

A guide to the OFT's investigation procedures in competition cases

Guidance

October 2012

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CONTENTS

<i>Chapter</i>	<i>Page</i>
1 Preface	4
2 The legal framework	9
3 The sources of our investigations	11
4 What we do when we receive a complaint	17
5 Opening a formal investigation	22
6 Our formal powers of investigation	26
7 Limits on our powers of investigation	36
8 Taking urgent action to prevent serious damage or to protect the public interest	40
9 The analysis and review stage	44
10 Investigation outcomes	50
11 Issuing our provisional findings – The Statement of Objections	56
12 Right to reply	64
13 The final decision	74
14 Complaints about our investigation handling, right of appeal and reviewing our processes	78

1 PREFACE

- 1.1 We have set out in this guidance document general information for the business and legal communities and other interested parties on the processes that we use when using our powers under the Competition Act 1998 (the **Act**) to investigate suspected infringements of competition law. It supersedes our previous quick guide on how we conduct investigations under the Act entitled *Under Investigation*¹ and updates the previous version of this guidance document published in March 2011. You may find it useful to read this document alongside other Office of Fair Trading (**OFT**) documents, including – *Enforcement*,² *OFT Prioritisation Principles*,³ *Powers of Investigation*,⁴ and *Involving third parties in Competition Act investigations*.⁵
- 1.2 In this guidance, we have set out our procedures and explained the way in which we conduct investigations into suspected competition law infringements. This is our current practice as at the date of publication of this document. It may be revised from time to time to reflect changes in best practice or the law and our developing experience in assessing and investigating cases. Please refer to the OFT website to ensure you have the latest version of this guidance.

¹ OFT 426 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_mini_guides/oft426.pdf

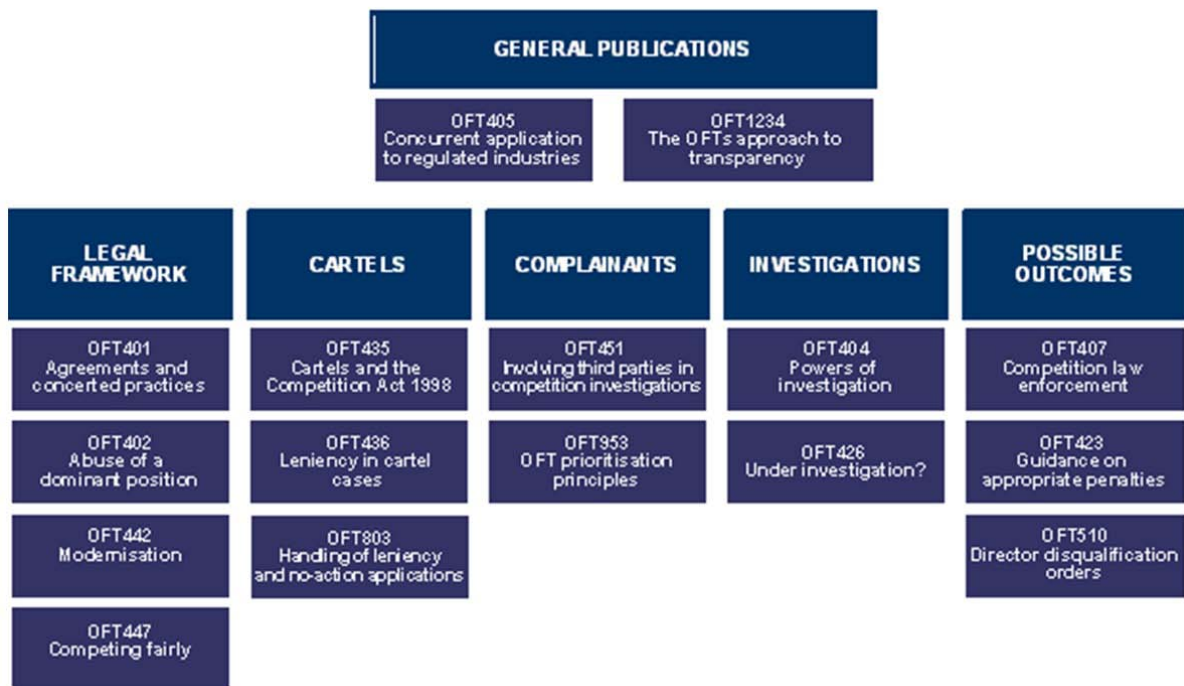
² OFT 407 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft407.pdf

³ OFT 953 available to download at www.offt.gov.uk/shared_offt/about_offt/oft953.pdf

⁴ OFT 404 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft404.pdf

⁵ OFT 451 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft451.pdf

Figure 1.1 Overview of OFT publications referred to in this guidance



1.3 This guidance is concerned exclusively with our investigations under the Act. It does not cover OFT investigations into individuals suspected of having committed the criminal cartel offence⁶ nor does it cover director disqualification order proceedings.⁷

1.4 This guidance does not cover the procedures used by sectoral regulators⁸ in their competition law investigations. Further guidance on

⁶ More information on the criminal cartel offence can be found in OFT515 available to download at www.offt.gov.uk/OFTwork/publications/publication-categories/guidance/enterprise_act/oft515

⁷ More information on director disqualification orders can be found in OFT 510 available to download at www.offt.gov.uk/shared_offt/business_leaflets/enterprise_act/oft510.pdf

⁸ The Office of Communications, the Gas and Electricity Markets Authority, the Northern Ireland Authority for Utility Regulation, the Water Services Regulation Authority, the Office of Rail Regulation, and the Civil Aviation Authority. This list is correct as at 16 October 2012. Monitor (the sector regulator for healthcare) will be given concurrent powers to undertake investigations under the Act at a time to be appointed: see sections 72 to 74 and section 306(4) of the Health and Social Care Act 2012. The list may change from time to time if further sector regulators are given concurrent powers.

this is available in *Concurrent Application to Regulated Industries*⁹ or from the relevant organisation's website.

- 1.5 This document incorporates the commitments made in our published Transparency Statement insofar as they apply to investigations under the Act.¹⁰
- 1.6 We will apply this guidance flexibly. This means that we will have regard to the guidance when we deal with suspected competition law infringements but that, when the facts of an individual case reasonably justify it, we may adopt a different approach. For example, we may adopt a different approach in circumstances where, at the same time as conducting an investigation into a suspected competition law breach by a business,¹¹ in parallel we are also looking at whether an individual has committed a criminal cartel offence.
- 1.7 This guidance will take effect from the date it is published. The new decision-making model will apply to all ongoing and future cases, except those in which a Statement of Objections was issued prior to 18 July 2012, this being the date on which the decision to implement a collective decision making model was adopted by the OFT Board. Those cases will continue under the decision-making model described in the previous version of this guidance, published in March 2011.

⁹ OFT 405 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft405.pdf

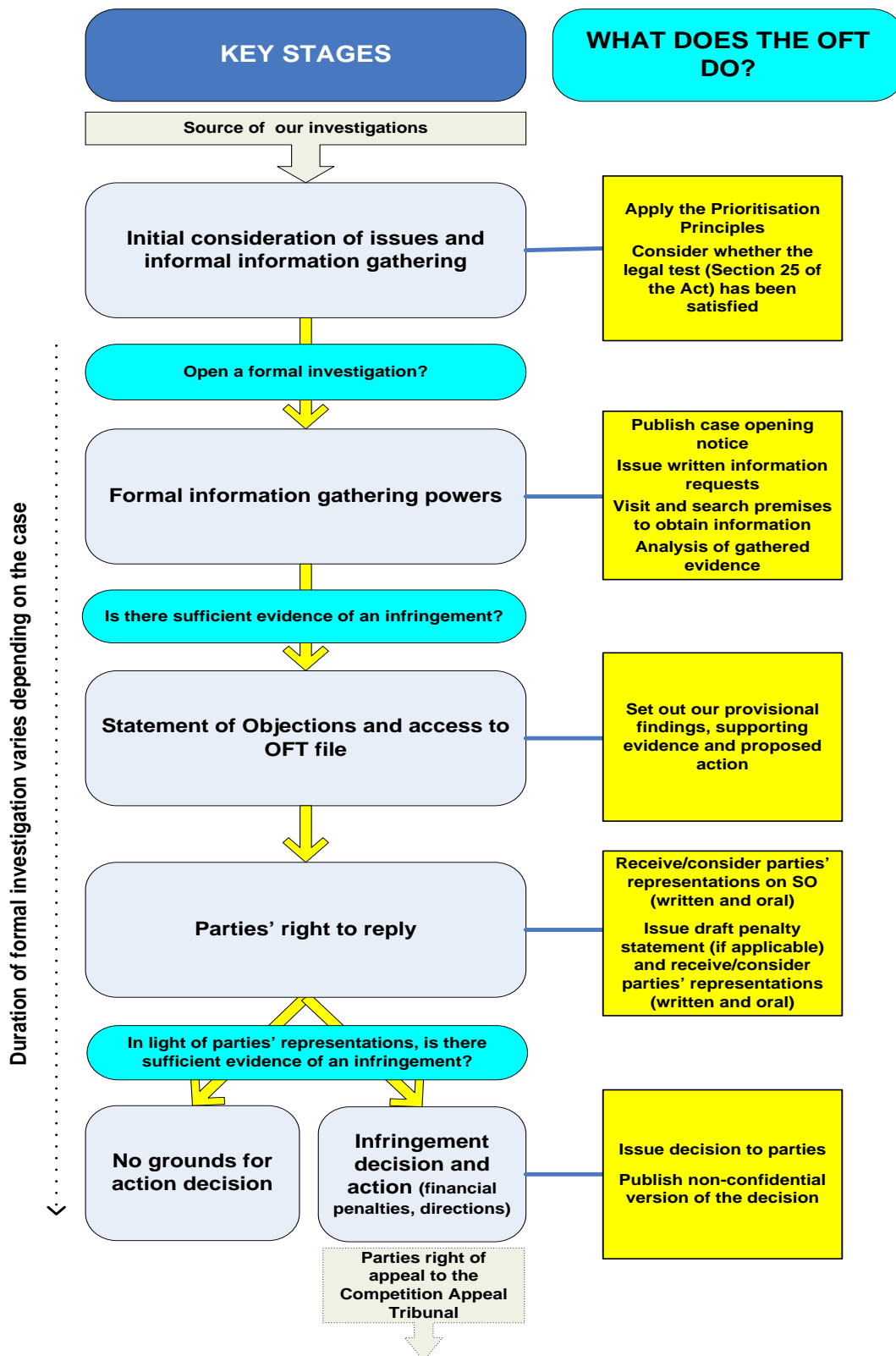
¹⁰ OFT 1234 available to download at www.offt.gov.uk/shared_offt/consultations/668117/OFT1234.pdf

¹¹ The relevant provisions of competition law apply to agreements between, and conduct by, 'undertakings'. In this Guidance the word 'business' should be understood to include all forms of undertaking. An undertaking means any natural or legal person carrying on commercial or economic activities relating to goods or services, irrespective of legal status. For example, a sole trader, partnership, company or a group of companies can each be an undertaking. Further guidance on the meaning of 'undertaking' can be found in OFT Guidance *Agreements and concerted practices* (OFT 401) and *Public bodies and competition law* (OFT 1389), and in relevant European case law, such as C-205/03 P *FENIN* [2006] ECR I-6295.

- 1.8 This document is not a definitive statement of, or a substitute for, the law itself and the legal tests which we apply in assessing breaches of competition law are not addressed in this guidance. A range of OFT publications on how we carry out this substantive assessment is available on the [OFT website](#).¹² We recommend that any person who considers that they or their business may be affected by an investigation into suspected anti-competitive practices should seek independent legal advice.
- 1.9 This guidance sets out the procedures we follow within the legal framework outlined in Chapter 2. It addresses each stage of a typical investigation in turn. The key stages of an investigation into a suspected infringement and a summary of our action at these stages are set out at Figure 1.2.

¹² See Figure 1.1 above.

Figure 1.2 – Key stages in an investigation



2 THE LEGAL FRAMEWORK

- 2.1 The Treaty on the Functioning of the European Union (TFEU) and the Act both prohibit, in certain circumstances, agreements and conduct which prevent, restrict or distort competition, and conduct which constitutes an abuse of a dominant position.
- 2.2 More information on the laws on anti-competitive behaviour is available in the OFT quick guide *Competing Fairly*¹³ and in the more detailed guidance on *Agreements and Concerted Practices*¹⁴ and *Abuse of a dominant position*.¹⁵
- 2.3 In the UK, competition law is applied and enforced principally by the OFT.¹⁶ The Act gives us powers to apply, investigate and enforce the Chapter I and Chapter II prohibitions in the Act and Articles 101 and 102 TFEU.¹⁷
- 2.4 Under EU legislation,¹⁸ as a 'designated national competition authority', when we apply national competition law to agreements which may affect trade between Member States or to abuse prohibited by Article 102, we are also required to apply Articles 101 and 102 TFEU.

¹³ OFT 447 available to download at www.offt.gov.uk/about-the-offt/legal-powers/legal/competition-act-1998/publications

¹⁴ OFT 401 available to download at www.offt.gov.uk/about-the-offt/legal-powers/legal/competition-act-1998/publications

¹⁵ OFT 402 available to download at www.offt.gov.uk/about-the-offt/legal-powers/legal/competition-act-1998/publications

¹⁶ However, it is open to any person to bring a standalone action in the High Court for an injunction and/or damages as a result of an alleged infringement of competition law. In relation to the regulated sectors (being, as at 16 October 2012, communications and postal services, gas, electricity, railways, air traffic services, water and sewerage), the respective sectoral regulators have concurrent powers with the OFT to apply and enforce the legal provisions.

