

Delivery, Change and People: 2012-2014 and beyond

Clive Maxwell
Chief Executive, Office of Fair Trading

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Introduction

Thank you for inviting me to give this speech today.

You've already heard a lot today about decision-making, consumer behaviour and behavioural economics from experts in these fields.

I'd like to take my speech in a slightly differently direction.

I took up my position as the OFT's new Chief Executive in July. This is my first speech in the role.

Although I've met many of you over the recent weeks and before then I'll start by saying a little bit about myself by means of an introduction. This will also provide some context as I outline my perspective on the current issues and challenges facing the OFT over the forthcoming period.

I want to explain:

- why I believe that our role remains as important as ever
- why we are keeping our foot on the pedal with our current and future portfolio of work, and
- how we'll be working to play our part in ensuring that the new bodies taking over our responsibilities in 19 months' time can hit the ground running. That includes the OFT handing over a rich portfolio of cases and projects.

I also want to spend some time talking about people.

One of the keys to a strong delivery culture is to invest in people and their skills. Only then can we efficiently deliver high impact, outcomes across our portfolio. This is a critical issue not just for the OFT but for regulators more generally, and one that may get overlooked in the rush to discuss processes and procedures.

I also hope that this perspective will have some wider relevance to other authorities facing similar challenges and for those working with us in continuing to deliver outcomes that matter – both for the economy and to the person on the street – in the face of reduced budgets and a challenging external economic environment.

A bit about me

I come to the role of Chief Executive both as an outsider and an insider. On the one hand, I'm neither a competition lawyer nor an industrial economist. My career anchor is not in the world of competition or consumer affairs, but rather in the broader civil service and in economic policy-making.

On the other, I've been a member of the OFT's senior management team for three years. That means that I've been more than immersed in competition and consumer law and economics. I've seen how the OFT – and some other regulatory and enforcement authorities – operate.

I find the substance of the work fascinating and very worthwhile. But I make no apologies for being more interested in those bigger picture questions and about what makes such an organisation tick – how you get people to deliver better, faster and more efficiently – and how this helps to deliver tough, real world outcomes that impact on the economy and cement consumer protection – rather than some of the procedural and process issues.

What this means to me is that I care about how we choose what we do, how we achieve change for the better in the real world most efficiently and effectively.

I want to build on the work of my predecessor, John Fingleton, and in particular his focus on real world impact and in thinking about our consumer and competition work together in terms of making markets work better.

Recent cases – what we've been doing, and why

2012 has been a really strong year so far.

There's no escaping the fact that 2010 and 2011 were difficult years for us. Everyone in this room is aware that we had some real disappointments in court, with the withdrawal of our criminal case against current and former British Airways executives, and setbacks before the Competition Appeal Tribunal in relation to our Construction and Tobacco cases.

Overall, our record remains strong, but we've learnt from these setbacks and improved our enforcement as a result, with recent successes across our competition, consumer and credit portfolios.

On the competition side, we brought the civil airline fuel surcharges case to a close, imposing a substantial penalty of £58.5 million on British Airways (BA). We've also recently issued Statements of Objections in two important cases: the first for alleged infringements of competition law in relation to the online supply of hotel accommodation, and the second in relation to alleged infringements by Mercedes-Benz and five commercial vehicle dealers involved in the sale of Mercedes-Benz trucks and vans.

On the consumer side, following OFT enforcement action 12 airlines recently agreed to include debit card surcharges in the headline ticket price rather than surprise consumers at the end of the booking process. We've continued to take action in the mobility aids market, revoking consumer credit licences, securing voluntary changes from providers and, most recently, securing court orders to prevent unfair and misleading

sales practices. We also recently secured a court order in relation to the unauthorised sale of tickets to the London Olympics, with undertakings to the court committing to provide a full refund to customers who did not receive their tickets or were refused entry to an event as the tickets supplied were not valid.

