UNITED KINGDOM

(1999)

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I. Introduction

1. The major development in competition law and policy in the United Kingdom in 1999 was the introduction of new law and procedures under the Competition Act 1998. Although the law was not due to come fully into effect until 1 March 2000, transitional provisions came into effect during 1999. The new legislation gives the Director General of Fair Trading greater powers of investigation, enforcement, and sanction to deal with anti-competitive practices. Its introduction also necessitated extensive reorganisation and an increase in the staffing of the Competition Policy Division of the Office of Fair Trading to deal with the new procedures. Details of the changes in the legislation are in Section II of this report.

II. Changes to competition laws and policies proposed or adopted

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

2. The Competition Act 1998 (CA98) received Royal Assent on 9 November 1998 (the enactment date). The new legislation prohibits both anti-competitive agreements (the Chapter I prohibition) and the abuse of a dominant position (the Chapter II prohibition) and gives the Director General of Fair Trading (DGFT) improved powers of investigation and enforcement, including the ability to take interim measures before he has completed an investigation and to impose financial penalties. The two prohibitions came into effect on 1 March 2000 (the starting date). The CA98 also considerably strengthens the DGFT's powers of investigation under the Fair Trading Act 1973.

3. The prohibitions mirror Articles 81 and 82 of the Treaty of Rome, so aligning United Kingdom domestic competition law with European Community (EC) competition legislation. Section 60 of the CA98 sets out 'governing principles', designed to ensure that the UK prohibitions are enforced consistently with the EC prohibitions.

4. An important feature of the CA98 is that the various sectoral regulators have concurrent powers with the DGFT in those utility and service sectors which fall under their jurisdiction. The relevant sector regulators are the Directors General of the Gas and Electricity Markets, Telecommunications, Water Services, Electricity Supply for Northern Ireland, and Gas Supply for Northern Ireland; and the Rail Regulator.

5. In the transitional period from enactment to the starting date the CA98 removed the obligation to notify restrictive agreements under the Restrictive Trade Practices Act 1976, apart from those containing price-fixing restrictions and those which are variations to registrable agreements made before the enactment date. At the starting date, the following pieces of legislation are repealed: the Restrictive Trade Practices Acts of 1976 and 1977; the Restrictive Practices Court Act 1976; the Resale Prices Act 1976; and sections 2-10 of the Competition Act 1980.

2. Guidelines

6. The DGFT has a statutory obligation to publish general advice and information about the application and enforcement of the Chapter I and Chapter II prohibitions. Following a formal consultation process, nine guidelines were issued in March and a further three in September. For a full list of these and of guidance in preparation, see Appendix II.

7. A series of guides aimed at small and medium-sized enterprises also commenced publication (see Appendix II) and the OFT sent out leaflets explaining the Act to around 1.6 million traders, inserting a

further million copies in various trade and business magazines. A video, *Compliance Matters*, attracted over 1 500 requests by the end of the year. A dedicated enquiry line received around 2 500 calls during the year, while by the year-end the CA98 website was receiving around 1 000 visits per week.

3. Proposals for new legislation

8. In June the Government published its Financial Services and Markets Bill. Under the provisions of the Bill, the DGFT would continue to be responsible for the competition scrutiny of the rules of the Financial Services Authority, investment exchanges and clearing houses, as he is currently under the Financial Services Act 1986. In addition, he would also be responsible for the competition scrutiny of the rules of the Competent Authority for Listing. Such scrutiny would be an advisory function, as the rules of these bodies are excluded from the application of the Chapter I prohibition of the CA98.

III. Enforcement of competition laws and policies

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

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

9. Until March 2000, the Restrictive Trade Practices Acts of 1976 and 1977 provided the means to evaluate the impact on competition of certain commercial agreements and to prevent the operation of arrangements that are significantly anti-competitive. It is unlawful to give effect to restrictions in a registrable agreement that has not been furnished for registration. The CA98 provided transitional arrangements to allow businesses a reasonable time to modify their agreements and practices in order to comply with the new regime under the Act.

10. During this interim period, from the enactment date until the starting date, the Restrictive Trade Practices Act 1976 (the RTPA) operates in a modified form to assist this process. Agreements made during this period are no longer required to be furnished except where they involve price-fixing. Such agreements may no longer benefit from a direction by the Secretary of State under section 21(2) of the RTPA, on the advice of the DGFT, that they do not contain restrictions significant enough to warrant examination by the Restrictive Practices Court. The DGFT's duty to refer other significant cases to the Court is replaced by a discretion.

