



## Memorandum of understanding between the Office of Fair Trading and the Office of Public Sector Information

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### MEMORANDUM OF UNDERSTANDING BETWEEN THE OFFICE OF FAIR TRADING (“OFT”) AND THE OFFICE OF PUBLIC SECTOR INFORMATION (“OPSI”) OUTLINING PROCEDURES TO BE FOLLOWED UPON RECEIVING A COMPLAINT REGARDING THE RE-USE OF INFORMATION HELD BY A PUBLIC SECTOR BODY

#### Introduction

1. This Memorandum of Understanding (MOU) records the basis on which the OFT and OPSI (the Parties) will co-operate in respect of complaints relating to issues concerning the re-use of information held by public sector bodies that may fall within the scope of the Competition Act 1998 (CA98) and the Re-use of Public Sector Information Regulations 2005 (SI 2005 No. 1515) (the Regulations).
2. The Regulations bring into effect the provisions laid out in the EU Directive on the Re-Use of Public Sector Information (2003/98/EC). A failure to meet obligations under the Regulations may, in certain circumstances (such as those involving pricing), also amount to an infringement of CA98 or of Articles 81 or 82 of the EC Treaty. A particular complaint, with the potential to fall within the ambit of both regimes, may be better addressed by OPSI acting under the Regulations or by the OFT acting under CA98.
3. The Parties recognise that this MOU may require amendment in the light of future experience, and that it will be reviewed periodically, and is published on both Parties' websites.

#### Procedures

4. Where the OFT receives a complaint raising issues over the re-use of information held by public sector bodies it may, in assessing its administrative priorities, consider whether the issue may be better addressed by OPSI acting under the Regulations. If the OFT concludes that a particular issue is better addressed by OPSI acting under the Regulations, the case will generally be closed on the grounds of administrative priority. Where this occurs, the complainant will be informed that the OFT does not propose taking the matter further and it will be suggested to the complainant that they may wish to consider contacting OPSI.
5. It is envisaged that in practice many of the complaints received by the OFT regarding the re-use of public sector bodies' information will be better addressed by OPSI acting under the Regulations. However, the OFT is likely to consider itself better placed to deal with any complaint raising issues which fall within the OFT's

administrative priorities for competition enforcement from time to time. An indication of the OFT's priorities can be found in its Annual Plan.

6. Where a complaint is received that OPSI believes may raise concerns under CA98 or Articles 81 or 82 of the EC Treaty, OPSI will contact the OFT via the Parties' respective identified contact points.
7. In the course of an investigation under the Regulations, OPSI will apprise the OFT of any issues it comes across that it believes raises concerns under CA98 or Articles 81 or 82 of the EC Treaty. Where a complaint raises issues, which it appears could be dealt with under the Regulations and/or under CA98, the OFT will consider whether to investigate those issues that could be addressed under CA98.
8. Where OPSI has concerns that conditions have been imposed on re-use which may unnecessarily restrict competition for the purposes of regulation 12(2)(b) of the Regulations, it may seek advice from the OFT on this question.
9. Both Parties will establish a contact point to ensure a consistent point of contact. The OFT will ensure that the OPSI liaison is provided with Guidelines on CA98 and that the OPSI liaison is kept up to date with the OFT's administrative priorities for competition enforcement.

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Competition Enforcement

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## **Background Notes to the Memorandum of Understanding between the Office of Fair Trading (“OFT”) and the Office of Public Sector information (“OPSI”)**

The Competition Act 1998 (CA98) contains two prohibitions. The first prohibition, the Chapter I prohibition, prohibits agreements between undertakings that have as their object or effect the prevention, restriction or distortion of competition within the UK. The second prohibition, the Chapter II prohibition, prohibits conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market if it may affect trade within the UK. The OFT can investigate under CA98 if there are reasonable grounds for suspecting an infringement and, if the OFT decides that either of the prohibitions have been breached, the OFT can impose a financial penalty against the undertakings concerned of up to 10% of their world-wide turnover. The OFT can also investigate under CA98 where it has reasonable grounds for suspecting an infringement of Articles 81 and/or 82 of the EC Treaty establishing the European Community. Articles 81 and 82 contain equivalent prohibitions to the Chapter I and Chapter II prohibitions (respectively), applicable where the conduct or agreement in question may affect trade between EC Member States.

The EU Directive on the Re-Use of Public Sector Information (the Directive) aims to stimulate the markets that are dependent on the re-use of information held by the public sector. In the UK, the Directive is given effect through the Re-Use of Public Sector Information Regulations 2005 (the Regulations) . The Regulations establish a legislative framework covering the re-use of public sector information.

Responsibility for ensuring compliance with the Regulations rests with the Office of Public Sector Information (OPSI). The Regulations provide:

- i) how public bodies should deal with requests for re-use;
- ii) that conditions for re-use should not place unnecessary restrictions, particularly on competition between re-users, including where the public sector body itself is a re-user;
- iii) that terms and conditions (including any charges) should not discriminate between re-users who re-use documents for similar purposes, including where the public sector body is itself a re-user;
- iv) that exclusive arrangements for re-use will not ordinarily be permitted;
- v) that where the public sector body decides to charge for the information, total income should not exceed the costs of collection, production, reproduction and dissemination and a reasonable return on investment;
- vi) that public sector bodies should be transparent by publishing details of what information assets are available for re-use; terms and conditions of re-use, including details of any charges and any exclusive arrangements;
- vii) that public sector bodies should have an established complaints procedure; and
- viii) time limits for responding to applications.

If the public sector body’s own complaints procedure is unable to resolve any issues of concern over re-use raised by third parties, the third party can then approach OPSI. OPSI will either investigate whether the public sector body has complied with the Regulations, or mediation may be offered as an alternative route to investigation. On concluding an investigation or mediation, OPSI will make a recommendation. OPSI will monitor compliance with the recommendation; non-compliance will be referred to the Minister for the Cabinet Office (or Scottish equivalent) to issue a Ministerial Letter of Direction. Both

the public sector body and the complainant have the right to apply to the Advisory Panel on Public Sector Information for a review of the recommendation.

A failure to meet obligations under the Regulations may, in certain circumstances (such as those involving pricing), also amount to an infringement of CA98 or of Articles 81 or 82. Because of this overlap, it is conceivable that some complaints could be addressed either by the OFT under the Competition Act 1998 or by OPSI under the Regulations.

For further information on CA98 and the work of the OFT, see [www.offt.gov.uk](http://www.offt.gov.uk)

For further information on the Directive and the work of OPSI, see [www.opsi.gov.uk](http://www.opsi.gov.uk)