

SCHEDULE

Article 2

Office of Fair Trading's Rules

The OFT, in exercise of the powers conferred upon it by sections 51(1) and 75A(1) of and Schedule 9 to the Competition Act 1998⁽¹⁾, hereby makes the following Rules:

Interpretation

1.—(1) In these Rules—

“the Act” means the Competition Act 1998;

“confidential information” means—

- (a) commercial information whose disclosure the OFT or a regulator thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the OFT or a regulator thinks might significantly harm the individual's interests, or
- (c) information whose disclosure the OFT or a regulator thinks is contrary to the public interest;

“infringement decision” means a decision that one or more of the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 81(1) and the prohibition in Article 82 has been infringed;

“internal document” means—

- (a) a document produced by, or exchanged between, any of the OFT, a regulator or another public authority, or
- (b) a document produced by any person from time to time retained under a contract for services by any of the OFT, a regulator or another public authority in connection with such a contract;

“public authority” includes—

- (a) in the United Kingdom, a court or tribunal and any person exercising functions of a public nature, and
- (b) in any country or territory outside the United Kingdom, a court or tribunal and any person or body which appears to the OFT or a regulator to be exercising functions of a public nature;

“writing” includes text that is—

- (a) transmitted by electronic means,
- (b) received in legible form, and
- (c) capable of being used for subsequent reference.

(2) In these Rules, any reference to:

- (a) a numbered rule is to the rule in these Rules which is so numbered;
- (b) a numbered paragraph or sub-paragraph is to the paragraph or sub-paragraph which is so numbered in the rule where the reference occurs.

(3) Except where these Rules otherwise provide, expressions used in the Act which are also used in these Rules have the same meaning in these Rules as they have in section 59 of the Act.

(1) 1998 c. 41.

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(4) Except in this rule and rule 20, any reference in these Rules to the OFT means the OFT or a regulator.

Application of the Rules

2.—(1) Subject to paragraphs (2) and (3), these Rules apply when the OFT takes investigation or enforcement action under the Act in relation to any one or more of the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 81(1) and the prohibition in Article 82.

(2) Rule 11 on the cancellation etc. of an individual exemption, rule 12 on the cancellation etc. of a parallel exemption, rule 14 on the withdrawal of an exclusion, rule 15 on the termination of the transitional period and rule 16 on the application for extension of the transitional period apply only when the OFT takes investigation or enforcement action in relation to the Chapter I prohibition or the Chapter II prohibition.

(3) Rule 13 on the withdrawal of the benefit of a regulation of the Commission pursuant to Article 29(2) of the EC Competition Regulation applies only when the OFT takes investigation or enforcement action in relation to the prohibition in Article 81(1).

Legal advice during investigations and inspections

3.—(1) An officer shall grant a request of the occupier of premises entered by the officer to allow a reasonable time for the occupier's legal adviser to arrive at the premises before the investigation continues, if the officer considers it reasonable in the circumstances to do so and if the officer is satisfied that such conditions as he considers it appropriate to impose in granting the occupier's request are, or will be, complied with.

(2) For the purposes of paragraph (1), "a reasonable time" means such period of time as the officer considers is reasonable in the circumstances.

(3) A person required by the OFT under section 26(6)(a)(ii) or (b) or section 65E(6)(a)(ii) or (b) of the Act to provide an explanation of a document in person may be accompanied by a legal adviser.

(4) In this rule, "officer" means an investigating officer within the meaning of section 27(1) or 65F(1) of the Act or a named officer of the OFT authorised by a warrant issued under section 28, 28A, 65G or 65H of the Act.

Statement of objections

4.—(1) If the OFT proposes to make an infringement decision—

(a) the OFT shall give notice of this stating which one or more of the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 81(1) and the prohibition in Article 82 the OFT considers has been infringed; and

(b) the provisions of rule 5 shall apply.

(2) Subject to rules 17 and 18, the notice referred to in paragraph (1)(a) must be given to each person who the OFT considers is a party to the agreement, or is engaged in conduct, which the OFT considers infringes one or more of the prohibitions mentioned in paragraph (1)(a).

