



House of Commons  
Trade and Industry Committee

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# **The work of the Office of Fair Trading**

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**Twelfth Report**





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## Twelfth Report

*Report, together with formal minutes, oral and  
written evidence*

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## The Trade and Industry Committee

The Trade and Industry Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department of Trade and Industry.

### Current membership

Peter Luff MP (*Conservative, Mid Worcestershire*) (Chairman)  
Roger Berry MP (*Labour, Kingswood*)  
Mr Brian Binley MP (*Conservative, Northampton South*)  
Mr Peter Bone MP (*Conservative, Wellingborough*)  
Mr Michael Clapham MP (*Labour, Barnsley West and Penistone*)  
Mrs Claire Curtis-Thomas MP (*Labour, Crosby*)  
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Mr Mike Weir MP (*Scottish National Party, Angus*)  
Mr Anthony Wright MP (*Labour, Great Yarmouth*)

### Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.publications.parliament.uk/pa/cm/cmstords.htm](http://www.publications.parliament.uk/pa/cm/cmstords.htm)

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [http://www.parliament.uk/parliamentary\\_committees/trade\\_and\\_industry.cfm](http://www.parliament.uk/parliamentary_committees/trade_and_industry.cfm).

### Committee staff

The current staff of the Committee are Elizabeth Flood (Clerk), David Slater (Second Clerk), Robert Cope (Committee Specialist), Ian Townsend (Inquiry Manager), Anita Fuki (Committee Assistant), Jim Hudson (Senior Office Clerk) and Cassandra Byrne (Secretary).

### Contacts

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### Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated in the form 'Ev x' which refers to the appropriate page number.

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# The Work of the Office of Fair Trading

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## Introduction

1. We inquired into the work of the Office of Fair Trading (OFT) as part of a programme of short inquiries into the non-departmental public bodies associated with the Department of Business, Enterprise and Regulatory Reform (which recently took on many of the functions of and bodies associated with the former Department of Trade and Industry).
2. We took written evidence from a number of organisations, and oral evidence from two consumer groups, Citizens Advice and the National Consumer Council, as well as the Confederation of British Industry, and the OFT itself.
3. **The evidence covered a very wide range of issues, including regulation of consumer credit, relations between the OFT and local detection and enforcement bodies such as Trading Standards Officers, the new super-complaints procedures, the approach taken by the OFT to conducting market studies, the way in which the OFT was exercising its powers under the Enterprise Act 2002, and co-ordination with other regulators. We were broadly satisfied with the approach of the current management of the OFT, but decided to issue this short report covering some key issues that emerged from the written and oral evidence. The fact that this Report does not mention many of the issues raised in written submissions or with our witnesses is not an indication that we consider those issues unimportant: they are too significant to be dealt with on the basis of a very brief inquiry and Report. Instead, we have chosen to focus on a few areas where swifter conclusions could be drawn.**

## The OFT's response to the 2005 NAO report

4. The National Audit Office (NAO) reported on the competition work of the OFT in November 2005.<sup>1</sup> It raised a number of concerns about the OFT and its approach to its work. These focused on three areas:
  - making best use of its resources;
  - improving the management of investigations;
  - improving the measurement of its achievements and the communication of its work.
5. The OFT accepted the NAO's criticisms in full. The organisation has worked hard to respond to them, restructuring internally on a sectoral basis to bring different aspects of its work — consumer and competition — together, reprioritising and moving towards greater efficiency.
6. **We commend the OFT for its response so far to the NAO's criticisms. As witnesses noted, it is too soon to make a balanced assessment of whether these criticisms have been fully addressed, but we are encouraged by the evidence of progress we have seen.**

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<sup>1</sup> National Audit Office, *The Office of Fair Trading: Enforcing Competition in Markets*, November 2005

Therefore we also welcome the fact that the NAO will be revisiting the work of the OFT after April 2008.<sup>2</sup>

### Salary and other constraints

7. The NAO report said that the OFT “faces an on-going challenge in recruiting and retaining suitably-qualified staff.” On the need for the OFT to improve pay and conditions and address staff turnover, we were interested to hear the OFT’s Chief Executive raise the issue of constraints deriving from the fact that OFT employees are civil servants.<sup>3</sup> It came to our attention in our inquiry into the communications regulator Ofcom earlier this year that there is a clear disparity between the rewards Ofcom offers to its employees and the rewards that other regulatory bodies are able to offer. That Ofcom is funded by contributions from industry appears to enable it to offer enhanced packages to attract those with sufficient skills and experience. **We share the concerns of OFT management over the lack of flexibility available to it in rewards packages. As the UK’s principal competition authority, the OFT needs to employ talented individuals to do its job. We recommend that the Department of Business, Enterprise and Regulatory Reform undertakes a review of the effect that the greater market power of Ofcom in attracting staff could be having on the effectiveness and balance of the overall UK competition regime.**