¹⁷ See Chapter III (Investigation and Enforcement) of the Act.

¹⁸ Article 3 of Council Regulation (EC) No 1/2003 (OJ L1, 4.1.2003, p.1), as amended.

- 2.5 Further information on the framework for applying Articles 101 and 102 and the interaction with the Chapter I and Chapter II Prohibitions in the Act is available in the OFT guide *Modernisation*.¹⁹
- 2.6 There are procedural rules that apply when we take investigative or enforcement action.²⁰ In addition, we are required to carry out our investigations and make decisions in a procedurally fair manner according to the standards of administrative law.²¹
- 2.7 In exercising our functions, as a public body, we must also ensure that we act in a manner that is compatible with the Human Rights Act 1998.

¹⁹ OFT 442 available to download at www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft442.pdf

²⁰ The Competition Act 1998 (Office of Fair Trading's Rules) Order 2004 SI 2004/2751 (the **OFT Rules**).

²¹ See in particular *Pernod Ricard SA and Campbell Distillers Limited v Office of Fair Trading* [2004] CAT 10.

3 THE SOURCES OF OUR INVESTIGATIONS

Summary

- We obtain information about possible competition law breaches through a number of sources
 - our research and market intelligence, and other workstreams
 - leniency applications
 - complaints to our Enquiries and Reporting Centre or to our Cartel Hotline.
- This chapter sets out how to contact us to apply for leniency or to complain about a suspected cartel or other potential competition law breach.
- In some cases, complainants can approach us informally in the first instance.

3.1 There are a variety of ways in which information can come to the OFT's attention, leading us to investigate whether competition law may have been breached.

3.2 Our own research and market intelligence may prompt us to make initial enquiries into suspected anti-competitive conduct. Alternatively, evidence gathered through our other workstreams, such as our merger or markets functions, or use of our powers under the Regulation of Investigatory Powers Act 2000, or information received via the European Competition Network or the European Commission may reveal potentially anti-competitive behaviour. In these circumstances, we gather publicly available information and may write to businesses or individuals seeking further information that we consider could be relevant.

3.3 We also rely on information from external sources to bring to our attention potentially anti-competitive conduct. This could be from

individuals with so called 'inside' information about a cartel²² or from a complainant.

Cartels and leniency

- 3.4 A business which is or has been involved in a cartel²³ may wish to take advantage of the benefits of our leniency programme prompting them to approach us with information about its operation.
- 3.5 By confessing to us, a business could gain total immunity from, or a significant reduction in, any financial penalties we can impose if we decide that the arrangement breaches the Chapter I prohibition and/or Article 101 TFEU.²⁴
- 3.6 It is also a criminal offence for an individual dishonestly to engage in cartel arrangements in the UK. Cooperating current and former employees and directors of companies which obtain immunity from financial penalties will normally receive immunity from prosecution. Also, an individual who comes forward with information about a cartel may receive immunity from criminal prosecution.²⁵
- 3.7 In addition, we will not apply for a competition disqualification order against any current director of a company whose company has benefited

²² We operate a financial reward programme in exchange for information about the operation of a cartel. For more information, go to www.offt.gov.uk/OFTwork/cartels-and-competition/cartels/rewards

²³ A cartel is an agreement between businesses not to compete with each other. The agreement can often be verbal. Typically, illegal cartels involve cartel members agreeing on price fixing, bid rigging, output quotas or restrictions, and/or market sharing arrangements. In some cartels, more than one of these elements may be present. For the purposes of our leniency programme, price-fixing includes resale price maintenance.

²⁴ More information on how we set penalties is available in Part 5 of OFT guideline *Enforcement* (OFT 407) available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft407.pdf and *Guidance as to the appropriate amount of a penalty* (OFT 423) available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft423.pdf

²⁵ Section 188 of the Enterprise Act 2002.

from leniency.²⁶ However, we may apply for an order against a director who has been removed or has otherwise ceased to act as a director of a company owing to his role in the breach of competition law and/or for opposing the application for leniency, or against a director who fails to co-operate with the leniency process.

3.8 We encourage business representatives who suspect that their business has been involved in cartel activity to blow the whistle on the cartel.

3.9 For more information on what constitutes a cartel, see our quick guide *Cartels and the Competition Act*²⁷ and our guideline *Agreements and Concerted Practices*.²⁸

How to apply for leniency

3.10 We handle leniency applications in strict confidence. Applications for lenient treatment under the OFT's leniency programme should be made to the Senior Director or Director of our Cartels and Criminal Enforcement Group (**CCEG**) in the first instance. The contact details of the relevant individuals are available on our website.²⁹ More detailed information on our leniency programme is available in *Leniency in cartel cases*³⁰ and *in Leniency and no-action*.³¹

²⁶ In respect of the activities to which the grant of leniency relates. For further detail, see OFT guidance *Competition Disqualification Orders* (OFT 510) available to download at www.offt.gov.uk/shared_offt/business_leaflets/enterprise_act/oft510.pdf

²⁷ OFT 435 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_mini_guides/oft435.pdf

²⁸ OFT 401 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft401.pdf

²⁹ www.offt.gov.uk/OFTwork/competition-act-and-cartels/cartels/confess

³⁰ OFT 436 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_mini_guides/oft436.pdf

³¹ OFT 803 available to download at www.offt.gov.uk/shared_offt/reports/comp_policy/oft803.pdf

Complaints about possible breaches of competition law

- 3.11 Another way in which we receive information from external sources is where an individual or a business complains to us about the behaviour of another business. Complaints can be a useful and important source of information relating to potentially anti-competitive behaviour.

How to make a competition complaint

- 3.12 If an individual or a business suspects that another business is infringing competition law, they should contact us.
- 3.13 Complaints about suspected cartels should be made by calling our Cartel Hotline on **0800 085 1664** or by emailing us at cartelshotline@oft.gsi.gov.uk. These complaints are handled in confidence by CCEG. Guidance on reporting a suspected cartel to the OFT is available in the OFT quick guide *Cartels and the Competition Act*.³²
- 3.14 For all other competition related complaints, please call our Enquiries and Reporting Centre (ERC) on **08457 22 44 99** or email us at enquiries@oft.gsi.gov.uk in the first instance. We will be able to advise whether the matter is within our remit and, if it is, how to submit a complaint in writing for consideration by our competition experts.
- 3.15 Complaints made to ERC which appear to relate to a suspected cartel will be redirected to the Cartel Hotline. Similarly, complaints to the Cartel Hotline about a non-cartel competition matter will be passed to ERC.
- 3.16 The Annexe to the OFT guideline *Involving third parties in Competition Act investigations*³³ also provides guidance and further detail on the type of information that we look for in a written, reasoned complaint.

³² OFT 435 available to download at www.oft.gov.uk/shared_oft/business_leaflets/ca98_mini_guides/oft435.pdf

³³ OFT 451 available to download at www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft451.pdf

Pre-complaint discussions

- 3.17 The requirement for a written, reasoned complaint does not preclude complainants from approaching us informally in the first instance. Pre-complaint discussions may be helpful to businesses in deciding whether to commit the necessary time and effort in preparing a reasoned complaint.
- 3.18 In such cases, we will endeavour to give an initial view as to whether we would be likely to investigate the matter further if a formal complaint were to be made. This view would be based both on the likelihood of the complaint raising competition concerns and on the assessment of the complaint against our Prioritisation Principles to see if it falls within our casework priorities at the time (see Chapter 4 for more information on how we prioritise cases). However, any view given at this stage will not commit the OFT to opening an investigation.
- 3.19 To be able to engage in pre-complaint discussions, we would expect to receive a basic level of information in writing from the complainant covering the key aspects of their concerns. This should include:
- the identity of the complainant and the party/ies to the suspected infringement, and their relationship to one another (for example, whether they are competitors, customers or suppliers)
 - the reasons for making the complaint, including a brief description of:
 - the product(s)/service(s) concerned
 - the agreement or conduct the complainant believes to be anti-competitive
 - the type of business operated by the complainant and the party(ies) to the suspected infringement (for example, manufacturer, wholesaler, retailer) and an indication of their geographic scale (for example, local, national, or international)
 - if known, the size of the market and of the parties involved (for example, market shares).

- 3.20 Whether we engage in pre-complaint discussions will depend on the availability of our resources and whether the issue(s) outlined in the basic information suggest to us that the case is one that would merit a prioritisation assessment by us. In cases where pre-complaint discussions are appropriate, we aim to suggest a date for the discussions within 10 working days of receiving the required information.
- 3.21 If you wish to approach us about the possibility of a pre-complaint discussion, you should contact ERC (contact details above) in the first instance. If sending an email, please include the words 'Pre-Complaint Discussion' in the subject line of the email.

Confidentiality of complaints

- 3.22 We understand that individuals and companies may want to ensure that details of their complaints are not made public. If a complainant has specific concerns about disclosure of their identity or their commercially sensitive information, they should let us know at the same time as submitting their complaint. We are prohibited³⁴ from disclosing certain confidential information and while we are considering whether to pursue a complaint we aim to keep the identity of the complainant confidential.
- 3.23 Later on, if we have sufficient information to carry out a formal investigation and we provisionally decide that a business under investigation has infringed the law, we may have to reveal to them the identity of the complainant as well as the information supplied by them where the business under investigation cannot properly respond to the allegations against them in the absence of such disclosure. However, before disclosing a complainant's identity or any of their information, we will discuss the matter with them and give them an opportunity to make representations to us.

³⁴ Rule 1(1) and 6 of the OFT Rules and Part 9 of the Enterprise Act 2002. However, Part 9 does permit the OFT to disclose confidential information in certain specified circumstances.

4 WHAT WE DO WHEN WE RECEIVE A COMPLAINT

Summary

- We use published Prioritisation Principles to decide which complaints to take forward to the Initial Assessment Phase.
- Prioritised cases will be allocated to one of our groups within Markets and Projects.
- We typically gather information informally at this stage (i.e. not using our formal powers of investigation).
- We aim to keep complainants informed of the progress of their complaint.

What we do when we receive a complaint

- 4.1 With the exception of complaints about suspected cartels, all competition complaints should be submitted to our Enquiries and Reporting Centre (**ERC**). Complaints received by ERC about suspected cartel activity are redirected to the Cartel Hotline.
- 4.2 We respond to all complaints we receive. We aim to give an initial response within 10 working days of receipt in at least 90 per cent of complaints. Where a competition complaint raises more complex issues, that require longer to assess, we will respond within 30 working days of receipt. All complaints that we receive are given a complaint reference number.
- 4.3 If ERC considers that a complaint relates to possible anti-competitive behaviour (other than cartel activity), the complaint is passed to our Preliminary Investigations team. The Preliminary Investigations team may engage in informal dialogue with the complainant if we need to clarify any information provided to us at this stage or if we require additional information.

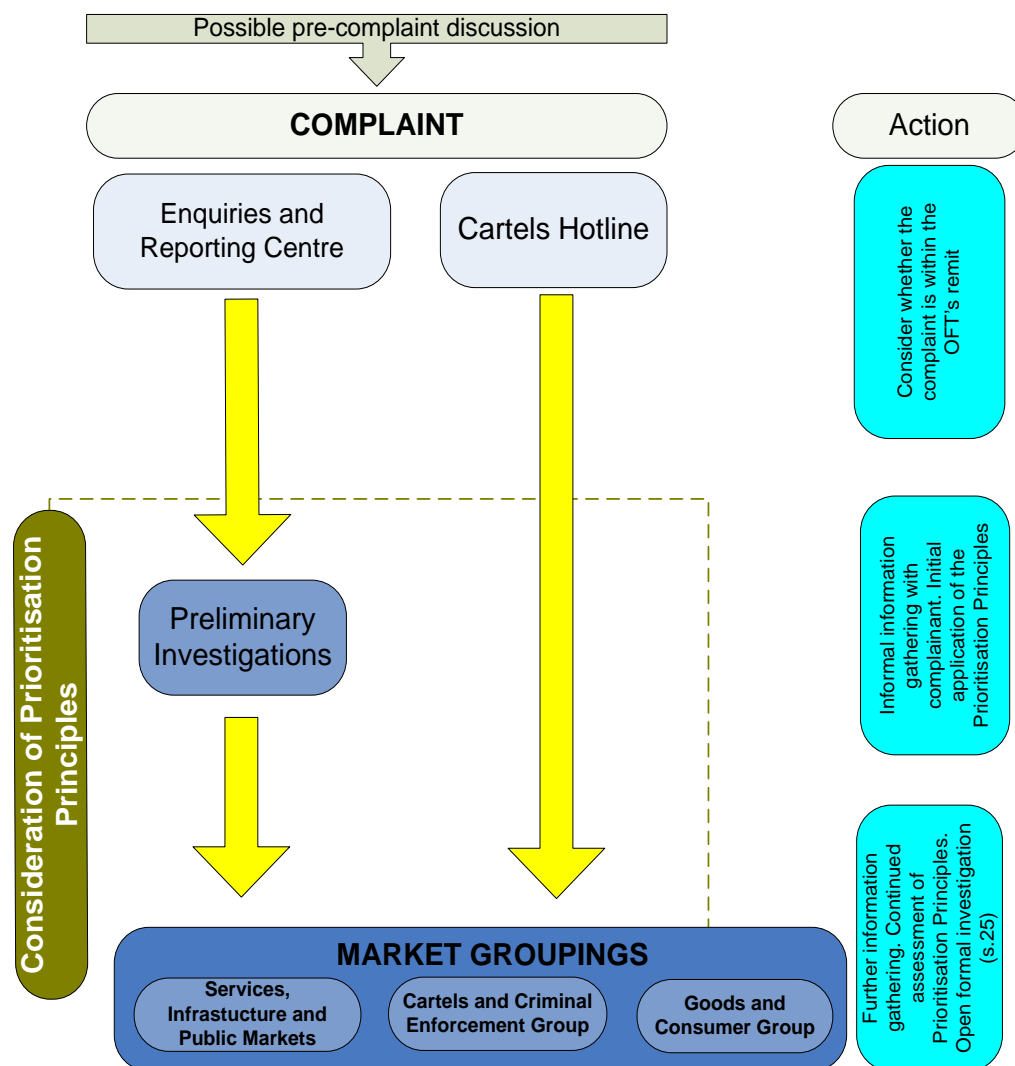
- 4.4 Although we consider all complaints we receive, we cannot formally investigate all suspected infringements of competition law. We decide which cases to investigate on the basis of our Prioritisation Principles. These take into account the likely **impact** of our investigation in the form of direct or indirect benefits to consumers, the **strategic significance** of the case, the **risks** involved in taking on the case, and the **resources** required to carry out the investigation. The Preliminary Investigations team carries out an initial assessment of whether a complaint satisfies our Prioritisation Principles, consulting other OFT officials as appropriate.
- 4.5 Further information on our Prioritisation Principles and how we apply them in practice is available in the OFT publication *Prioritisation Principles*.³⁵
- 4.6 We aim to keep complainants informed of the progress of their complaint and share with them our expected timescale for dealing with it. In all cases we aim to communicate to the complainant within four months from the date of receipt of their complaint whether we have decided to open a formal investigation.
- 4.7 However, our ability to follow up on a complaint and to determine within four months whether to open a formal investigation depends to a great extent on the timely cooperation of the complainant and the amount and quality of information they provide us with. Well structured written complaints supported by evidence are likely to proceed more rapidly to a prioritisation assessment and, if they are prioritised, to an investigation. They can also assist complainants in being granted Formal Complainant status if we proceed to a formal investigation. See Chapter 5 for more details on the process for becoming a Formal Complainant.
- 4.8 If we decide not to prioritise a complaint at this stage, we will write to the complainant to inform them of the fact. In appropriate cases, we may send a warning letter to a company to inform them that we have been made aware of a possible breach of competition law by them and that, although we are currently not minded to pursue an investigation,

