



OFT housebuilding investigation

On 22 June 2007, the Office of Fair Trading (“OFT”) announced a market study, the third study in 2007, into housebuilding in the UK.¹ This is the latest in a series of investigations into the UK housebuilding sector.² The construction industry is one of the OFT’s priority areas and the decision to undertake a market study not only reflects the importance of housebuilding to the UK’s economy, but also this authority’s concern to take on more cases that involve markets that are familiar and of concern to the general public. The aims of the housebuilding market study are to understand:

- how competition and the planning system affect the ability of the market to deliver sufficient quantities of cost-effective high quality new houses, and
- homebuyers’ levels of satisfaction with the new houses they purchase.

The OFT will examine the following issues:

- *The extent to which consumers have power to drive competition.* Consumers’ purchases of houses are often constrained in timing and location, and there may be information asymmetries between homebuyers and housebuilders.
- *The level of consumer protection and redress.* The OFT will consider consumer legislation and will include an investigation of building regulation standards and the efficacy with which they are enforced. The OFT will also investigate whether new home warranties adequately insure homebuyers against poor quality housing.

1 In 2007, the OFT has also announced studies into the markets for the distribution of medicines and personal current accounts in the UK.

2 Barker Review (2004) Proposed forcing companies to release land for building and to build 21,000 “affordable” houses a year.

Planning and Compulsory Purchase Act (2004) Limit standard planning permissions to three years.

Barker Review (2006) Called for a new independent planning Commission to rule on important transport, waste and energy projects.

Calcutt review (2006) aimed to find ways of meeting the government’s target of 200,000 new homes a year.

Planning White Paper (2007) aims to cut time taken to build infrastructure projects.

- *The extent of competition in housebuilding* and barriers to entry and expansion, including whether available land is being effectively brought through the planning process in a timely manner, scarcity of key inputs, and the effects of landbanks and option agreements. In June 2007, the Royal Town Planning Institute (“RTPI”), published a Report that suggested the country’s top 10 housebuilders were sitting on 14,000 acres of land with planning permission, equivalent to 225,000 houses.³ In London alone, there is a 16 year supply of land with planning permission, enough to deliver 30,500 homes each year.

Market studies were introduced by the OFT as a means of identifying and addressing all aspects of market failure and a wide range of outcomes are possible, including:

- *A decision that intervention is not appropriate on the evidence available.* Such markets may be revisited, however, if new evidence is brought to the OFT’s attention.
- *Publishing information* to help consumers make a more informed choice.
- Encouraging firms to take *voluntary action* where the OFT perceives that there is an issue to be addressed, but do not believe enforcement action would be appropriate (or proportionate).
- Encouraging a *code of practice* if a market study finds that there is a significant problem with consumer complaints, without a specific breach of competition or consumer law.
- Making *recommendations to the Government or regulator* if the OFT identifies government regulations or licensing as affecting the operation of particular markets.
- The OFT may *investigate or take enforcement action*. However, the OFT does not foresee such action to occur regularly in the OFT’s own-initiative studies, as the potential for enforcement action will have been considered before a market study is commenced.
- The OFT is able to make a market investigation reference to the Competition Commission when it has reasonable grounds to suspect that a feature or combination of features of a market prevents, restricts or distorts competition. This was done, for example, with regard to the markets for store cards, UK airports, PPI, extended warranties for electrical goods and classified directory advertising. In considering whether a market should be the subject of a full OFT study, or referred to the Competition Commission, the OFT will weigh a number of factors including: the nature and significance of the competition problems; whether a reference would be a proportionate response to the scale of the competition problems identified; whether remedies are likely to be available or whether a Competition Commission report might provide a useful contribution, and whether the OFT is in a position to fully address the concerns itself. A reference may be made, however, if the OFT suspects that a competition problem could not be adequately or appropriately addressed under its competition enforcement powers. The Competition Commission may negotiate undertakings or can impose orders if it finds an adverse effect on competition following a reference.

3 Opening up the debate: Exploring housing land supply myths <http://www.rtpi.org.uk/download/1708/Opening-up-the-debate-June-2007.pdf>

The OFT's market study guidance outlines the factors that the OFT takes into account when selecting markets for review.⁴ The reasons the OFT has decided to proceed with a market study into housebuilding are:

- *The OFT is concerned that the market for housebuilding is not working well and there appears to be significant consumer detriment* in the form of low supply response to sustained rising prices, low levels of quality and a lack of innovation.
- *The importance of housebuilding to the economy.* In 2006 the value of the private housebuilding market in Great Britain was estimated at around £20 billion and accounted for around 35% of construction activity. Construction is one of the OFT's priority sectors. Over the last two years the OFT has been carrying out an investigation into bid rigging by construction companies in England, and during this investigation 57 companies have been raided. As a result of the investigation, the OFT has uncovered evidence of bid rigging in thousands of tenders with a combined estimated value approaching £3 billion. Any business found to be part of a cartel could be fined up to 10 per cent of its worldwide turnover.
- *Customer satisfaction has not increased substantially* since the Barker Review of Housing Supply in March 2004. The Chancellor of the Exchequer and the Deputy Prime Minister set up the review in April 2003 (led by Kate Barker) to consider housing supply in the UK and if appropriate to identify options for Government action. The final report, in March 2004, called on the industry to (i) increased the proportion of house buyers who would recommend their house builder from 46 per cent to at least 75 per cent, (ii) improved customer service satisfaction levels from 65 per cent to 85 per cent and (iii) established an OFT-approved consumer code.⁵ It called on the OFT to conduct a review of the market if progress was unsatisfactory or if customer satisfaction levels did not rise substantially by 2007. A code of conduct was never developed.
- *The housebuilding sector has a significant level of Government involvement and regulation.* A market study will allow the OFT to make a substantial contribution to policy formulation in this area.
- *Prospect of obtaining evidence.* The OFT proposes to conduct this market study working together with firms, trade associations, central and local government and independent experts.
- *Prospect of identifying remedies.* The OFT is well placed to identify and recommend remedies to empower consumers to drive competition.
- *The OFT is the most appropriate body to undertake a study.* An OFT market study under the Enterprise Act 2002 facilitates a market-wide consideration of both competition and consumer issues together.

Timetable

The deadline for written submissions is 17 August 2007 and the OFT is expected to report back by summer 2008.

⁴ Market studies: Guidance on the OFT Approach November 2004

⁵ Recommendation 32, HMT/DCLG Review of Housing Supply Final Report March 2004

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