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I Changes to competition laws and policies adopted or envisaged

A. Summary of new legal provisions in competition law and related legislation

1. Orders under the Restrictive Trade Practices Act 1976 came into effect on 9 January 1998. They meant that details of sale and purchase, share-subscription, and franchise agreements no longer had to be notified to the Director General of Fair Trading provided that the agreements contained no price-fixing restrictions. In addition, the former threshold level below which agreements between different parties did not have to be notified was raised from a combined United Kingdom turnover of £20 million to a turnover of £50 million.

2. A new duty was imposed on the DGFT by the Producer Responsibility (Packaging Waste) Regulations 1997. Implementing the European Directive on Packaging and Packaging Waste, the regulations were made under the Environment Act 1995 and came into force on 6 March 1998.

3. A Competition Bill was laid before Parliament in 1997. If it is passed it will introduce wide-ranging reform of UK competition law, replacing the Restrictive Trade Practices Act with two prohibitions modelled on Articles 85 and 86 and repealing much of the Competition Act 1980. The existing merger provisions and the complex monopoly provisions of the Fair Trading Act 1973 remain. The Bill also replaces the Monopolies and Mergers Commission (MMC) with a Competition Commission to take on the rôle of the MMC, and to act as a Tribunal to hear and decide on appeals against decisions by the DGFT.

B. Changes in competition law rules, policies or guidelines

4. In order to reduce the burden placed on business and to simplify procedures in these circumstances, the authorities in the United Kingdom (the Office of Fair Trading), France (the Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes), and Germany (the Bundeskartellamt) devised a common two-page form for the voluntary notification of a proposed merger that will be accepted in all three countries. The new form was introduced on 29 September 1997.

II. Enforcement of competition laws and policies

A. Action against anti-competitive practices by competition authorities and the courts

i) Restrictive Agreements (Restrictive Trade Practices Acts 1976 & 1977)

5. The Restrictive Trade Practices Acts of 1976 and 1977 provide the means to evaluate the effect on competition of certain commercial agreements and to prevent the operation of arrangements that are significantly anti-competitive. Details of all relevant agreements must be sent to the Office of Fair Trading (OFT) to be entered on the public register - the Register of Restrictive Trading Agreements.

6. The DGFT has two main responsibilities under the Acts. First, he must appraise the relevant restrictions in agreements that have been sent for registration at the proper time and, if necessary, refer them to the Restrictive Practices Court. The restrictions in such agreements are lawful unless and until the Court strikes them down. Second, he seeks out, investigates and evaluates registrable agreements that have not been sent for registration, many of which are harmful cartel agreements, with a view to referring

them to the Court. It is unlawful to give effect to restrictions in a registrable agreement that has not been furnished for registration.

Agreements submitted for registration

7. Details of 1,375 agreements were submitted to the OFT compared with 1,599 in 1996. Nevertheless, because - on examination - many of those submitted prove not to be registrable, only 643 agreements were added to the register, bringing the total number entered since the register was established in 1956 to 14,119.

Restrictions

8. Most agreements placed on the register do not contain restrictions of such significance that they justify investigation by the Court. In these circumstances, under section 21 (2) of the 1976 Act, the Secretary of State can, on the DGFT's advice, direct that reference to the Court is not required. During the course of 1997, the DGFT gave such advice on 1,216 agreements, including common form agreements.

9. In a number of other cases the DGFT exercised his discretion under section 21(2) of the 1976 Act not to refer to the Court agreements which had ended or from which all restrictions had been removed.

10. The OFT's Cartels Task Force continued its programme of education, predominantly to central and local government bodies. Although fewer complaints were received about secret cartels than in 1996, about the same number of investigations were put in hand. Some of these cases are expected to be referred to the Court in the first half of 1998. In a number of other instances, however, where the existence of a cartel was suspected, the Task Force was unable to proceed further. Under section 36 of the 1976 Act the DGFT must have 'reasonable cause to believe' that persons may be party to an undisclosed but registrable agreement before he can issue a statutory notice requiring them to provide details. In an earlier case, the Court ruled that 'reason to *believe*' is a significantly more exacting test than 'reason to *suspect*'.

11. A total of 44 new investigations were started and section 36 notices were issued in four investigations. In a number of other cases, informal inquiry letters were sent out.

12. When the DGFT has reason to believe that an unlawful agreement has been deliberately concealed, he almost invariably refers the matter to the Court. Under section 35 of the 1976 Act, the Court may then make orders requiring the parties not to enforce restrictions in that agreement - and not to enforce restrictions in any other registrable agreements which have not been notified to the DGFT within the prescribed time limits. The DGFT may also ask the Court to make orders, under section 2 of the 1976 Act, requiring the parties to registered agreements not to make any similar restrictive arrangements. Breaches of orders, or of undertakings given in lieu of orders, constitute contempt of court and may lead to fines and, for directors or employees, imprisonment for up to two years.

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Court cases concluded

13. **Net Book Agreement (NBA)** - Over a 10-day period in January the Restrictive Practices Court heard evidence about operation of the NBA, following an application by the DGFT, under section 4 of the 1976 Act, for an order declaring the restriction in the agreement to be contrary to the public interest and prohibiting its enforcement, and, under section 17 of the Resale Prices Act, for an order to discharge the Court's 1968 order exempting books and maps from the prohibition on resale price maintenance.

14. The NBA was an agreement between publishers, collectively enforced by the Publishers Association, which - with certain exceptions - prevented retailers from selling net books at prices below the net price set by the publisher. On 13 March, the Court ruled in favour of both applications and declared the restriction in the NBA to be contrary to the public interest. The 29-year-old exemption which allowed resale price maintenance on books and maps was also ended.

15. The Court found that, since it had last considered the question in 1962 - when it had ruled that the NBA was not against the public interest - there had been material changes in circumstances. These included: major developments in printing technology reducing the cost of book production; the growth of specialist bookshop chains throughout the United Kingdom; the growth of wholesalers providing a fast delivery-and-ordering service; the availability of books on a sale-or-return terms. It also took into account the voluntary suspension of the NBA in September 1995. As a result of this decision, booksellers are now free to decide the retail prices of the books they stock, thus providing greater freedom and flexibility to compete.

16. **Powder coatings** - In June, proceedings were successfully concluded against nine manufacturers of powder coatings - a relatively recent alternative to traditional wet paints. The Court found that the companies had been party to a registrable agreement involving price notification and maintenance. Seven of the firms were also party to a price-raising agreement. The Court accepted undertakings from the parties not to give effect to the agreement, or similar agreements, and not to enforce any other registrable agreement which has not been submitted to the DGFT in time.