³⁵ OFT 953 available to download at www.offt.gov.uk/OFTwork/publications/publication-categories/corporate/general/oft953

we may do so in future if we receive further evidence of a suspected infringement or our prioritisation assessment changes.

4.9 Where we prioritise a complaint, the case will be allocated to the appropriate OFT group for formal or further informal investigation.

Figure 1.3 – Complaint Process



Which part of the OFT carries out the investigation?

4.10 We have three groups which carry out the majority of competition investigations. These are: Services, Infrastructure and Public Markets (**SIP**); Goods and Consumer; and CCEG (together referred to as the

Markets and Projects groups). A chart showing the structure of the OFT is available on the OFT website.³⁶

- 4.11 SIP and Goods and Consumer are organised around sectors of the economy rather than by legal tools. This means that they are responsible for both competition and consumer casework, and market studies. For example, SIP focuses on areas such as financial services, professional services, transport, construction, property, the creative industries, the knowledge economy, including information technology, and public markets. Goods and Consumer is responsible for consumer goods such as food, drink, clothing, pharmaceuticals, chemicals, metals, electrical appliances and recreational goods as well as for investigating potential breaches of consumer law. Most cartel investigations are run by CCEG.
- 4.12 However, there is flexibility in the allocation of cases between our Markets and Projects groups. This means that a case that falls into the area covered by one group may be allocated to another group where that group is better placed to carry out the investigation, for instance, where it has more available resources at the time.
- 4.13 The processes underpinning our investigations and the tools available to us are identical across all our groups.³⁷ Information on the different groups within Markets and Projects is available on the OFT website.³⁸

Initial assessment phase

- 4.14 Once we have decided to take forward a case within Markets and Projects, we may gather more information from the complainant, the company/ies under investigation, and/or third parties on an informal basis. This may involve sending an informal request for information, a request for clarification of information already provided to us in the complaint, or an invitation to meet with us. In these circumstances,

³⁶ www.offt.gov.uk/about-the-offt/offt-structure/structure

³⁷ However, any covert surveillance or handling of covert human Intelligence sources under the Regulation of Investigatory Powers Act 2000 will only be carried out by CCEG in relation to investigations into suspected cartels.

³⁸ www.offt.gov.uk/about-the-offt/offt-structure/structure

where we are not using our formal powers to gather information, we rely on voluntary cooperation.³⁹

- 4.15 In the case of suspected cartels, however, we are unlikely to contact the companies under investigation informally as to do so may prejudice our investigation. Instead, we typically use our formal information gathering powers from the outset.
- 4.16 On the basis of the information we have gathered at that time, if we consider we have reasonable grounds for suspecting that competition law has been breached, we can open a formal investigation. This allows us to use our formal information gathering powers (see Chapter 6).

³⁹ We can only use our formal information gathering powers where we have reasonable grounds for suspecting that competition law has been breached.

5 OPENING A FORMAL INVESTIGATION

Summary

- The decision to open a formal investigation depends upon whether
 - the legal test that allows us to use our formal investigation powers has been satisfied, and
 - whether the case continues to fall within our casework priorities.
- When we open a formal investigation, the case is allocated a Team Leader, a Project Director and a Senior Responsible Officer.
- In appropriate cases, when we open a formal investigation, we will send the companies under investigation a case initiation letter including contact details for key members of the case team including the Senior Responsible Officer, who will decide whether to issue a Statement of Objections in the case.
- We will also publish on our website a case opening notice setting out basic details of the case and a case-specific administrative timetable for the investigation.
- We will grant Formal Complainant status, in relation to an investigation, to any person who has submitted a written, reasoned complaint to us, who requests Formal Complainant status, and whose interests are, or are likely to be materially affected by the subject-matter of the complaint.
- Formal Complainants have the opportunity to become involved at key stages of our investigation.

5.1 If a complaint is likely to progress to a formal investigation, the case is allocated:

- a designated Team Leader, who leads the case team and is responsible for day-to-day running of the case
- a Project Director, who directs the case and is accountable for delivery of high quality timely output, and

- a Senior Responsible Officer (**SRO**), who is responsible for authorising the opening of a formal investigation and taking certain other decisions including, where the SRO considers there is sufficient evidence, authorising the issue of a Statement of Objections.⁴⁰
- 5.2 For these purposes, the decision to open a formal investigation means deciding whether the legal test⁴¹ which allows us to use our formal investigation powers has been met and whether the case continues to fall within our casework priorities.
- 5.3 Once the decision has been taken to open a formal investigation, we will send the businesses under investigation a case initiation letter setting out brief details of the conduct that we are looking into, the relevant legislation, the case-specific timetable, and key contact details for the case such as the Team Leader, Project Director and SRO.⁴²
- 5.4 In some instances, we will send out a formal information request at the same time as sending the case initiation letter or the information request may form part of the case initiation letter. See Chapter 6 for more information on formal information requests.
- 5.5 In some cases, it will not be appropriate to issue a case initiation letter at the start of a case, as to do so may prejudice our investigation, such as prior to unannounced inspections or witness interviews. In these cases, we will send out the letter as soon as possible.
- 5.6 Also, it may be necessary to limit the information that we give in the case initiation letter, for example, to protect the identity of a whistleblower in a suspected cartel investigation or the identity of a complainant where there are good reasons for doing so.

⁴⁰ The categories of decision for which the SRO is responsible are listed in more detail at paragraph 9.10 below.

⁴¹ Under section 25 of the Act we may use our formal investigation powers where we have reasonable grounds for suspecting that competition law has been breached.

⁴² See *Transparency – A Statement on the OFT's approach* (OFT 1234) available to download at www.offt.gov.uk/shared_offt/consultations/668117/OFT1234.pdf

- 5.7 Once a formal investigation is opened and the parties have been informed of this, we will generally publish on the OFT's website⁴³ a case opening notice containing basic details of the case,⁴⁴ including the administrative timetable for the case.⁴⁵ If the timetable changes during the investigation, the timetable will be updated in the case opening notice, including reasons for the changes that have been made.
- 5.8 In some cases, such as cartel investigations, it will not be possible to include many details of the investigation at the stage of publishing the case opening notice, as to do so might prejudice the OFT's ongoing investigation. The case opening notice will be updated once we are able to provide further details of the investigation without risking prejudicing the investigation.

Granting Formal Complainant status

- 5.9 We will grant Formal Complainant status in relation to an investigation to any person who has submitted a written, reasoned complaint to us, who requests Formal Complainant status, and whose interests are, or are likely to be materially affected by the subject-matter of the complaint. Typically, we will remind complainants who have submitted a written, reasoned complaint but who have not requested formal status that they

⁴³ See www.offt.gov.uk/OFTwork/oft-current-cases

⁴⁴ The case opening notice will contain basic information such as whether the case is being investigated under the Chapter I and/or II prohibitions, a brief summary of the suspected infringement, and the industry sector involved. We will not publish the names of the parties under investigation in the case opening notice other than in exceptional circumstances, such as where the parties' involvement in the OFT's investigation is already in the public domain or 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.

⁴⁵ Initially, the timetable will cover the investigative stages up to the OFT's decision on whether to issue a Statement of Objections. If we issue a Statement of Objections, the timetable will be updated with indicative timing of the steps to the end of the investigation.

may apply to be treated as a Formal Complainant. We may grant Formal Complainant status to more than one complainant in an investigation.

- 5.10 The principal advantage of acquiring this status is that Formal Complainants have the opportunity to become involved at key stages of our investigation.
- 5.11 For example, we will consider providing Formal Complainants with access to the same information available to companies under investigation at the outset of our formal investigation. This will depend on the circumstances of the individual case. Where we do provide such information, the Formal Complainant is under a legal obligation to respect its confidentiality. Later on, we will also invite Formal Complainants to comment, usually in writing, on the provisional findings in our Statement of Objections through a structured process, before our investigation is concluded. See Chapter 12 for more detail on this.
- 5.12 Other interested third parties who are not Formal Complainants may also have an opportunity to become involved in our investigation. For example, we may consider inviting them to comment on our Statement of Objections where we consider that it would be appropriate to do so.
- 5.13 More information on the involvement in OFT investigations of Formal Complainants and other interested third parties is available in the OFT guideline *Involving third parties in Competition Act investigations*.⁴⁶

⁴⁶ OFT 451 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft451.pdf

6 OUR FORMAL POWERS OF INVESTIGATION

Summary

- After we have opened a formal investigation, we can use our formal powers to obtain information.
- We can issue formal information requests (section 26 notices) in writing.
- We also have the power to enter, and in some instances to search, business and domestic premises.
- It can be a criminal offence not to comply with our information gathering process.

Information gathering powers

6.1 We have a range of powers to obtain information to help us establish whether an infringement has been committed. We can require the production of specified documents or information, enter premises without a warrant, and enter and search premises with a warrant. The entering of premises can be with or without notice.

6.2 The following paragraphs give an overview of the extent of our formal powers and how we use them. More detailed guidance is available in the OFT guideline *Powers of Investigation*.⁴⁷

Written information requests

6.3 This is the power we use most often to gather information during our investigations. We send out formal information requests (also referred to as section 26 notices)⁴⁸ in writing to obtain information from a range of

⁴⁷ OFT 404 available to download at www.of.gov.uk/shared_of/business_leaflets/ca98_guidelines/oft404.pdf

⁴⁸ Section 26 of the Act gives us the power to require the production of information and documents when conducting a formal investigation.

sources such as the business(es) under investigation, their competitors and customers, complainants, and suppliers. It is a criminal offence punishable by a fine and/or imprisonment not to comply with a formal information request,⁴⁹ or to provide false or misleading information,⁵⁰ or to destroy, falsify or conceal documents⁵¹ (subject in each case to certain defences or conditions set out in the Act).⁵²

- 6.4 Under this power, we can also ask for information that is not already written down, for example market share estimates based on knowledge or experience, and we can also require past or present employees of the business providing the document to explain any document that is produced. Examples of the types of information we may ask for include internal business reports, copies of emails and other internal data.
- 6.5 Our request will tell the recipient what the investigation is about, specify or describe the documents and/or information that we require, give details of where and when they must be produced, and set out the offences that may be committed if the recipient does not comply.
- 6.6 We may send out more than one request to the same person or company during the course of our investigation. For example, we may ask for additional information after considering material submitted to us in response to an earlier request.
- 6.7 We will ask for documents or information which, in our opinion, are relevant to the investigation at the time we send out the request. Any queries about the scope of an information request or the time given to respond should be raised with the Team Leader or Project Director as soon as possible.

⁴⁹ Section 42 of the Act.

⁵⁰ Section 44 of the Act.

⁵¹ Section 43 of the Act.

⁵² For more information on potential criminal penalties for failing to co-operate with our powers of investigation see *Powers of Investigation* (OFT 404) available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft404.pdf

Using draft information requests

- 6.8 Where it is practical and appropriate to do so, we will send the information request in draft.⁵³ In this way, we can take into account comments on the scope of the request, the actions that will be needed to respond, and the deadline by which we must receive the information. The timeframe for comment on the draft will depend on the nature and scope of the request.
- 6.9 In certain circumstances, it would not be appropriate to send information requests in draft. For example, if in our view it would prejudice our investigation or if it would be inefficient because the request is for a small amount of information. We will assess each case on its facts to determine whether it would be appropriate to use a draft information request.

