Minutes of the Office of Fair Trading Board Meeting

Thursday 4 December 2008

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

OFT Staff:
Claire Craig
Barney Wyld
Ali Nikpay, Colin Brown and Gordon Ashworth (Item 4)
Frances Barr (Items 1 and 6)
Heather Clayton, James MacBeth and Peter Lukacs (Item 5)
Stuart Vernon, Omar Yaqub and Paul Gurowich (Item 6)

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

Item 1: Minutes of the Board meeting (6 November) OFT (08) 10th minutes

Subject to an amendment to page two of the public minutes, the Board approved the private and full minutes of the last meeting.

Item 2: ExCo oral and written report to the Board

The Board continued to be content with the way the written report was developing. Any detailed comments will be fed in to Claire Craig and Erik Wilson directly.

CEO

Political climate

The CEO outlined to the Board the initiatives being taken by the Department for Business Enterprise and Regulatory Reform (BERR) since the appointment of
Lord Mandelson as Secretary of State. In recent speeches the Secretary of State has emphasised the need for government to be joined-up in its dealings with business and was proposing a new 'industrial activism'.

OFT priorities

The CEO emphasised the OFT is very much alive to the economic and political climate and is preparing itself for the impact this will have on its portfolio and work programme. The OFT can expect increasing dialogue with Government on potential new workstreams. The CEO highlighted the need for the OFT to be pragmatic and flexible.

The CEO referred to his attendance at a 'credit summit' on the 26 November, convened by Lord Mandelson (following a statement by the Prime Minister on 11 November) to bring together the credit card industry to discuss a statement of best practice containing 'clear and fair principles' in light of rises in credit and debit card rates and the need for more 'responsible lending', in particular to both companies and individuals who find themselves in difficult financial circumstances. The OFT engaged extensively with BERR in the lead-up to the event to emphasise the importance of not inadvertently breaching competition law and to emphasise the CEO’s attendance in an observational capacity.

The Executive Director of Corporate Services informed the Board that the National Economic Council is also seeking the OFT's advice on credit measures and the team is engaging closely with it to offer its experience.

European developments

The successor to Philip Lowe (current Director General of DG Competition) has been announced. Alexander Italianer who is currently deputy secretary-general will replace Philip Lowe not later than 1 November 2009. Mr Italianer is an econometrician by profession and is highly regarded in the European Commission.

On Wednesday 3 December, the European Commission published guidance on its enforcement priorities in applying European Community Treaty (ECT) rules on abuse of a dominant market position (Article 82) to abusive exclusionary conduct by dominant undertakings.

Casework

The Board received updates on a number of projects.

Other matters

- Freedom of Information Act (FoIA) request – the Board was informed of the receipt of a FoIA request with regards to the Co-Op/Somerfield merger.
• Succession for Senior Director of Mergers – the CEO explained that the appointment will be made via internal lateral transfer. A decision is expected to be made by 19 December when other internal announcements are also planned.

Executive Director, Markets & Projects and Policy & Strategy

NAO report

The Board was updated on the good engagement we have had with the NAO, commenting on the factual accuracy of drafts. The completed report is expected to be published in the New Year.

Personal current account work

The Board received a paper updating it on the progress being made in the market study and the test case. On the market study, the team is working closely with the parties on potential remedies. The Board will be updated on both workstreams in the New Year.

OFT/CC

The Board received a paper summarising the off-site between the Board and the CC Council on 20 and 21 November. The Executive Director asked the Board to provide any feedback it had on the event to him or the Strategy Director.

Board agenda changes and forward work programme

The Board received a paper outlining how the Board has spent its time and draft agenda items for 2008/2009. The Board was pleased with the new format and the thinking that is being progressed to ensure the Board is effectively and efficiently engaging on the right subjects, in the right way and at the right time.

Environment, Food and Rural Affairs Committee (EFRA)

The Executive Director and the Senior Director of Markets and Projects, Goods, will be appearing before the Committee to give evidence on its Inquiry into the Pig industry. The Board will be updated on this in January.