Notices, access to file and representations

5.—(1) In this rule—

(a) "notice" means a notice that the OFT is required to give under rule 4, 12(3) or 13(1); and

(b) "relevant person" means a person to whom notice is required to be given under the rules mentioned in sub-paragraph (a).

(2) A notice shall state:

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- (a) the facts on which the OFT relies, the objections raised by the OFT, the action the OFT proposes and its reasons for the proposed action;
 - (b) the period within which a relevant person may make written representations to the OFT identifying the information contained in the notice which that relevant person considers the OFT should treat as confidential information and explaining why he considers the OFT should treat such information as confidential information; and
 - (c) the period within which a relevant person may make written representations to the OFT on the matters referred to in the notice.
- (3) The OFT shall give a relevant person a reasonable opportunity to inspect the documents in the OFT's file that relate to the matters referred to in a notice given to that relevant person, except that the OFT may withhold any document—
- (a) to the extent that it contains confidential information; or
 - (b) which is an internal document.
- (4) Where, in written representations on the matters referred to in a notice given to a relevant person, that relevant person states that he wishes to make oral representations to the OFT on such matters, the OFT shall give that relevant person a reasonable opportunity to make such oral representations.
- (5) Where, upon the expiry of the period mentioned in paragraph (2)(c), no written representations on the matters referred to in a notice given to a relevant person have been made by that relevant person, the OFT may proceed with the case in the absence of such representations.
- (6) Where the OFT has given a relevant person a reasonable opportunity to make oral representations under paragraph (4) but no oral representations have been made, the OFT may proceed with the case in the absence of such representations.
- (7) Paragraph (2)(b) is not to be construed as restricting the application of rule 6(1) and (2).

Confidential information

- 6.—(1)** Where a person who has supplied information to the OFT has made representations to the OFT identifying such information as being information that the OFT should treat as confidential information and the OFT proposes to disclose such information under these Rules, the OFT shall take all reasonable steps to—
- (a) inform that person of the OFT's proposed action; and
 - (b) give that person a reasonable opportunity to make representations to the OFT on the OFT's proposed action.
- (2) The OFT may at any time request a person who has supplied information to the OFT to make written representations to the OFT in respect of the information supplied—
- (a) identifying the information which that person considers the OFT should treat as confidential information; or
 - (b) explaining why that person considers the OFT should treat the information as confidential information; or
 - (c) on the matters referred to in both sub-paragraphs (a) and (b).
- (3) If a person who has supplied information to the OFT makes written representations to the OFT in respect of the information supplied identifying the information which that person considers the OFT should treat as confidential information or explaining why he considers the OFT should treat the information as confidential information, whether or not such representations are made under this rule, the OFT may seek from that person such further clarification as the OFT considers is needed.

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(4) If the OFT requests any person to make representations or to give further clarification under this rule, the OFT may specify the period within which such representations or further clarification should be made.

(5) For the purposes of this rule, where, in the OFT's opinion, information supplied to the OFT by any person relates to or originates from another person, that other person may be treated as a person who has supplied the information to the OFT.

Notice of decision

7.—(1) Where the OFT has made an infringement decision, it shall without delay—

- (a) subject to rules 17 and 18, give notice of the infringement decision to each person who the OFT considers is or was a party to the agreement, or is or was engaged in conduct, stating the facts on which the OFT bases the infringement decision and the OFT's reasons for making the infringement decision; and
- (b) publish the infringement decision.

(2) Where the OFT has made a decision that there are no grounds for action in respect of—

- (a) an agreement either because the conditions of the Chapter I prohibition are not met or because the agreement is excluded from the Chapter I prohibition or satisfies the conditions in section 9(1) of the Act; or
- (b) an agreement either because the conditions of the prohibition in Article 81(1) are not met or because the agreement satisfies the conditions of Article 81(3); or
- (c) conduct because the conditions of the Chapter II prohibition or the prohibition in Article 82 are not met;

the OFT shall without delay, subject to rules 17 and 18, give notice of the decision, to any person whom it has undertaken to inform of the decision and to any person in respect of whom the OFT or an officer has exercised any of the powers of investigation in the Act, stating the facts on which the OFT bases the decision and the OFT's reasons for making the decision.