Advance notice of the issue of written information requests

- 6.10 In appropriate cases, we will seek to give recipients of large information requests advance notice so they can manage their resources accordingly. This is our usual approach.
- 6.11 However, in other circumstances, it may be inappropriate to give advance notice, such as where the request is for a small amount of information, the need for the information was unexpected, or where giving notice would prejudice our investigation. Where we do not give advance notice of large information requests, we will explain why.

Setting a deadline for a response to a written information request

- 6.12 When we send out a request, we also set a deadline by which we must receive the response. If a request has been provided in draft and the timescale for response to the final request already discussed, we will agree to an extension only in exceptional circumstances, so as to minimise any delay to our investigation.

⁵³ See *Transparency – A Statement on the OFT's approach* (OFT 1234) available to download at www.offt.gov.uk/shared_offt/consultations/668117/OFT1234.pdf

- 6.13 The deadline specified in the final request will depend on the nature and the amount of information that we have requested. It is not possible for us to apply uniform, set timescales for responses to information requests.
- 6.14 Where a recipient has a complaint about the deadline set for a response to a written information request, the recipient should raise this as soon as possible with the SRO. If it is not possible to resolve the dispute with the SRO, the recipient may refer the matter to the Procedural Adjudicator.⁵⁴

Responding to our written information requests

- 6.15 As stated above, we expect recipients to comply fully with our information request within the given deadline. This is especially the case where we have engaged with them on the scope and purpose of the request and the proposed deadline for its completion, to help them comply. It is a criminal offence punishable by a fine and/or imprisonment not to comply with a formal information request,⁵⁵ or to provide false or misleading information,⁵⁶ or to destroy or falsify documents⁵⁷ (subject in each case to certain defences or conditions set out in the Act).
- 6.16 Unless otherwise indicated, the response should be sent to the Team Leader in electronic format and in hard copy. If the response contains commercially sensitive information or details of an individual's private affairs and the sender considers that disclosure might significantly harm their interests or the interests of the individual, a separate non-confidential version along with an explanation which justifies why certain information should be treated as confidential should be submitted at the same time and in any event no later than four weeks from the date of

⁵⁴ See Chapter 14. Further details on the Procedural Adjudicator's role is available at www.offt.gov.uk/about-the-offt/legal-powers/legal/competition-act-1998/procedural-adjudicator-trial

⁵⁵ See footnote 49 above.

⁵⁶ See footnote 50 above.

⁵⁷ See footnote 51 above.

submitting the original response. Any extensions to this deadline should be agreed with the Team Leader in advance of the deadline. In the event that we have not received a non-confidential version within this deadline, we will give one further opportunity to make confidentiality representations to us. The timeframe for responding in this case will be set by the Team Leader. If, after this second opportunity, we have received no reply, we will assume that no confidentiality is being claimed in respect of the information. We will not accept blanket or unsubstantiated confidentiality claims. See Chapter 7 on handling of confidential information.

- 6.17 In some cases, we may return information sent to us in response to a request where, after careful review, we consider it is duplicate information or information that is outside the nature and scope of the request.

Power to enter premises

- 6.18 In some cases, we will visit premises to obtain information. The power we use to gain entry will depend on whether we intend to inspect business premises (such as an office or a warehouse) or domestic premises (such as the home of an employee).⁵⁸
- 6.19 Under certain circumstances we can enter business premises, but not domestic premises, without a warrant. Where we have obtained a warrant⁵⁹ in advance of entry, we can enter and search both business and domestic premises. These two powers (to enter premises without a warrant and to enter premises with a warrant) are explained below.

⁵⁸ We also have powers to gather information to assist other authorities in relation to their investigations into suspected competition infringements in other parts of the European Union. For example, we may assist the European Commission in obtaining information in relation to its investigations into suspected infringements of Articles 101 and 102 TFEU. More information on these powers can be found in *Powers of Investigation* (OFT 404) which is available to download at www.ofc.gov.uk/shared_ofc/business_leaflets/ca98_guidelines/ofc404.pdf

⁵⁹ From the High Court in England and Wales or Northern Ireland or the Court of Session in Scotland.

6.20 The occupier of the premises does not have to be suspected of having breached competition law.⁶⁰

Entering premises without a warrant⁶¹

6.21 An OFT officer who is authorised by us in writing to enter premises but does not have a warrant may enter business premises in connection with an investigation if they have given the premises' occupier at least two working days' written notice.

6.22 In certain circumstances, we do not have to give advance notice of entry.⁶² For example, we do not have to give advance notice if we have reasonable suspicion that the premises are, or have been, occupied by a party to an agreement that we are investigating or a business whose conduct we are investigating, or if our authorised officer has been unable to give notice to the occupier, despite taking all reasonably practicable steps to give notice.

What powers do we have when entering business premises without a warrant?

6.23 When an inspection without a warrant is taking place, our officers may require any person to:

- produce any document that may be relevant to our investigation – our officers can take copies of, or extracts from, any document produced
- provide an explanation of any document produced
- tell us where a document can be found if our officers consider it is relevant to our investigation.

⁶⁰ For example, we could enter the premises of a supplier or a customer of the business suspected of breaching the law, so long as we have taken all reasonably practicable steps to notify them in advance of our intended entry.

⁶¹ Section 27 of the Act.

⁶² Section 27(3) of the Act.

- 6.24 Our officers may also require any relevant information electronically stored to be produced in a form that can be read and taken away, and they may also take steps necessary to preserve documents or prevent interference with them.⁶³

Entering and searching premises with a warrant⁶⁴

- 6.25 We can apply to the court⁶⁵ for a warrant to enter and search business or domestic premises.
- 6.26 We would usually seek a warrant to search premises where we suspect that the information relevant to our investigation may be destroyed or otherwise interfered with if we requested the material via a written request. Therefore, we mostly use this power to gather information from companies or individuals suspected of participating in a cartel.

What powers do we have when entering premises with a warrant?

- 6.27 Where an inspection is carried out under a warrant, our officers are authorised to enter premises using reasonably necessary force but only if they are prevented from entering the premises. Our officers cannot use force against any person.
- 6.28 In addition to our powers described above, the warrant also authorises our officers to search the premises for documents that appear to be of the kind covered by the warrant and take copies of or extracts from them.⁶⁶

⁶³ Section 27(5) of the Act.

⁶⁴ Section 28 of the Act in relation to business premises. Section 28A of the Act in relation to domestic premises.

⁶⁵ The High Court in England and Wales or Northern Ireland or the Court of Session in Scotland.

⁶⁶ For business premises, section 28(2)(b) of the Act. For domestic premises, section 28A(2)(b) of the Act.

6.29 The search may cover offices, desks, filing cabinets, electronic devices, such as computers and phones, as well as any documents. We can also take away from the premises:⁶⁷

- original documents that appear to be covered by the warrant if we think it is necessary to preserve the documents or prevent interference with them or where it is not reasonably practicable to take copies of them on the premises
- any document, or copies of it, to determine whether it is relevant to our investigation, when it is not practicable to do so at the premises. If we consider later on that the information is outside the scope of our investigation, we will return it⁶⁸
- any relevant document, or copies of it, contained in something else where it is not practicable to separate out the relevant document at the premises. As above, we will return information if we consider later on that it is outside the scope of our investigation
- copies of computer hard drives, mobile phones, mobile email devices and other electronic devices.

What will happen upon arrival?

6.30 Our authorised officers will normally arrive at the premises during office hours. On entry, they will provide evidence of their identity, written authorisation by the OFT, and a document setting out what the investigation is about and describing what criminal offences may be committed if a person fails to co-operate. A separate document will also

⁶⁷ For business premises, section 28(2)(c) of the Act. For domestic premises, section 28A(2)(c) of the Act. We can only retain these documents for a maximum period of three months (for business premises, section 28(7) of the Act. For domestic premises, section 28(A)(8) of the Act). More information can be found in OFT 404 available to download at www.of.gov.uk/shared_of/business_leaflets/ca98_guidelines/of404.pdf

⁶⁸ However, the OFT may retain all of the material if it is not reasonably practicable to separate the relevant information from the irrelevant information without prejudicing its lawful use, for example as evidence.

be provided that sets out the powers of the authorised officers and the right of the occupier to request that a legal adviser is present.

- 6.31 Where we have obtained a warrant, we will produce it on entry. The warrant will list the names of the OFT officers authorised to exercise the powers under the warrant and will state what the investigation is about and describe the criminal offences that may be committed if a person fails to co-operate.
- 6.32 Where possible, the person in charge at the premises should designate an appropriate person to be a point of contact for our authorised officers during the inspection.

Can a legal adviser be present?

- 6.33 The occupier may ask legal advisers to be present during an inspection, whether conducted with or without a warrant. If the occupier has not been given notice of the visit, and there is no in-house lawyer on the premises, our officers may wait a short time for legal advisers to arrive.⁶⁹
- 6.34 During this time, we may take necessary measures to prevent tampering with evidence or warning other companies about our investigation.⁷⁰

What if there is nobody at the premises?

- 6.35 If there is no one at the premises when our officers arrive, our officers must take reasonable steps to inform the occupier that we intend to enter the premises. Once we have informed them, or taken such steps as we are able to inform them, we must allow the occupier or their legal or other representative a reasonable opportunity to be present when we carry out our search under the warrant.⁷¹

⁶⁹ Rule 3(1) of the OFT Rules.

⁷⁰ This could include sealing filing cabinets, keeping business records in the same state and place as when OFT officers arrived, suspending external email or making and receiving calls, and/or allowing our officers to enter and remain in offices of their choosing. It may be a criminal offence to tamper with evidence protected in this way.

⁷¹ Rule 3(1) of the OFT Rules.

6.36 If our officers have not been able to give prior notice, we must leave a copy of the warrant in a prominent place on the premises. If, having taken the necessary steps, we have entered premises that are unoccupied, on leaving we must leave them secured as effectively as we found them.⁷²

⁷² For business premises, section 28(5). For domestic premises, section 28A(6) of the Act.

7 LIMITS ON OUR POWERS OF INVESTIGATION

Summary

- We cannot require the production of privileged communications.
- We cannot force a business to provide answers that would require an admission that they have infringed the law.
- We are subject to strict rules governing the extent to which we are permitted to disclose confidential and sensitive information.
- We expect to receive a separate non-confidential version of any documents or materials containing sensitive or otherwise confidential information, along with a clear explanation as to why the redacted information should be considered confidential.

Privileged communications

- 7.1 Under the Act, we are not allowed to use our powers of investigation to require anyone to produce privileged communications.⁷³
- 7.2 Privileged communications are defined in the Act. They include communications, or parts of such communications, between a professional legal adviser and their client for the purposes of giving or receiving legal advice, or those which are made in connection with, or in contemplation of, legal proceedings, and for the purposes of those proceedings. For example, this would cover a letter from a company's lawyer to the company advising on whether a particular agreement infringed the law.
- 7.3 If there is a dispute during an inspection as to whether communications, or parts of communications, are privileged, our officer may request that

⁷³ Section 30 of the Act.

the communications are placed in a sealed envelope or package. The officer will then discuss the arrangements for safe-keeping of these items by the OFT pending resolution of the dispute.

Privilege against self-incrimination

- 7.4 When we request information or explanations we cannot force a business to provide answers that would require an admission that they have infringed the law.⁷⁴ We can, however, ask for any documents already in existence, or information relating to facts, such as whether a given employee attended a particular meeting.
- 7.5 The law on privilege is complicated. As investigators of a possible infringement, we are not able to advise on the circumstances in which a person can claim privilege. Anyone in any doubt about how it applies in practice should seek independent legal advice.

Handling confidential information

- 7.6 During the course of our investigations we acquire a large volume of confidential information relating to both businesses and individuals.
- 7.7 There are strict rules governing the extent to which we are permitted to disclose such information.⁷⁵ In many instances we may have to redact documents we propose to disclose to remove any confidential information, for example, by blanking out parts of documents or by aggregating figures.
- 7.8 If a person or company thinks that any information they are giving us or we have acquired is commercially sensitive or contains details of an individual's private affairs and that disclosing it might significantly harm the interests of the business or person, they should submit a separate non-confidential version of the information and, in an annexe clearly marked as confidential, set out clearly why the redacted information

⁷⁴ Privilege against self-incrimination is an aspect of the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights. This is given effect in the United Kingdom by the Human Rights Act 1998.

⁷⁵ Rule 6 of the OFT Rules and Part 9 of the Enterprise Act 2002.

should be considered confidential. We will not accept blanket or unsubstantiated confidentiality claims. The non-confidential version should be provided at the same time as the original response and in any event no later than four weeks from the date of submitting the original response. Any extension to this deadline should be agreed in advance of the deadline with the Team Leader.