17. **Blast-protection polyester film** - In June, proceedings were initiated against five suppliers of polyester film used to protect glazing against bomb blast. There was evidence that these firms had an arrangement whereby they mutually agreed which of them should succeed in bidding for particular contracts. When submitting tenders, the remaining parties put in higher prices, with the aim of ensuring that the selected favoured bidder would win. From time to time the parties also exchanged information about prices to be charged or quoted.

18. In an undefended hearing in October, the Court accepted undertakings from all five companies not to give effect to the agreement, or similar agreements, and not to enforce any other registrable agreement which has not been submitted to the DGFT in time.

19. **Ready-mixed concrete** - Proceedings against 13 companies supplying ready-mixed concrete were successfully concluded in October. The Court found that these firms had been party to a number of registrable but unregistered agreements involving price fixing and market sharing. In an undefended hearing the Court made orders against two of the companies, under section 35, and accepted undertakings from the other 11, not to implement any registrable agreements without first submitting details to the DGFT. These firms were involved in the same agreements as 17 other ready-mixed concrete companies who, in August 1995, had been fined record amounts for contempt of court, having breached previous court orders made against them.

20. From the time that the DGFT first received complaints about the operation of cartels among the suppliers of ready-mixed concrete, it took nine years until the final court cases were concluded.

Court proceedings

21. **Football Association Premier League Ltd** - The DGFT continued proceedings under section 1(3) against three agreements which provide for the exclusive televising of Premier League football matches.

22. The first agreement requires that all member clubs (under rule D7.3 of the Premier League rulebook) accept a restriction preventing them from selling their television rights, except through the Premier League. At the same time, included as parties to the agreement which established the Premier League in 1992 are the Football League Ltd and the Football Association Ltd.

23. The two other agreements referred to the Court provide for the collective selling of those rights by the Premier League, and grant exclusive coverage of live matches to BSkyB, and of recorded highlights to the BBC. The exclusive agreements covered five years, until the end of the 1996/97 season, and then a further four years, until the end of the 2000/01 season.

24. The respondents' statements of case were submitted to the Court in February. The DGFT lodged his answers in June. Subsequently, he sought to obtain further particulars of their statements from the respondents, while he also provided them with further particulars of his answers. In November, the Court directed that the final hearing to determine whether or not the agreements were in the public interest would start in January 1999.

25. **Laboratory filters** - In September, proceedings were issued against Gelman Sciences Ltd and Sartorius Ltd, both manufacturers of laboratory filters used to remove impurities from liquids or otherwise isolate them. The DGFT alleged that the companies were party to a price-fixing agreement, and applied to the Court for an order restraining them from giving further effect to the agreement and from making any other agreement to the like effect. The case is expected to be heard in the first half of 1998.

ii) *Resale Price Maintenance (Resale Prices Act 1976)*

26. Under the Resale Prices Act 1976 it is unlawful for suppliers of goods to impose minimum resale prices on dealers, or to compel them to charge those prices by threatening to withhold supplies or impose some other penalty. In 1997, the DGFT received 58 complaints alleging contravention of the Act, compared with 185 in 1996. In 10 cases, the DGFT obtained written assurances from suppliers that they would not seek to impose minimum prices at which dealers could resell their goods.

27. **Medicaments review** - The DGFT announced in October 1996 that he would be making an application to the Restrictive Practices Court to remove the long-standing exemption of over-the-counter medicaments from the terms of the Act. Throughout 1997, work proceeded on preparing the case, which was referred to the Court on 8 January 1998.

28. **Books, children's books and maps** - On 13 March, in response to an application made under section 17 of the Act, the Restrictive Practices Court made an order to remove the exemption on books,

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children's books and maps from the general prohibition on resale price maintenance. This discharged the court order made in 1968.

iii) Anti-competitive practices (Competition Act 1980)

29. Anti-competitive practices by individual firms can be investigated under the provisions of the Competition Act 1980. Many complaints to the DGFT are dealt with through informal inquiries. In some cases, the issues raised might persuade the DGFT that he would be justified in making a reference to the MMC. Alternatively, in order to remedy the anti-competitive effects of the behaviour he is concerned about, he may accept undertakings from the company in lieu of a reference.

References to the MMC

30. The DGFT made one Competition Act reference in 1997:

22 December The supply of ice cream by Birds Eye Wall's Ltd

31. **Ice cream** - Enquiries continued throughout the year into a complaint about the distribution of Wall's ice cream - which is produced by Birds Eye Wall's Ltd, part of the Unilever Group. The complaint specifically related to wrapped ice cream intended for immediate consumption, known in the trade as 'impulse ice cream'. Wall's accounts for approximately 65% of this market. The DGFT was concerned that the terms on which Wall's made its products available restricted competition between wholesalers by unduly favouring its network of 32 dedicated distributors, who undertake not to supply other makes of ice cream.

32. Confidential negotiations between Wall's and the DGFT took place over several months to see whether it might be possible to agree undertakings sufficient to meet the DGFT's anxieties. Although the company agreed to changes in its distribution system, however, the undertakings it was willing to offer did not satisfy all his reservations. Consequently, in December, the question was referred to the MMC under the terms of the Competition Act.

iv) Monopoly situations (Fair Trading Act 1973)

33. Section 2 of the Fair Trading Act 1973 requires the DGFT to keep commercial activities in the United Kingdom under review in order to detect monopoly situations (as defined in sections 6-11) and uncompetitive practices. Where there is evidence of the existence of a monopoly situation, the DGFT can refer the case to the MMC for investigation, but there is no presumption that he must always do so. When he does make such a reference, however, it is for the MMC to determine whether a monopoly situation does exist and, if so, whether it operates, or may be expected to operate against the public interest.

References to the MMC

34. The DGFT made one monopoly reference in 1997:

20 November The supply of underwriting services for share issues

35. **Underwriting services for share issues** - In December 1996, the DGFT had said that he would be making a decision on whether to refer the underwriting of equity issues to the MMC before the end of March 1997. The scarcity of rights issues during the first quarter of the year, however, meant that - at that time - he could not judge the effect of some innovative issues on the market. Accordingly, he continued to monitor the situation. By the time he made the reference, on 20 November, the DGFT had been able to analyse 60 rights issues made since October 1996, which had seen the start of some limited competition in tendering for sub-underwriting. The results showed that, despite tendering, there was still a high level of excess returns in underwriting fees and that standard fees had been charged in at least 50% of the issues. The MMC has until 20 November 1998 to complete its investigation and report to the Secretary of State.