(3) Where the OFT is required to give notice of a decision under paragraph (2), it may publish the decision.

(4) In this rule, "officer" has the same meaning as in rule 3.

Directions and penalties

8.—(1) Where the OFT gives a direction to a person under section 32 or 33 of the Act, it shall at the same time inform that person in writing of the facts on which it bases the direction and its reasons for giving the direction.

(2) Where the OFT requires an undertaking to pay a penalty under section 36 of the Act, it shall at the same time inform that undertaking in writing of the facts on which it bases the penalty and its reasons for requiring that undertaking to pay the penalty.

(3) The OFT shall publish directions given under section 32 or 33 of the Act.

(4) The OFT shall publish penalties imposed under section 36 of the Act.

Interim measures

9.—(1) Subject to paragraph (2), if the OFT proposes to give a direction under section 35 of the Act, it shall give each person to whom it proposes to give the direction a reasonable opportunity to inspect the documents in the OFT's file relating to the proposed direction.

(2) The OFT may withhold any document—

- (a) to the extent that it contains confidential information; or
- (b) which is an internal document.

(3) When giving a person an opportunity to make representations under section 35(3)(b) of the Act, the OFT shall specify the period within which that person may make such representations.

(4) Where the OFT gives a direction to a person under section 35 of the Act, it shall at the same time inform that person in writing of the facts on which it bases the direction and its reasons for giving the direction, and it shall publish the direction.

Election to apply a relevant prohibition to a case

10.—(1) The OFT may, at any time prior to making an infringement decision, elect to apply to a case one or more of the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 81(1) and the prohibition in Article 82 (whether or not any such election has previously been made by the OFT in that case).

(2) If the OFT proposes—

- (a) to make a decision that one or both of the prohibition in Article 81(1) and the prohibition in Article 82 has been infringed, but in any notice given under rule 4 the OFT has stated that it considers that only one or both of the Chapter I prohibition and the Chapter II prohibition has been infringed; or
- (b) to make a decision that one or both of the Chapter I prohibition and the Chapter II prohibition has been infringed but in any notice given under rule 4 the OFT has stated that it considers that only one or both of the prohibition in Article 81(1) and the prohibition in Article 82 has been infringed,

the provisions of rules 4 and 5 shall apply to the extent that they have not already been applied.

(3) In paragraph (2), “any notice given under rule 4” means any notice given under rule 4 that has not been superseded by a subsequent notice given under rule 4.

Cancellation etc. of an individual exemption

11.—(1) If the OFT proposes to take any of the steps mentioned in section 5(1) of the Act⁽²⁾, it shall consult the public, the applicant and, subject to rules 17 and 18, the other parties to the agreement.

(2) If the OFT decides to take any of the steps mentioned in section 5(1) of the Act, it shall—

- (a) give notice of its decision to do so—
 - (i) to the applicant; and
 - (ii) subject to rules 17 and 18, to the other parties to the agreement, stating the facts on which the OFT bases the decision and the OFT’s reasons for the decision; and
- (b) publish the decision.

(3) In this rule—

- (a) “applicant” means the person who applied for the exemption; and
- (b) “the other parties to the agreement” means those persons who the applicant identified in his application as being the other parties to the agreement to which the exemption relates.

(2) Section 5 of the Act has been repealed by article 4 of the Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I.2004/1261) with effect from 1st May 2004 but by virtue of article 6(3) of those Regulations it will continue in effect while any individual exemption has effect.

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Cancellation etc. of a parallel exemption

12.—(1) The circumstances in which the OFT may exercise the powers in section 10(5)(a), 10(5)(c) and 10(5)(d) of the Act are where it finds that an agreement which benefits from a parallel exemption nevertheless has effects in the United Kingdom, or a part of it, which are incompatible with the conditions laid down in section 9(1) of the Act.

