Background and introduction

1. The OFT published its revised Competition Act 1998 (CA98) Procedures Guidance on 16 October 2012. This includes certain enhancements the OFT has made to its CA98 investigation procedures.

2. One such enhancement is that, under the new Guidance, the OFT will be publishing Case Opening Notices in every case where it opens a formal investigation, that is when the section 25 CA98 threshold of 'reasonable grounds for suspecting' an infringement has been reached and the OFT has decided to prioritise the case for further investigation. This is intended to enhance transparency of the OFT’s portfolio of open CA98 investigations. In addition, in some cases, it may assist the OFT’s investigation by eliciting information from businesses or individuals who were previously unaware that an investigation was ongoing.

Content and status of Case Opening Notices

3. It is important to note that at this stage the OFT will have made no finding of infringement and it should not be assumed that parties subject to the investigation have broken the law. The OFT will decide whether the law has been breached after it has issued any Statement of Objections in the case and considered any written and oral representations in response to the case set out in the Statement of Objections.

4. The level of detail in Case Opening Notices will vary from case to case but will normally set out basic details of the investigation including the OFT reference details of the case, the sector the investigation relates to, the relevant legislation and a high-level description of the nature of the suspected infringement(s). However, in some cases, there may be sensitivities in publishing information at an early stage and the Case Opening Notice may refer simply to an investigation having been launched in a broad industry sector. It is not expected that parties would be named at this stage. There may however be exceptional circumstances when the OFT would do so, such as: where the parties’ involvement in the OFT’s investigation is already in the public domain; where parties request that the OFT
name them in the case opening notice (and the OFT considers doing so to be appropriate in the circumstances); or where the OFT considers that the level of potential harm to consumers or other businesses (including businesses in the same sector not involved in the investigation) from parties remaining unidentified is such as to justify disclosure.

5. Media enquiries on Case Opening Notices should be directed to a member of the OFT Press Office.

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