

Street furniture advertising: Recommendations to Local Authorities

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1 INTRODUCTION

- 1.1 This note provides information for Local Authorities following the closure of the OFT's competition investigation into street furniture advertising in April 2012. It includes brief background on the investigation and the voluntary assurances offered by Clear Channel UK (CCUK) and JCDecaux.
- 1.2 It also makes recommendations for ways in which Local Authorities might procure street furniture advertising in future in order to encourage greater competition. **These recommendations are not legally binding on Local Authorities and do not form part of the assurances offered by CCUK and JCDecaux.**

2 VOLUNTARY ASSURANCES OFFERED BY CCUK AND JCDECAUX

- 2.1 Between February 2011 and April 2012 the OFT investigated the compatibility of current street furniture advertising contracts in the UK with competition law.
- 2.2 Street furniture advertising (as defined for the purposes of the investigation) includes advertising on bus shelters, free standard advertising units, information panels, automatic public conveniences and any other freestanding advertising on the public highway. It is typically of '6-sheet' format, and is usually arranged through contracts between the relevant Local Authority or Public Transport Executive and a media owner. The OFT is aware of around 280 such contracts across the UK. The vast majority of these are held by either CCUK or JCDecaux, with a third media owner (Primesight) also holding some contracts.
- 2.3 As a result of the investigation, CCUK and JCDecaux have agreed a set of voluntary assurances relating to the way they enforce certain terms in existing and future street furniture contracts.
- 2.4 In broad terms, CCUK and JCDecaux have agreed:
- Not to enforce exclusivity clauses which prevent competitors advertising on different types of street furniture from those covered by the contract, in locations more than 25 metres from existing street furniture advertising sites. For example, if a company only installs or maintains bus shelters under the terms of a particular contract, it will not enforce any exclusivity terms in this contract which prevent competitors from installing free standing advertising panels or other types of advertising aside from bus shelter advertising at a distance of more than 25 metres from existing sites. (Assurance 1)
 - Not to enforce tacit renewal clauses which currently allow contracts to be rolled over automatically once they reach the end of their term. (Assurance 2)

- To make sure there is a clear contract end date in future contracts, and to confirm in writing the end dates of current contracts. Future contracts should not include 'date of build' clauses. In some circumstances the contract commencement date might be later than the date of signing a contract (for example to allow time to secure planning permission on sites). However, the contract end date should not be linked to the date of installing the last piece of street furniture. (Assurance 3)
- Not to proactively seek contract extensions, except in certain limited circumstances. In the past, this practice has led to some contracts being lengthened rather than going out to tender at the end of the initial term (Assurance 4)
- To cooperate with the LA to transfer to a new operator when a contract comes to an end. (Assurance 5)

2.5 Further details of the assurances are available on the OFT website.¹

2.6 These assurances only apply to contracts entered into by CCUK and JCDecaux; assurances have not been given by other media owners.

2.7 The OFT considers that these assurances will benefit competition by making it easier for other firms apart from CCUK and JCDecaux to compete for and win street furniture contracts in future. They will allow LAs greater freedom to sign contracts with new providers alongside their existing street furniture contracts.

2.8 As a result of CCUK and JCDecaux UK making these assurances, the OFT has closed its investigation. The OFT has made no finding of any infringement of the Competition Act 1998, and none should be assumed as a result of the offering of these assurances.

¹ www.of.gov.uk/shared_of/ca-and-cartels/ccuk-jcdcecaux.pdf

3 ROLE OF LOCAL AUTHORITIES AND PUBLIC TRANSPORT AUTHORITIES

- 3.1 While the assurances offered by CCUK and JCDecaux should act to encourage stronger competition in the market, the approach LAs take in negotiating street furniture advertising will also affect competition.
- 3.2 For example, LAs typically control the length of a street furniture contract, and agree any exclusivity terms jointly with the advertising provider. They also determine how the contract is awarded – whether through open tender or through negotiation with potential providers.
- 3.3 For this reason, the OFT has produced a set of best practice recommendations for LAs which, if followed, should help to strengthen competition and ultimately ensure that LAs have greater choice in contracting for street furniture advertising.
- 3.4 It is important to note that these recommendations are separate from the assurances given by CCUK and JCDecaux. They are suggestions made by the OFT, on the basis of our investigation of the market. It is for LAs individually to consider whether they wish to take up these recommendations.
- 3.5 Nevertheless, the OFT considers that, if taken up by a sufficient number of LAs, these suggestions would help to make the market work more effectively.

4 RECOMMENDATIONS ON CONTRACT PROCUREMENT

1. LAs should be aware that long contract durations can limit the scope for competition.

- 4.1 We recognise that, in the short-run, LAs may be able to secure higher revenues from long duration contracts because this will allow media owners a longer period over which to recover the costs of their investment in new street furniture. However, LAs should weigh these short-term revenues against the longer-term benefits of competition, and also be aware of the downsides being locked in to long contracts which are difficult to renegotiate.
- 4.2 A potential competitor considering entering the market needs to plan to win contracts over a number of years in order to build up a strong market position. The shorter the average contract length, the more frequently contracts will come up for tender across the country as a whole.
- 4.3 Based on evidence seen by the OFT on costs of street furniture and expected advertising revenues, we consider that the majority of contracts for street furniture will pay back their capital costs and earn a reasonable rate of return for contractors within 10 years. (Where contracts make provision for significant numbers of non-advertising bus shelters then this could lengthen the pay-back period). As such, LA should be cautious about entering into agreements that run for a longer period.

