



Guidance for Registering Authorities on Setting Fees for Local Land Charge Services in England

Implementation of section 13A of the Local
Land Charges Act 1975

**Presented to Parliament by the Secretary of State
for Constitutional Affairs and Lord Chancellor
By Command of Her Majesty
January 2007**

**This information is also available on the DCA website
at www.dca.gov.uk**



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Introduction

This guidance is issued by the Lord Chancellor to registering authorities¹ in England under section 13A of the Local Land Charges Act 1975.²

- **Aim and scope**

The guidance is intended to help registering authorities specify and publish fees for local land charges services other than fees for personal searches of the local land charges register, which will continue to be set by the Lord Chancellor, with effect from 1 April 2007.³

The guidance does not relate to the setting of fees for other land or property searches, such as replies to enquiries of the local authority, or to the proposed local, drainage and water enquiries under the Home Information Pack Regulations, whether made in person, by post, or by e-mail.

This guidance does not apply to registering authorities in Wales. The Lord Chancellor's fee setting power in relation to all local land charges services in Wales was transferred to the National Assembly for Wales with effect from 31 December 2004.⁴

- **Background**

Under the Local Land Charges Act 1975 each registering authority is responsible for keeping a register of local land charges for its area, and an index in which the entries can be readily traced. The Act gave the Lord Chancellor, with the concurrence of HM Treasury, power to prescribe fees for local land charges services in England and Wales.

The Lord Chancellor set the fees in accordance with HM Treasury's Fees and Charges Guide.⁵ The current edition of the guide specifies that fees and charges should normally be set to recover the full cost of the service, which should usually be the total cost of all resources used in providing the service. This includes direct and indirect costs, including a full proportional share of overhead costs, distribution costs, insurance, depreciation and cost of capital. The guide also provides that the fees should not be set to recover a surplus unless the enabling legislation permits.

As the methods of providing local land charges services differ from one registering authority to another, the fees set by the Lord Chancellor could only approximate to an average cost for all registering authorities rather than the cost to each authority. It was therefore decided to pass the power to set fees to individual registering authorities, so that fees could be set by reference to actual costs at each registering authority.

¹ See paragraph 1.1

² The text of section 13A of the 1975 Act is set out at Annex A.

³ The 1975 Act, section 14(1)(h).

⁴ The National Assembly for Wales (Transfer of Functions) Order 2004.

⁵ HM Treasury The fees and charges guide. (ISBN 0115600434) available at: <http://www.tsoshop.co.uk/bookstore.asp?FO=1159966&action=book&productid=0115600434&From>.

The Local Land Charges Act 1975 was accordingly amended by the Constitutional Reform Act 2005⁶ so as to require registering authorities in England to specify and publicise their own fees for local land charges services except for personal searches of the local land charges register. The 1975 Act specifies that in setting fees registering authorities in England must secure that, taking one financial year with another,⁷ fee income does not exceed the cost of providing the service.

During the passage of the Constitutional Reform Act 2005 draft illustrative guidance was prepared to assist Members of both Houses of Parliament in their consideration of the amendments to the Local Land Charges Act 1975. The Government used their draft guidance as the basis for the proposed guidance issued in its 2006 consultation paper Local Land Charge Fees: Guidance for registering authorities on setting fees for local land charge services in England.⁸

This guidance takes into account comments made in the 2006 consultation, particularly in relation to the scope of the legislative power and the process of setting fees. It also draws upon the Treasury Guide on Fees and Charges and the guidance issued by the Office of the Deputy Prime Minister (ODPM) General Power for Best Value Authorities to Charge for Discretionary Services – Guidance on the Power in the Local Government Act 2003.⁹

The guidance is intended to be consistent with the publications of the Chartered Institute of Public Finance and Accounting (CIPFA) and, in particular, the Best Value Accounting Code of Practice (BVACOP) and the Code of Practice on Local Authority Accounting in the United Kingdom 2005 – Statement of Recommended Practice (SORP). These codes of accounting practice will assist registering authorities in complying with their obligations under the 1975 Act.

In specifying and publishing the fees, registering authorities must have regard to this guidance. Having done so, they may decide that for their own circumstances the fees should be set differently. So long as the fees are set in accordance with the 1975 Act as amended, this would be entirely proper. This guidance does not therefore prescribe a methodology that has to be followed. In general terms, the guidance recommends that registering authorities start the process of specifying fees for local land charges services by identifying the local land charges services they provide and calculating the cost of those services. The authority will then be able to calculate a unit cost for those services.