Agreements submitted for registration before November 1998

11. For agreements made prior to the enactment date and furnished within the permitted timescale, the full provisions of the RTPA continued to apply. In these cases, the DGFT was still required to appraise the relevant restrictions in all notifiable agreements and decide, subject to the exceptions set out in the RTPA, whether an agreement should be referred to the Court. During 1999 a further 271 agreements were added to the Register, bringing the total number of agreements since it was established in 1956 to 15,153. Many agreements proved not to be registrable and in practice, most agreements placed on the Register do not contain restrictions significant enough to warrant examination by the Court.

12. In 1999 the Secretary of State gave directions under section 21(2) on 260 agreements, including common form agreements. All agreements subject to a direction under section 21(2) will benefit from an exclusion from the provisions of Chapter I of the CA98 for their duration. In a number of other cases, the

DGFT exercised his discretion, under section 21(1) of the RTPA, not to refer to the court agreements which had ended or from which all restrictions had been removed.

Agreements submitted for registration after November 1998

13. During the interim period, the only agreements which remain notifiable are registrable agreements in which one of the relevant restrictions or information provisions relates to price - that is, price-fixing agreements within the meaning of section 27A(3) of the RTPA. For this reason only 179 agreements were furnished during 1999 for consideration under the interim provisions (compared with 1,119 in 1998) and 99 were found to be registrable. Such agreements will not benefit from the Chapter 1 exclusion in the same way as those agreements submitted prior to 8 November 1998 which are subject to a section 21(2) direction.

Investigations

14. The Cartels Task Force continued to receive and investigate complaints about secret cartels throughout 1999. A total of 47 new investigations were started (compared with 52 in 1998) and in seven cases (the same as in 1998) notices were issued under section 36 of the RTPA requiring the provision of information on agreements. In a number of other instances informal enquiry letters were sent out.

15. Several of the cases investigated raised strong suspicions of the existence of a cartel, but the Task Force could not prove it. Under section 36, the DGFT must have 'reasonable cause to *believe*' that individuals may be party to a registrable but unregistered 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 an exacting test. This ruling has caused serious difficulties in the past. The change of threshold under the CA98, which provides that a formal investigation can be initiated when the DGFT has 'reasonable grounds *for suspecting'* that a cartel is in operation, should prove to be a significant step forward in the detection of secret agreements.

16. When the DGFT has reason to believe that an agreement which is unlawful under the RTPA has been deliberately concealed, he will almost invariably refer the matter to the Court under section 35 of the RTPA. The Court may then make orders requiring the parties not to enforce restrictions in the 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 RTPA, requiring the parties to registered agreements not to make any similar restrictive agreements. Breaches of orders, or of undertakings given to the court in lieu of orders, constitute contempt of court and may lead to fines and, for directors or employees, imprisonment for up to two years.

Court cases concluded

17. **Animal food supplement** – On 29 November a price-fixing agreement which could have had the effect of increasing the price of animal feed, resulting in higher meat prices for UK consumers, was struck down by the Restrictive Practices Court . The parties had agreed a minimum price for the animal foodstuff lysine. The court accepted an undertaking from Archer Daniels Midland Ingredients Ltd and made an order against Cheil Jedang Corporation, a South Korean company with a branch office in London, not to give effect to the agreement or to enter into any similar agreements in the future.

18. **Bus services in Hull** – On 29 July, the Court struck down a secret market-sharing and price-fixing agreement between school bus operators in Kingston upon Hull. The OFT started proceedings

against 12 companies in November 1998. The Court heard that the bus operators had met secretly and agreed on minimum prices at which they would tender to supply school bus services and on the routes for which each operator would tender. Eight of the businesses involved gave undertakings not to give effect to any of the agreements to which they were already party, or to enter into similar agreements in the future. The Court made similar orders against two other bus operators. Proceedings against a further two operators were discontinued as evidence of their participation in the agreements was inconclusive.

19. **Bus services in Staffordshire** – On 29 November the Court struck down a price-fixing and market-sharing agreement between three coach companies in Staffordshire. The three operators entered into agreements with each other in 1996 and again in1997 whereby they agreed not to bid for certain home-to-school transport contracts, or to bid only at agreed levels when those contracts were put out to tender by Staffordshire County Council. The agreements came to light after an investigation by the OFT's Cartels Task Force acting on a complaint from Staffordshire County Council. The Court accepted undertakings from one party and made an order against the other two not to give effect to any agreement, enter into similar agreements, or enforce any other registrable agreements that had not been properly submitted to the OFT.

20. **Scottish electrical retailers** - In March 1999 proceedings were initiated against four electrical retailers carrying on business in the Glasgow area. They were involved in a series of agreements which took the form of joint television and radio advertisements featuring electrical goods which were advertised for sale or rental by each of the firms at exactly the same price. On 30 November, in an undefended hearing, the Restrictive Practices Court in Scotland struck down the agreements as being contrary to the public interest, and made orders against the firms not to give effect to the agreements or to any similar agreements or to enter into any such agreements in the future.

