LETTER TO THE OPERATORS OF 100 LEADING PCWs

Dear [ ]

We are writing to 100 leading price comparison website operators, including your business, to make you aware of some of the OFT’s recent work in this area and our consumer awareness campaign, in which we have highlighted the practices that consumers should be able to expect of trustworthy price comparison sites. For the avoidance of doubt, we are not suggesting that your business is in breach of any particular piece of legislation but rather that we would encourage you to check your practices against a number of standards, as set out below.

As you may be aware, the Department for Business, Innovation and Skills has published ‘Better Choices, Better Deals: Consumers powering growth’ which sets out its consumer empowerment strategy. One of the objectives of that strategy is to help vulnerable groups become more confident as consumers, including through the use of tools such as price comparison websites, and to complement that strategy with a strong consumer protection regime.¹ As set out in its Annual Plan, one of the OFT’s strategic priorities is work that improves trust in online markets. In support of these objectives, the OFT is undertaking a project designed to help foster greater and more widespread trust in price comparison websites and further extend their use as choice tools.

The OFT recently held a roundtable with our regulatory partners in this area², and carried out a web sweep of 55 price comparison websites in relation to a variety of consumer protection issues that cut across product sectors. It included an examination of privacy policies, general transparency and information provision, and complaints and liability policies. The OFT has today published a report, outlining our findings and setting out how price comparison websites could improve their practices

¹ A copy is available here: http://www.bis.gov.uk/betterchoices

² ASA, CAA, FSA, ICO, Legal Services Board, Ofcom, Ofgem, ORR. Representatives from Consumer Focus and the Legal Services Consumers Panel also attended.
to increase consumer trust. The OFT has also launched a consumer awareness campaign to advise consumers what practices they should expect to see in trustworthy price comparison sites, and how to get the best from their use of them (our key messages to consumers, in the form of ‘Top Tips’, are attached for your information). To highlight our business and consumer messages we are writing to 100 price comparison businesses, including yours, to make them aware of our report and to advise them of the sorts of transparent practices we would expect to see in trustworthy price comparison sites. We would encourage you to check your practices against the following standards:

- **Ensure that you have a privacy policy.** This should be clear, prominent and brought to consumers’ attention before they enter personal information. The privacy policy should clearly offer consumers the opportunity to opt-out of third party data sharing if they wish. The Data Protection Act 1998 (the ‘DPA’) requires that all businesses collecting personal data explain to consumers: who is collecting their information; what they intend to do with their information; and with or to whom their information will be shared or disclosed. The DPA also provides that all consumers can prevent the use of their information for direct marketing purposes. The ICO has produced a privacy code of practice that sets out best practice in these areas.

- **Be clear about the way search results are presented** (by price, by popularity, by relevance, ‘best deal’, etc) – clear, simple information about how different types of ranking or promotion are generated will help promote trust and make it easier for consumers to decide which ranking system or deal is best for them. It is vital there is no confusion over whether a particular offer represents a comparison result based upon objective criteria, or a promotion which may be based upon commercial relationships between the comparison provider and the product vendor. While including both

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3 http://www.oft.gov.uk/OFTwork/consumer-protection/campaign11-12/price-comparison-websites/

types of offer on the same website may have benefits for both the consumer and the business, in our view a clear distinction between the two is necessary to ensure that trust is maintained and extended. It is also important, in our view, that comparison websites also clearly explain the nature of any affiliate or commercial links they have with the vendors whose products appear on the website. Failure to disclose ownership links and commercial relationships where that information is material to a consumer’s decision making may breach regulations 6(1)(a) and 4(b) and (c) of the Consumer Protection from Unfair Trading Regulations 2008 (the ‘CPRs’) and may also breach part 9.1 of the Committee of Advertising Practice’s Code on Non-broadcast Advertising (the ‘CAP Code’). A failure to disclose the identity of the business operating the website is a breach of the Electronic Commerce Regulations 2002. The OFT has previously taken enforcement action against websites in this respect.

- **Be clear about the nature of the search.** The market coverage of a search should be clearly explained and information regarding the frequency with which pricing and stock availability information is updated should also be provided.

  Statements similar to, ‘We’ve searched the market’ or ‘We’ve found the best deal’ should be qualified in circumstances where the entire market has not been searched. We consider this will address two issues. First it will prevent consumers from assuming a search is more comprehensive than it is. Second, the increased transparency may help reassure consumers who may be concerned about the exact level of coverage and who perhaps think that it is

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5 The OFT has published guidance on complying with the CPRs: http://www.oft.gov.uk/business-advice/treating-customers-fairly/protection

6 The Code is available here: http://www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML.aspx

7 For details of that action see, http://www.oft.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/heating-oil/
lower than it actually is. Overstating market coverage may breach parts 3.1 and 3.11 of the CAP Code. If a statement about market coverage is untrue then it may mislead the consumer in relation to the nature of the service, the main characteristics of the service, the existence of a specific price advantage and the consumers’ rights or risks and therefore may breach regulations 3(4)(a), 5(2)(a), 5(4)(a), (b), (h) and (k) CPRs.

We consider that it would also help consumers if comparison websites clearly and prominently state how frequently they update their information on prices and stock availability. In particular, failure to include information that is material with regards to the accuracy of prices and stock availability may be a breach of 6(1)(a) and (b) CPRs.

- **Ensure that there is a clear complaint and redress process** for consumers who have complaints about the search and comparison services they have used.8

An exclusion of all liability for matters in relation to search and comparison services is in many circumstances likely to be incompatible with the Unfair Terms in Consumer Contract Regulations 1999 part 5 and schedule 2 paragraph 1(b) and 1(q).9

In our campaign, we are advising consumers to contact Citizens Advice in the first instance if they are unsure about their rights, or wish to complain or seek redress. In this regard we have worked closely with the Information Commissioner’s Office, the Advertising Standards Authority and Citizens Advice, who all have a front line role in monitoring or enforcing some of the issues we have raised.

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8 Businesses also selling goods and services should extend this to cover the products they sell.

9 The OFT has published guidance on complying with the UTCCRs: http://www.oft.gov.uk/about-the-oft/legal-powers/legal/unfair-terms/guidance
This work is being undertaken without prejudice to the other work of the OFT or the work of other regulators, in particular those with a sector-specific remit who naturally have a different focus to the OFT.

I hope you find this advice helpful.

Yours sincerely