Registering authorities are familiar with the process of setting fees under other statutory powers. Many of those fees will be financially much more significant than the fees chargeable for local land charges services. Registering authorities may therefore

⁶ Schedule 4, paras 82 to 84.

⁷ The 1975 Act, section 13A(5). See paragraph 6.3.

⁸ Local Land Charge Fees: Guidance for registering authorities on setting fees for local land charge services in England. CP(L) 25/06. Available on the Department for Constitutional Affairs website at www.dca.gov.uk under publications.

⁹ General Power for Best Value Authorities to Charge for Discretionary Services – Guidance on the Power in the Local Government Act 2003 (November 2003) can be found at <http://www.local.odpm.gov.uk/guidprop.pdf>

already have in place systems that will facilitate the setting and publicising of fees for local land charges services.

- **Structure of this guidance and definitions used**

Having provided general background information in the introduction, the remainder of this guidance is structured round a series of questions. These are listed in the table of contents.

- **Question 1** identifies who can set local land charges fees.
- **Question 2** sets out the duty to set fees.
- **Question 3** describes the underlying concepts of services and descriptions of service.
- **Question 4** describes the upper limit on the fees that may be set.
- **Question 5** describes how the costs of providing a service should be calculated.
- **Question 6** sets out factors to be taken into account in specifying a fee.
- **Question 7** sets out how the fees should be published.
- **Question 8** explains how the competition law may be relevant to fee setting.
- **Question 9** explains how fees will be monitored.
- **Annex A** sets out the text of section 13A of the Local Land Charges Act 1975 as amended.
- **Annex B** lists the local land charges services for which the Lord Chancellor set a fee in 2003.
- **Annex C** reproduces Annex E to the Treasury Fees and Charges Guide, which summarises the effect of the Competition Act 1998.

In this guidance references to “the 1975 Act” are to the Local Land Charges Act 1975 as amended by the Constitutional Reform Act 2005.

1. Question 1: What is a registering authority?

- 1.1 Registering authorities are defined by the 1975 Act as the council of any district, the council of any London Borough or the Common Council of the City of London.¹⁰

2. Question 2: What must registering authorities do?

- 2.1 Each registering authority must specify fees which are to be payable for services relating to local land charges. In setting these fees the registering authority must have regard to this guidance and comply with the 1975 Act.
- 2.2 The 1975 Act permits registering authorities to specify different fees for different services or descriptions of service and to provide services or descriptions of service for which no fee is payable.
- 2.3 Fees must be set to cover but not exceed the costs.¹¹ In most cases we would expect the registering authority to set fees so as to recover their costs. Where a registering authority decides that the fee for a local land charges service should recover less than its full cost there should be a clear justification for this, especially when a nil fee is set.
- 2.4 Registering authorities should review fees annually to check whether they remain appropriate.

3. Question 3: What is a service relating to local land charges?

- 3.1 The 1975 Act does not provide a definition. For the purposes of this guidance, a service is an output that a registering authority intends to provide on a continuing basis.
- 3.2 Local land charges services for these purposes should not be confused with the different and wider concept of services provided by the Local Land Charges Department or Section of a local authority.
- 3.3 The 1975 Act states that different fees may be charged for different services. In the past the Lord Chancellor prescribed different fees for different services.¹²
- 3.4 The 1975 Act also provides that different fees may be charged for different descriptions of services. It does not define the point at which a description of a service becomes a different service. This is a question of degree. The Lord Chancellor prescribed different fees for an official search of the local land charges register: £6.00 if the application was made in the traditional fashion and £4.00 if the

¹⁰ The 1975 Act, section 3. For further information, contact the LLCI Limited on 01924 502070, <http://www.llci.org>, or visit <http://www.direct.gov.uk/DI1/Directories/LocalCouncils/fs/en>

¹¹ For further details see question 6.

¹² See Annex B. It lists the services for which a fee was specified in the Local Land Charges (Amendment) Rules 2003, schedule 3.

application was made electronically. These fees were for the same service supplied in different ways.

- 3.5 A registering authority might specify fees for the same range of local land charges services and description of service, or for each group of services or descriptions of service as the Lord Chancellor, but is not obliged to do so. It might, for example, specify a fee for a new service.
- 3.6 The following table brings together examples of the points made above.

TABLE 1	Description of fee
Possible new services	A registering authority might, for example, decide to specify charges for the registration of all local land charges.
Different services	The making of the entry on a register and the provision of an official certificate of search in Form LLC1.
Descriptions of service	The request of an official certificate of search in Form LLC1 electronically and by post. An expedited premium service and a standard time service.

