Minutes of the Office of Fair Trading Board Meeting

Thursday 3 February 2010

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

OFT Staff:
Frances Barr
Claire Craig
Barney Wyld
Heather Clayton, Alastair Mordaunt, Jessica Nardin (Item 1)
Cavendish Elithorn, Gordon Ashworth, Colin Brown, Jackie Holland, Steven Preece (Item 2)
Heather Clayton, Aileen Armstrong, Jason Freeman, Juliet Young (Item 3)
Clive Maxwell, Alastair Mordaunt (Item 4)

Executive Office:
Jennifer Halliday
Erik Wilson
Rachel Christopher

Item 1: Transparency

The team explained that the organisation has become significantly more transparent since the project began in 2009. For example, the publication of the names of Senior Responsible Officers, teams and their contact details against cases has become routine and no issues have arisen from this initiative. This stage of the project supports the general trend that public bodies are accessible.

The Board discussed the publication of case-opening summaries and the point in the process where parties could be named. It was agreed that each project would need to be considered on a case-by-case basis. A set of codified principles to be applied to each case will be developed and a pilot, guided by ExCo, will be run for 12 months before returning to the Board.
Item 2: Drivers of compliance and non-compliance

The team has conducted research into drivers of compliance with both consumer and competition law. The consumer side is based on research of small and medium enterprises (SMEs); the competition side is research the OFT conducted with larger companies and law firms. The projects are intended to enable us to inform and review our existing approach, to identify new factors or prompt a change in the way the OFT addresses compliance. Results and recommendations are due to be published around spring 2010.

Very little research has been conducted internationally into the impact of consumers and their behaviour on business compliance with consumer protection law. The team’s research shows that consumers drive compliance in business. However, SMEs are less likely to be aware of consumer and competition law in the first place (and have many other regulations which they may see as priorities, e.g., health and safety) and thus to comply with it. They value their relationships with Trading Standards and other trade organisations and rely on such organisations to keep them up-to-date. Also, all businesses are relying more heavily on the internet for information on the law.

The Board agreed that it could be valuable to focus on continuing to inform and update trade associations on the law; it also thought a website on consumer law for SMEs could be useful.

The team explained that discussions were continuing on Macrory-type powers for enforcement of consumer law, which would allow the OFT to enforce consumer law as it currently does competition law.

Competition law is significantly more integrated into the daily running of large businesses which are highly disciplined about compliance; many such businesses have in-house lawyers who are responsible for this. So-called “rogue employees” can be a concern even for companies with strong compliance initiatives and there are difficulties in determining what is, and is not, a sound “competition culture” and a “rogue employee”. The Board thought that the use of director disqualification orders will be important in encouraging compliance. The Board suggested that guidance on compliance specifically for non-executive directors (NEDs) would be helpful, and recommended that compliance becomes part of NED induction procedures. The team’s future research includes consulting large businesses on their compliance programmes and the success thereof.

In conclusion, it was agreed that the team would return to the Board below the line with its firm recommendations once the research is concluded.

Item 3: Consumer market group: progress and portfolio

The Consumer Market Group (CMG) was established in June 2009 and comprises the old Consumer Protection Group and other parts of the organisation. The structure of the team has been modernised, the number of senior staff increased, and junior posts reduced. Staff turnover has increased in a positive way with
resources moving flexibly. The group has now become much more strategic and has a long-list of pipeline work.

A new team in CMG focuses on e-enforcement. The team has a laboratory that was developed after the receipt of specialist advice; this is fully integrated and contains sophisticated investigation tools. The skills learned will be deployed across the office. A number of cases have been identified and the team is working closely with the Federal Trade Commission (FTC) and other international enforcement authorities. The work carried out in this team is not duplicating that of other enforcement agencies. The FTC led the work in the US and the Police Central e-crime Unit is the closest comparator in the UK.

In conclusion, the team explained that it continues to work closely with Trading Standards and LACORs, providing bulletins on law updates and a one stop shop for queries. The Board welcomed the new focus of CMG and the establishment of the e-enforcement team.

Item 4: Update on new Services team specialising in CA98 investigations

This new team, which has been charged with reviewing and streamlining the process for handling CA98 investigations, will be established in the next few months and will comprise four to five members. The Board supported the development of the team.

Item 5: ExCo oral and written quarterly report

CEO

Banking

Discussions are currently ongoing with the main banks for changes in business practices following the personal current accounts market study and the test case.

Executive Director, Markets & Projects and Policy & Strategy

Cases
The Board was updated on developments in several ongoing cases.

Executive Director, Corporate Services

Finance
The Board noted its continuing desire to see the Office putting in place measures to improve forecasting.

Consumer Direct
Performance is beginning to improve, following the introduction of New Case management software
Operon
Operon, the OFT’s facilities providers, went into administration recently, our contract was sold to Europa. Europa has indicated that it is able to take on the work on Fleetbank House, but has yet to confirm timetables.

Financial Services Bill
Amendments have been tabled to the Financial Services Bill which may have implications for the work of the OFT (e.g. Credit).

Civil Service Compensation Scheme
Changes have been made to compulsory redundancy terms. This has been agreed by five of six Civil Service unions; the Public and Commercial Services Union, which is also the biggest, will ballot on industrial action.

General Counsel

CAMRA
An appeal against our decision to take no further action in response to the supercomplaint has been launched. The OFT is now consulting on its decision and the appeal has been delayed for six months.

Construction Recruitment Forum and Construction
The CAT has decided it will hear the 25 appeals in Construction in parallel hearings at the end of June.

The Construction Recruitment Forum case management conference will take place on 5 February.

Other litigations
• BSkyB lost its appeal to the Court of Appeal from the CAT’s judgment concerning the CC’s remedy requiring divestment of shares in ITV plc;
• The first judicial review of a merger case at the CC has launched by Stagecoach.

The OFT is carefully following the case of Safeway v Twigger in the High Court concerning actions by Morrisons against former Directors of Safeway arising out of the Dairy case.

Director Communications

Scamnesty
Scamnesty launched this week. It allows the public to send examples of scams received by mail, email or phone to the OFT. The initiative has been popularly received by the press and 40 MPs have signed an early day motion.

Director Strategy and Planning
The Director presented charts which give an intuitive look at how the portfolio is split by economic sector and by time.

Item 6: Review of the future Board agenda
The Board members were invited to review the more detailed forward agenda supplied, and also the proposed list of planned pre-Board seminars.

**Item 7: Minutes of the Board meeting (14 January), below the line items and AoB**

The Board approved the private and public minutes of the last meeting subject to one minor change.

December Audit Committee minutes
The Board received this paper for information only.

Staff survey results
The Board received this paper for information only.

Rachel Christopher
17 February 2009