21. **Football Association Premier League –** In the first half of the year the main hearing took place in the proceedings brought by the OFT against the Premier League, the BBC and BSkyB under section 1(3) of the 1976 Act, relating to the sale of football television rights. The case concerned restrictions in the Premier League rulebook and in the agreements made to televise football matches. The effect of the most significant of the restrictions is that only 60 of the 380 Premier League matches played annually are televised live. Individual football clubs are prevented from selling the rights to other currently non-televised matches. Other restrictions relate to playing in matches or competitions not specifically approved by the Premier League.

22. The hearing took 47 days, from 12 January to 5 May. Judgement was handed down in a short hearing on 28 July. The Court found that the main restrictions relating to the collective and exclusive selling of television rights were not against the public interest, but that three of the other restrictions were. Two of the restrictions found to be against the public interest were the matching rights clauses in the Premier League television contracts with the BBC for highlights and BSkyB for live coverage of football matches. These clauses mean that when the contracts are renewed the incumbents, i.e. the BBC and BSkyB respectively, have the right to match any bid that might be higher than theirs and so retain the contract. The third restriction found to be against the public interest related to the playing of matches outside England and Wales, the significance of which the Court considered could be important in the development of new competitions.

23. In the resumed judgement hearing on 15 October, the Court formally declared that the three restrictions outlined above were contrary to the public interest. No party sought leave to appeal, and each will bear its own costs.

Court proceedings

24. There were no court cases in progress at the end of the year.

Cases which did not come to court

25. **Northern Ireland slaughterhouses** – On 17 August the DGFT announced that seven members of the Northern Ireland Meat Exporters Association had given assurances that they would not fix the levy for the removal and disposal of specified bovine offal from slaughtered cattle.

26. **Volvo Car UK Ltd (Volvo)** – On 9 July the DGFT announced that Volvo had signed assurances that it would not support price-fixing cartels operated by its dealers. Evidence revealed that agreements were made by dealers to restrict the levels of discount available to private buyers and fleet customers. Further evidence indicated that Volvo ensured that dealers would comply with the set levels of discount by penalising them if they did not.

27. **Manufacturers of foam rubber** – On 17 December the DGFT announced that an agreement had been unearthed whereby the three main manufacturers of foam rubber exchanged information with each other regarding their pricing intentions. Vitafoam Ltd, Carpenter plc and Recticel Ltd met at an industry social event where various assurances were sought that price rises of 8 per cent for block foam and 4 per cent for reconstituted foam that Vitafoam Ltd was about to announce would be matched by similar announcements from Carpenter and Recticel. The agreement was, however, ended by the parties and in view of the imminent repeal of the RTPA no further action was taken.

ii) Resale Price Maintenance (Resale Prices Act 1976)

28. Under the Resale Prices Act 1976 (RPA) 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. The RPA is repealed on 1 March 2000.

29. In 1999 there were 49 complaints alleging contravention of the RPA, compared with 39 in 1998. In two cases the DGFT obtained written assurances from suppliers that they would not seek to impose minimum prices at which dealers could resell their goods.

30. **Over-the-counter medicines review** - Proceedings continued before the Restrictive Practices Court in relation to over-the-counter medicines and related goods ('medicaments'), as mentioned in the UK's 1998 report. In March 1999 the DGFT presented evidence to the court that there had been a material change in circumstances in the medicaments market since 1970.

31. He argued that there had been major changes in consumer behaviour, in the nature of chemists' business, and in the structure and operation of the retail market, while manufacturers had not enforced resale price maintenance on branded prescription-only medicines for more than 20 years. The court granted the DGFT leave to apply for discharge of the Order exempting medicaments and other related goods from the statutory prohibition on resale price maintenance under the RPA.

32. The Proprietary Articles Trade Association and the Proprietary Association of Great Britain oppose the application. They must now show that they fall under one or more of the 'gateways' set out in section 14 of the RPA, and then demonstrate that the detriment to the public of keeping resale price maintenance is less than the detriment caused by removing it in respect of those goods.

33. A further court hearing in November/December considered questions concerning the mechanisms for the collection of evidence in preparation for the trial. A number of procedural matters were finalised, including a timetable for proceedings leading up to a full hearing in October 2000. (The court proceedings are not affected by the repeal of the RPA.)

iii) Anti-competitive practices (Competition Act 1980)

34. Anti-competitive practices by individual firms with a market share of 25 per cent or more can be investigated under the provisions of the Competition Act 1980, either informally or by reference to the Competition Commission (CC), formerly the Monopolies and Mergers Commission (MMC). Alternatively, the Director General can seek to remedy the anti-competitive effects of the behaviour he is concerned about by accepting undertakings from a company in lieu of a reference. In 1999 there were no new references, and undertakings were accepted in lieu of a reference in one case.