2. LAs should consider separating out contracts for installing and maintaining street furniture from contracts to advertise on that street furniture

- 4.4 Most current contracts bundle together the installation and maintenance of street furniture with the right to advertise on that street furniture. Long contract durations allow time for the media owner to recoup the capital costs of installing the street furniture.
- 4.5 An alternative approach would be to separate out contracts for installing and maintaining street furniture from contracts for advertising on that street furniture. Installation and maintenance contracts could continue to be of long duration, to match the expected lifetime of the assets, while an LA could hold more frequent tenders for the right to advertise – perhaps every four to five years. This could increase the degree of competition and opportunities for entry in the market for selling advertising space.
- 4.6 This separation might be achieved in a number of different ways – for example:
- The LA could take ownership of the street furniture itself and contract separately for maintenance as necessary. It would then be free to have separate contracts for advertising on the street furniture.
 - Alternatively the LA could sign a contract for installing and maintaining street furniture, and then separately tender shorter contracts for advertising on that street furniture.
- 4.7 For example, Warwickshire Council has recently separated out its ownership of street furniture, which has enabled it to have its street furniture maintained by its highways maintenance contractor and to supply advertising services on the street furniture under a separate contract.
- 4.8 We recognise that these business models may not be suitable for all LAs, and that there are potential downsides which LAs would have to consider. For example it would be necessary to ensure a clear division of

responsibilities between the company maintaining the street furniture and the advertising provider.

- 4.9 However, if such alternative business models were developed by a significant number of LAs, the OFT considers that they would encourage shorter street furniture advertising contracts and help strengthen competition to the benefit of the LAs.

3. LAs should aim to arrange separate contracts for advertising on different types of street furniture wherever feasible

- 4.10 Some current street furniture contracts combine the provision of different types of street furniture (e.g. both bus shelters and information panels). This may deter smaller suppliers, who do not provide all the types of street furniture required by the Local Authority. It also reduces the number of potential entry opportunities for new competitors.

- 4.11 Therefore LAs should aim to arrange separate contracts for advertising on different types of street furniture wherever feasible.

4. LAs should tender out contracts which come to the end of their current term, rather than simply renegotiating an extension with the incumbent provider

- 4.12 Open tenders ensure a level playing field and greater transparency for potential new entrants.

- 4.13 One of the main reasons why contracts are currently not tendered regularly is that they are sometimes renegotiated or extended with the existing incumbent. While LAs clearly need flexibility – for example to extend contracts for a short period if the tender for a new replacement contract is delayed – longer contract extensions can adversely affect competition.

4.14 As part of their voluntary assurances, CCUK and JCDecaux have agreed not to proactively seek extensions of existing street furniture advertising contracts which are coming up for renewal. There are some exceptions to this to allow flexibility, for example if a tender round is delayed. In particular, if the LA has not re-tendered its existing street furniture advertising contract and the contract is due to terminate within 12 months, CCUK or JCDecaux may approach that LA to discuss renegotiation for a single additional interim period of no more than 12 months.

5. LAs should make contract end dates publicly and readily available.

4.15 We have been told by potential entrants that it is important to be able to plan ahead and to know when different contracts are likely to be coming onto the market.

4.16 The OFT is intending to publish a summary of contract end dates for all current street furniture contract. However, this is not something that the OFT will be able to keep updated. We would therefore recommend that LAs should make contract end dates publicly and readily available. This greater transparency should be helpful in encouraging potential competitors to enter the market.

6. LAs should avoid agreeing exclusivity terms which restrict advertising in the LA area, except where this is limited to the type of street furniture specified in the contract or in a specified radius around installed street furniture sites.

4.17 Some current street furniture contracts contain exclusivity clauses which prevent any competitor from displaying small-format (4- and 6-sheet) advertising in the LA area. This limits competition by preventing potential entrants from looking for new advertising opportunities, for example on new types of street furniture.

- 4.18 As part of their voluntary assurances, CCUK and JCDecaux have agreed that, at locations more than 25 metres from existing street furniture advertising sites identified under the terms of a particular contract, they will not enforce any exclusivity terms insofar as these prevent a competitor from installing or selling advertising space on street furniture of a different type to that already with identified sites, or installed or maintained by the company under the terms of the same contract.
- 4.19 For example, if CCUK or JCDecaux only installs or maintains bus shelters under the terms of a particular contract, it will not enforce any exclusivity terms in this contract which prevent competitors from installing free standing advertising panels or other types of advertising aside from bus shelter advertising at a distance of more than 25 metres from existing sites.
- 4.20 These assurances should create the potential for a degree of competition between providers within an LA area. However, it is important to note that LAs remain free to have more limited exclusivity terms, or indeed no exclusivity terms at all within their own street furniture contracts. LAs should consider carefully what exclusivity terms are appropriate in order to protect a media owner's capital investment, while allowing sufficient scope for competition.