- 7.9 In the event that we have not received a non-confidential version within this deadline, we will give one further opportunity to make confidentiality representations to us. The timeframe for responding in this case will be set by the Team Leader. If, after this second opportunity, we have received no reply, we will assume that no confidentiality is being claimed in respect of the information.
- 7.10 There may be occasions where we propose to disclose information identified by the person or business providing it as being confidential either to parties to the investigation or by including the information in a published decision. For example, we may not agree with the person or business who provided it that the information in question is confidential or we may agree that the information is confidential but consider that it is necessary to disclose the information either to the parties in the investigation in order to enable them to exercise their rights of defence or in a published decision. In such circumstances, we will give the person or business who provided the information prior notice of our proposed action and will give them a reasonable opportunity to make representations to us. We will then inform the party whether or not we still intend to disclose the information, after considering all the relevant facts.
- 7.11 Where a party is informed that we do still intend to disclose information and the party is unhappy about this, the party should raise this as soon as possible with the SRO. If it is not possible to resolve the dispute with the SRO, the party may refer the matter to the Procedural Adjudicator.⁷⁶

⁷⁶ See Chapter 14. Further details of the Procedural Adjudicator role are available at www.ofc.gov.uk/about-the-ofc/legal-powers/legal/competition-act-1998/procedural-adjudicator-trial

- 7.12 In some cases, we may consider the use of practices such as ‘confidentiality rings’ or ‘data rooms’ at access to file stage to handle the disclosure of confidential information to a limited group of persons. We are likely to do so where there are identifiable benefits in doing so and where any potential legal and practical difficulties can be resolved swiftly in agreement with the parties concerned.⁷⁷ In such cases, the person or business that provided the information will be informed of the proposal and provided with a reasonable opportunity to make representations to us. We will then inform the person or business whether or not we still intend to use the proposed ‘confidentiality ring’ and/or ‘data room’ arrangement, after considering all the relevant facts.
- 7.13 Where a person or business is informed that we do still intend to use the ‘confidentiality ring’ and/or ‘data room’ arrangement and the person or business is unhappy about this, the person or business should raise this as soon as possible with the SRO. If it is not possible to resolve the dispute with the SRO, the person or business may refer the matter to the Procedural Adjudicator.⁷⁸

⁷⁷ See further detail at Chapter 11.

⁷⁸ See Chapter 14. Further details of the Procedural Adjudicator role are available at www.offt.gov.uk/about-the-offt/legal-powers/legal/competition-act-1998/procedural-adjudicator-trial

8 TAKING URGENT ACTION TO PREVENT SERIOUS DAMAGE OR TO PROTECT THE PUBLIC INTEREST

Summary

- We can require a business to comply with temporary directions (interim measures) where
 - we have started but not yet concluded an investigation, and
 - we consider it necessary to act urgently either to prevent serious irreparable damage to a person or category of persons, or to protect the public interest.
- In these circumstances, we can act on our own initiative or in response to a request to do so.
- Any person who considers that the alleged anti-competitive behaviour of another business is causing them serious, irreparable damage may apply to us to take interim measures.
- If a person fails to comply with the interim measures without reasonable excuse, we would apply to court for an order to require compliance within a specified time limit.

8.1 We have the power⁷⁹ to require a business to comply with temporary directions (referred to as 'interim measures') while we complete our investigation.

8.2 We may do this where we have started but not yet concluded our investigation and we consider it necessary to act urgently either to prevent serious, irreparable damage to a person or category of persons, or to protect the public interest. We can act on our own initiative or in response to a request to do so.

⁷⁹ Section 35 of the Act.

- 8.3 In most cases, interim measures will have immediate effect. However, if a person fails to comply with them without reasonable excuse, it is our practice to apply to court for an order to require compliance within a specified time limit.
- 8.4 The court can require the person in default or any officer of a business responsible for the default, to pay the costs of obtaining the order.
- 8.5 If the measures relate to the management or administration of a business, the court order can compel the business or any of its officers to comply with them. Failure to comply with a court order will be in contempt of court.

Application for interim measures

- 8.6 Any person who considers that the alleged anti-competitive behaviour of another business is causing them serious, irreparable damage may apply to us to take interim measures.
- 8.7 They should contact the designated Team Leader who is responsible for the case in the first instance. The Team Leader will be able to discuss the information requirements and explain the procedure for dealing with such requests.
- 8.8 Applicants should provide as much information and evidence as possible to demonstrate their case for interim measures and they should also indicate as precisely as possible the nature of the interim measure being sought.

Decision to impose interim measures

- 8.9 The SRO⁸⁰ may provisionally decide to give an interim measures direction. In this case, we will write to the business to which the directions are addressed setting out the terms of the proposed directions and our reasons for giving them. We will also allow them a reasonable opportunity to make representations to us. Given the time critical nature of the interim measures process, the time allowed may be short.

⁸⁰ See paragraph 5.1.

- 8.10 The business to which the directions are addressed will also be allowed to inspect documents on our file that relate to the proposed directions. We may withhold any documents to the extent to which they contain any confidential information.
- 8.11 After taking into account any representations, we will make our final decision and inform the applicant and any Formal Complainants and the business against which the order is being sought. The SRO is responsible for deciding whether to give an interim measures direction. Before taking this decision, the SRO will consult other senior OFT officials as appropriate.

Rejecting an application for interim measures

- 8.12 If the SRO provisionally decides to reject an application for interim measures, we will consult the applicant and any other Formal Complainants before doing so by sending a provisional dismissal letter setting out our principal reasons for rejecting the application. We will give them an opportunity to submit comments and/or additional information within a certain time, the length of which will depend on the case.
- 8.13 If the comments from the applicant or Formal Complainant contain confidential information, a separate non-confidential version must be submitted at the same time (see Chapter 7 on handling confidential information). We may provide this to the business under investigation if we think it appropriate, such as where it may be relevant for the rights of defence.
- 8.14 We will consider any comments and further evidence submitted within the specified time limit. After considering the additional information provided to us, if the SRO still decides to reject the application, we will send a letter to the applicant and any other Formal Complainants and normally the business against which the directions are sought to inform them and give our reasons.
- 8.15 However, if the additional information from any of these parties does lead the SRO to change his/her provisional view and to decide that we should make an interim measures direction, we will inform the applicant, any other Formal Complainants, and the business against which the

directions are sought, and our investigation will continue in the normal way.

Publication

- 8.16 We maintain a register on our website of all interim measures directions.⁸¹ We may also publish them in an appropriate trade journal.
- 8.17 More information on interim measures directions is available in *Enforcement*⁸² and *Involving third parties in Competition Act investigations*.⁸³

⁸¹ The register can be viewed at www.offt.gov.uk/OFTwork/competition-act-and-cartels/ca98/decisions

⁸² OFT 407 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft407.pdf

⁸³ OFT 451 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft451.pdf

9 THE ANALYSIS AND REVIEW STAGE

Summary

- Regular review and scrutiny are a key part of our investigation process. Senior officials and advisors, both internal and external, can perform this function.
- We provide case updates to keep parties informed.
- We offer parties the opportunity to meet with the case team at state of play meetings.

9.1 The evidence that we gather using our powers described above is fundamental to the outcome of our investigation. In all cases, we routinely review and analyse the information in our possession to test the factual, legal and economic arguments and to establish whether it supports or contradicts the theory/ies of competition harm.

9.2 In some cases, an investigation may start out by probing a particular set of circumstances that points to conduct of one type, but information may later surface which indicates the existence of another type of potentially anti-competitive behaviour or a different theory of competition harm from that advanced earlier in the investigation. Alternatively, our early analysis may suggest that a large number of businesses have been acting unlawfully but later on it emerges that we only have enough evidence to warrant further the investigation of some of those businesses. We may also exercise our administrative discretion to focus our resources on investigating a limited set of activities or businesses.

9.3 The analysis and review stage therefore forms an essential part of our investigation process. In addition to carrying out their own analysis, our case teams seek input from other areas of the OFT to assist them.

Internal scrutiny

9.4 Throughout our competition investigations, as part of the quality assurance that we adopt in every case, we regularly scrutinise the way

in which we handle our investigation and routinely assess the evidence before us to ensure that our actions and decisions are well-founded, fair and robust. This involves seeking internal advice from specialist advisors on the legal, policy and economic issues that arise. In some instances, we may also seek advice from external sources, such as external counsel.

- 9.5 In particular, to provide a further internal check and balance before a Statement of Objections is issued or a final decision on infringement is taken, specialised lawyers and economists from outside the case team analyse and review the relevant facts and key underlying evidence, and highlight to the case team and the relevant decision maker(s) the legal and/or economic risks associated with the proposed course of action.
- 9.6 The General Counsel and the Chief Economist are responsible for ensuring that there has been a thorough review of the robustness of, respectively, the legal and the economic analysis (and of the evidence being used to support this) before a Statement of Objections is issued or a final decision on infringement is taken.
- 9.7 The General Counsel is also responsible for ensuring that the relevant decision maker(s) is/are aware of any significant legal risks before the decision to issue a Statement of Objections or a final decision on infringement is taken. The Chief Economist is similarly also responsible for ensuring that the relevant decision maker(s) is/are aware of any significant risks on the economic analysis before the decision to issue a Statement of Objections or a final decision on infringement is taken.
- 9.8 The General Counsel and the Chief Economist (or their representative(s)) will attend the oral hearing(s)⁸⁴ and may ask questions of the parties.
- 9.9 The OFT Executive Committee (**ExCo**) and/or the OFT Board⁸⁵ will receive regular updates from the case team on the progress of an investigation and the risks arising.

⁸⁴ Including both the oral hearing on liability following the issue of a Statement of Objections and the oral hearing on penalty following the issue of a draft penalty statement. See further Chapter 12.

9.10 The SRO decides whether:

- there are sufficient grounds to open a formal investigation
- there is sufficient evidence to issue a Statement of Objections
- to close a case prior to issue of a Statement of Objections
- to make an interim measures direction⁸⁶
- to accept commitments offered by a party under investigation⁸⁷
- a case is appropriate for settlement.⁸⁸

Before taking these decisions, and in addition to taking advice from specialist advisors as detailed above, the SRO will consult other senior officials and (in relation to decisions on commitments and settlement) the Policy Committee⁸⁹ as appropriate.

9.11 Where a Statement of Objections is issued, a Case Decision Group is appointed by the Policy Committee to act as the decision-maker on whether, based on the facts and evidence before it, the legal test for establishing an infringement has been met. Before taking this decision, the Case Decision Group will, in addition to being made aware of any significant legal risks or risks on the economic analysis (as described in paragraph 9.5 to 9.7 above), consult the Policy Committee.

⁸⁵ Further details of ExCo and the OFT Board are available at www.offt.gov.uk/about-the-offt/offt-structure/board

⁸⁶ See paragraphs 8.9 to 8.15.

⁸⁷ See paragraphs 10.15 to 10.23.

⁸⁸ See paragraphs 11.3 to 11.4.

⁸⁹ The Policy Committee is constituted of members of the OFT's senior staff, including the Chief executive, other executive members of the OFT Board, the Chief Economist, the General Counsel and the Senior Director of Policy. Its purpose is to oversee and scrutinise the development of OFT casework, guidance, procedures and policy relating to the Act and the equivalent provisions of the TFEU.

9.12 When consulted by the Case Decision Group, the Policy Committee's role is not to advise the Case Decision Group on the strength of the evidence in the case, but to provide the Case Decision Group with its views on any policy, legal or economic issues arising out of the Case Decision Group's proposed decision.

Sharing our early thinking and giving regular updates

9.13 The time taken to establish the facts and whether they point to an infringement of competition law will vary from case to case depending on a range of factors such as, for example, the number of parties under investigation, the extent to which they cooperate with us, and the complexity of the conduct under consideration. In many cases, the facts advanced by one party will directly contradict those put forward by another party. The purpose of our investigation is to establish which set of circumstances is more credible based on verifiable facts.

9.14 We generally provide case updates to companies under investigation and Formal Complainants either by telephone or in writing. These are often the most efficient and effective ways of sharing information on case progress for us and the parties alike.

9.15 We will also offer each party under investigation separate opportunities to meet with representatives of the case team (including the SRO and/or Project Director) to ensure they are aware of the stage the investigation has reached.⁹⁰ At these 'state of play' meetings, we will inform parties of the next stages of the investigation and the likely timing of these, subject to any restrictions we may have if the timing is market sensitive.⁹¹ We will also, generally, share our provisional thinking on a case.

⁹⁰ On occasion, we may, if we consider it useful or appropriate, invite the parties under investigation to a multi-party meeting. For example, we may consider offering a multi-party meeting where there are differing views on a key issue such as market definition or differing interpretations offered in respect of a key piece of evidence.

⁹¹ As to market sensitivity considerations, see paragraphs 3.27-3.42 (and particularly paragraph 3.28) of *Transparency – A Statement on the OFT's approach* (OFT 1234) available to download at www.of.gov.uk/shared_of/consultations/668117/OFT1234.pdf

- 9.16 We will invite a party to a first state of play meeting once the case has been formally opened. This will cover the anticipated scope of the investigation, next stages and the proposed timetable. This meeting will provide parties with greater transparency on the nature and scope of the investigation. We will invite parties to a second state of play meeting before a decision is taken on whether to issue a Statement of Objections. At this meeting we will update parties on our provisional thinking on the case, including the key potential competition concerns identified.
- 9.17 In some cases it may not be appropriate to hold a state of play meeting at the outset of the investigation where this may prejudice the ongoing investigation. However, in such cases, we will offer a state of play meeting to each party before the decision is taken on whether or not to issue a Statement of Objections, to update them on our provisional thinking, including the key potential competition concerns identified.
- 9.18 In all cases where a Statement of Objections is issued, we will invite each party to a further state of play meeting after we have received all parties' written and (where applicable) oral representations on the Statement of Objections. At this meeting, which will be attended by at least one member of the Case Decision Group⁹² and the case team, we will update parties on our preliminary views on how we intend to proceed with the case in light of the written and oral representations we have received.
- 9.19 In appropriate circumstances, we may also meet with parties on other occasions. This may be where they have new information that can materially assist us in taking forward our case. Parties who believe that a meeting of this kind would be useful should contact the Team Leader in the first instance to discuss the matter.
- 9.20 As a matter of routine, we will keep parties to the investigation informed of the anticipated case timetable and any changes to this, as well as publishing this information in the case opening notice on our website.⁹³

⁹² See paragraph 11.27.

⁹³ See Chapter 5.