35. **Aberdeen Journals Ltd** – The DGFT received a complaint from the *Aberdeen & District Independent* newspaper that Aberdeen Journals was breaking informal assurances given to the DGFT on 15 September 1997. The assurances were intended to stop the company from making it a condition, when offering free or cut price advertising in its publications, that advertisers agree not to advertise in other publications. Aberdeen Journals offered formal undertakings that it would abandon its course of conduct in lieu of a reference to the Competition Commission.

Reports by the MMC/CC

36. No reports were published in 1999.

iv) Monopoly situations (Fair Trading Act 1973)

37. 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.

38. The DGFT carries out this function in two ways. First, he monitors the economic performance of industries to identify areas where there may be monopolies and abuses of monopoly situations. He pays particular attention to the economic importance of firms with large market shares, taking account of the degree of import penetration and of information on price levels and movements, profits and market behaviour. Secondly, he takes note of complaints and other representations he receives from business and the public.

39. Where a monopoly situation is found, the DGFT can refer the case to the CC for investigation but there is no presumption that he must always do so. When he does, the CC must determine whether a monopoly situation does exist and, if so, whether it operates, or may be expected to operate, against the public interest. Alternatively, the DGFT may accept undertakings in lieu of reference to remedy competition problems.

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References to the CC

40. In 1999 the DGFT made two monopoly references:

17 March The supply of new motor cars
8 April The grocery retail sector.

Report by the MMC

41. One monopoly report, *The supply in Great Britain of raw cows' milk*, was published, on 6 July 1999. The then MMC found that Milk Marque had exercised its power as a scale monopolist in a way that was operating against the public interest. The Secretary of State accepted the MMC's conclusions but not a recommendation that Milk Marque be broken up into three or more parts. He asked the DGFT to consult within the dairy industry to seek consensus on a long-term reform of the Milk Marque selling system, and negotiate interim behavioural undertakings along the lines recommended by the MMC.

42. Milk Marque was unwilling to accept the restraints that would have been imposed by the interim undertakings, in particular a prohibition on its acquiring any more processing capacity. As an alternative, Milk Marque proposed that it split voluntarily on a geographical basis into three separate companies. Following advice from the DGFT, the Secretary of State decided that this would provide an effective remedy for the concerns expressed in the MMC report. In November Milk Marque members voted to accept the proposed break-up. The Secretary of State asked the DGFT to monitor closely the operation of the three successor companies to ensure that they are operating independently and in line with the assurances given by Milk Marque in its public announcements.

43. Both Milk Marque and the National Farmers' Union expressed a belief that the basis of the MMC's findings and the Secretary of State's adoption of them were inconsistent with the Treaty of Rome. By way of judicial review they obtained permission to put the matter before the European Court of Justice. These proceedings do not affect Milk Marque's intention to split into three.

Action on earlier reports

44. **Petrol –** The DGFT is still considering whether the remaining undertakings given by petrol wholesalers in 1966 should be retained or whether they should be wholly or partly removed. The undertakings apply to the sale of both petrol and diesel fuel. They limit exclusive petrol supply agreements between certain wholesalers and independent retailers to 5 years, control the extent to which wholesalers are involved in the sale of non petrol goods by independent retailers, and are designed to assist in enhancing the security of tenure of those retailers who operate in wholesaler owned sites as licensees or tenants.

45. **Roadside advertising services** – Following the 1981 MMC report on the supply in the United Kingdom of roadside advertising services nine poster advertising companies undertook to provide the DGFT with particulars of any joint selling arrangements with another contractor, and, if requested, details of sales revenue and stocks of panels both in relation to sales effected through joint selling arrangements and direct sales.

46. The industry has changed significantly since the 1981 report. In particular, there has been considerable consolidation within the outdoor advertising sector. During 1999 the DGFT conducted a

review of the undertakings to consider their continued effectiveness. Further consultation with the industry will take place before any changes deemed appropriate may be implemented in the first quarter of 2000.

47. **Service Corporation International plc -** The DGFT continued his review of the behavioural undertakings given by funeral services provider Service Corporation International (SCI) on 16 December 1996 following the MMC's 1995 report on SCI's acquisition of Plantsbrook Group plc. The review focused on the undertaking to disclose ownership within the determined area that had been examined by the MMC. SCI was also asked about its voluntary undertaking (which the DGFT cannot enforce) to instruct all its branches to disclose details of ownership at their premises. The DGFT will report his findings to the Secretary of State for Trade and Industry when he has reached conclusions in respect of the 'at-need' funeral market enquiry (see paragraph 105).