(2) The circumstances in which the OFT may exercise the powers in section 10(5)(b) of the Act are where, having previously exercised the powers in section 10(5)(a) or 10(5)(c) of the Act in respect of an agreement, the OFT finds that—

- (a) as a result of a material change in circumstances since the exercise of those powers, any condition or obligation it has imposed in exercise of those powers is no longer necessary to ensure that the effects of the agreement in the United Kingdom, or a part of it, are compatible with the conditions laid down in section 9(1) of the Act; or
- (b) as a result of a material change in circumstances since the exercise of those powers, or as a result of information supplied in response to a notice given under paragraph (3) being incomplete, false or misleading in a material particular, the agreement has effects in the United Kingdom, or a part of it, which are incompatible with the conditions laid down in section 9(1) of the Act.

(3) Subject to rules 17 and 18, if (other than in the circumstances referred to in paragraph (2)(a)) the OFT proposes to exercise any of the powers in section 10(5) of the Act it shall give notice to each person who it considers is a party to the agreement and the provisions of rule 5 shall apply.

(4) Subject to rules 17 and 18, if the OFT proposes to exercise any of the powers in section 10(5)(b) of the Act in the circumstances referred to in paragraph (2)(a) it shall consult each person who it considers is a party to the agreement.

(5) If the OFT proposes to exercise any of the powers in section 10(5) of the Act it may consult the public.

(6) If the OFT has made a decision in exercise of any of its powers in section 10(5) of the Act it shall—

- (a) subject to rules 17 and 18, give notice of the decision to each person who the OFT considers is a party to the agreement, stating the facts on which it bases the decision and its reasons for the decision; and
- (b) publish the decision.

Withdrawal of the benefit of a Commission Regulation pursuant to Article 29(2) of the EC Competition Regulation

13.—(1) Subject to rules 17 and 18, if the OFT proposes, in any particular case, to withdraw in the whole or any part of the United Kingdom the benefit of a Commission Regulation pursuant to Article 29(2) of the EC Competition Regulation, it shall give notice to each person who the OFT considers is a party to the agreement, and the provisions of rule 5 shall apply.

(2) If the OFT proposes to exercise its powers under Article 29(2) of the EC Competition Regulation it may consult the public.

(3) If the OFT has made a decision withdrawing in the whole or any part of the United Kingdom the benefit of a Commission Regulation pursuant to Article 29(2) of the EC Competition Regulation it shall—

- (a) subject to rules 17 and 18, give notice of the decision to each person who the OFT considers is a party to the agreement, stating the facts on which it bases the decision and its reasons for the decision; and
- (b) publish the decision.

Withdrawal of an exclusion

14.—(1) Subject to rules 17 and 18, if the OFT proposes to give a direction under paragraph 4 of Schedule 1 to the Act or paragraph 2 or 9 of Schedule 3 to the Act, or in accordance with an order made under section 50 of the Act, to the effect that an exclusion made by a provision specified in paragraph (2) does not apply to an agreement, it shall consult each person who it considers is a party to the agreement.

- (2) The provisions specified for the purposes of paragraph (1) are—
- (a) paragraph 1 of Schedule 1 to the Act (enterprises ceasing to be distinct: the Chapter I prohibition);
 - (b) paragraph 2(1) of Schedule 3 to the Act (section 21(2) agreements);
 - (c) paragraph 9(1) of Schedule 3 to the Act (agricultural products); and
 - (d) an order made under section 50 of the Act (vertical agreements and land agreements).
- (3) The period specified for the purposes of paragraph 4(4) of Schedule 1 to the Act and paragraphs 2(6) and 9(6) of Schedule 3 to the Act is ten working days starting with the date the notice is given.
- (4) If the OFT has given a direction referred to in paragraph (1), it shall publish the direction.

Termination of the transitional period

15.—(1) Subject to rules 17 and 18, if the OFT proposes to give a direction under paragraph 37 of Schedule 13 to the Act terminating the transitional period for an agreement, it shall consult each person who it considers is a party to the agreement.

(2) For the purposes of paragraph 38(2) of Schedule 13 to the Act, the period is ten working days starting with the date on which the person in question receives the requirement to give information to the OFT.

(3) The OFT shall publish a direction given under paragraph 37 of Schedule 13 to the Act after the date on which the direction takes effect; if the direction is revoked, it shall publish a notice of that fact.