Reports by the MMC

36. Three monopoly reports were published in 1997:

30 July The supply of domestic electrical goods

29 August Solicitors' estate agency services in Scotland

19 December Foreign package holidays

37. **Domestic electrical goods** - The MMC found that two complex monopoly situations existed in each of the eight key product markets investigated. These covered: washing machines; tumble-driers; dishwashers; cold-food-storage equipment; televisions; video-cassette recorders; hi-fi systems; and camcorders. Accounting for £3.8 billion total annual sales in 1995, these products were chosen as representative of the large range of domestic electrical goods available.

38. The first complex monopoly situation involved all suppliers who suggested or recommended retail prices and all retailers who discussed these prices with suppliers and/or took account of them. The second involved all suppliers who refused to supply dealers (that is wholesalers as well as retailers) who did not meet certain criteria, and those dealers who were supplied. Scale monopolies were also found to exist in favour of General Domestic Appliances on washing machines and tumble-driers, Emaco on dishwashers, Sony and Matsushita, as suppliers of hi-fi systems and camcorders respectively, and Dixons as a retailer of camcorders.

39. In each of the eight reference markets the two complex monopoly situations were found to operate against the public interest. Their main effect was to cause retail prices to be higher than they would be otherwise. Other adverse effects were reduced consumer choice - in relation to lower prices and fewer non-price benefits on the one hand, and higher prices and more non-price benefits on the other - and the discouragement of retail innovation. The actions on withholding supply, within the second complex monopoly situation, were deemed to underpin those on prices and had the extra adverse effect of restricting entry to the retail market. The MMC made no adverse findings against the scale monopolists additional to the complex monopoly findings made against them.

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40. The references had been made following complaints which suggested that many suppliers put pressure on dealers to maintain uniform prices and that they refused to supply discount warehouse clubs and other retailers selling below recommended resale prices. There was concern that this might restrict competition unduly at the retail level and result in higher shop prices.

41. In the case of the first complex monopoly situation identified, the MMC found many practices followed by suppliers which operated against the public interest. These included setting or suggesting recommended resale prices, and actions or threats against dealers who undercut those prices. The latter involved direct pressure to change prices, and imposing limits on supplies and reductions in discounts or conditional advertising support. On withholding supply, where the second complex monopoly situation existed, the MMC found that discrimination against warehouse clubs and other creditworthy discount dealers was against the public interest.

42. The MMC made 22 recommendations; most of them common to all of the goods and applicable to all suppliers and retailers. These aimed to encourage price discounters, and other retailers taking a non-standard approach to pricing, to enter the market. Many of the recommendations were designed to prevent suppliers influencing dealers' prices. The MMC concluded that the use of recommended retail prices was so entrenched in the way business was conducted that only their prohibition would deal effectively with the adverse effects found. The MMC therefore proposed that suppliers should be prohibited from publishing, or otherwise notifying to dealers, the prices that suppliers recommend or suggest that dealers advertise, display or charge when they seek to resell goods.

43. To reinforce its main recommendation on prices the MMC also suggested prohibiting certain other practices used to frustrate competition. In particular it recommended that suppliers should be prohibited from taking any action to compel or influence dealers to raise their prices; and dealers should be prohibited from persuading suppliers to suggest or recommend retail prices or to encourage or influence other dealers to change their prices.

44. The MMC's recommendations on supply were intended to complement those on prices. To benefit warehouse clubs and to make sure that any selection criteria are transparent, objective and consistent it suggested that suppliers should be prohibited from applying dealer selection criteria in a manner which discriminates against particular dealers or categories of dealers. Suppliers should be required to notify would-be dealers in writing of the criteria they use to select dealers and dealers who were refused supply should be given a written statement of the reasons for refusal by the supplier concerned. Suppliers should also be required to supply all creditworthy warehouse clubs on request, on terms no less favourable than those on which other dealers in similar circumstances are supplied, unless the criteria used to refuse supply do not have as their object or effect the prevention, restriction, or distortion of competition and have been applied in a non-discriminatory manner.

45. In addition, the MMC recommended that General Domestic Appliances, Dixons Stores Group, Empire Stores Group, and Combined Independents (Holdings) and its local groups, should undertake to discontinue certain actions which operated, or which might be expected to operate, against the public interest.

46. The Secretary of State, on advice from the DGFT, accepted the MMC's recommendations in general. In relation to warehouse clubs, however, she proposed to adopt a more targeted approach. Before implementing the remedies, the Secretary of State has allowed interested parties to comment. In addition, she asked the DGFT to see whether suitable undertakings could be obtained from the individual

companies and organisations against which the MMC made specific adverse findings. At the end of the year she was considering what action to take in the light of the responses that had been received.

47. **Solicitors' estate agency services in Scotland** - In its report, the MMC found that a complex monopoly situation existed in favour of solicitors' property centres in Scotland and the solicitor estate agents who used them. The centres operated arrangements which prevented their use by non-solicitor estate agents and - in some cases - prevented their use by solicitors who wanted to advertise properties that were simultaneously being advertised elsewhere by non-solicitor estate agents. Nevertheless, the MMC concluded that these arrangements did not, and might not be expected to, operate against the public interest.

48. The reference to the MMC had initially been triggered by complaints the DGFT had received about the effect on competition, and consumer choice, of a rule operated by all the solicitors' property centres in Scotland - and, in particular, those in Aberdeen and Edinburgh.

49. The MMC found that there was no evidence of a lack of effective competition in the provision of estate agency or conveyancing services in Scotland (while, among Scottish consumers, there was a high level of satisfaction with these services). While the property centres were highly regarded by the public in Scotland, estate agents who were unable to use them had other options for advertising property which allowed them to offer clients a cost-effective alternative to the use of the centres. In practice, demand for joint marketing of an individual property, by a solicitor estate agent and a non-solicitor estate agent, was very low in Scotland, and that in the few instances where it did arise it could be met by forms of joint agency which were unaffected by the rules of the property centres.

50. Since the MMC found no basis for concern on competition grounds, the DGFT can take no further action on the issues examined during the course of his inquiry.

51. **Foreign package holidays** - The reference covered the supply of the services of both tour operators and travel agents in relation to foreign package holidays. While the MMC thought that, in general, the market was broadly competitive and served clients well, it found two complex monopolies in operation - one in favour of certain tour operators, the other in favour of certain travel agents - and concluded that some of the practices followed by the firms concerned were against the public interest.

52. The MMC found, first, that Thomson and Airtours plc engaged in the practice of agreeing 'most favoured customer' clauses with travel agents, and that this distorted competition on holiday prices. Agents who enter such an agreement with a tour operator are bound by its terms to offer discounts on that operator's foreign package holidays as large as those they offer on the holidays of any other operator. Second, it found that travel agents Lunn Poly, Going Places, Thomas Cook Group, and AT Mays also conducted their activities in a way that distorted competition, and it identified two specific practices as operating against the public interest. These were: making the offer of discounts conditional on the purchase of travel insurance; and the failure of vertically integrated travel groups to make clear the ownership links between their travel agencies and their associated tour operators.

