educated views. This fits well with other work we are doing. It was stressed that there will be increasing emphasis on the consumer aspects/impact of the crisis and these need to be considered carefully in our strategy. The team explained that we are actively monitoring the market and gaining evidence to inform our approach and further work will be done on this to input into the plan.

Item 3: Possible market study

The Board received a presentation seeking its views on a proposal to launch a short market study. The Board had also received a paper which outlined the Group’s portfolio, placing this item in the context of other actual and proposed work. The Board discussed several issues around the size of the market, proportionality, the availability of remedies, sensitivities, deterrent effects, strategic significance, experience from other jurisdictions (European case law) and impact. The Board approved the study.

Item 4: The OFT’s international strategy

The team presented its paper which outlined the context of the OFT’s international work, the benefits it achieves and sought the Board’s views on strategy and key objectives for 2009-10.

The objectives of the international strategy were summarised as follows:

- Markets are increasingly global, new competition and consumer laws have identified a real need to prevent international harm from private conduct on both the competition (for example, Marine Hoses) and consumer (for example, Bogus Holiday Clubs) side.
• We must continue to work internationally to discourage and address distortionary public restrictions and protectionist measures.
• In order to avoid duplicative burdens on business which impose costs which are ultimately passed on to the consumer, it is essential to develop co-operation and convergence globally amongst agencies.
• To further the delivery of the OFT’s domestic objectives, especially in areas such as horizon-scanning, and to improve learning and sharing of experience around, for example, methodology.
• To retain and further the OFT’s already strong reputation as a leader in the international arena.

These objectives will continue to be achieved through international networks and information exchanges. Influencing key policy debates and developments (for example, recent DG Competition Guidance on Enforcement Priorities under Article 82 ECT) and aiming to understand divergence and promote convergence.

The team proposed three key priorities/objectives upon which it seeks the Board’s views:

i. improving internal co-ordination and dissemination of information;
ii. contributing to the debate on the international financial crisis;
iii. international leadership.

The Board applauded the work of the OFT on the international arena, stressing that the OFT’s contribution was universally perceived as fundamental. It noted that the work requires significant resource and commitment, within the immediate team and across the OFT (including significant senior time) but that there are huge externalities which were very evident to those Board members who attend the same international events and witness the benefits first hand. In addition, technical assistance from the OFT to other agencies is always needed and welcomed.

The Board noted that one of the biggest challenges for any international team within a competition/consumer agency is to ensure that the learning captured is effectively disseminated within the domestic agency to ensure all benefit. Emphasis should be placed on meeting this challenge which will also demonstrate to the rest of the OFT the benefits being obtained from the investment of their time. The team noted that an updated form of the annexe to the paper, which summarised the activities of the international team, will be disseminated across the OFT on a regular basis and that it plans to have more internal know-how seminars on international issues.

It was noted that there has never been a more important time for authorities to join together and co-operate to develop and speak with one aligned voice on the importance of competition and consumer law and policy.
Finally it was noted that limited time and resource meant that we have to be selective about the invitations that we accept, we focus on activities and events that benefit the OFT and we try and get organisers of events to fund our attendance.

**Item 5: Annual Plan Meeting with Lord Mandelson**

The Board received a paper tabled at the meeting which advised it of the meeting planned for the 11 February with Lord Mandelson.

**Item 6 Preparations for OFT Board/Competition Commission (CC) Council Meeting**

The OFT Board is due to meet the CC Council on 12 February. The Chairman met with Peter Freeman at the end of January and agreed the outline of the agenda. This meeting is part of the regular cycle following the off-site event of November 2008. The primary objective of these regular meetings is to provide the Board and the Council with opportunities to develop a deeper understanding of one another’s work.

**Item 7: Minutes of the Board meeting (8 January) OFT (09) 1st minutes and below-the-line items**

The Board approved the private minutes and, subject to minor corrections, the public minutes of the last meeting. The Board noted the two below-the-line papers.

**Item 8 Any other business and future agenda items**

i. The Board was invited to attend a talk by Bill Kovacic (the outgoing Chairman of the US Federal Trade Commission, ‘FTC’) which presents its report on 'FTC at 100; Agency Effectiveness'. The talk will be recorded and made available if Board members are unable to attend. There is also a video of a talk Bill delivered at the OFT this week on the impact of the economic crisis on the US. Board members should contact Executive Office if they would like to view this.

ii. Richard Whish gave his apologies for the OFT/CC meeting scheduled for 12 February.

Jennifer Halliday  
(Acting) Board Secretary  
6 February 2009