Application for extension of the transitional period

16.—(1) An application under paragraph 36 of Schedule 13 to the Act for the extension of the transitional period shall—

- (a) be submitted in writing to the OFT;
 - (b) comply with paragraph (2); and
 - (c) include the documents specified in paragraph (3).
- (2) An application submitted under paragraph (1) shall—
- (a) be signed by the applicant or by a duly authorised representative of the applicant;
 - (b) contain an explanation of—
 - (i) the purpose of the agreement;
 - (ii) the basis for the applicant's belief that there is a transitional period;
 - (iii) the need for an extension of the transitional period; and
 - (iv) the likely application of the Chapter I prohibition to the agreement at the end of the transitional period, including any grounds for believing that the agreement is likely to satisfy the conditions in section 9(1) of the Act; and

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- (c) specify the length of the transitional period, the date of its expiry and the period of extension applied for.
- (3) The documents specified for the purposes of paragraph (1) are the following—
 - (a) two copies of the application;
 - (b) three copies of the agreement, each copy certified by the applicant to be a true copy of the original; and
 - (c) where the application is signed by a representative of an applicant, proof in writing of that representative's authority to act on that applicant's behalf.
- (4) If the OFT—
 - (a) refuses an application submitted to it under paragraph (1);
 - (b) grants the application; or
 - (c) grants an extension which is of shorter duration than that applied for,it shall give notice of its decision to the applicant not less than one month before the date of expiry of the transitional period, specifying, if appropriate, the period of extension granted.
- (5) Subject to rules 17 and 18, if the OFT extends the transitional period on its own initiative, it shall give notice of its decision to each person who it considers is a party to the agreement, specifying the period of extension granted.
- (6) Where a joint application is submitted, the application shall be submitted by or on behalf of all of the applicants, and a joint representative may be appointed as authorised to act on behalf of some or all of the applicants for the purposes of this rule.
- (7) Subject to paragraph (8), the application shall be correct and complete.
- (8) The OFT may, by giving notice to the applicant, dispense with the obligation to submit any particular information, including any supporting document required by this rule for an application under paragraph 36 of Schedule 13 to the Act, if it considers that such information or document is unnecessary for the examination of the application.
- (9) Where the applicant knows of material changes in the information contained in the application he shall without delay communicate those changes to the OFT.
- (10) An application is made on the date on which the application is received by the OFT.
- (11) The OFT shall acknowledge receipt of an application by giving notice to the applicant without delay.
- (12) If the OFT extends the transitional period, it shall publish a notice of that fact, specifying the period of extension granted.

Associations of undertakings

17.—(1) Where a rule requires the OFT to give notice of any matter to an association of undertakings the OFT shall give such notice to the director, secretary, manager or other similar officer of the association on its behalf.

(2) Where a rule requires the OFT to give notice of any matter to each of more than twenty members of an association of undertakings, the OFT may, instead of giving such notice to any such member, give such notice to the director, secretary, manager or other similar officer of the association on that member's behalf.

Time limits and giving notice

18.—(1) Where—

- (a) the OFT has taken all reasonable steps to give notice to the persons mentioned in paragraph (3) but has been unable to give such notice or in the OFT's opinion there is doubt that it has been able to give such notice; or
 - (b) there are no reasonable steps that can be taken by the OFT to give notice to the persons mentioned in paragraph (3),
- the OFT may, instead, take all the steps mentioned in paragraph (2).
- (2) The steps mentioned for the purposes of paragraph (1) are the following—
 - (a) publish a summary of the notice by means of entry in the register maintained by the OFT under rule 20; and
 - (b) cause a reference to the summary of the notice published in that register to be published in—
 - (i) the London, Edinburgh and Belfast Gazettes;
 - (ii) at least one national daily newspaper; and
 - (iii) if there is in circulation an appropriate trade journal which is published at intervals not exceeding one month, in such trade journal.
 - (3) The persons mentioned for the purposes of paragraph (1) are the following—
 - (a) a person under rule 4, 7(1)(a), 7(2), 11(2)(a)(ii), 12(3), 12(6)(a), 13(1), 13(3)(a), 16(5) or 19(8)(b);
 - (b) the other parties to the agreement in order to consult them under rule 11(1); or
 - (c) a person in order to consult him under rule 12(4), 14(1), 15(1) or 19(7).
 - (4) Except where paragraph (1) is applied, where these Rules allow or require notice to be given to a person, such notice shall be treated as having been given on the date on which that person receives it.
 - (5) Where paragraph (1) is applied, the notice shall be treated as having been given on the date of its publication in accordance with paragraph (2).
 - (6) Any notice given under these Rules must be in writing.
 - (7) Where the time prescribed by these Rules for doing any act expires on a day which is not a working day, the act is in time if done at or before 5.30 p.m. on the next following working day.
 - (8) Where an act done in accordance with these Rules is done on a day which is not a working day, or after 5.30 p.m. on a working day, the act shall be treated as done on the next following working day.
 - (9) In this rule, “the other parties to the agreement” has the same meaning as in rule 11.

