

# HBF Policy Conference 2008

The scope and implications  
of the OFT inquiry

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30 January 2008

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# Overview

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- Background
- Housebuilding market study
- Possible outcomes
- Practical tips

# Background on market studies

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- Carried out by OFT under Enterprise Act
- Assess market operation and needs of consumers – “market failure”?
- Mixed competition and consumer law focus
- No set timescale
- Procedures:
  - Questionnaires
  - Meetings with OFT
  - Consumer research

# Housebuilding market study

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- Barker Review 2004 – kept housebuilding market study option open
- Market study launched 22 June 2007
- OFT expects to conclude by summer 2008

# Competition and the construction industry

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- Target industry (OFT Annual Plan 2006-2007)
- Cartel cases
  - Bid rigging in the construction sector
  - Roofing sector bid rigging
- Mergers

# Reasons for OFT's main concerns

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- Perceived significant consumer detriment
  - Alleged low supply
  - Alleged low quality
  - Alleged lack of innovation
- Importance of housebuilding sector to economy
- Consumer satisfaction
- Significant levels of Government involvement/regulation

# OFT's focus

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- Delivery of new homes/planning process
  - land suitable for development - planning
  - land with planning approval – conversion to new home
- Customer satisfaction
- Consumer power driving competition
- Consumer protection and redress
- Extent of competition (including barriers to entry/expansion)

# Outside of scope

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- Social housing sector (except where linked to private housing development)
- Overall policy on land use (including green belt and environmental impact)



# Possible outcomes of the market study

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- Clean bill of health
- Enforcement action by OFT
- Reference to Competition Commission (or undertakings in lieu)
- Recommendations for changes in laws/regulations
- Recommendations to regulators/self-regulatory bodies/others
- Campaigns to promote consumer education/awareness

# Reference to Competition Commission

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- OFT *may* make a market investigation reference to the CC where it:
  - has reasonable grounds for suspecting that
  - any *feature*, or *combination of features*,
  - of a market in the UK
  - prevents, restricts, or distorts competition.

# Reference to Competition Commission

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- The OFT will also consider whether:
  - it would be more appropriate to deal with the competition issues identified by applying CA98/other available powers;
  - undertakings in lieu of reference more appropriate;
  - the scale of the suspected problem is such that a reference would be an appropriate response to it; and
  - there is a reasonable chance appropriate remedies will be available.

# CC investigation

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- 2 year period.
- Test: any feature / combination of features restricts etc competition in referred market?
- Remedies: comprehensive solution as is reasonable and practicable to remedy adverse effect on competition and detrimental effect on consumers. Effect on consumer benefits.
  - Undertakings
  - Recommendation to others
  - Order
- Judicial review

# Other market studies

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- 27 OFT market studies.
- 5 CC referrals:
  - 2002: Extended warranties for electrical goods
  - 2004: Store cards
  - 2005: Classified directories advertising services
  - 2006: Payment protection insurance
  - 2007: UK Airports

# 2007 market studies

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- Distribution of medicines
  - Recommendations to Department of Health
- Personal current accounts
  - Ongoing
- UK airports
  - Reference to Competition Commission
- Internet shopping
  - Consumer group / business working group
- Pharma price regulation
  - Proposed value based pricing
- Public sector procurement
  - Guide for public sector procurers

# Other relevant investigations

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- Supermarkets
  - CC provisional findings on planning

## Practical tips

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- No legal obligation to provide OFT with requested information ***but***:
  - Provision of false/misleading information is a criminal offence (fine/two years imprisonment)
  - Inadequate information may increase likelihood of market investigation reference (CC has broad powers)
- Confidential information protected, but can be disclosed in some circumstances
- If in doubt, consult HBF/seek independent legal advice