9.21 We have published a Transparency Statement on our website, setting out the steps we take to ensure our work is open and accessible.⁹⁴ If you have a concern or complaint about our procedures or the handling of a case, you should contact the SRO in the first instance. If you are unable to resolve the dispute with the SRO, certain procedural complaints may be referred to the Procedural Adjudicator.⁹⁵ If your dispute falls outside the scope of the Procedural Adjudicator trial, the Transparency Statement sets out the options available to you to pursue the complaint.

⁹⁴ Available at www.ofst.gov.uk/shared_ofst/consultations/668117/OFT1234.pdf

⁹⁵ See Chapter 14, details of the Procedural Adjudicator role available through www.ofst.gov.uk/about-the-ofst/legal-powers/legal/competition-act-1998/procedural-adjudicator-trial

10 INVESTIGATION OUTCOMES

Summary

- There are a number of ways in which our investigation can be resolved.
 - We can close our investigations on the grounds of administrative priorities.
 - In these circumstances, we may also write to businesses explaining that, although we are not currently pursuing a formal investigation, we have concerns about their conduct.
 - We can issue a decision that there are no grounds for action if we have not found evidence of an infringement.
 - We can accept commitments from a business about their future conduct.
 - We will issue a Statement of Objections where our provisional view is that the conduct under investigation amounts to an infringement.
 - After issuing a Statement of Objections and receiving the parties' representations, we can issue a final decision that the conduct amounts to an infringement.

10.1 Our investigations can be resolved in a number of ways.

- We can decide to close our investigation on grounds of administrative priorities (see paragraphs 10.2 – 10.11)
- We can issue a decision that there are no grounds for action if we have not found sufficient evidence of an infringement of competition law (see paragraphs 10.12 – 10.14)
- We may accept commitments from a business relating to their future conduct where we are satisfied that these commitments fully address our competition concerns (see paragraphs 10.15 – 10.23)

- We will issue a Statement of Objections where our provisional view is that the conduct under investigation amounts to an infringement of competition law (see Chapter 11 below). After allowing the business(es) under investigation an opportunity to make representations on our Statement of Objections (see Chapter 12 below), if we still consider that they have committed an infringement, we can issue an infringement decision against them and impose fines and/or directions to bring to an end any ongoing anti-competitive conduct.

Closing our investigations on the grounds of administrative priorities

- 10.2 Not all of our investigations result in a finding that there has been a breach of competition law. We may decide that a formal investigation no longer merits the continued allocation of our resources because it no longer fits within our casework priorities and/or because we do not have sufficient evidence in our possession to determine whether a breach has been committed and we consider that further investigation is not warranted. We may take this decision at any stage of our investigation.⁹⁶
- 10.3 If we decide to close an investigation on the grounds of administrative priorities, we will inform any Formal Complainants in writing, setting out our principal reasons for not taking forward the investigation. The amount of detail given will vary according to the circumstances of each case. In more advanced investigations, we are likely to give more details than in the case of complaints which have not been the subject of extensive investigation.
- 10.4 We will give Formal Complainants an opportunity to submit their comments or any additional information within a specified time frame. Generally, we will give two to four weeks to respond. In complex cases which have been extensively investigated, we may give longer.

⁹⁶ The SRO is responsible for deciding whether to close a case on administrative priorities grounds prior to issue of a Statement of Objections. After any Statement of Objections has been issued, case closure decisions are the responsibility of the Case Decision Group.

- 10.5 If a Formal Complainant's response contains confidential information, they will be asked to submit a separate non-confidential version at the same time (see Chapter 7 on handling confidential information). We may provide this to the business(es) we are investigating if we think it appropriate, such as if it is likely to change our preliminary view.
- 10.6 We will also give a copy of the provisional closure letter to the business(es) under investigation giving them an opportunity to comment within the same time frame.
- 10.7 We will consider any comments and further evidence submitted within the specified time limit before reaching a final view on whether to close our investigation.
- 10.8 If we decide to close the case, we will write to the Formal Complainant and the business under investigation, explaining why any additional information sent to us has not led us to change our view. The level of detail given will depend on the case and the nature of the additional information provided.
- 10.9 In these circumstances, we may also write to the business under investigation to inform them that we have been made aware of a possible breach of competition law by them and that although we are currently not minded to pursue an investigation, we may do so in future if our priorities change (for example in response to further evidence we receive).
- 10.10 We will also issue a public statement linking to the relevant page on our website and explain why we have closed the case on administrative priority grounds.
- 10.11 If the response to our provisional closure letter leads us to change our preliminary view and decide that an investigation should be continued, we will inform the company under investigation and the Formal Complainant and continue our investigation in the normal way.

Issuing a no grounds for action decision

- 10.12 If we do not find sufficient evidence of a competition law infringement, we may publish a reasoned no grounds for action decision when closing the case.⁹⁷
- 10.13 In such cases, we will provide a non-confidential version of our proposed decision to the Formal Complainant. The consultation process on the proposed decision will be the same as for provisional case closure letters.
- 10.14 Further information is available in *Involving third parties in Competition Act investigations*.⁹⁸

Accepting commitments on future conduct

- 10.15 If we consider that the case gives rise to competition concerns, instead of making an infringement decision, we may be prepared to accept binding promises, called 'commitments', from a business relating to their future conduct.⁹⁹ We must be satisfied that the commitments offered fully address our competition concerns. The decision to accept commitments is at our discretion.
- 10.16 We are likely to consider it appropriate to accept commitments only in cases where the competition concerns are readily identifiable, will be fully addressed by the commitments offered, and the proposed commitments can be implemented effectively and, if necessary, within a short period of time.
- 10.17 We are very unlikely to accept commitments in cases involving secret cartels between competitors or a serious abuse of a dominant position.

⁹⁷ Rule 7(3) of the OFT Rules.

⁹⁸ OFT 451 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft451.pdf

⁹⁹ Section 31A of the Act.

- 10.18 A business under investigation can offer commitments at any time during the course of that investigation, until a decision on infringement is made. However, we are unlikely to consider it appropriate to accept commitments at a very late stage in our investigation, such as after we have considered representations on our Statement of Objections.
- 10.19 If a business would like to discuss offering commitments, they should contact the Team Leader in the first instance. If, following that contact, we think that commitments may be appropriate, we will send a summary of our competition concerns to the business. Once commitments have been offered, we may discuss them with the business to see if they would be acceptable to us.
- 10.20 If we propose to accept the commitments offered, we will consult those who are likely to be affected by them and give them an opportunity to give us their views within a time limit of at least 11 working days. After receipt of the responses to this consultation, we will hold a meeting with each business that offered commitments to inform them of the general nature of responses received and to indicate whether we consider that changes are required to the commitments before we would consider accepting them.
- 10.21 If the business(es) offer revised commitments including significant changes, we will allow another opportunity for Formal Complainants and any other interested third parties to express their views within a time limit of at least six working days.
- 10.22 The SRO is responsible for deciding whether to accept the commitments offered, having consulted with the Policy Committee¹⁰⁰ and other senior OFT officials as appropriate. The SRO's decision will require the approval of the Policy Committee before the commitments can be formally accepted by the OFT. Once accepted, we will publish the commitments on our website.

¹⁰⁰ For a description of the Policy Committee and its role in investigations under the Act, see Chapter 9.

10.23 Further information on our approach to commitments is contained in the OFT guideline *Enforcement*.¹⁰¹

Issuing a Statement of Objections

10.24 We will issue a Statement of Objections where our provisional view is that the conduct under investigation amounts to an infringement. See Chapter 11 for more detail on this.

¹⁰¹ OFT 407 available to download at www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft407.pdf

11 ISSUING OUR PROVISIONAL FINDINGS – THE STATEMENT OF OBJECTIONS

Summary

- Where our provisional view is that the conduct under investigation amounts to an infringement, we will issue our Statement of Objections to each business we consider to be responsible for the infringement.
- The SRO is responsible for the decision to issue a Statement of Objections.
- The Statement of Objections represents our provisional view and proposed next steps. It allows the business being accused of breaching competition law an opportunity to know the full case against them and, if they choose to do so, to formally respond in writing and orally.
- We give each addressee of our Statement of Objections an opportunity to inspect our investigation file.
- At this stage, we may also invite the addressee of our Statement of Objections to contact us if they would like to enter into discussions on possible settlement of the case.
- A Case Decision Group will be appointed to be the final decision-makers on whether or not the business(es) under investigation have infringed competition law. We will inform those businesses of the identity of the Case Decision Group members.

11.1 Following the analysis of the evidence on our files, if our provisional view is that the conduct under investigation amounts to an infringement, we will issue our Statement of Objections to each business we consider to be responsible for the infringement and give them an opportunity to inspect our file.¹⁰²

¹⁰² Rule 4 of the OFT Rules.

- 11.2 If the case involves more than one party, each party will receive a copy of the Statement of Objections. Information that is confidential will be disclosed through the Statement of Objections to other parties only if disclosure is strictly necessary in order for them to exercise their rights of defence. Before disclosing any confidential information, we will consider whether there is a need to exclude any information whose disclosure would be contrary to the public interest or whose disclosure might significantly harm the interests of the company or individual it relates to. If we consider that disclosure might significantly harm legitimate business interests or the interests of an individual, we will consider the extent to which disclosure of that information is nevertheless necessary for the purpose for which we are allowed to make the disclosure.¹⁰³
- 11.3 At this stage, we may also invite addressees of a Statement of Objections to contact us if they would like to enter into discussions on the possible settlement of the case. This settlement process applies where a business under investigation is prepared to admit that it has breached competition law and to agree to a streamlined administrative procedure to govern the remainder of our investigation of that business' conduct. In return for this, we may agree to impose a reduced penalty on the business. Businesses may wish to approach us earlier on in our investigation to discuss the possibility of exploring settlement. If so, they should contact the Team Leader in the first instance.
- 11.4 Consideration of the possibility of settlement will only be appropriate when we consider that the evidential standard for an infringement is met. Settlement will not be appropriate in every case and we will exercise our discretion on a case by case basis to decide whether or not it would be appropriate to offer to enter into settlement discussions. Before settlement discussions may commence, the SRO must receive approval from the Policy Committee to enter into such discussions. Any agreement in principle reached between the SRO and the business regarding possible settlement will require the approval of the Policy Committee before the settlement agreement can be formally entered into by the OFT and take effect. The case against the settling business will

¹⁰³ Section 244 of the Enterprise Act 2002.

then proceed to an infringement decision following the streamlined administrative procedure agreed upon.

- 11.5 The Statement of Objections represents our provisional view and proposed next steps. It allows the businesses being accused of breaching competition law an opportunity to know the full case against them and, if they choose to do so, to formally respond in writing and orally.
- 11.6 The Statement of Objections will set out the facts and our legal and economic assessment of them which led to our provisional view that an infringement has occurred. We will also set out any action we propose to take, such as imposing financial penalties¹⁰⁴ and/or issuing directions¹⁰⁵ to stop the infringement if we believe it is ongoing, and our reasons for taking the action.
- 11.7 It is our current practice to send a hard copy of the Statement of Objections and covering letter to recipients by courier or recorded delivery. Typically, we also provide an electronic copy in pdf format.
- 11.8 It is our normal practice publicly to announce the issue of the Statement of Objections on our website and to make an announcement on the Regulatory News Service.¹⁰⁶
- 11.9 As far as possible, we aim to give the directly affected parties fair and sufficient notice, as well as advance sight of announcement documents, to enable them to prepare their response.
- 11.10 The timing of the announcement and any advance notice will depend on whether there is any market sensitivity about the announcement. We

¹⁰⁴ More information on how we set penalties is available in Part 5 of OFT guideline *Enforcement* (OFT 407), available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft407.pdf and *Guidance as to the appropriate amount of a penalty* (OFT 423), available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft423.pdf

¹⁰⁵ More information on directions can be found in *Enforcement* (OFT 407), available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft407.pdf

¹⁰⁶ www.investegate.co.uk

have to balance our responsibilities concerning the control and release of market sensitive information against our objective of, as far as possible, giving directly affected parties fair and sufficient notice.

- 11.11 As a general rule, if there is no market or other sensitivity about the fact or date of the announcement, we will be open about the date and publish the date on our website, up to several days before the full announcement. We will tell affected parties in advance of placing any statement on the substance of the matter on our website. The exact notice given will depend on the circumstances of the particular case in point.
- 11.12 Generally, in non-market sensitive announcements, we aim to give parties advance sight of the content of our announcement, in confidence, unless there is a compelling reason not to do so.
- 11.13 In the case of market sensitive announcements, where appropriate, we will apply the FSA's Guideline for the control and release of price sensitive information by Industry Regulators.¹⁰⁷
- 11.14 If there is no market or other sensitivity about the date of the announcement as opposed to the content of the announcement, we will be open about the date and publish that date on our website up to several days in advance of the full announcement. We will also inform media organisations. We will tell parties in advance of informing the media or placing any statement about the substance of the matter on our website.
- 11.15 If the date and content of the announcement may be market-sensitive, for example, where nothing about the investigation has previously been announced, we will notify affected parties after financial markets have closed including, where appropriate, financial markets in other countries.
- 11.16 In particular, if the date of the announcement is not in the public domain, we will inform those directly affected in strict confidence the evening before issue once relevant financial markets have closed.

¹⁰⁷ www.fsa.gov.uk/pubs/ukla/ir_guidelines.pdf

11.17 More details about the way in which we publicly announce the issue of a Statement of Objections is available in our *Transparency Statement*.¹⁰⁸

Who decides whether to issue a Statement of Objections?

11.18 The SRO decides whether to issue a Statement of Objections. Before doing so, the SRO will consult the General Counsel and Chief Economist (or their representatives) to ensure that the SRO is aware of any significant legal and economic risks that have been identified.¹⁰⁹ The SRO will also consult other senior OFT officials as appropriate.