4. Question 4: How much can a registering authority charge?

- 4.1 The 1975 Act allows registering authorities some flexibility in setting the fees for local land charges services. However, each authority must ensure that taking one financial year with another the income from fees charged for each service does not exceed the costs of providing the service. The same principle applies to each description of service and each group of services or descriptions of service for which the registering authority sets a fee.
- 4.2 In carrying out this comparison, registering authorities must compare the income with the cost of the provision of the service, description of service, group of services or group of descriptions of service, as the case may be, to which the income relates. A registering authority might decide, for example, to group together the income from the following services: filing a definitive certificate of the Lands Tribunal under rule 10(3); filing a judgment, order or application for the variation or cancellation of any entry in Part 11 of the register; and the registration of a charge in Part 11 of the register (light obstruction notices). Grouping of services is discussed further in relation to question 6.
- 4.3 Registering authorities wishing to set a fee below cost should give careful consideration to any anti-competitive implications of such pricing.¹³
- 4.4 For the purpose of setting fees, registering authorities may not group local land charges services or descriptions of service with any other services it may provide, for example, replying to enquiries of the local authority.

¹³ See section 8 and Annex C. It outlines the Competition Act 1998.

5. Question 5: How should a registering authority calculate the cost of a service?

- 5.1 As mentioned, a service is an output. It should be a separate and readily identifiable function. A description of a service should be equally separable and identifiable. In setting fees registering authorities should first identify the services and descriptions of local land charges service that they provide or wish to provide. These will presumably include all the items for which the Lord Chancellor previously set a fee, other than personal searches of the local land charges register, but need not be limited to them.¹⁴ A registering authority might, for example, decide to specify charges for the registration of all local land charges.
- 5.2 Having identified the outputs for which fees are to be charged, registering authorities should then calculate the total cost of providing these services or descriptions of service. In most cases, the relevant activities are already ongoing and closely related to activities for which local authorities already set fees. Information about the definition and cost of many of the services or descriptions of service for which a fee is to be levied should therefore be relatively readily available.
- 5.3 The cost of service or description of service provision should be the total cost of the provision of the service or description of service. This will include the direct costs of maintaining the local land charges register and its index and keeping them up to date. The cost will also generally include indirect costs, such as contributions to central and overhead costs, insurance, amortised costs, depreciation and cost of capital.¹⁵ Registering authorities may find it helpful to refer to BVACOP and SORP when compiling these costs.¹⁶ Registering authorities will also usually have proven methods of establishing costs in place for use in the pricing of other services. These methods should be used wherever possible.
- 5.4 In costing services registering authorities will have to estimate demand for the services. They should use experience and information available from previous years in making these estimates. There are a variety of forecasting methods, but as a starting point registering authorities may wish to gather data from the past five years, if possible, and then calculate a moving average to estimate future demand.
- 5.5 Registering authorities will receive a statutory fee specified by the Lord Chancellor under the 1975 Act for each personal search of the local land charges register. This is £11 at present. This is intended to approximate to the average total cost over all registering authorities in permitting the personal search. As personal searches would not be possible without a register, the fee is intended to include a contribution to the indirect costs of enabling a personal search of the local land charges register. Income from the £11 fee should be taken into account in

¹⁴ See Annex B. It lists the services for which a fee was specified in the Local Land Charges (Amendment) Rules 2003, schedule 3.

¹⁵ The rate used for the Lord Chancellor's fee was based on the Treasury Fees and Charges Guide states that the return on capital to be included in the total cost of providing a service is 3.5% (i.e. 3.5 per cent of the value of the net assets employed (see paragraph 2.4.10). Registering authorities may apply their own rate for cost of capital.

¹⁶ See paragraph 4.

calculating the total costs of providing local land charges services. So, if the direct cost for the personal search is less than the £11 set fee, the surplus should be offset against other local land charge service costs.

- 5.6 The £11 fee for a personal search of the local land charges register relates only to a personal search of that register. It does not authorise the payer to inspect any other register or make any other enquiry of the registering authority. Costs attributable to those inspections or enquiries do not relate to local land charge services.

