

Government Proposes Merger of OFT and Competition Commission

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Publication Date: October 20, 2010

On 14 October 2010, the Department for Business, Innovation and Skills (BIS) announced its proposals to merge the Office of Fair Trading (OFT) and the Competition Commission to create a single competition regulator. Currently, along with its consumer protection functions, the OFT is responsible for conducting investigations into suspected anti-competitive arrangements and abuses of dominance, as well as conducting initial market studies and merger reviews. The role of the Competition Commission is to conduct more in-depth reviews of those mergers or markets referred to it by the OFT (or concurrent regulators, in the case of market investigations) that appear to give rise to more significant competition issues.

The move comes as part of the coalition government's plans to simplify the work of public bodies, with the creation of a single competition authority intended to streamline procedures and create a stronger enforcement authority. The new body would be responsible for all merger reviews, market investigations, and cartel and antitrust cases, as well as a number of functions with respect to regulated utilities. A public consultation on the options for creating the new competition and markets authority is planned for 2011.

In addition, the government is proposing that Trading Standards will take responsibility for enforcement of almost all consumer law. Non-financial consumer education, information and advice, together with consumer-related research and advocacy functions (currently undertaken by OFT and Consumer Focus), will be transferred to the Citizens Advice Service. The Competition Appeal Tribunal is being retained, but its supporting body, the Competition Service, may see its functions being transferred to the Tribunal Service before eventually being abolished.

The government has confirmed that the sectoral regulators that have concurrent competition enforcement powers - Ofgem, Ofwat, CAA, ORR and Ofcom - will be kept, although the roles of Ofgem and Ofwat are currently under review. As part of the re-shuffle, there are also plans to merge the postal watchdog, Postcomm, with the media regulator, Ofcom.

The announcement generally appears to have received a positive response, with expectations that this will lead to a speeding up of investigations compared with the existing two-tier review system.

In a statement issued by the OFT, Chief Executive John Fingleton confirmed that the OFT has advocated the merger of the Competition Commission with the OFT for some time. He stated that "[w]ith the right design, a single competition and markets authority can deliver better, faster results for consumers and the economy, and greater consistency for businesses," and added that the OFT would be actively contributing to the debate in the planned consultation. However, he also recognised that "today's proposals raise important questions about how local and national enforcement of consumer law should best be structured to ensure markets work well for consumers."

The proposals have the potential to cut not only the amount of time spent by the regulator on completing investigations, but also the time spent by companies providing information to the authorities when under scrutiny. Frustrations with the existing system include that the Competition Commission begins investigations from scratch once the OFT has already been working on the same case, although it is understood that the OFT does currently provide assistance to the Competition Commission by sharing its case files. These issues are likely to be alleviated under a merged regulator. The current two-tier system is perhaps one of the reasons why UK competition regulation is considered particularly effective worldwide and some have voiced the view that having two regulators ensures objectivity and independence from political pressures. It would appear, however, that the two-stage process for mergers and markets will be retained under the new regime. There are also concerns that removing the consumer protection function may undermine attempts to coordinate a response at national level to businesses engaging in behaviour affecting consumers. In light of the £100m combined annual budget of the OFT and Competition Commission, it will also be interesting to see what, if any, cost and efficiency savings can be made in reality, although cost saving is not cited as a primary motivator.

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