48. **Beer Orders** – the DGFT continued to monitor brewers' compliance with the 1989 Beer Orders and is satisfied that the large brewery groups have complied with the requirement to keep their number of tied premises within the maxima permitted under the Supply of Beer (Tied Estate) Order 1989. At the year end the OFT was preparing to review the Beer Orders.

49. **Classified directory advertising services** – The DGFT continued to monitor undertakings on the operation of *Yellow Pages* which British Telecommunications plc gave to the Secretary of State in July 1996. A review of the undertakings was in preparation towards the end of 1999.

50. **Domestic electrical goods –** The DGFT has been monitoring compliance with the Restriction on Agreements and Conduct (Specified Domestic Electrical Goods) Order 1998. Five suppliers of kitchen furniture were found to be in breach of the Order and gave written assurances to the DGFT that they would not publish or otherwise notify recommended resale prices to their customers in respect of certain categories of specified domestic electrical goods. The Order was introduced to eliminate anti-competitive practices relating to the supply of washing machines, tumble dryers, dishwashers, cold food storage equipment, televisions, video recorders, hi-fi systems and camcorders. In particular, the Order prohibits suppliers of such goods from recommending or notifying a price at which the goods should be resold.

51. **Performing rights –** The DGFT continued to monitor the progress being made by the Performing Right Society (PRS) towards meeting the recommendations made by the then MMC in its 1996 report on the administration of performing rights and film synchronisation rights. Of the 44 recommendations made by the MMC, 40 were met and the remaining four were in hand by the end of the year. The DGFT continues to monitor the Society's performance in all the areas covered by the recommendations.

v) Financial services

52. Under the terms of the Financial Services Act 1986 the DGFT is required to keep under review the rules of the Financial Services Authority (FSA), self-regulating organisations, recognised investment exchanges and clearing houses. He must report to the Treasury if in his opinion the rules restrict, distort or prevent competition to a significant extent. He is further required to report to the Treasury on the effect on competition of the rules of exchanges and clearing houses that apply for recognition under the Act.

53. The DGFT completed his review of the rules of the London Stock Exchange on worked principal agreements. In May he reported to the Treasury that they did not appear to have a significant effect on competition.

54. In August he published his report to the Treasury on the effect on competition of the FSA rules polarising the provision of investment advice between wholly independent advisers and advisers who are

tied to a single provider. He found that the rules restricted or distorted competition to a significant extent by preventing some forms of retail innovation. He believed, however, that the adverse effect of the rules on competition for advice on life assurance and personal pensions was outweighed by competition between providers generated by the number of independent financial advisers in the market and by the protection that the rules give to consumers of these products. He therefore recommended that the polarisation rules should be retained for advice on investment products linked to life insurance, including personal pensions, but should be abolished for advice on unit trusts and open-ended investment companies.

55. The DGFT also considered applications by the Cantor Financial Futures Exchange, Eurex Zurich, the Warenterminb rse and the New Zealand Futures and Options Exchange for recognition as overseas investment exchanges. He reported to the Treasury that the rules of these exchanges did not give rise to significant anti-competitive effects.

2. Mergers and acquisitions

56. In 1999, the DGFT considered a total of 415 merger cases - whether they were in the public domain (public mergers), under the confidential guidance procedure, or by way of informal advice. Year-on-year, this represents a decrease of about 2 per cent on the 425 cases considered in 1998, which is more than accounted for by a fall in requests for confidential guidance. It is also noteworthy that the number of mergers pre-notified using the statutory procedures has risen markedly, as has the number of mergers considered under the European Community Merger Regulation.

57. 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 CC for more detailed investigation. If the CC 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 CC's report. In lieu of a reference to the CC, however, the Secretary of State may - should the DGFT so recommend - accept undertakings from the parties to remedy any adverse effects that the DGFT has identified. In 1999, such undertakings were accepted in seven cases.

Confidential guidance

58. One or more parties to a merger can ask the DGFT for confidential guidance on the chances of its being referred to the CC by the Secretary of State once it is in the public domain. In 1999, the DGFT considered 50 such requests, compared with 61 in 1998, a decrease of 18 per cent. The DGFT advised on 35 requests, a decrease of 22 per cent on the 1998 total of 45; the remaining 15 requests were found not to qualify or were abandoned. In addition, in 70 cases where there was a possibility of a merger, DGFT staff gave the parties informal advice about qualification for investigation and the potential for reference (67 cases in 1998).

