

Mr Patrick Gerard

Your ref
Our ref CE/6001-05
Date 10 August 2005

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Dear Mr Gerard,

Comparative pay positioning and executive pay

Thank you for your letter and submission of 28 June to my colleague, Darren Eade. Mr Eade has asked me to respond to your further request for an OFT investigation into the way executive pay is set in the UK.

While your complaint raises some interesting questions about the way executive pay is set in the UK, we do not consider that it falls within the OFT's administrative priorities and as a result will not be taking any further action.

The OFT has discretion over which complaints to pursue. In considering whether to investigate a complaint, the OFT must first have regard to its administrative priorities; that is, the OFT has to decide where best to focus its resources. In doing so, the OFT will consider issues such as the level of consumer detriment, the type of issue concerned and whether there are alternative or more appropriate forms of redress available.

The likelihood of reaching an effective outcome under the Competition Act 1998 (the Act) appears remote. As well as requiring a considerable commitment of resources to pursue effectively, the unusual nature of the services concerned and the evidential thresholds that must be met for finding an infringement of the Act do not suggest that this would be an effective way of addressing the issues you have raised. For example, to successfully find a concerted practice it is necessary to demonstrate clearly that the outcomes observed in a market cannot be explained other than from a concerted practice, considering the structure of the specific market in which the conduct is alleged to have occurred. In addition, the issue with executive pay do not fall within the OFT's priority areas, as identified in the OFT's annual report and accounts (available on our website). As a result of these points we cannot consider committing resources to pursuing the issues you raise.

Many of the issues you raise appear to relate to the requirements of the Combined Code on Corporate Governance 2003 (the Code) and the way it operates in practice. As such, it is possible that the problems you identify are caused by the corporate governance structure as it operates in the UK. There are a number of organisations better placed than OFT to consider the arguments

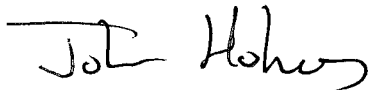


you have raised concerning how executive pay is determined. In particular, we have noted that the Financial Reporting Council, responsible for overseeing standards of corporate governance in the UK, has launched a review into the effectiveness of the Code. Comments on the code may be sent to:

Mr Chris Hodge
Corporate Governance Unit
Financial Reporting Council
Fifth Floor
Aldwych House
71-91 Aldwych
London
WC2B 4HN

Once again, this is not to say that the issues you have raised are not important but simply that it does not fall within the OFT's administrative priorities at this time and as a result will not be taking any further action. I appreciate that this will come as a disappointment but I hope that this letter helps to explain our position.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Holmes". The signature is written in a cursive style with a long horizontal stroke at the end.

John D Holmes
Principal Case Officer
Competition Enforcement 5