6. Question 6: How should a registering authority specify fees for local land charges services?

- 6.1 Having defined the services and descriptions of service for which fees are to be specified and calculated their total cost, registering authorities must then specify what the actual fees payable are to be. The simplest method would be to divide the total cost by the expected number of unit outputs in the year and specify the result as the fee.
- 6.2 However, this approach may need to be refined. First, registering authorities may need to allow for fluctuations in demand for the services by taking one financial year with another. Secondly, they may wish to group services or descriptions of service. Thirdly, they must act within their powers.
- 6.3 The requirement to take ‘one financial year with another’ means that a registering authority should take account of surpluses and deficits in the current and previous years in setting fees for the forthcoming year so that, over time, income does not exceed costs. However, where a fee has been set at a level below cost, any shortfall in fee income from that service or group of services cannot be met by charging fees that would over-recover costs for another service, descriptions of service or group of services.¹⁷
- 6.4 The 1975 Act does not define how many previous years should be taken into account. This will depend on the circumstances of the individual case and may vary between registering authorities. Where registering authorities already apply similar requirements in relation to other fees it may well be sensible to apply the same methodology. Nonetheless, registering authorities may initially find it useful to consider assessing the cost of providing a service, the projected take-up of that service, and thus the charge that should be made, over a period of between 1 and 3 years.
- 6.5 The 1975 Act also provides that in specifying fees a registering authority may group services together for the purpose of measuring the income from the group of services against the costs of its provision.¹⁸ This will allow common costs to be shared and avoid the need to create artificially small divisions between services of descriptions of service.

¹⁷ The 1975 Act, section 13A(5).

¹⁸ The 1975 Act, section 13A(5).

- 6.6 Grouping should therefore make the process of cost setting more straightforward but it is a new concept in relation to fees for local land charges services. The 1975 Act does not provide a definition of a group of services or impose any restrictions on the local land charge services or descriptions of service that can be grouped for these purposes. All that is required is that the services or descriptions of services grouped are services or descriptions of service in respect of which fees can be set by the registering authority under the 1975 Act.
- 6.7 In setting fees registering authorities will be exercising a statutory power. They must act within the scope of the power. For example, the same fee must be charged to all users of the same service or description of service.¹⁹ Exceeding the power will expose registering authorities to judicial review. Registering authorities should take their own legal advice as appropriate in relation to the extent of the power.
- 6.8 Registering authorities should therefore ensure that they can demonstrate compliance with the 1975 Act, including having had regard to this guidance. They should ensure that their accounting and other information systems can provide the financial information required for setting fees and for monitoring the income from fees against the costs for each local land charges service they provide and for which a fee is set. The same applies to descriptions of service, groups of services and groups of descriptions of services.
- 6.9 Registering authorities should consider the preparation of statements showing actual costs against estimated costs and fee income for each service, description of service, group of services or descriptions of services. These should be differentiated down to individual service level where appropriate.

7. Question 7: How should details of the fees be published?

- 7.1 The 1975 Act requires that registering authorities, when specifying new fees for local land charges services, must specify the date on or after which those fees will be payable.²⁰
- 7.2 Changes in fees for local land charges services should ideally be announced in advance of their application. Registering authorities should therefore publish details of the fees a reasonable time before they come into force and, as a matter of course, at the beginning of each financial year.²¹
- 7.3 In publishing details of the fees, registering authorities should provide a clear description of the service to which each fee relates. The same principle applies to each description of service, or for each group of services or descriptions of service that it thinks appropriate. They may also wish to indicate the manner in which fees

¹⁹ The 1975 Act does not provide an equivalent provision to section 93(5) of the Local Government Act 2003, which expressly authorises the specification of different fees for the same services.

²⁰ The 1975 Act, section 13A(6).

²¹ The 1975 Act, section 13A(7) and (8).

should be paid: for example, in advance rather than within, say, seven days of the delivery of the service.

- 7.4 As mentioned, registering authorities should be able to explain how the fees were calculated. It may be helpful for the published fees to be accompanied by an outline of the calculations used. The outline of the calculations used to reach the published fees should also be available on request.
- 7.5 The 1975 Act requires registering authorities to publish the fees, but does not specify where the fees must be published. Registering authorities should ensure that details of the fees are readily accessible to businesses and consumers. It may therefore be helpful to publish the fees on the authority's website and in a prominent position in the place where local land charges business is conducted.

8. Question 8: Is the Competition Act 1998 relevant to registering authorities in setting fees for local land charges services?