53. The MMC recommended that the practice of making a discount on a foreign package holiday conditional upon the purchase of travel insurance should be prohibited; 'most favoured customer' clauses should be prohibited; and a package of measures should be implemented to ensure that customers are aware of ownership links between tour operators and travel agents.

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54. On 19 December, the Secretary of State announced her intention of making an order under the Fair Trading Act to prohibit both 'most favoured customer' clauses in agreements between tour operators and travel agents, and the practice of offering discounts which are conditional on the purchase of travel insurance by travel agents (or by companies in the same group as the travel agent). To give effect to the MMC's third recommendation - the introduction of measures to make ownership links more transparent - the Secretary of State asked the DGFT to seek suitable undertakings from Thomson Travel Group Ltd, Airtours plc, Thomas Cook Group Ltd, and Carlson Leisure Group (UK) Ltd, and their respective travel agency businesses. While this matter was still under negotiation at the end of the year, it was anticipated that the undertakings would cover the presentation of ownership links at those companies' retail premises, and on the travel businesses' printed brochures, advertisements and stationery.

Action on earlier reports

55. **Beer Orders** - The OFT continued to monitor brewers' compliance with the 1989 Beer Orders. It has satisfied itself that the large brewery groups have complied with the requirement to keep their number of tied premises within the maximum permitted under the Supply of Beer (Tied Estate) Order 1989 (SI 1989/2390). The Supply of Beer (Tied Estate) (Amendment) Order 1997 (SI 1997/1740) came into force on 22 August. This enables large brewery groups' tied pub tenants and pubs in receipt of tied loans from these groups to take one brand of bottle-conditioned beer as well as one brand of cask-conditioned beer from a source of their own choosing.

56. **Bus services in North East England** - Following publication of the MMC report in August 1995 and the giving of undertakings by Stagecoach Holdings plc in October 1996, the Go-Ahead Group plc gave undertakings in April.

57. **Classified directory advertising services** - The DGFT continued to monitor undertakings on the operation of Yellow Pages, which British Telecommunications plc (BT) had given to the Secretary of State in July 1996. During the course of the year, BT submitted four new master rate-cards for scrutiny. The DGFT was content that increases in advertising charges in each rate-card were within the RPI-2 limit set in the undertakings. Towards the end of the year, BT also submitted its accounts for its classified directory business for the 1996-97 financial year.

58. **Contact lens solutions** - With a view to assessing the effectiveness of the remedies put into place following the 1993 MMC report, the DGFT continued to seek voluntary information about the price and availability of solutions from manufacturers, importers, and a cross-section of retailers, including opticians, pharmacies and supermarkets.

59. **Electrical contracting services at London exhibition halls** - The DGFT continued to monitor exhibition hall owners' compliance with the Electrical Contracting (London Exhibition Halls) Order 1995. Following enquiries into a media report that an unnamed hall owner in London was charging excessively for the inspection by its own in-house electrical contractor of work done by third-party contractors, the company concerned - the Business Design Centre - ceased the practice.

60. **Films** - In accordance with an earlier recommendation by the DGFT, the Films (Exhibition Periods) Order 1997 (made in December 1996) came into force on 1 March. Its aim was to control the length of minimum exhibition periods imposed by film distributors.

61. **Fine fragrances** - Most of the fine-fragrance houses provided the DGFT with returns showing details of their range-stocking and minimum-purchase requirements for 1996. These details were requested in response to a suggestion made by the MMC in its 1993 report. The results of this exercise were passed to the European Commission in June to assist with its review of its decision on perfume houses' distribution agreements.

62. **Performing rights** - The DGFT continued to monitor progress made by the Performing Right Society (PRS) towards meeting the 44 recommendations made by the MMC in its 1996 report on the administration of performing rights and film synchronisation rights. The PRS gave the following undertakings on 27 February:

not to propose any amendment to the memorandum and articles of association of Performing Right Society Limited (PRS) (the Agreement) which would:

- a) prevent or inhibit PRS members from self-administering their live performing right or the categories of performing rights specified in the European Commission decisions relating to the German collecting society for performing and mechanical rights in Re GEMA (No 1) L134/15 CMLR D35, and Re GEMA (No 2) L182/24 CMLR D115; or
- b) prevent writers' non-member representatives from speaking and voting at general meetings of the PRS; or
- c) significantly alter the structure or operation of the PRS Appeals Board; or
- d) be contrary to any recommendation made by the MMC in its report;

to pre-notify the DGFT of any proposed changes to the Agreement which would be contrary to provisions (a)-(d) above and to relay to PRS members any comments made by the DGFT on the proposals before they vote on them;

to publish and notify PRS members of any amendment to the Agreement;

to keep separate the roles and functions of the company's Chairman and Chief Executive and its Board on the one hand and its executive committees on the other;

to report annually to the DGFT specifying the measures it has taken to comply with the recommendations made by the MMC;

to provide the DGFT with details of PRS's cost allocation scheme and details of the company's members' overseas earnings, and any other information as appropriate.

63. All of the recommendations made by the MMC had been met or were in hand at the end of 1997. Much of the work remaining to be done by the PRS was in the areas of sampling review and distribution modelling and cost allocation. These are perhaps the most challenging areas for the PRS but it appeared that it was making good progress.

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v) *Financial services*

64. Under the terms of the Financial Services Act 1986, the DGFT is required to consider the implications for competition of the rules of the Securities and Investments Board (SIB) and of bodies seeking recognition as self-regulating organisations (SROs), investment exchanges and clearing houses, and to report his findings to the Chancellor of the Exchequer. He is further required to report on amendments to those rules and on the organisations' practices whenever he identifies competition concerns. In addition to examining rule changes, the OFT maintains close contacts with the various regulatory bodies. When requested to do so, it also offers advice on proposed rule changes and it responds to consultation exercises where there may be implications for competition.

65. In May 1997, the Chancellor made a statement to Parliament about his intention to reform financial regulation by introducing legislation to establish a single regulatory body to cover investment business, banking, insurance, building societies and friendly societies. The SIB announced a change of name to the Financial Services Authority (FSA), as the first stage on the road to the new single regulator. Consultations began on the rules of the new body with the issue of three papers in October.