### Merger referral threshold

8. The CBI suggested that too many proposed mergers are referred to the Competition Commission, in part due to the comparatively low level of the threshold above which the OFT is obliged to refer.<sup>4</sup> The OFT is consulting on increasing this *de minimis* threshold from £400,000 annual market turnover to £10 million, with a number of provisos that will enable it to refer mergers below that level in specific circumstances.

9. **While the broad thrust of this new approach appears sensible, we have some concerns that smaller markets or competition in local areas could be neglected under the merger referral proposals. Although there is provision for referrals below the £10 million level in some circumstances, it will be necessary to ensure that this does indeed happen, and we recommend that the OFT continue to keep this matter under review once new guidelines have been adopted.**

10. **Set against the need to maintain the right to make merger referrals where needed, it is important to ensure that the OFT bears in mind the costs to companies of a full referral. Wherever possible the OFT should seek to resolve smaller and less strategically significant merger proposals itself, using, where necessary, its powers to seek undertakings. From the evidence given to us, we are confident that the OFT understands this difficult balancing act, but we believe it is an issue the organisation must keep at the forefront of its thinking.**

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<sup>2</sup> Q137

<sup>3</sup> Qq144-150

<sup>4</sup> Ev 51

## Codes of practice

11. The OFT's role in approving voluntary industry codes of practice, and overseeing their operation, is an important one. While the number of approved codes is gradually increasing, Citizens Advice raised concerns that these codes are "quite marginal" or cover "small sections of markets",<sup>5</sup> with the National Consumer Council giving the example of the Debt Managers Standards Association code.<sup>6</sup> Moreover, Citizens Advice thought there was scope for the OFT to be far more active in encouraging such codes of practice. In particular, it considered the withdrawal of the Association of British Travel Agents (ABTA) from the codes scheme a missed opportunity.<sup>7</sup> We sought ABTA's views on this matter, and later raised this issue with the OFT, whose response we have published together with ABTA's evidence.<sup>8</sup>

**12. We see codes of practice as potentially beneficial to the consumer, but are concerned about the apparent lack of incentive for companies to take part. As codes are voluntary while being intended to go beyond legal minima, the successful operation of a code will largely rely on goodwill within an industry, and good working relationships between that industry and the OFT. The case of the ABTA code has denied consumers in the travel market the extra confidence that an approved code could give and is an unfortunate precedent for the Codes of Practice system as a whole, but there appears to be no obvious solution to the difficulties.**

## Consumer Direct

13. The OFT's Consumer Direct telephone service provides initial ("first tier") advice and refers consumers to more comprehensive assistance as required. The OFT described its purpose as "to provide a uniform level of consumer advice across Great Britain",<sup>9</sup> but Citizens Advice argued that there was inconsistency in the quality of service between different suppliers in different regions.<sup>10</sup> The OFT denied this.<sup>11</sup> **We believe the delivery mechanism chosen, with eleven different contractors, will take careful management to ensure consistency. We therefore call on the OFT to work with consumer groups to assess whether there are significant inconsistencies of service, and if so, to address them.**

14. The Consumers, Estate Agents and Redress Act, which received Royal Assent earlier this year,<sup>12</sup> allows for the merging of various consumer bodies, including the gas and electricity consumer body, Energywatch, and the postal services consumer body, Postwatch, into a single National Consumer Council.<sup>13</sup> Consumer Direct will become the

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<sup>5</sup> Q19

<sup>6</sup> Q20

<sup>7</sup> Ev 60, paras 5.2 and 5.4-5.5

<sup>8</sup> Ev 38 (ABTA) and Ev 78 (OFT)

<sup>9</sup> Ev 77

<sup>10</sup> Qq 25-26 Also Ev 62, para 7.2-7.4

<sup>11</sup> Qq 207-211

<sup>12</sup> c.17

<sup>13</sup> s.30

public contact point for consumers who would previously have used the Energywatch and Postwatch services. The Act also allows for the consumer organisation for water services to be merged into the new consumer body in due course,<sup>14</sup> which would lead to Consumer Direct also becoming the contact point for water services.