Third party appeals

- 19.**—(1) An application in relation to a decision made before 20 June 2003 under section 47(1) of the Act, asking the OFT to withdraw or vary a decision shall—
- (a) be submitted in writing to the OFT within one month from the date of publication of that decision;
 - (b) comply with paragraph (2); and
 - (c) include the documents specified in paragraph (3).
- (2) An application submitted under paragraph (1) shall be signed by the applicant, or by a duly authorised representative of the applicant, and shall state the applicant's reasons—
- (a) for considering that he has a sufficient interest in the decision referred to in paragraph (1); or
 - (b) where he claims to represent persons who have sufficient interest in that decision—

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- (i) for claiming that he represents those persons; and
 - (ii) for claiming that those persons have a sufficient interest in that decision.
- (3) The documents specified for the purposes of paragraph (1) are the following—
- (a) three copies of the application; and
 - (b) where the application is signed by a representative of an applicant, proof in writing of that representative's authority to act on that applicant's behalf.
- (4) An application is made on the date on which it is received by the OFT.
- (5) The OFT shall acknowledge receipt of an application by giving notice to the applicant without delay.
- (6) Where the applicant knows of any material change in the information contained in the application he shall without delay communicate that change to the OFT.
- (7) Subject to rules 17 and 18, if the OFT proposes to grant the application it shall consult all persons whom it was required to notify of the decision referred to in paragraph (1).
- (8) If the OFT grants the application, it shall give notice of its decision—
- (a) to the applicant; and
 - (b) subject to rules 17 and 18, to all persons whom it was required to notify of the decision referred to in paragraph (1),
- stating in the notice the facts on which it bases the decision and its reasons for the decision.
- (9) Where the OFT is required to give notice of a decision under paragraph (8) it shall publish the decision.
- (10) For the purpose of this rule, the reference in paragraph (1) to section 47(1) of the Act is to be construed as a reference to section 47(1) of the Act as preserved by article 5 of the Enterprise Act 2002 (Commencement No 3, Transitional and Transitory Provisions and Savings) Order 2003(3).

Public register

- 20.**—(1) The OFT shall maintain a register in which there shall be entered—
- (a) all decisions that the OFT is required to publish under these Rules;
 - (b) all decisions published under rule 7(3);
 - (c) all directions that the OFT is required to publish under these Rules;
 - (d) all notices that the OFT is required to publish under rules 15(3), 16(12) and 21(2);
 - (e) all summaries of notices published under rule 18(2)(a); and
 - (f) all penalties that the OFT is required to publish under rule 8(4).
- (2) The register shall be open to public inspection—
- (a) at the OFT's offices at Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX, or such other address as may be notified, between 10.00 a.m. and 4.30 p.m. on every working day; and
 - (b) on the OFT's website at <http://www.of.gov.uk>.

Consultation

- 21.**—(1) Where the OFT, if it proposes to take action, is required to consult a person under these Rules, it shall—

(3) S.I. 2003/1397.

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- (a) subject to rules 17 and 18, give notice to that person; and
 - (b) state in that notice the action the OFT proposes to take, its reasons for proposing such action and the period within which that person may make written representations to the OFT on these matters.
- (2) Where the OFT, if it proposes to take action—
- (a) is required to consult the public under these Rules; or
 - (b) proposes to consult the public in exercise of its discretion to do so under these Rules,
- it shall publish a notice stating the action it proposes to take, its reasons for proposing such action and the period within which written representations may be made to the OFT on these matters.