66. The DGFT reported to the Chancellor on the rules of the London Stock Exchange for the new Stock Exchange Electronic Trading System, launched on 20 October. He welcomed the removal of publication delays but said it was too early to comment on the effect of worked principal transactions. He undertook to review these after 12 months.

vi) *Producer Responsibility (Packaging Waste) Regulations 1997*

67. The aim of the Regulations is to secure a more sustainable approach to dealing with packaging waste through recovery and recycling rather than landfill. Businesses subject to the regulations (the criteria are based on their turnover and the volume of waste they handle) are required to register with either the Environment Agency (in England and Wales) or the Scottish Environment Protection Agency and to achieve target levels of recycling and recovery in relation to the volume of packaging material generated. Companies that incur such an obligation to recover and recycle specific amounts of waste can organise the recovery and recycling of sufficient material themselves, or they can join a compliance scheme which assumes responsibility for meeting the obligations of all its members. Such schemes also have to be registered with the appropriate environment agency.

68. The registration procedure includes provision for scrutiny by the Secretary of State for Trade and Industry - who is advised by the DGFT - to assess whether a scheme has, or is likely to have, the effect of restricting, distorting or preventing competition, or that, where it does, that effect is, or is likely to be, no greater than is necessary to achieve the environmental or economic benefits set out in section 93(6) of the Environment Act, and that the scheme does not, and is not likely to, lead to an abuse of market power. There is also provision for registered schemes to be monitored by the DGFT and, should he consider that any scheme no longer meets the requirements of the competition scrutiny, so to advise the Secretary of State.

69. In 1997, the DGFT gave advice on eight schemes subsequently registered by the appropriate agency.

B. Mergers

70. In 1997, the OFT considered a total of 396 merger cases - whether in the public domain (public mergers), under the confidential guidance procedure, or by way of informal advice. Year-on-year, this represents a fall of approximately 26% on the 533 cases considered in 1996.

71. Under the Fair Trading Act, the DGFT is required to keep himself informed about actual or prospective merger situations and to recommend to the Secretary of State whether a merger which qualifies for investigation should be referred to the MMC for more detailed investigation. If the MMC finds that a merger operates or is likely to operate against the public interest, the Secretary of State can make orders or obtain undertakings from the parties to remedy the adverse effects identified in the MMC's report. In lieu of a reference to the MMC, however, the Secretary of State may - if the DGFT so recommends - accept undertakings from the parties to remedy any adverse effects that the DGFT has identified. In 1997, such undertakings were accepted in only one case.

72. One or more parties to a merger can ask the DGFT for confidential guidance on the chances of its being referred to the MMC by the Secretary of State once it is in the public domain. In 1997, the DGFT considered 64 such requests, compared with 128 in 1996, a decrease of 50%. The DGFT advised on 41 requests, a decrease of 45% on the 1996 total of 74; the remaining 23 requests were found not to qualify or were abandoned. In addition, in 63 cases where mergers were possible, OFT staff gave the parties informal advice about qualification for investigation and the potential for reference.

73. There is a statutory procedure to allow the parties to a merger to prenotify the OFT of its details. In such cases, the Secretary of State must announce a decision on whether it is to be referred to the MMC within 20 working days of the receipt by the OFT of the completed prenotification form (or 35 working days if the DGFT exercises his power to extend the timetable); otherwise the power to make a reference is lost.

74. During 1997, the OFT considered 51 proposed mergers under this procedure, against 30 in 1996. Of these, 46 were completed within the statutory timescale, four were found not to qualify and the remaining one was abandoned. In 19 cases (41%) a decision was reached within the initial consideration period of 20 working days.

75. Unless a proposed merger has been prenotified under the statutory procedures there are no statutory time limits on reference to the MMC. For completed mergers, the Secretary of State loses the power to make a reference four months from the time the completion becomes public.

76. The OFT considered 218 proposed or completed public mergers, compared with 280 in 1996, a decrease of 23%. The DGFT advised on 142 cases, a fall of 19% on the 1996 total of 175. The remaining 76 cases were either found not to qualify for investigation or were abandoned before a decision was taken.

77. These figures exclude newspaper mergers, which are examined by the Department of Trade and Industry (DTI) under sections 57-62 of the Fair Trading Act. Mergers of water enterprises (where each enterprise has gross assets of at least £30 million) are also considered separately, under the provisions of the Water Industry Act 1991, but no references were made under this head in 1997.

78. The total value of the assets acquired or bid for in the qualifying merger situations examined by the OFT in 1997 was £106 billion (£154 billion in 1996). Horizontal mergers (where the largest and

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second-largest activities of the merging firms overlap) accounted for 95% of the total number of qualifying cases examined in 1997 (93% in 1996).

References to the MMC

79. The Secretary of State made 10 merger references to the MMC under the terms of the Fair Trading Act in 1997, one fewer than in 1996. Of these, three references were made against the advice of the DGFT (in two cases he had advised that the merger be cleared and in the third had recommended negotiating undertakings in lieu of reference). With the exception of PacifiCorp/The Energy Group plc, all of the references were made on competition grounds. Two of the references were subsequently laid aside.

80. In an unprecedented move, the then Minister for Corporate and Consumer Affairs announced on 27 January that he had decided, *in principle* and in line with the recommendation of the DGFT, to refer the proposed acquisition by the Stagecoach Group of the Scotrail train operating franchise. But, under the bidding procedures that had been adopted for railway privatisation, the Director of Rail Passenger Franchising offered the Scotrail franchise to National Express instead, and Stagecoach dropped out of the picture. The National Express bid was, however, referred to the MMC on 22 May.

81. The references were:

- | | |
|-------------|--|
| 11 February | Littlewoods Organisation plc/Freemans plc
<i>reference subsequently laid aside</i> |
| 13 March | Technicolor Ltd/Metrocolor London Ltd |
| 7 April | London Clubs International plc/Capital Corporation plc |
| 21 April | Littlewoods Organisation plc/Freemans plc |
| 22 May | National Express Group plc/Central Trains Ltd |
| 22 May | National Express Group plc/ Scotrail Ltd |
| 2 June | Priory Hospitals Group Ltd/Charter Medical of London Ltd
<i>reference subsequently laid aside</i> |
| 31 July | Capital Radio plc/Virgin Radio |
| 1 August | PacifiCorp/The Energy Group plc |
| 2 December | Fresenius AG/Caremark Ltd |

Reports by the MMC

82. Ten merger reports were published in 1997:
- 21 January General Utilities plc and SAUR Water Services plc/Mid Kent Holdings plc
 - 24 January First Bus plc/SB Holdings Ltd
 - 18 March Cowie Group plc/British Bus Group Ltd
 - 13 June Société Centrale d'Investissement et Associés/Klaus J Jacobs Holdings AG
 - 27 June Bass Brewers Ltd/Carlsberg-Tetley plc/Carlsberg AS
 - 24 July Technicolor Ltd/Metrocolor London Ltd
 - 5 August London Clubs International plc/Capital Corporation plc
 - 18 November Littlewoods Organisation plc/Freemans plc
 - 19 November Peninsular and Oriental Steam Navigation Co/Stena Line Ltd
 - 19 December PacifiCorp/The Energy Group plc

83. In six cases, the MMC concluded that the merger was against the public interest, and its findings are summarised in the following paragraphs. In the remaining four cases, however, it concluded that the merger did not operate against the public interest and would not be expected to do so. These cases were: Cowie Group plc/British Bus Group Ltd; Société Centrale d'Investissement et Associés/Klaus J Jacobs Holdings AG; Technicolor Ltd/Metrocolor London Ltd; and PacifiCorp/The Energy Group plc.