Prenotification

59. There is a statutory procedure to allow parties to a merger to prenotify the DGFT of its details. In such cases, the Secretary of State must announce his decision on whether to refer the merger to the CC within 20 working days of the DGFT's receiving the completed prenotification form (35 working days if the DGFT exercises his power to extend the timetable); otherwise the power to refer it to the CC is lost. During 1999, the DGFT considered 69 mergers under this procedure, against 45 in 1998 (an increase of over 50 per cent) of which 2 were found not to qualify and 5 were withdrawn or abandoned.

Other proposed or completed public mergers

60. Unless a proposed merger has been prenotified under the statutory procedures there are no statutory time limits on reference to the CC. In the case of completed mergers, however, the Secretary of State loses the power to make a reference four months from the time the completion becomes public. The DGFT considered 226 proposed or completed public mergers, compared with 252 in 1998, a decrease of 10 per cent. The DGFT advised on 157 cases, a decrease of 12 per cent on the 1998 total of 179. The remaining 69 cases were either found not to qualify for investigation or were abandoned before a decision was taken.

61. The total value of the assets acquired or bid for in the qualifying merger situations examined by the DGFT in 1999 was £116.5 billion (£180 billion in 1998). Horizontal mergers (where some activities of the merging firms overlap) accounted for 94 per cent of the total number of qualifying cases examined in 1999 (92 per cent in 1998).

62. These figures exclude newspaper mergers, which are dealt with by the Department of Trade and Industry 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; there were no references under this head in 1999.

References to the CC

63. In 1999, the Secretary of State made 10 merger references to the CC under the terms of the Fair Trading Act, two more than in 1998. All the references, with the exception of NTL/Cable & Wireless, were made in accordance with the advice of the DGFT and all of them were made on competition grounds.

The references were:

20 January	British Airways plc/CityFlyer Express Ltd
2 February	Air Products Group Ltd/Devilbiss Medequip Ltd *reference subsequently laid aside*
30 March	Hepworth Building Products plc/assets of Naylor Industries plc *reference subsequently laid aside*
9 April	NTL Incorporated/Newcastle United plc
14 July	Whitbread plc/assets of Allied Domecq plc *reference subsequently laid aside*
15 July	Alanod Aluminium-Veredlung GMBH & Co/Metalloxyd Ano-Coil Ltd
17 August	Universal Foods Corporation/Pointing Holdings Ltd
17 September	CHC Helicopter Corporation/Helicopter Services Group ASA
12 November	Vivendi SA/24.5 per cent interest in British Sky Broadcasting Corporation plc
12 November	NTL Incorporated/Cable & Wireless Communications plc

Reports by the CC

64. Seven merger reports were published in 1999:

4 February	Cendant Corporation/RAC Motoring Services
25 February	IMS Health Inc/Pharmaceutical Marketing Services Inc
9 April	British Sky Broadcasting Group plc/Manchester United plc
7 May	Rockwool Ltd/assets of Owens-Corning Building Products (UK) Ltd
20 July	British Airways plc/CityFlyer Express Ltd
27 July	NTL Incorporated/Newcastle United plc
21 December	Universal Foods Corporation/Pointing Holdings Ltd

65. In the case of **NTL/Newcastle** the CC concluded that even if at the time of reference there had been a merger situation, subsequent changes to the transaction had reduced the level of interest acquired by NTL such that it did not confer material influence. In the case of **Universal Foods/Pointing**, the CC concluded that the merger did not operate against the public interest. In the other five cases the CC found the merger to be against the public interest.

66. **Cendant Corporation/RAC Motoring Services** – The CC concluded that the loss of Cendant's Green Flag breakdown service as an independent third force would significantly weaken competition in the supply of insurers' breakdown services for light vehicles. The CC also concluded that behavioural undertakings would not be sufficient to remedy the adverse effects of the merger. The Secretary of State, in accordance with the advice of the DGFT, accepted the findings and the recommendation of the CC that, before acquiring RAC, Cendant should be required to undertake to divest Green Flag within 6 months. On 23 November, Cendant gave the required undertakings to this effect.

67. **IMS Health Incorporated/Pharmaceutical Marketing Services Inc** – The CC concluded that the merger would give rise to a loss of actual and potential competition in the supply of specialist pharmaceutical services. The prospect of new entry to the UK market was limited given the barriers to entry and the countervailing power of the purchasers would be insufficient given the lack of any alternative sources of supply. The CC recommended that IMS be required to dispose of PMSI's Source Dispensing business and give certain supporting behavioural undertakings. These related to the licensing of prescription data; pricing relevant services according to transparent price lists and discounts; not selling those relevant services, or offering discounts, as a package; and not entering into or maintaining exclusive contracts with data providers. Following public consultation, the DGFT recommended that the undertakings should be slightly amended to reflect changes in the market and to permit the divestment of less than the whole of the Source Dispensing assets if a buyer requested this and a more limited divestment was still adequate to remedy the adverse effects of the merger. The Secretary of State accepted the CC's findings and the DGFT's advice on remedy. On 29 October, IMS gave undertakings to this effect