Executive Director, Corporate Services

OFT Budget

HMT has been informed of the significant work the OFT has undertaken to ensure it can live within its budget. The Director of Finance has since met HMT officials who were supportive of the OFT's efforts in this regard.
Consumer Credit Licensing

The Executive Director explained that there had been a significant drop in applications during November but we are unsure whether this is an anomaly or a longer-term issue. In order to plan for the latter, the Executive is identifying further potential reductions in the costs of the team. Despite a fall in the number of applications, the OFT is confident the work is going in the right direction.

Consumer Direct (CD)

The response to the announcement of the delay in the project has been muted.

The team and senior management is considering how the CD service fits with other aspects of the Government’s consumer services.

The Board was informed of the fact that CD received a huge volume of calls complaining about Lapland New Forest resort which has received substantial media coverage this week. This has cost CD circa £30k.

Sub-Letting of Fleetbank House

The Board was informed that there is considerable interest from an agency of Government to occupying the whole of the 1st floor.

General Counsel

The Board was informed of current key cases in the General Counsel’s Office.

Director, Communications

Media

The Board was informed of the launch of National Consumer Week with appearances on GMTV and other media. A Scams Christmas Campaign will also be launched shortly via national and regional media.

Head of Marketing and Campaigns

This appointment has been made. The Director thanked Philip Marsden for his help on interviewing. The candidate was previously with the Department for Transport.

Item 3: Audit Committee Update

Tony Lea, Chairman of the committee, reported orally on the Committee's meeting that morning. He noted progress across all areas where issues had been identified including with the Finance Management Improvement Plan, the Corporate Risk register, implementation of four various previous Internal Audit reports, the planning for the NAO audit of the current year’s accounts, internal
security and the Business Continuity Plan. Whilst there was still plenty of work to do, the Committee was satisfied with the broad direction and general progress.

**Item 4: Self-Regulation and industry-led Compliance with Consumer Law**

The Board received a presentation from the Policy group. The starting point was that self-regulation by a group of firms within an industry to modify their behaviour to enhance consumer protection, but without harming competitive rivalry or process between them, was beneficial. It avoided the need for formal, inflexible and potentially intrusive regulation and resource-intensive enforcement interventions.

The presentation looked at what the OFT does now through existing statements, how it works with various industry bodies on specific projects and what more OFT could do. The Board support a drive to improve compliance and raise standards through working with trade associations.

**Item 5: Proposed Market Study**

Subject to the points made by the Board being taken into account they approved the proposal for a short diagnostic study.

**Item 6: Work of the General Counsel’s Office (GCO)**

Frances Barr gave a presentation on the GCO and her role as head of profession. The presentation covered the OFT’s legal landscape and how it is affected by our objectives and priorities, by changing economic conditions and by legal and policy developments.

The Board agreed the importance of robust legal analysis, quality assurance and awareness of legal risk across the OFT and the benefit of this being embedded within teams. This will continue to be essential in light of the increasingly high-impact work that we are undertaking with higher attendant risk.

The presentation included some specific issues/examples which included the Freedom of Information Act (FoIA) and the process for dealing with requests and fostering clarity and coherence around exemptions thereto, ring-fenced litigation budget, how we maintain the necessary separation between out investigative and adjudicative roles.

Finally, the presentation outlined the GCO’s vision in supporting and promoting the OFT’s work, its mission on delivery, leadership and development, some of the challenges that it faces and the main features of the implementation of the strategy.

The Board commended the work of the GCO and the developments in depth and quality of legal knowledge and analysis which is having tangible benefits across the whole of the OFT’s portfolio of work.
Item 7 Any other business and future agenda items

FoIA request to disclose information

The Chairman noted that on 20 November, the Board had approved through written procedure the decision to withhold information requested under section 36(2)(b) and (c) of the FoIA relating to an investigation.

Audit Committee

The Chairman advised that Philip Marsden had been appointed a member of the Audit Committee.

Jennifer Halliday
(Acting) Board Secretary
16 December 2008