Our credit work has continued at pace with the launch of the payday lending review. We had high profile enforcement successes including the revocation of the licences of Log Book Loans Limited and Yes Loans Limited, the revocation of the licence of payday lender MCO Capital¹ and the imposition of a fine of more than £500k for breach of anti-money laundering regulations, and the imposition of requirements on another payday lender - Wonga - to improve its debt collection practices.² But those are just the cases which have captured media attention - we concluded more than 100 other consumer credit enforcement cases last year.

And we've still got a lot on. Our current enforcement portfolio includes:

- 12 Chapter I Competition Act cases (anti-competitive agreements)
- three Chapter II Competition Act cases (abuse of dominance)
- two criminal cartels cases under the Enterprise Act
- about 300 Consumer Credit Act cases (including gateway cases)
- 21 consumer enforcement cases.

Four of these are criminal cases – two consumer and two cartels – although you'll appreciate that I can't say much about these.

We've also been busy with our work on markets. I've seen three key themes emerge over the last 18 months or so.

First, we've made a number of Market Investigation References (MIRs) to the Competition Commission (CC), including on private healthcare,

¹ MCO has appealed this decision.

² Wonga has appealed the imposition of requirements.

aggregates and audit, as well as provisionally deciding to refer the motor insurance market. This is a significant step up in the rate of references.

Second, we've done an increasing amount of work on public services, including our study on dentistry – I'll come back to this a bit later on.

Third, we've used our market studies as a springboard for enforcement where this is warranted, such as in the case of the mobility aids work I mentioned before.

At the present time, we have:

- seven live market reviews of various types, and
- five advocacy projects, providing advice to policymakers on competition issues, including in public markets and professional services.

Included in this portfolio is our recently launched review of the Personal Current Account (PCA) market. This builds on our previous work in this area and will inform our response to the Independent Commission on Banking's recommendation that the OFT makes a Market Investigation Reference to the Competition Commission by 2015, if sufficient improvements in the market have not been made by that time.

And you have no doubt seen that just last week we announced that we are taking a look at the road fuels market – an area where there is significant public, media and political interest.

Our mergers work has also increased.

Last year saw a surge in the number of mergers reviewed, and an increase in high-profile, complex mergers. This has occurred despite the generally low level of mergers and acquisitions in the economy, and reflects instead some interesting trends. Overall, we examined 103 merger cases during 2011-12, referring nine to the CC. Again, I'd make three observations.

First, these figures seem to reflect the fact that a higher proportion of mergers that do take place are involving a move towards greater concentration. Some of these relate to failing firms or at least to firms struggling to continue to make sustainable profits in a challenging economic environment.

Second, some of these cases raise particular challenges, often relating to the application of 'failing firm' arguments and the desire from parties for rapid decisions. A good example is our investigation into Kingfisher plc's acquisition of 30 former Focus DIY stores. Our experience in assessing this type of retail merger, the parallel assessment of competition impact and application of the 'failing firm' defence, as well as the prompt responses from their parties, meant that we were able to conclude this investigation in only 19 working days.

My third remark concerns our approach to undertakings and mergers. Over recent years, we have successfully developed an approach that has allowed us to clear mergers – particularly those that raise local competition concerns – at phase one, which we might, in the past, have referred. Indeed, the high performance of our mergers team has been recognised in Global Competition Review's annual competition agency ratings.

We propose to maintain this successful approach, but business and legal advisors need to recognise that this involves a trade-off, as resolving issues at phase one – given the legal thresholds and the limit on time and data – means we need to be more cautious. There will always be certain deals that raise significant competition issues that cannot be addressed by a phase one outcome without extensive pre-notification. And for completed deals, extensive work at phase one may not be possible given the risk of integration. Even where these deals can be assessed, remedies may be too difficult to implement at the phase one stage. As we operate to both statutory and administrative timetables, the resources and time available at phase one are necessarily limited, and these constraints aren't going to go away – pressures on timetables are only likely to increase, particularly as the CMA introduces firmer time limits.