84. **General Utilities plc and SAUR Water Services plc/Mid Kent Holdings plc** - The MMC considered that the merger would prejudice the ability of the Director General of Water Services to make comparisons between different water enterprises and so reduce the prospects for competition in the region. The efficiency gains achievable through the proposed arrangements were small, and so price cuts would not be sustainable in the long term, whereas the damage to the comparator regime arising from the loss of an independent water enterprise would be permanent. The MMC therefore recommended that the merger be prohibited. The Secretary of State, in accordance with advice from the DGFT, accepted the MMC's findings and asked him to obtain appropriate undertakings.

85. **FirstBus plc/SB Holdings Ltd** - The MMC cited three main reasons for its conclusion that the merger was against the public interest: first, there was a loss of actual and potential competition between FirstBus and SB Holdings (SBH); secondly, it would deter competition with SBH from Stagecoach and Cowie; and thirdly, it would deter entry to the relevant market by others. The MMC did not think that there were likely to be any benefits to the public interest that would offset the detriments of the merger (increased fares and subsidies and lower frequency of service). It recommended that FirstBus should be required to divest the enlarged Midland Bluebird, as defined, together with one of SBH's central Glasgow depots, together with a spread of routes representing 20% of SBH's turnover and a bus fleet appropriate to service those routes. The divestment should be made to a single buyer approved by the Secretary of State. Should the recommended divestment prove to be impractical, the MMC recommended that FirstBus be

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required to divest the whole of SBH. The DGFT advised acceptance of the MMC's recommendations with a slight simplification, namely, that the routes to be divested should be those mainly operated from the Glasgow depot concerned. The Secretary of State accepted this advice. On 31 July, she confirmed that the DGFT had been asked to review and give advice on the decision to accept the MMC's recommendation in the light of changes that had subsequently taken place in the bus market in Glasgow. That matter was still under consideration at the year's end.

86. **Bass Brewers Ltd/Carlsberg-Tetley plc/Carlsberg AS** - The MMC concluded that, in the longer term, the proposed merger of Bass Brewers and Carlsberg-Tetley could be expected to operate against the public interest by leading to higher wholesale and on-trade retail prices of beer than would otherwise have been the case. In order to counter these anticipated effects the majority of the MMC inquiry group recommended a package of measures involving a reduction in the number of Bass's tied public houses to a maximum of 2,500. One member of the group, however, was not persuaded that these remedies would be sufficient to alleviate the adverse effects and favoured prohibition of the merger. The Secretary of State accepted the MMC's general conclusion that the merger might be expected to have an adverse effect on the public interest and, in accordance with advice from the DGFT, she also endorsed the minority recommendation that it should be prohibited. The DGFT was asked to obtain an undertaking from Bass that it would divest its existing 50% interest in Carlsberg-Tetley, as well as undertakings from all the parties that they would not proceed with the merger of their brewing interests.

87. **London Clubs International plc/Capital Corporation plc** - The MMC concluded that the merger would mean the loss of competition between the two major operators of exclusive casinos in London. This, in turn, would mean less choice and lower standards for customers - with less prospect of innovation. The MMC could see no public interest benefit to set against these adverse effects and recommended that the merger should be prohibited. The Secretary of State, in accordance with advice from the DGFT, accepted the MMC's findings and recommendation and asked him to obtain appropriate undertakings.

88. **Littlewoods Organisation plc/Freemans plc** - The MMC concluded that the loss of competition that would result from the merger of the two mail-order catalogue companies would, over time, lead to less choice, higher prices and less efficiency. The MMC could see no behavioural remedy that would adequately address these effects and recommended that the merger be prohibited. The Secretary of State, in accordance with the DGFT's advice, accepted the MMC's findings and recommendation. She asked the DGFT to obtain appropriate undertakings.

89. **Peninsular and Oriental Steam Navigation Co/Stena Line Ltd** - The MMC concluded that the creation of a joint-venture company, which saw a merger of P&O's and Stena's ferry operations on the routes between Kent and Northern France and Belgium, could be expected to operate against the public interest - but the adverse effects would be limited to the passenger market and would not be felt until 1999, after the existing duty-free concessions had been abolished. No adverse effects were identified in the freight market. The MMC considered that, taking account of the loss of revenue that would be brought about by the loss of the duty-free facility, smaller ferry operators would be unable to compete effectively with a company as powerful as the new joint venture. They would quit the market, leaving a duopoly - with only the operator of services using the Channel Tunnel to challenge P&O/Stena. In this situation, there would be price following, resulting in higher ferry prices than necessary to maintain a sustainable alternative to the Tunnel.

90. As to how the situation might be remedied, the majority of the MMC inquiry group recommended a package of behavioural undertakings which might ensure greater competition but would

also allow the benefits of the new operator to be passed to customers. One member of the inquiry group, however, recommended prohibition of the merger. The DGFT advised the Secretary of State that he supported the MMC's general findings on the merger's likely effects and that he favoured the minority view that it should be prohibited. Nevertheless, while accepting the public-interest findings, the Secretary of State decided that the most appropriate remedy would be a cap on passenger fares - which would become effective after 1999 - and the DGFT was asked to obtain suitable undertakings from the parties.

Undertakings in lieu of reference

91. When it appears that a reference to the MMC might otherwise be necessary, the Secretary of State may, on the advice of the DGFT, accept undertakings to remedy the adverse effects in lieu of reference.

92. In 1997 there was only one case in which such undertakings were given (bringing to 18 the total of such cases since this procedure was introduced in 1990):

20 October British United Provident Association Ltd/Goldsborough Healthcare plc

93. **British United Provident Association Ltd/Goldsborough Healthcare plc** - In accordance with the DGFT's recommendation, the Secretary of State accepted undertakings from BUPA that, if successful in acquiring Goldsborough, it would - by 31 March 1998 - sell all its interest in Independent British Healthcare plc (IBH). The undertakings were designed to remedy concerns about the level of concentration in private medical hospitals in certain local or regional markets which might make it difficult for other private medical insurance companies to compete with BUPA in those markets. On 4 November, BUPA completed the sale of all its interest in IBH to Community Hospitals Group plc.