- 8.1 In general, competition law only applies to the discretionary commercial activities of registering authorities not to the setting of statutory fees. Nonetheless, in the context of the property information market registering authorities need to ensure that, when exercising their power to specify fees for local land charge services, they comply fully with the Competition Act 1998 ("CA98").
- 8.2 Annex E to the Treasury Fees and Charges Guide, which summarises the CA98, is reproduced at Annex C to this guidance. This outlines a non-exhaustive set of examples where conduct by an undertaking may constitute an abuse. In particular, registering authorities may need to consider the relevance of the CA98 where they are the principal holder of information used by commercial businesses and against whom they also compete to provide services.
- 8.3 Registering authorities should take their own legal advice as appropriate in relation to any competition concerns setting fees for services.

9. Question 9: How will registering authorities be monitored?

- 9.1 During 2007 the Department will compare fees set with effect from 1 April and investigate any significant variations.
- 9.2 We will review the effectiveness of the guidance in 3 to 5 years time. The review will involve consultation within government and external stakeholders as appropriate.
- 9.3 As the geographical make up and organisation of each registering authority differs, it is expected that costs may vary and that consequently the fee levels may vary between registering authorities.

Annex A: Local Land Charges Act 1975, section 13A

Specification of fees by registering authorities in England

- 13A.** – (1) Each registering authority in England must specify fees which are to be payable by persons for services relating to local land charges which are provided to them by the authority.
- (2) This section does not apply to any fees payable for the making of a personal search (for which see section 14(1)(h)(i) below).
 - (3) Different fees may be specified for different services or descriptions of service.
 - (4) A registering authority may provide for there to be services or descriptions of service in respect of which no fees are to be payable.
 - (5) In specifying fees, a registering authority must secure that, taking one financial year with another, the income from fees for each service or description of service, or for each group of services or descriptions of service that they think appropriate, does not exceed the costs of its provision.
 - (6) When exercising the duty under subsection (1) above, a registering authority must specify the date on or after which the fees specified under that subsection are to be payable.
 - (7) Where the duty under subsection (1) above is exercised by a registering authority, they must publish details of the fees specified under that subsection before the date mentioned in subsection (6) above.
 - (8) If any fees specified under subsection (1) above are to be the same immediately before as immediately after the beginning of a financial year, a registering authority must publish details of those fees shortly before the beginning of the financial year.
 - (9) In specifying fees or publishing details of fees, a registering authority must have regard to such guidance as the Lord Chancellor may issue.
 - (10) That guidance:
 - (a) may also include provision concerning the manner in which fees are to be paid, and
 - (b) may be framed by reference to guidance issued by a person other than the Lord Chancellor.
 - (11) The Lord Chancellor must lay before both Houses of Parliament any guidance that he issues under this section.
 - (12) In this section “financial year” means a period of 12 months beginning with 1st April.

Annex B: Local Land Charges (Amendment) Rules 2003

Item

1. Registration of a charge in Part 11 of the register (light obstruction notices)
2. Filing a definitive certificate of the Lands Tribunal under rule 10(3)
3. Filing a judgment, order or application for the variation or cancellation of any entry in Part 11 of the register (light obstruction charges)
4. Inspection of documents filed under rule 10 in respect of each parcel of land
5. Personal search in the whole or in part of the register in respect of one parcel of land
and in addition, in respect of each additional parcel of land, where under rule 11(3) the search extends to more than one parcel...
6. Official search (including issue of official certificate of search) in respect of one parcel of land -
 - (a) in any one part of the register
 - (b) in the whole of the register
 - (i) where the requisition is made by electronic means in accordance with rule 16; and
 - (ii) in any other case
and in addition, in respect of each additional parcel of land, where under rule 11(3) more than one parcel is included in the same requisition (whether the requisition is for a search in the whole or any part of the register)...
7. Office copy of any entry in the register (not including a copy or extract of any plan or document filed pursuant to these Rules)
8. Office copy of any plan or other document filed pursuant to these Rules.

Annex C: Annex E to the Treasury Fees and Charges Guide, Competition Act 1998

1. Articles 81 and 82 of the EC Treaty (“Articles 81/2”) prohibit anti-competitive agreements and abuse of a dominant position that may affect trade between member states. These are directly effective and government bodies need to comply with them. In addition, the Competition Act 1998 (‘the Act’) introduced two very similar prohibitions into domestic law (referred to in the Act as the “Chapter I and Chapter II prohibitions), which apply in cases where there is an effect on trade within the United Kingdom. The chief enforcement body for the Act is the Director General of Fair Trading (DGFT);²² some sectoral regulators like OFCOM also have enforcement powers in relation to regulated matters.