**15. In a previous Report<sup>15</sup> we noted the unwelcome uncertainty caused by the proposals to abolish Postwatch in the middle of a major series of local consultations on the future of the post office network. This uncertainty is unhelpful both for the staff of Postwatch and for the efficacy of the consultation process.**

**16. In the longer term, we share the concerns raised by the OFT and consumer groups regarding the risk that an over-ambitious timetable and potential under-resourcing could lead to a poorer service for customers under the new arrangements. The Government must ensure that the OFT is provided with sufficient resources to enable Consumer Direct to handle the increase in consumer contact (600,000 to 1 million calls, in addition to the 1.7 million existing contacts in 2006-07),<sup>16</sup> and the Government must ensure that a 'second-tier' service comparable with the existing one continues to be available, either through the new National Consumer Council or by enhancing the Consumer Direct service. In either case it is vital that new NCC and Consumer Direct work effectively together; other consumer organisations should not find themselves being called on to take the strain unless this is the stated aim of the Government and proper planning is made for such a change.**

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<sup>14</sup> s.31

<sup>15</sup> *Stamp of approval? Restructuring the Post Office Network*, Fourth Report of Session 2006–07, HC 276, para 35

<sup>16</sup> Ev 77

# Formal minutes

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**Thursday 18 October 2007**

Members present:

Mr Peter Luff, in the Chair

Mr Roger Berry

Mr Michael Clapham

Mr Mark Hunter

Miss Julie Kirkbride

Judy Mallaber

Mr Anthony Wright

The Committee considered this matter.

Draft Report (The work of the Office of Fair Trading), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 16 read and agreed to.

*Resolved*, That the Report be the Twelfth Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

[Adjourned till Monday 22 October at 3.15am]

## Witnesses

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### Tuesday 5 June 2007

Page

**Teresa Perchard**, Director of Policy, and **Peter Tutton**, Policy Officer, Citizens Advice, **Philip Cullum**, Deputy Chief Executive, National Consumer Council Ev 1

### Tuesday 17 July 2007

**Richard Lambert**, Director General, Confederation of British Industry, **Rufus Ogilvie Smals**, Chairman of the Competition Panel, CBI, and Head of Legal GKN plc Ev 11

**John Fingleton**, Chief Executive, and **Colin Brown**, Director, Advisory, Policy and International, Office of Fair Trading Ev 20

## List of written evidence

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|    |   |                     |
|----|---|---------------------|
| 1  | ABTA  | Ev 38               |
| 2  | Alliance Against IP Theft                         | Ev 40               |
| 3  | Association of Newspaper and Magazine Wholesalers | Ev 43               |
| 4  | BT  | Ev 45               |
| 5  | Brick Development Association                     | Ev 46               |
| 6  | British Bankers' Association                      | Ev 46               |
| 7  | British Brands Group                              | Ev 49               |
| 8  | CBI   | Ev 51               |
| 9  | Citizens Advice                                   | Ev 54, Ev 63        |
| 10 | Finance and Leasing Association                   | Ev 65               |
| 11 | Future Media                                      | Ev 67               |
| 12 | Law Society of Scotland                           | Ev 69               |
| 13 | Ofcom   | Ev 71               |
| 14 | Office of Fair Trading                            | Ev 73, Ev 77, Ev 78 |
| 15 | Ofwat   | Ev 83               |

## List of unprinted evidence

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The following memoranda have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives, and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Training for Professionals

## List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2006–07

|                 |  |                 |
|-----------------|--|-----------------|
| First Report    | Local energy—turning consumers into producers            | HC 257 (HC 494) |
| Second Report   | Work of the Committee in 2005-06                         | HC 332          |
| Third Report    | Stamp of Approval? Restructuring the Post Office Network | HC 276 (HC 593) |
| Fourth Report   | Success and failure in the UK car manufacturing industry | HC 399          |
| Fifth Report    | Better Skills for Manufacturing                          | HC 493-I        |
| Sixth Report    | Marketing UK plc—UKTI's five-year strategy               | HC 557          |
| Seventh Report  | Trade with Brazil and Mercosur                           | HC 208-I        |
| Eighth Report   | Restructuring the Post Office Network                    | HC 593          |
| Ninth Report    | Recent developments with Airbus                          | HC 427          |
| Tenth Report    | Strategic Export Controls: 2007 Review                   | HC 117          |
| Eleventh Report | Europe Moves East: The impact of 'new' EU Member States  | HC 592          |