Looking ahead – priorities for the next 19 months (and beyond)

I hope that gives you a useful flavour of our current portfolio and the work we have concluded so far this year.

Coming into this role, I've been clear that I expect that I – and the OFT more generally – will be judged against three things:

1. How we continue to maximise our impact in making markets work well – keeping our foot on the pedal.
2. Doing what we can to ensure that the new competition, consumer and credit regimes hit the ground running.
3. Through all of this, how we ensure that our people are motivated, engaged and continuing to develop – not least because none of the above will be possible without that.

I'll start with the first of these – maximising our impact.

As we look ahead, we will continue to prioritise work that drives change, delivers real outcomes across markets, especially in evolving business areas and where vulnerable consumers are affected. We will continue to maximise the benefits of competition, ensure consumers gain from quality and choice, and that they are protected from bad practice.

Not all of our work is discretionary – some is demand-driven such as our merger control and credit licensing functions. But where it is, we want to ensure that it reflects real risks to consumers and markets.

Our Annual Plan for 2012-13 set out five themes:

- protecting vulnerable consumers
- pricing as a barrier to fair choice
- improving trust in online markets
- intellectual property and high innovation markets, and
- public markets.

Many of the cases I mentioned earlier fall within these themes. There is more to come in these areas over the coming months.

Since my appointment, I've met a number of partners, regulators, business representatives and consumer bodies to ask them what they see as the main risks and longer-term developments in the economy. I'd like to thank them for their time and input, which has been very useful, particularly as we begin to prepare our first Strategic Assessment. We intend to publish this with our draft Annual Plan this autumn. It will take a step back in looking at risks to consumers and markets.

We have instigated this work to make sure that we look outwards into the economy and identify where we need to act on that basis. I suspect that few of the risks we identify will come as a surprise, as our assessment necessarily reflects the major issues facing the country at the moment. But it is important to assess what they might mean for consumers and competition and how we should react.

What are likely to be our themes for the remaining period of the OFT's life?

We increasing pressures on consumers' finances and the provision of alternative, non-mainstream, sources of credit seem set to continue, along with increasing debt difficulties. Our work on the payday lending sector demonstrates the importance of looking at evolving business models to ensure financially vulnerable consumers are protected.

Linked to the potential impact of an ageing population, we continue to see a growing divide emerging between age groups, with older households having larger debts than younger households, and the over-60s struggling with debt burdens after retirement. We will continue to look at possible risks posed by newer forms of lending, as well as the risks that arise when things go wrong and consumers get into payment difficulties, for example, by monitoring firms in the debt management sector.

The upward shift in the age profile also has implications across other sectors, including health, social care and pensions. We've already taken cases on retirement homes exit fees and mobility aids, and looked at private healthcare sector and dentistry. With the welcome introduction of auto-enrolment into defined contribution workplace pensions starting in

October 2012, pensions will become an even bigger market, and a continually evolving one.

The increasing shift to online purchases has benefits for many but also potential risks and downsides for some groups of consumers.

Indeed, the ongoing digital revolution poses challenges for all consumers, both old and young. Our recent studies on online pricing and advertising of prices have been both a framework for analysis and a springboard for enforcement. A newly emerging frontier is personalised pricing – using the power of ‘big data’ to set prices for individuals. This has many potential positive impacts – but it also creates risks if, for example, it disincentives consumers searching elsewhere. Pricing seems highly likely to remain a key theme for us, not least in the area of online markets.

Digital innovations also potentially create new areas where we may see a rise in unfair trading and/or traders acting dishonestly towards customers, unfair contract terms and a lack of pre-contract information (for consumer credit applications in particular). These can disadvantage customers. We are active across a range of online markets and have, for example, previously taken consumer enforcement action against deceptive selling of Government services. Targeted enforcement, to ensure that consumers continue to have confidence in the internet when buying goods and services, will also remain a key priority.

