

News Release

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OFT AND CC PUBLISH JOINT MERGER GUIDELINES

The Competition Commission (CC) and the Office of Fair Trading (OFT) have today issued draft joint guidelines on how they assess the competitive impact of mergers, and have called for comments on the document from interested parties.

The publication revises and expands guidance material currently contained in several publications issued separately by the two authorities after the introduction of the Enterprise Act 2002. This is the first time the OFT and the CC have worked together to produce a single set of guidelines.¹

The joint guidelines feature sections on the operation of the UK merger regime; the questions the CC and OFT must consider when reviewing mergers; how they define a 'relevant merger situation'; the criteria and methodology used by the authorities when assessing mergers; guidance on public interest cases; and information on related matters such as interim measures and remedies, directing where appropriate to other guidance already published by the two authorities.

The draft policy has been developed in consultation with government, the European Commission and other external parties involved in merger inquiries or competition policy.

CC Chairman, Peter Freeman said:

The CC and the OFT play different roles in the merger control regime, but there is still considerable scope for a consistent approach. We are sure that parties involved in merger investigations will appreciate this clear and comprehensive explanation of how the system works, the similarities and differences between our respective roles and how we assess the competitive effects of mergers.

The guidelines update the separate guidance published several years ago by each authority when the Enterprise Act had just put the new system in place—so they represent a revised rather than a new approach, using the benefit of the experience we have gained from investigations over the last few years. This also shows how we and the OFT are working closely together to make the overall system operate as transparently and smoothly as possible.

¹The CC and OFT recently also published a Memorandum of Understanding to promote greater clarity on their process for reviewing merger, monopoly and market undertakings—see news release www.oft.gov.uk/news/press/2009/15-09.

OFT Chief Executive, John Fingleton, said:

Businesses that are considering a merger rightly expect to be dealing with a joined-up regime that minimises its burdens on them, and this is all the more important when economic times are tough. We have developed these draft guidelines, as part of a wider programme of work with the Competition Commission, with this goal very much in mind.

Comments are invited from interested parties and should be sent by email to Tony Gooch (tony.gooch@cc.gsi.gov.uk) by 7 August 2009. A joint presentation on the new guidelines is also planned in the near future—no date has been set but those interested in attending should also contact Tony Gooch.

Notes for editors

1. Today's publication, *Merger Assessment Guidelines*, is available at www.competition-commission.org.uk or www.oft.gov.uk.
2. The OFT is the UK's combined competition and consumer authority. In relation to merger activity, it obtains and reviews information and, where necessary, refers any relevant mergers to the CC for further investigation.
3. The CC is an independent public body, which carries out investigations into mergers, markets, and the regulated industries.
4. The joint mergers assessment guidance will replace the following OFT publications: *Mergers—substantive assessment guidance* (OFT516), *Guidance note revising Mergers—substantive assessment guidance* (OFT516a) and *Revision to Mergers: substantive assessment guidance—exceptions to the duty to refer markets of insufficient importance* (OFT 516b); and CC publication: *Merger References: Competition Commission Guidelines, CC2*.
5. The OFT published new draft jurisdictional and procedural guidance (March 2008): *Mergers—jurisdictional and procedural guidance*.
6. The CC published new guidance on remedies in merger cases (November 2008): *Merger Remedies, CC8*.
7. The CC had launched a review of its own merger guidelines in February 2008 but following the start of that process, the CC and OFT decided to conduct a joint review of their respective guidelines to ensure a consistent approach and ease the burden on interested parties by ensuring their comments feed into a review of UK merger assessment in general. See news release: www.competition-commission.org.uk/press_rel/2008/apr/pdf/11-08.pdf.
8. Further information on the Review of Guidelines for Merger References is at: www.competition-commission.org.uk/about_us/our_organisation/workstreams/analysis/cc2_review.htm.
9. Enquiries should be directed to Rory Taylor at the CC on 020 7271 0242 (email rory.taylor@cc.gsi.gov.uk), or Corinne Gladstone at the OFT on 020 7211 8899 (email corinne.gladstone@oft.gsi.gov.uk).