68. **British Sky Broadcasting Group plc/Manchester United plc –**The CC concluded that the merger might be expected to reduce competition for the broadcasting rights to Premier League matches. This would lead to less choice for the Premier League and less scope for innovation in the broadcasting of

Premier League football. The CC also concluded that the merger might have adverse effects on the wider public interest. These were that the merger would reinforce the inequality of wealth between football clubs and would give BSkyB additional influence on footballing decisions leading to some decisions which would not reflect the game's long term interests. The CC considered a range of possible behavioural remedies to address the adverse effects of the merger but concluded that none of these would be effective. The CC, therefore, recommended that the merger be prohibited. The Secretary of State, in accordance with the advice of the DGFT, accepted the findings and recommendation of the CC and asked him to obtain suitable undertakings.

69. **Rockwool Ltd/assets of Owens-Corning Building Products (UK) Ltd** – The CC concluded that the proposed acquisition was against the public interest since it would lead to a loss of competition in the supply of stone wool products in the UK, particularly in certain sectors of the market. While the sectors represented a minority of Rockwool's overall sales, they were considered to be a significant minority and the adverse effects arising from the merger would be higher prices in these sectors. While the CC recognised that there might be benefits arising from the merger - an improvement in the efficiency of the Owens Corning Building Products site, as well as environmental improvements – it did not believe that the adverse effects of the merger were offset by the benefits. In the absence of any other effective remedy, the CC recommended that the merger should be prohibited. The Secretary of State, in accordance with the DGFT's advice, accepted the CC's findings and recommendation and asked him to obtain appropriate undertakings.

70. **British Airways plc/CityFlyer Express Ltd** – The CC concluded that the merger might be expected to operate against the public interest, primarily because of its effects on competition, resulting in higher fares for air services from Gatwick and the foreclosure of opportunities for BA's competitors to acquire CityFlyer's slots for the purpose of offering new services or expanding existing services in competition with BA. In order to boost potential competition by giving BA's rivals greater opportunity to acquire slots to develop competing or complementary services alongside BA's hub operation at Gatwick, the CC recommended two caps on slot holdings. The first, a cap of 41 per cent of available slots to apply to BA and its subsidiaries (but not franchisees). The second, a cap, also applying to franchisees, which would limit the slot holding in peak hours at 70 per cent of available slots in any one hour and at 65 per cent in any two hour period.

71. While endorsing the CC's analysis of the case and the objectives of their recommended remedies, the DGFT recommended that there should be no overall cap on BA's slot holding, but that the maximum number of slots BA held in any one hour should be capped at 65 per cent of the available slots in any one hour period, and that this cap should operate for a period of five years. The Secretary of State asked the DGFT to consult interested third parties on the right level for the proposed cap to remedy the adverse effects. Following consultation the DGFT recommended that BA's slot holdings at Gatwick should not exceed 65 per cent of the available slots in any one-hour, nor 60 per cent in any two-hour period. The Secretary of State accepted the DGFT's recommendation and asked him to obtain appropriate undertakings.

Undertakings in lieu of reference

72. When it appears that a reference to the CC 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. In 1999, there were seven cases in which such undertakings were given, compared with three in 1998. There have been 28 such cases in total since the procedure was introduced in 1990. The 1999 cases were:

30 April National Data Corporation/John Richardson Computers

11 June	The Scotts Company/assets of Monsanto Company
9 September	British Aerospace/GEC Marconi's Electronic Systems business
1 October	National Power plc/assets of Midland Electricity plc
22 December	Scottish & Newcastle plc/assets of The Greenalls Group plc
22 December	Punch Group Ltd/assets of Allied Domecq plc
22 December	Bass plc/550 Allied Domecq pubs from Punch Group Ltd

73. **National Data Corporation/John Richardson Computers** – In accordance with the recommendation of the DGFT, the Secretary of State accepted undertakings from NDC intended to remedy the potential adverse effects arising from the merger. The undertakings require that NDC will not enter into exclusive contracts with data providers (pharmacies) and will not inhibit the extraction of specialised data from such pharmacies by any other person.

74. **The Scotts Company/assets of Monsanto Company** - In accordance with the DGFT's recommendation, the Secretary of State accepted undertakings from Scotts that required it to divest the Phostrogen brand through the sale of its UK trademarks and patents, and its stock in trade. The undertakings also cover the transfer of Phostrogen's current UK pesticide approvals; all sales, marketing and research and development; and customer lists and records to a purchaser to be approved by the DGFT. The undertakings are designed to remedy concerns about Scotts' dominance in the UK garden fertiliser market.