Decisions by the Government also influence market developments. Examples include the growing role of choice and competition in public markets, the further liberalisation of professional services and the potential of our competitive advantage in digital and creative industries helping lead the recovery.

The OFT’s public markets work has an important role to play here. I see it as becoming even more crucial over the next two years.

As the Government increasingly encourages choice in the delivery of public services, we need to ensure the benefits and risks of competition are fully understood by policy makers – and that the markets that are being created are working effectively. Work in this area has included

dentistry, education and health sectors. I anticipate over the next year the OFT looking harder at more public services markets, including a new role in healthcare mergers.

I hope that I've given you a good flavour of the areas in which we are interested and some of the likely drivers behind our approach to selecting and delivering cases over the next couple of years.

So, on to the second big issue – the transition to new regimes.

As a reminder, for the OFT this takes three broad forms:

- the transfer of credit licensing to the new financial regulator – the Financial Conduct Authority – by April 2014
- the transfer and realignment of some consumer protection functions, some of which has already begun – such as the move of the Consumer Direct telephone service to Citizen's Advice, and
- the establishment of the Competition and Markets Authority – which will take on the competition, markets and remaining consumer functions of the OFT plus all of those of the Competition Commission.

One critical element of our approach to this follows on very well from my discussion of themes and cases for the OFT.

I am clear that one of our major responsibilities is to ensure that we hand on to the new institutions – in particular the new Competition and Markets Authority – a rich portfolio of projects and cases. So everyone should be clear that we will not be 'winding down' our opening of new work in the run up to its establishment. Rather, we will be aiming to 'see through' the transition – to be in a position to hand on that set of exciting work to the new organisation so that it really can hit the ground running in 2014.

If that is the first element, the second is our approach to working with our partners.

I am pleased to say that we are working closely with the Department for Business, the Competition Commission, and the senior leadership and

recently appointed chair-designates of the CMA and FCA.³ This is vital to facilitate all the other work that needs to be done to ensure that the new bodies have the structures, procedures, guidance and staff needed to take over the OFT's functions in less than two years' time. We're also working with partners including Citizens Advice and Trading Standards to make sure that the proposed changes to the consumer protection landscape can be delivered in practice from the word go.

I've prioritised meeting the leaders of these organisations in my first few weeks. I'm delighted to say that we're seeing real practical engagement between our organisations.

That said, each transfers brings with it different challenges and opportunities. However, there are two important themes that arise through all these changes:

- what the changes will mean for the people who work in the OFT and how we continue to motivate, engage, retain and recruit during this period, and
- more generally, how we continue to invest time and effort in improving how we do things ahead of these changes – whether in IT systems, in new procedural arrangements, or in staff capability.

I'll now turn to these and other themes in considering people, innovation and change.

I would hope that these thoughts raise broader issues for colleagues involved in leading other regulatory and enforcement authorities, especially those that are also facing considerable change.

The context we in the OFT face – like many other authorities – includes:

- a budget that is reducing year-on-year

³ Lord David Currie was appointed as the Chair Designate of the new CMA on 17 July 2012. John Griffith-Jones was appointed as the Chair Designate of the FCA on 11 June 2012.

- major institutional and regime change, and
- growing expectations about what we can and should achieve – yet increasing challenges, for example in the form of legal and other appeals.

Rather than set out exhaustively how we're responding to these challenges, I want to discuss one example that I think illustrates our approach to this.

My example concerns our approach to enforcement.

I was struck, as the Government consulted on reforming the consumer and competition regimes, that much of the external commentary and criticism of the OFT has focused on its enforcement work.

In fact, I think that some of that criticism had been misplaced, driven by some weak comparisons for example.

But I also took the view that it indicated some issues of substance – and that these issues deserved a broader consideration. I also believe that the OFT's success in enforcement is important to its broader credibility and legitimacy in its other critical areas of activity – its markets, mergers and advocacy work, for example.