11.19 The SRO will be chosen at the outset of the formal investigation and businesses under investigation will be informed of who the SRO is (along with details of the other key members of the case team). If, later on, it is necessary to allocate a new SRO to the case, we will inform the businesses under investigation.

Inspection of our file

11.20 At the same time as issuing the Statement of Objections, we will also give the addressees of the Statement of Objections the opportunity to inspect our file. This is to ensure that they can properly defend themselves against the allegation of having breached competition law.

11.21 We allow addressees of the Statement of Objections a reasonable opportunity, typically six to eight weeks, to inspect copies of disclosable documents on our file. These are documents that relate to matters contained in the Statement of Objections, but excluding certain confidential information¹¹⁰ and OFT internal documents.¹¹¹

¹⁰⁸ For a general guide to our approach when we make a public announcement, see *Transparency – A Statement on the OFT's approach* (OFT 1234) available to download at www.of.gov.uk/shared_of/consultations/668117/OFT1234.pdf

¹⁰⁹ As described further in paragraphs 9.5 to 9.7 above.

¹¹⁰ Under Rule 1(1) of the OFT Rules confidential information means commercial information whose disclosure the OFT thinks might significantly harm the legitimate business interests of the company to which it relates, or information relating to the private affairs of an individual whose disclosure the OFT thinks might significantly harm the individual's

- 11.22 Access to file is usually given by supplying the file in electronic form on a DVD. Where a business does not have the relevant electronic means to view the documents in this way or if there is only a very small number of documents, we will send hard copies. In rare circumstances, businesses can inspect the file on our premises.
- 11.23 In addition to sending copies of disclosable documents, we will also send a separate schedule of external documents, which lists all documents held in our file other than OFT internal documents.
- 11.24 We will also consider requests for access to our file by other methods, for example, by using 'confidentiality rings' or 'data rooms'. Such requests will be considered on a case by case basis. We have discretion as to whether or not to agree to such requests and are likely to do so only where there are clearly identifiable benefits in doing so and where any potential legal and practical difficulties can be resolved swiftly in agreement with the parties concerned.
- 11.25 Where we decide to use a 'confidentiality ring' or 'data room', we will provide the parties involved with details of how we propose this will work in practice, for example through providing copies of the proposed data room rules and the confidentiality undertakings that will be required from those are given access to the data room.
- 11.26 In some cases, where the parties consent, we may propose that some confidential information is disclosed on an 'external adviser only' basis. For example, in some cases a 'confidentiality ring' has been considered where there is a large volume of documents on the case file which are not being relied upon in the Statement of Objections. If the parties agree, the case team may adopt a streamlined access to file process, preparing redacted versions of the case file only for documents which are being relied upon in the Statement of Objections or have been identified as being relevant to the case. A 'confidentiality ring' on an 'external adviser only' basis is used to allow the parties' external advisers to check the

interests, or information whose disclosure the OFT thinks is contrary to the public interest.

¹¹¹ Rule 5(3) of the OFT Rules.

remainder of the file to ensure that the case team has disclosed all relevant documents to the parties, with the case team only needing to prepare redacted versions of any additional documents identified as necessary for disclosure to the party.

Appointment of a Case Decision Group

- 11.27 Once we have issued a Statement of Objections, a three-member Case Decision Group is appointed by the Policy Committee to be the decision-makers in the case. The Case Decision Group is responsible for taking decisions on (a) whether to issue an infringement decision (with or without directions) or 'no grounds for action' decision; and (b) on the appropriate amount of any penalty.¹¹²
- 11.28 The SRO will not be a member of the Case Decision Group to ensure that the final decision is taken by officials who were not involved in the decision to issue the Statement of Objections.
- 11.29 The Case Decision Group will be appointed by – and will operate under the delegated authority of – the Policy Committee,¹¹³ which is constituted of members of the OFT's senior staff, including the Chief Executive, other executive members of the OFT Board, the Chief Economist, the General Counsel and the Senior Director of Policy.
- 11.30 We will inform the parties of the identity of the Case Decision Group members. The Case Decision Group will include at least one member of the Policy Committee and at least one of its members (who may be the member of the Policy Committee) will be legally qualified.
- 11.31 The case team, including the SRO, will remain in place to progress the investigation under the direction of the Case Decision Group as appropriate. The case team will remain the primary point of contact for

¹¹² The Case Decision Group may also decide to close a case on the grounds of administrative priorities. See further paragraphs 10.2 – 10.11 above.

¹¹³ The Policy Committee operates under delegated authority from the OFT Board. The purpose of the Policy Committee is to oversee and scrutinise the development of OFT casework, guidance, procedures and policy relating to the Act and the equivalent provisions of the TFEU.

the parties under investigation, complainant(s) and third parties, and will relay information from those parties to the Case Decision Group as necessary.¹¹⁴ The Case Decision Group should therefore not be contacted directly by those parties or their representatives outside of any oral hearing or state of play meeting.

¹¹⁴ Contact details for the case team will be included in the case opening notice published on the OFT's website www.of.gov.uk/OFTwork/oft-current-cases

12 RIGHT TO REPLY

Summary

- Recipients of the Statement of Objections have an opportunity to respond to it.
- Formal Complainants and third parties who may be able materially to assist our assessment of a case will generally also be provided with an opportunity to comment.
- The Case Decision Group will review the Statement of Objections, the parties' written representations and the key underlying evidence. They will attend all oral hearings. The Chief Economist and General Counsel (or their representatives) will also attend.
- We will carefully and objectively consider all written and oral representations to appraise the case as set out in the Statement of Objections and to assess whether the conclusions reached in the Statement of Objections continue to be supported by the evidence and the facts.
- Where, having considered any written and oral representations made to us on the Statement of Objections, the Case Decision Group is considering reaching an infringement decision and imposing a financial penalty on a party, we will give that party the opportunity to comment in writing and orally on a draft penalty statement before a final decision on infringement and the appropriate penalty is taken.
- If we receive new information in response to the Statement of Objections which indicates evidence of a different alleged infringement or a material change in the nature of the infringement, and we propose to rely on this information to establish an infringement, we will issue a Supplementary Statement of Objections.

Written representations – the response to the Statement of Objections

- 12.1 When we issue a Statement of Objections, we will invite each addressee of the Statement of Objections (an **Addressee**) to respond in writing. However, there is no obligation to submit a response.
- 12.2 Written representations provide an opportunity to comment on the matters referred to in the Statement of Objections. This may involve comments regarding the facts relied on by the OFT and the legal and economic assessment set out in the Statement of Objections.
- 12.3 The deadline for submitting written representations will be specified in the Statement of Objections and will be set having regard to the circumstances of the case. Usually the deadline for an Addressee to submit written representations will be at least 40 working days, and no more than 12 weeks, from the issue of the Statement of Objections.
- 12.4 Where an Addressee has a complaint about the deadline set for submitting written representations, the Addressee should raise this as soon as possible with the SRO. If it is not possible to resolve the dispute with the SRO, the Addressee may refer the matter to the Procedural Adjudicator¹¹⁵
- 12.5 When an Addressee submits written representations they should also provide a non-confidential version of their representations, along with an explanation which justifies why information should be treated as confidential. We will not accept blanket or unsubstantiated confidentiality claims. The non-confidential version should be provided at the same time as the original response and in any event no later than four weeks from the date of submitting the original response. Any extension to this deadline should be agreed in advance of the deadline with the Team Leader.

¹¹⁵ See Chapter 14. Further details of the Procedural Adjudicator role are available at www.of.gov.uk/about-the-of/legal-powers/legal/competition-act-1998/procedural-adjudicator-trial

- 12.6 In the event that we have not received a non-confidential version within this deadline, we will give one further opportunity to make confidentiality representations to us. The timeframe for responding in this case will be set by the Team Leader. If, after this second opportunity, we have received no reply, we will assume that no confidentiality is being claimed in respect of the information.
- 12.7 Formal Complainants and third parties who may be able materially to assist our assessment of a case will generally also be provided with an opportunity to submit written representations. In most cases, disclosure of a non-confidential version of the Statement of Objections will be sufficient to enable third parties to provide the OFT with informed comments and this will not generally include any annexed documents. The document is for the Formal Complainant's use only in making representations to the OFT and must not be disclosed to others. The deadline for a Formal Complainant or third party to submit written representations (along with a non-confidential version) will be between 20 to 30 days from the date on which we send the Statement of Objections to them.
- 12.8 The non-confidential version of the written representations that have been submitted by a Formal Complainant or third party will be disclosed to Addressee(s) to allow them an opportunity to comment. We will not generally allow Formal Complainants and other third parties an opportunity to comment on the Addressees' written representations, although this may be appropriate in certain circumstances.¹¹⁶
- 12.9 In some cases, we may decide to consult Formal Complainants and third parties to a more limited extent, or not at all, for instance in cartel cases where there is a risk of prejudice to a related criminal investigation.

¹¹⁶ For example, when the Addressee and a third party put forward different versions or interpretations of the same facts and it is necessary to decide which version or interpretation is more credible.

12.10 Further information on the involvement of Formal Complainants and interested third parties at the Statement of Objections stage is available in *Involving third parties in Competition Act investigations*.¹¹⁷

Oral representations – the oral hearing

12.11 We encourage Addressees to take up the opportunity to attend an oral hearing with us on the matters referred to in the Statement of Objections.¹¹⁸ They should make it clear in their written representations that they would like to do so. The Addressee can bring legal or other advisers to the oral hearing to assist in presenting its oral representations at the hearing, subject to any reasonable limits that the OFT may set in terms of the number of persons that may attend on behalf of the Addressee. Formal Complainants and other interested third parties will generally not be permitted to attend the Addressee's oral hearing.¹¹⁹

12.12 The oral hearing will be held around 20 to 30 working days after the deadline for the submission of the written representations on the Statement of Objections.

12.13 The Case Decision Group will attend all oral hearings. The hearing will also be attended by members of the case team, the Chief Economist (or a representative of the Chief Economist) and the General Counsel (or a representative of the General Counsel). The hearing will be chaired by the Procedural Adjudicator.

12.14 To promote a focused and productive meeting, the case team will ask the Addressee to give an indication, in advance, of the matters they propose to focus on in their oral representations at the hearing. The Addressee and the case team will agree an agenda in advance of the hearing, taking into account any matters which the Case Decision Group

¹¹⁷ OFT 451 available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft451.pdf

¹¹⁸ Rule 5(4) of the OFT Rules.

¹¹⁹ In some cases, we may decide that it is appropriate to hold a multi-party hearing, including Formal Complainants and/or other interested third parties. See paragraph 12.21 below.

has indicated to the case team that it wishes to cover at the oral hearing. The agenda for the hearing will include reasonable periods of time for the Addressee to make oral representations and for the OFT staff present to ask the Addressee questions on its representations.¹²⁰

- 12.15 In the event that an agenda is not agreed between the Addressee and the case team at least 10 working days prior to the hearing, the agenda will be determined by the Procedural Adjudicator.
- 12.16 The oral hearing provides the Addressee with an opportunity to highlight to the Case Decision Group directly issues of particular importance to their case, which have been set out in their written representations. The oral hearing may also provide a useful opportunity for the Addressee to clarify the detail set out in their written representations. As a general rule, any points raised orally by the Addressee at this stage should be limited to those already submitted to us in writing.
- 12.17 During the oral hearing, the Case Decision Group and other members of OFT staff present may ask questions on the Addressees' written representations or questions of clarification. It will be helpful for the OFT, and is likely to assist the progress of the investigation, if full responses are provided to these questions but there is no obligation to answer. It is possible to respond to questions in writing after the hearing.
- 12.18 A transcript of the oral hearing will be taken and the Addressee will be asked to confirm the accuracy of the transcript and to identify any confidential information. We will not accept blanket or unsubstantiated confidentiality claims.
- 12.19 Following the oral hearing, the Procedural Adjudicator will report to the Case Decision Group, indicating any procedural issues that have been brought to the attention of the Procedural Adjudicator during the investigation and confirming whether the parties' right to be heard has been respected, including at the oral hearing.

¹²⁰ See paragraph 12.17.

- 12.20 If a Case Decision Group member changes after the oral hearing(s) but before we issue a final decision, the new member will, as well as considering parties' written representations, review the transcript of the oral hearing(s).
- 12.21 We will consider multi-party oral hearings on specific issues in appropriate cases, such as where there are differing views on a key issue like market definition or differing interpretations offered in respect of a key piece of evidence.

Considering representations

- 12.22 In some cases, the volume of information submitted as part of the representations process can be extensive. We will carefully and objectively consider all written and oral representations to appraise the case as set out in the Statement of Objections and to assess whether the conclusions reached in the Statement of Objections continue to be supported by the evidence and the facts.
- 12.23 This will involve assessment of the representations we have received, including by the case team, the Case Decision Group and, as set out below, other OFT officials.
- 12.24 The General Counsel and the Chief Economist are responsible for ensuring that there has been a thorough review of the robustness of, respectively, the legal and the economic analysis (and of the evidence being used to support this) by specialised lawyers and economists from outside the case team before the Case Decision Group decides whether or not to issue an infringement decision. The General Counsel and the Chief Economist are also responsible for ensuring that the Case Decision Group are aware of any significant risks on the legal or economic analysis before the decision is taken.¹²¹

¹²¹ See further Chapter 9.

- 12.25 As noted above,¹²² the General Counsel and the Chief Economist (or their representative(s)) will attend the oral hearings and may ask questions of the parties.
- 12.26 An original set of all written representations and the transcript from the oral hearing will be placed on the case file.