Action on other mergers

94. **British Airways plc/American Airlines Inc** - The proposed alliance between the two airlines - first announced in June 1996 - has been under consideration by a number of competition authorities. In the United Kingdom, it has been examined both under the mergers provisions of the Fair Trading Act and, uniquely, under regulations that were introduced in 1996 and which provide for the consideration of agreements on air services between a Member State of the European Community and countries outside the Community (EC Competition Law (Articles 88 and 89) Enforcement Regulations). While agreements of this type affecting almost all other goods and services fall to be considered by the European Commission under Article 85 of the Treaty of Rome, there are special provisions for air services. The Commission is considering the alliance under Article 89 (transatlantic services), Regulation 3975/87 (intra-EC services) and Article 85 (related intra-EC services such as ground handling). In the United States, the alliance also requires anti-trust immunity. Consequently the consideration of this case has been particularly complex.

95. Following the publication of the UK's draft competition analysis in December 1996, the OFT considered a number of representations from interested third parties both on the analysis itself and on the proposals for remedying competition concerns first announced by the then Secretary of State on 6 December 1996. Throughout 1997, officials liaised closely with EC and US authorities and will continue to do so until a final decision is taken. In due course, the DGFT will offer further advice to the Secretary of State on whether suitable undertakings could be given to remove competition concerns sufficiently to

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enable an exemption to be granted under Article 85(3) from the prohibition of anti-competitive agreements under Article 85(1) and in lieu of a reference of the merger to the MMC.

96. **Granada Group plc/Forte plc** - On 6 March, Granada sold to Investcorp its Welcome Break business, including 21 motorway service areas. The sale of the business was required by undertakings given to the Secretary of State in July 1996 following Granada's purchase of Forte. In accordance with the terms of the undertakings the DGFT had to approve the purchaser before the sale went ahead.

97. **Stagecoach Holdings plc/Cambus Holdings Ltd** - On 2 May, Stagecoach sold MK Metro Ltd and the Huntingdon bus operations of its United Counties subsidiary to Premier Buses Ltd. The sale, to a buyer approved by the DGFT, was required by the undertakings given to the Secretary of State in June 1996 following the acquisition of Cambus Holdings by Stagecoach.

Action on earlier reports

98. **GEHE AG/Lloyds Chemists plc** - Following the publication of a report by the MMC in July 1996, GEHE gave undertakings that - if it succeeded in acquiring Lloyds - it would divest those Lloyds' pharmaceutical wholesaling businesses that the report had identified as serving the areas where competition would be most seriously reduced. GEHE completed the acquisition of Lloyds on 20 January 1996. The seven wholesaling businesses identified by the MMC were sold by GEHE on 11 April and 30 May.

99. **National Express Group plc/Midland Main Line Ltd** - On 16 December, in accordance with recommendations in an MMC report that had been published in December 1996, undertakings were accepted from the National Express Group (NEG) on the running of coach services between central London and Sheffield, Chesterfield, Derby, Nottingham, and Leicester. In respect of these services, NEG undertook: not to increase fares above the increase in the Retail Price Index; not to reduce the levels of service; to provide a quality of service at least equal to the standards on other parts of the network; and to provide the DGFT with such information as he might require to monitor the undertakings.

100. **Nutricia Holdings Ltd/Valio International UK Ltd** - In April, in line with recommendations that had been made by the MMC in its report of December 1995, undertakings were obtained from Nutricia that aimed to control the prices of certain gluten-free and low-protein products.

101. **Scottish Pride Holdings plc/Robert Wiseman Dairies plc** - In February, following the publication of the MMC's report in December 1996, Wiseman gave undertakings that it would not acquire any other supplier of processed milk in Scotland without the prior written consent of the DGFT, that it would provide the OFT with information on its prices to seven categories of customer in Scotland, and that it would also provide further information, in particular, its customer lists.

102. **Service Corporation International Ltd/Plantsbrook Group plc** - Following the publication of a report by the MMC in May 1995, Service Corporation International (SCI) gave undertakings that it would, among other things, sell individual funeral businesses in 10 local areas in the South East and would not acquire any further such businesses in those areas without the prior approval of the DGFT. The sale of the businesses concerned, to The Co-operative Wholesale Society Ltd (CWS), was completed on 4 April 1997. On 3 November, the Secretary of State varied the terms of the undertakings in order to allow SCI to acquire Birkbeck Securities Ltd on condition that, within six months, it should dispose of the funeral business of a Birkbeck subsidiary, H Copelands & Son Ltd, which was located in one of the areas

where SCI had previously been required to make a divestment. SCI sold the business to CWS on 5 November.

103. **Stagecoach Holdings plc/Ayrshire Bus Owners A1 Service Ltd** - On 7 April, Stagecoach gave undertakings restricting its ability to raise fares or use fares and frequency of service in a predatory way against competitors. It also undertook to supply certain financial information to the OFT. The MMC's report on this case had been published in November 1995, but action to implement its recommendations was suspended pending the result of judicial review proceedings brought by Stagecoach against the Secretary of State and the MMC. These were concluded in June 1996 when the Court of Session in Edinburgh dismissed Stagecoach's petition.

Newspaper transfers and mergers

104. The transfer of the ownership of newspapers can raise issues that touch on the accurate presentation of news and the free expression of opinion. For this reason, newspaper transfers and mergers are treated differently from other company mergers. These procedures are administered by the Secretary of State. They were first introduced under the Monopolies and Mergers Act 1965 and retained in the Fair Trading Act 1973.

105. In some circumstances, newspapers cannot change hands without the consent of the Secretary of State. Unless the proposed transfer meets particular conditions, that consent cannot be given until the MMC has reported on the matter. When a newspaper merger is referred, additional members may be appointed to the inquiry group, drawn from a specialist panel maintained for that purpose.

Reports by the MMC

106. One report was published in 1997:

21 October **Mirror Group plc/Midland Independent Newspapers plc**

107. **Mirror Group plc/Midland Independent Newspapers plc** - The proposed transfer of the 38 regional or local newspapers and associated plant and premises owned by Midland Independent Newspapers plc (MIN) to Mirror Group plc was referred to the MMC by the Secretary of State on 10 July.

108. The MMC concluded that the proposed transfer would not operate against the public interest. In its report, it noted that, if the newspapers published by the Mirror Group in Scotland and Northern Ireland were taken into account, the transfer would make the group the largest publisher of regional or local newspapers in the United Kingdom with a 13% share of the total. Nevertheless, it was satisfied that these newspaper interests were sufficiently widely dispersed not to represent a serious risk to diversity of opinion in the country as a whole.