With that aim in mind, I led an 'enforcement debate' at the start of 2012 within the OFT, to identify what we at the OFT do well and less well, and the challenges we face in doing it even better. We also discussed these issues with similar bodies in the UK and abroad. I was especially struck that we need to look outside the competition and consumer community and more generally at the way in which other authorities – such as the FSA, the Serious Fraud Office and Her Majesty's Revenue and Customs – tackle what are broadly similar challenges in addressing wrongdoing by businesses and individuals.

The conclusions to this work included three points:

- The importance of skills.

- The need for the right attitude – or culture – for successful enforcement work.
- The importance of intelligence.

We are now taking forward these conclusions.

We've set up an 'Enforcement Academy', which focuses on providing specialist skills training, knowledge sharing and facilitating discussion forums. This rolling programme is provided by a mix of OFT staff and external experts. We're also joining up all our enforcement experts, which is resulting in even greater coordination across our portfolio.

We are continuing to recruit staff with specialist skills to support our enforcement functions in particular. We've made 31 new appointments since April 2012 across the breadth of our portfolio and are currently recruiting for a new Director of Criminal Enforcement, for example.

We are putting more effort into thinking about data and intelligence, as our publication of a Strategic Assessment will show.

In parallel, we have thought hard about our procedures for taking decisions on Competition Act cases, including our approaches to penalties and leniency. We will publish full details of our model of decision-making and other enhancements in revised guidance this autumn, have issued today new penalties guidance for competition cases and will be proceeding with a public consultation on draft settlement guidance soon. We are also looking at how we will exercise an important new power to suspend credit licenses.

What does this all show?

For me, there are three important points to all of this.

The first is that while it is right that any agency needs to work hard at its processes and procedures, the skills and culture of the people in the organisation is at least as important.

I believe that some of the potential for sharing such ideas between authorities remains to be exploited further.

It is also the case that tackling this requires putting your money where your mouth is – skills development is an investment and it is important to recognise that this costs money. I am pleased to say that despite the overall reduction in our funding, we have maintained our learning and development budget for 2012-13 at the same level as 2011-12, and that our average spend of £630 per individual is almost four times higher than the public sector average.

The second is that even where we are facing big organisational changes and uncertainty it is important to continue to invest time and effort doing things better.

To invest in staff capability is a no regrets move for the OFT – and for the individuals concerned. We are committed to continuing to fund individual professional development and to support staff to develop the skills they need to meet the challenges of enforcement and the transition to new organisational arrangements.

But the same is true, up to a point, of investing in new procedures and processes where it makes sense to do so.

The third is that in running agencies such as the OFT it's really important to continue to review how we do things, to experiment where needed, and to learn lessons from our own and others' experiences.

I look forward to these and other actions bearing fruit over the next 19 months – but also beyond that time period into the operation of the new institutions.

Some of the signs are promising. Although staff turnover for permanent staff rose from 5.6 per cent in 2010-11 to 9.2 per cent in 2011-12, this seems to have levelled off. Our staff engagement score for October 2011 fell only fractionally on the previous year.

Some final thoughts

I've outlined our current work programme, some areas of focus over the next 19 months and our commitment to ensuring that the new bodies and partners taking over the competition, consumer and credit regimes are empowered to start as they mean to go on.

I hope that the observations I have made have some relevance to the challenges your organisations are facing. For me, delivery is about people and commitment, as well as processes, and we must not forget that our staff are the major driver of our organisations' success.

As the OFT approaches its 40th birthday in 2013, I want to see the lasting legacy of my time as Chief Executive of the OFT include:

- continuing impact in making markets work better – by keeping our foot on the pedal
- seeing the new institutions and regimes hit the ground running, and
- our people continuing to be motivated, engaged and enthused by the exciting, important work that they are doing.