Letter of facts

- 12.27 Where we acquire new evidence at this stage which supports the objection(s) contained in the Statement of Objections and the Case Decision Group proposes to rely on it to establish that an infringement has been committed, we will put that evidence to the Addressee in a letter and will give them an opportunity to respond to the new evidence. The timeframe for responding will depend on the volume and complexity of the new evidence. However, it will be shorter than the time to respond to the Statement of Objections.

Supplementary Statement of Objections

- 12.28 If new information received by us in response to the Statement of Objections indicates that there is evidence of a different suspected infringement or there is a material change in the nature of the infringement described in the Statement of Objections, we will issue a Supplementary Statement of Objections setting out the new set of facts on which we propose to rely to establish an infringement. The Case Decision Group will be responsible for deciding whether to issue a Supplementary Statement of Objections having consulted the case team and other OFT officials as appropriate.
- 12.29 We will give the Addressee a further opportunity to respond in the same way as before. We will set the time frame for responding after taking into account the extent of the difference in the objections raised in the first Statement of Objections compared with the Supplementary Statement of Objections and allow them an opportunity to inspect new documents on the file. The process will be the same as that set out in Chapter 11. The time frame for responding to a Supplementary

¹²² See paragraphs 12.13 and 12.17

Statement of Objections will almost always be shorter than the time given to respond to the original Statement of Objections.

- 12.30 If it appears to us unlikely that engaging with Formal Complainants or other interested third parties at this stage will materially assist our investigation, we may decide to consult them on a more limited basis, or not at all. This may be the case, for example, where the Supplementary Statement of Objections is very narrow in scope.

Draft Penalty Statement

- 12.31 Where, once any written and oral representations made to us on the Statement of Objections have been considered, the Case Decision Group is considering reaching an infringement decision and imposing a financial penalty on a party, we will provide that party with a draft penalty statement. This will set out the key aspects¹²³ relevant to the calculation of the penalty that we propose to impose on that party, based on the information available to us at the time.¹²⁴ The draft penalty statement will also include a brief explanation of the Case Decision Group's reasoning for its provisional conclusion on each aspect.
- 12.32 Parties will be offered the opportunity to comment on the draft penalty statement in writing and to attend an oral hearing (in person or by telephone) with the Case Decision Group.¹²⁵ If a party chooses to make written representations or oral representations at a hearing, these representations should relate only to the draft penalty calculation in the draft penalty statement: the Case Decision Group will not consider

¹²³ Including, for example, the starting point percentage, the relevant turnover figure to be used, the duration of the infringement, any uplift for specific deterrence, any aggravating/mitigating factors (and the proposed increase/decrease in the penalty for these), and any adjustment proposed for proportionality.

¹²⁴ For further information on how the OFT calculates the appropriate amount of a penalty, see *Guidance as to the appropriate amount of a penalty* (OFT 423) available to download at www.of.gov.uk/shared_of/business_leaflets/ca98_guidelines/oft423.pdf

¹²⁵ As with the oral hearing following the Statement of Objections, the oral hearing on the draft penalty statement will be chaired by the Procedural Adjudicator and attended by the Case Decision Group, the Chief Economist and the General Counsel (or their representatives) and members of the case team.

further representations at this stage on whether an infringement has been committed, other than in exceptional cases such as where the party is able to demonstrate that it was unable to provide the information/evidence before the issue of the draft penalty statement. The written and oral representations process following issue of the Statement of Objections¹²⁶ represents parties' opportunity to make submissions to the Case Decision Group on whether an infringement has been committed.

12.33 The deadline for submitting written representations on the draft penalty calculation will be specified in the draft penalty statement. The deadline will be set having regard to the circumstances of the case and will allow for the opportunity to inspect new relevant documents (if any) on the file.¹²⁷ The timeframe for responding will typically be shorter than the time given to respond to the Statement of Objections.

12.34 Where a party has a complaint about the deadline set for submitting written representations on the draft penalty statement, the party should raise this as soon as possible with the SRO. If it is not possible to resolve the dispute with the SRO, the party may refer the matter to the Procedural Adjudicator.¹²⁸

12.35 When a recipient of a draft penalty statement submits written representations on that draft penalty statement, they should also provide a non-confidential version of their representations, along with an explanation which justifies why an item of information should be treated as confidential. We will not accept blanket or unsubstantiated confidentiality claims. The non-confidential version should be provided at the same time as the original response and in any event no later than two weeks from the date of submitting the original response. Any

¹²⁶ As described in paragraphs 12.1 – 12.21 above.

¹²⁷ Including, in cases in which we issue draft penalty statements to several parties, non-confidential versions of the draft penalty statement issued to each of those parties (see paragraph 12.37 below).

¹²⁸ See Chapter 14. Further details of the Procedural Adjudicator role are available at www.ofc.gov.uk/about-the-ofc/legal-powers/legal/competition-act-1998/procedural-adjudicator-trial

extension to this deadline should be agreed in advance of the deadline with the Team Leader.

- 12.36 If a party requests an oral hearing on the draft penalty statement, that hearing will be held around 10 to 20 working days after the deadline for the submission of the written representations on the draft penalty statement.
- 12.37 In cases in which draft penalty statements are issued to more than one party under investigation, we will – in order to provide parties with transparency as to our application of the principle of equal treatment in our draft calculations¹²⁹ – place a non-confidential version of each party’s draft penalty statement on our file. That non-confidential version may be inspected by the other parties under investigation.¹³⁰

¹²⁹ See *Guidance as to the appropriate amount of a penalty* (OFT 423) available to download at www.ofc.gov.uk/shared_ofc/business_leaflets/ca98_guidelines/ofc423.pdf at footnote 16.

¹³⁰ The case team will prepare non-confidential versions of each party’s draft penalty statement, based on any confidentiality representations previously made by that party in relation to the information included in the draft penalty statement. Where the draft penalty statement contains information regarding a party, which that party has not had a previous opportunity to assess for confidentiality, we will allow them a reasonable opportunity to make such an assessment and to make any confidentiality claims to us, before the non-confidential version of the draft penalty statement is placed on the file.

13 THE FINAL DECISION

Summary

- The Case Decision Group is responsible for deciding whether the legal test for establishing an infringement is met and, where appropriate, the level of financial penalty to be imposed, having consulted the Policy Committee and other senior OFT officials as appropriate.
- The Case Decision Group's decision must be formally adopted by the Policy Committee before it can be issued by the OFT.
- Once adopted, an infringement decision is issued to each business found to have infringed the law.
- If the CDG does not find evidence of a competition law infringement, we may publish a reasoned decision explaining why there are no grounds for further action.
- A final opportunity will be given to the addressee of the decision to make confidentiality representations.
- The non-confidential version of the decision and the summary will be published on our website.

13.1 The issue of a decision represents the culmination of our investigation.

13.2 The Case Decision Group decides whether there is sufficient evidence to meet the legal test for establishing an infringement and, if so, the level of any financial penalty to be imposed.

13.3 Where the Case Decision Group finds the legal test to have been met, it will consult the Policy Committee to provide an opportunity for the Policy Committee to provide its views on any legal, economic or policy issues arising out of that proposed decision. Having considered the views expressed, the Case Decision Group will then proceed to its final decision. The Case Decision Group's final decision must be formally adopted by the Policy Committee before that decision is issued by the OFT.

- 13.4 We will issue an infringement decision to each business found to have infringed the law.¹³¹
- 13.5 As noted in Chapter 10, if, having completed its consideration of the case, the Case Decision Group does not find sufficient evidence of a competition law infringement, it will close the case. In those circumstances, the Case Decision Group may decide to publish a reasoned no grounds for action decision. The Case Decision Group will consult the Policy Committee on its proposed decision to publish such a reasoned no grounds for action decision, to provide an opportunity for the Policy Committee to provide its views on any legal, economic or policy issues arising out of that proposed decision. Having considered the views expressed, the Case Decision Group will then proceed to its final decision. The Case Decision Group's final no grounds for action decision must be formally adopted by the Policy Committee before that decision is issued by the OFT.

Issue of an infringement decision

- 13.6 In addition to an infringement decision, we will normally issue a press announcement, make an announcement on the Regulatory News Service and publish a page on our website which describes the case.
- 13.7 We will inform the addressee(s) before the issue of the infringement decision, and the announcement of the decision. As a general rule, as described in Chapter 11, in non-market-sensitive announcements, we aim to give parties advance sight of the content of the OFT's announcement, in confidence, unless there is a compelling reason not to do so. In both market-sensitive and non-market sensitive situations, we will aim to balance an open approach with the need to ensure the orderly announcement of full information.¹³²
- 13.8 The infringement decision will set out fully the facts on which we rely to prove the infringement and the action that we are taking, and will

¹³¹ Section 31 of the Act and Rule 7 of the OFT Rules.

¹³² For a general guide to our approach when we make a public announcement, see *Transparency – A Statement on the OFT's approach* (OFT 1234) available to download at www.of.gov.uk/shared_of/consultations/668117/OFT1234.pdf

address any material representations that have been made during the course of our investigation. If a financial penalty is being imposed, the infringement decision will explain how the Case Decision Group decided upon the appropriate level of penalty, having taken into account the parties' written and oral representations on the draft penalty calculation.¹³³ The infringement decision may also give directions to bring the infringement to an end.¹³⁴

- 13.9 If the case involves more than one party, each party will receive a copy of the decision. Information that is confidential will be disclosed through the infringement decision to other parties only if disclosure is strictly necessary. Before disclosing any confidential information, we will consider whether there is a need to exclude any information whose disclosure would be contrary to the public interest or whose disclosure might significantly harm the interests of the company or individual it relates to. If we consider that disclosure might significantly harm legitimate business interests or the interests of an individual, we will consider the extent to which disclosure of that information is nevertheless necessary for the purpose for which we are allowed to make the disclosure.¹³⁵
- 13.10 After the infringement decision and press announcement have been issued, we will generally notify Formal Complainants and other interested third parties (for example, third parties who have submitted written representations during the investigation) of our decision.

¹³³ More information on how we set penalties is available in Part 5 of OFT guideline *Enforcement* (OFT 407), available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft407.pdf and *Guidance as to the appropriate amount of a penalty* (OFT 423), available to download at www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft423.pdf

¹³⁴ Section 32 and 33 of the Act. If a business fails to comply with our directions, we may seek a court order to enforce them under section 34 of the Act.

¹³⁵ Section 244 of the Enterprise Act 2002.

Publication

Confidentiality

- 13.11 The addressee of the decision will already have had the opportunity to make confidentiality representations. After the infringement decision has been issued we will allow them one final opportunity to make representations on information which they deem to be confidential and is contained in the decision. The deadline for this final set of representations will normally be four weeks from the date of the issue of the decision. Any representations must be limited to confidentiality issues only and, as at the other stages in our process, we will not accept blanket or unsubstantiated confidentiality claims.

Summary

- 13.12 A summary of the infringement decision will also be prepared. This will provide a brief overview of our investigation (for example, the date on which the Statement of Objections was issued and other key milestones in the investigation) and the infringement decision (for example, the nature of the infringement, the parties involved and the overall financial penalty).

Final publication

- 13.13 The non-confidential version of the infringement decision and the summary will be published on the page on our website which describes the case. We also maintain a register¹³⁶ of decisions in investigations under the Act and the details of the case will be placed on the register.

¹³⁶

www.offt.gov.uk/OFTwork/competition-act-and-cartels/ca98/decisions

14 COMPLAINTS ABOUT OUR INVESTIGATION HANDLING, RIGHT OF APPEAL AND REVIEWING OUR PROCESSES

- 14.1 We have published a Transparency Statement¹³⁷ on our website setting out the steps we take to ensure our work is open and accessible. Individuals, businesses and their advisers are entitled to be treated with courtesy, respect and in a non-discriminatory manner when dealing with us. Complaints about responses from ERC should be made to the Head of ERC in the first instance.¹³⁸
- 14.2 Once a formal investigation has been opened, any concerns or complaints about our procedures or how we handle our investigation should be made in writing to the SRO in the first instance. If you are unable to resolve the dispute with the SRO, certain procedural complaints may be referred to the Procedural Adjudicator. Details of the Procedural Adjudicator trial are available on our website.¹³⁹ If your dispute falls outside the scope of the Procedural Adjudicator trial, the Transparency Statement sets out the options available to you to pursue the complaint.
- 14.3 Addressees of our appealable decisions and third parties with a sufficient interest in our appealable decisions have a right to appeal them to the Competition Appeal Tribunal. Appealable decisions include decisions as to whether there has been a competition law infringement, interim measures decisions and decisions on the imposition of, or the amount of, a penalty.¹⁴⁰

¹³⁷ See figure one in *Transparency – A Statement on the OFT's approach* (OFT 1234) available to download at www.offt.gov.uk/shared_offt/consultations/668117/OFT1234.pdf

¹³⁸ www.offt.gov.uk/about-the-offt/offt-structure/governance/complaint

¹³⁹ www.offt.gov.uk/about-the-offt/legal-powers/legal/competition-act-1998/procedural-adjudicator-trial

¹⁴⁰ Section 46 of the Act and section 47 of the Act as substituted by section 17 of the Enterprise Act 2002.

- 14.4 Where the law does not provide for an appeal, an application for judicial review may be brought in certain circumstances.¹⁴¹
- 14.5 Following the completion of an investigation, case teams routinely evaluate the investigation process undertaken to determine what went well and how things may be improved for other ongoing and future cases. Typically, the 'lessons learnt' are shared with colleagues across the OFT. This evaluation process is unrelated to the investigation process but remains an important way in which we ensure that best practice can be applied across all our investigations under the Act.

¹⁴¹ A judicial review application may be brought before the Administrative Court of the Queen's Bench Division under Part 54 of the Civil Procedure Rules.