109. The Mirror Group owned no regional or local newspapers in the area of the Midlands served by MIN newspapers. The MMC examined the effect of bringing the Mirror Group's national daily newspapers under common ownership with MIN's regional and local titles but concluded that the transfer would not adversely affect competition for either readers or advertisers, and diversity of opinion would continue to be served by a number of other publishers in the region. While noting that the transfer could

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result in more competitive cover prices or advertising rates, the MMC considered that they did not pose a threat to the existence of effective competition from other publishers.

110 No evidence was received that cast doubt on the editorial independence of the range of newspapers already controlled by the Mirror Group, and the MMC did not believe that the transfer would threaten the accurate presentation of news or free expression of opinion. Nor did it consider that there would be adverse consequences for efficiency and employment. While it was possible that the transfer could significantly raise the gearing of the enlarged group, the MMC was satisfied that this was not a cause for concern when the financial arrangements the Mirror Group had put in place were taken into account.

111 The report was published on 21 October, when Nigel Griffiths, Minister for Competition and Consumer Affairs, announced that consent had been given to the transfer of the MIN titles to the Mirror Group, together with their associated assets, plant and premises.

Transfers not referred to the MMC

112 The Secretary of State gave consent to the following transactions without requiring the MMC to report:

- | | |
|------------|---|
| 23 May | Johnston Press plc/ <i>Bridlington Gazette & Herald, Driffield Post, and Pocklington Post</i> |
| 11 August | Independent Newspapers Ltd/Fletcher Newspapers Ltd |
| 14 October | Bath Newspapers Ltd/Newsquest (Wessex) Ltd |
| 6 November | Johnston Press plc/North Derbyshire Newspapers Ltd |

*Annex***Statistics on Merger Activity**

1. The statistics shown in tables T-4 broadly relate only to those mergers that the OFT examined in the context of the Director General's responsibilities under the Fair Trading Act 1973. They do not represent an estimate of total merger activity in the United Kingdom. The following points should be borne in mind:

the figures cover merger proposals as well as completed mergers and, where there is more than one proposal for a given target, each is counted separately;

the figures do not include proposals considered for investigation under the newspaper mergers provisions of the Fair Trading Act (which are considered separately by the DTI);

the figures include requests for confidential guidance as well as publicly announced mergers - although confidential guidance cases that subsequently become public are not included twice;

because some time may elapse between the opening of a file on a case and a decision by the Secretary of State on whether to make a reference to the MMC, the mergers that are referred in any particular year may not necessarily correlate to the cases first recorded in that year.

A better indicator of overall merger activity in the United Kingdom is provided by statistics collected by the Office for National Statistics, and published in *First Release: Acquisitions and Mergers involving UK companies*. These figures are shown in Table 1.

2. To qualify for reference to the MMC under the terms of the Act, a merger must either involve the acquisition of gross (fixed and current) assets of more than £70 million or lead to the creation or augmentation of a share of supply of 25% or more in a particular market.

Merger activity considered in 1997

3. In 1997, the OFT considered 396 mergers and merger proposals under the terms of the Fair Trading Act (see Table 2). This represented a fall of 26% on the total for 1996, when 533 cases were considered. There was also a large drop in the number of cases that qualified for reference to the MMC - from 274 in 1996 to 229 in 1997 (Table 1). The Secretary of State made 10 references in total, three of which were against the advice that had been offered by the Director General. By contrast, in 1996, when there were 14 references, the Director General's had also recommended in favour of reference in a 15th case.

4. There were 64 confidential guidance cases in 1997, exactly half the total of 128 cases recorded in 1996. In addition there were 51 pre-notified cases, compared with 30 the year before.

5. The value of assets bid for in all qualifying cases decreased by 31% (Table 3). (In order to give some indication of the real, inflation-adjusted value of assets bid for, the current asset values shown have

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been deflated by the Gross Domestic Product - GDP - deflator). The average assets bid for fell from £561 million in 1996 to £462 million in 1997.

Rounding of figures

6. In the tables, asset values have generally been rounded to the nearest £m, and percentages to one decimal place. Consequently there may be some slight discrepancy between the sum of the individual entries and the totals shown.

Table 1. Merger activity: 1995-97

<i>Year</i>	<i>Proposals qualifying under the Fair Trading Act 1973: all cases</i>		<i>First Release¹</i>	<i>Fair Trading Act cases as percentage of First Release cases</i>
	<i>Numbers</i>	<i>Assets bid for: £m</i>	<i>Numbers of cases</i>	
1995	275	178,096	634	43.3
1996	274	153,623	663	41.3
1997	229	105,738	640	36.0

Source: Office of Fair Trading

1. *First Release* figures collected and published by the Office for National Statistics.

Table 2. Supplementary data on numbers of mergers examined and reference to the MMC: 1995 -97

Year	Total numbers of cases examined	Found not to qualify, proposals abandoned, and informal guidance cases	Qualifying cases		Confidential guidance cases	Pre-notified cases	Qualifying cases less confidential guidance cases	References to the MMC			Total references as % of:		
			Nos	% change				Recommended by Director General	Recommended but not made	Made but not recommended	Total references	Qualifying cases	Qualifying cases less confidential guidance cases
1995	473	198	275	+19.0	107	12	203	11	2	0	9	3.3	4.4
1996	533	259	274	0.0	128	30	146	15	1	0	14	5.1	9.6
1997	396	167	229	-16.5	64	51	165	8	1.00	3	10	4.3	6.0

Source: Office of Fair Trading

Table 3. Value of assets bid for in merger proposals qualifying under the Fair Trading Act 1973 at current and at constant prices: 1995-97

Year	All cases: assets bid for			
	at current prices		at 1990 prices ¹	
	£m	% change	£m	% change
1995	178,096	+9.8	149,912	+7.9
1996	153,623	-14.0	125,509	-16.3
1997	105,738	-31.0	84,455 ²	-32.7

Source: Office of Fair Trading

1. Deflated by GDP at factor cost. The total value of assets bid for in 1990 was £100,043 million.
2. Estimate used for GDP deflator based on the first three quarterly statistics only (not full year)

Table 4. References to the MMC under the Fair Trading Act 1973: 1997

Findings of the MMC	Qualification criteria under the Fair Trading Act 1973			
	Share of supply of at least 25%	Assets in excess of £70 million	Meeting both criteria	Totals
Not against the public interest	2	1	0	3
Against the public interest	1	0	2	3
Proposal abandoned	2	0	1	3
Decision awaited	1	0	0	1
<i>Totals</i>	6	1	3	10
<i>as percentage of all qualifying mergers in this category</i>	5.4	1.0	11.1	4.3

Source: Office of Fair Trading