2. The Act provides that to the extent possible the domestic prohibitions are to be interpreted in accordance with the jurisprudence on Articles 81 and 82. Both the EC and the Act prohibitions apply to “undertakings”. Broadly speaking, an undertaking includes any natural or legal person that is engaged in economic or commercial activity relating to goods or services, regardless of its legal status and the way in which it is funded. However, public sector bodies may be capable of falling within this definition, to the extent that they are carrying on such activity.

The Chapter I prohibition

3. This is based on Article 81. It is as set out in section 2 of the Act and covers agreements between undertakings that have the object or effect of preventing, restricting or distorting competition. Examples of the sorts of agreements that will be caught by the Chapter I prohibition (unless excluded by or exempted under the Act – see paragraphs 5 and 9 below) are those which:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- make the conclusion of contract subject to acceptance of unrelated conditions.

4. The Chapter I prohibition applies where the agreement in question has an ‘appreciable’ effect on trade. As a general rule, the DGFT has said that an agreement is unlikely to have an appreciable effect where the combined market share of the parties does not exceed 25 per cent. However, agreements to fix prices impose minimum resale prices or share markets may have an appreciable effect even where the market share of the parties falls below 25 per cent. This also applies where the agreement is one of a network of similar agreements that have a cumulative effect on the market.

²² All references in this annex made to the Director General of Fair Trading (DGFT), should be to the Office of Fair Trading (OFT).

5. Certain agreements may be exempted from the Chapter I prohibition if they meet the criteria set out in section 9 of the Act, which are modelled on the exemption criteria of Article 81(3).

The Chapter II prohibition

6. This is based on Article 82, and is set out in section 18 of the Act. It covers conduct by one or more undertakings, which amounts to abuse of a dominant position in a market within the United Kingdom. The prohibition is of the abuse, not the dominant position. So to determine whether it has been breached it is necessary to establish it first, whether an undertaking is dominant in a relevant market and, if so, second, whether it is abusing that dominant position.

7. To determine the relevant market will generally involve identifying two dimensions: the product market, and the geographic market. What constitutes a dominant position in that market will require analysis of all the circumstances of the particular market. One indicator of relevance, however, is likely to be the market share of undertakings. The Act does not set any market share thresholds for dominance. European Court of Justice case law suggests a presumption of dominance in the absence of evidence to the contrary if an undertaking has a market share persistently above 50 per cent. The Director General of the Office of Fair Trading considers it unlikely that an undertaking will be individually dominant if its market share is below 40 per cent, although dominance could be established below that figure if other relevant factors (such as the weak position of competitors in that market) provided strong evidence of dominance (See OFT guidance on the Chapter II prohibition.)

8. Abusive conduct generally falls into one of the following categories:

i. conduct that exploits customers or suppliers, for example:

- excessively high prices (to establish abuse prices would have to allow profits which significantly and persistently exceed the undertaking's cost of capital);
- discriminatory (different) prices, or discrimination in other terms and conditions either for the same product to different customers (except for objective reasons such as differences in quality or quantity or other different characteristics in the items supplied, or the same prices to different customers where the costs of supply were very different);

ii. Anti-competitive behaviour that removes or limits competition from existing competitors, or excludes potential new entrants to the market, eg

- predatory behaviour where prices are set so low as to threaten the competitive process: the OFT has given broad guidelines based on judgements of the European Court that indicate that the price of the product should never be set:

o below the average variable cost of production, or

o above average variable costs, but below average total costs in any case where the pricing decision could be shown to be intended to eliminate a

competitor (there could, of course, be other reasons for such pricing decisions eg short term special offers to move excess stock);

- certain types of vertical restrictions: various common business practices, such as only supplying one distributor in a particular territory, can be an abuse, but only if they lead to a reduction in competition;
- refusing to supply existing or potential competitors without objective justification (objective justification could include eg customer's poor creditworthiness, or supplies temporarily out of stock).

General

9. Certain cases are excluded from the Chapter I and Chapter II prohibitions. For example, the Chapter I prohibition does not apply to an agreement made in order to comply with a specified legal requirement; or the Chapter II prohibition to conduct to the extent to which it is engaged in an order to comply with a specified legal requirement. Other exclusions are set out in the Act.

10. The OFT has issued a series of guidelines on the Act. All the guidelines can be ordered or downloaded from the OFT's website www.of.gov.uk/.

11. Departments should take their own legal advice as appropriate, and if there are competition concerns in respect of their commercial activities they should consult the Department of Trade and Industry (DTI). Departments should always consult the DTI before asserting that they are an "undertaking" which may have wider implications for other government bodies.²³

²³ These enquiries should now be directed to the Office of Fair Trading (OFT).



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