75. **British Aerospace/GEC Marconi's Electronic Systems business** - The Secretary of State announced that he intended to seek from British Aerospace undertakings to remedy the competition and other public interest concerns arising from the proposed acquisition. This was contrary to the DGFT's advice that the merger should be referred to the Competition Commission. In his announcement, the Secretary of State commented that undertakings in lieu of a reference, while inevitably complex, would offer the prospect of a speedier resolution while safeguarding the benefits which the merger would bring. In reaching his decision, the Secretary of State took into account Government policy for restructuring within the European defence industry and that the merger would strengthen the UK's defence industry. The DGFT therefore entered into negotiations on undertakings with BAE SYSTEMS (as the new company was now called).

76. **National Power plc/assets of Midland Electricity plc** – The Secretary of State accepted undertakings from National Power to divest its four-GigaWatt coal-fired power station at Drax, in North Yorkshire, to purchasers and on terms approved by him. The undertakings, which were designed to address competition concerns arising from the bringing together of two major players at either end of the electricity supply chain, also required National Power to vary its rights to earn-out payments from Eastern Electricity plc, which it had acquired under the lease made on 27 June 1996. Until the earn-outs payments made under the lease expire on 31 March 2003, National Power will receive earn-out payments in relation to Eastern's plants at West Burton, Rugely and Ironbridge from 1 June 2000 reduced by £1.50 per megawatt-hour for each of the months of June, July, and August. The Secretary of State also accepted a number of informal assurances from National Power and Midland Electricity which, in common with assurances given on previous electricity mergers, were designed to address largely regulatory concerns. In his initial advice to the Secretary of State, the DGFT had recommended that the merger should be referred to the CC for further investigation. This was consistent with earlier advice he had given on the similar

proposed mergers of National Power plc/Southern Electric plc and PowerGen plc/Midlands Electricity plc and PowerGen plc/DR Investments, owner of East Midlands Electricity plc. In the present case the Secretary of State felt that undertakings in lieu of a reference might be appropriate and therefore asked the DGFT to negotiate undertakings along the lines indicated.

77. **Scottish & Newcastle plc/assets of Greenalls Group plc; Punch Group Ltd/assets of Allied Domecq plc; Bass plc/550 Allied Domecq pubs from Punch Group Ltd**– In each of these cases, and in accordance with the DGFT's recommendation, the Secretary of State accepted undertakings - from S&N, Punch Group, and Bass respectively - that required each, within 6 months, to dispose of a certain number of pubs in those Petty Sessional Divisions where, as a result of the merger, its share of pubs would be more than 25 per cent.

Action on other mergers

78. **British Airways plc/American Airlines Inc** – Consideration of the proposed alliance between these major British and US airlines ceased when British Airways announced its withdrawal from the alliance.

Action on earlier reports

79. **FirstGroup plc/SB Holdings Ltd** – On 31 July 1998, the then Secretary of State announced that she had decided to seek a package of behavioural undertakings from FirstGroup. These included undertakings on prices and minimum service levels, restrictions on fare and frequency changes, journey intervals and tendered services. These undertakings were in place of the divestment remedy that had earlier been sought but which had then been reviewed in the light of changes to the bus market in Glasgow since the MMC had reported. At the end of the year the undertakings were still under negotiation.

80. **Bass Brewers Ltd/Carlsberg-Tetley plc/Carlsberg AB** – On 22 August 1997, Bass exercised its option to place its 50 per cent interest in Carlsberg-Tetley with Carlsberg AB. Negotiations on the undertakings to be given by the parties were still continuing at the year's end.

81. **Fresenius AG/Caremark Ltd** – On 30 April, following publication of the MMC's report in April 1998 Fresenius gave undertakings that it would not acquire, or acquire an interest in, any of the assets of Caremark (other than in ordinary course of business) or acquire an interest in any company having control of Caremark.

82. **Ladbroke Group plc/the Coral betting business** – On 27 October 1999, following publication of the MMC's report in September 1998, Hilton Group (formerly Ladbroke Group) gave undertakings preventing it from re-acquiring control of the assets of the Coral betting business except in certain limited circumstances.

83. **Tomkins plc/Kerry Group plc** – On 21 January, following publication of the MMC's report in September 1998, Tomkins gave undertakings that it would dispose of the flour mills at Avonmouth, Liverpool, Newcastle and Tilbury. Tomkins also gave undertakings that it would not re-acquire an interest in those mills or any company having control of or carrying on the business of those mills, nor increase the production of hard flour at its Cambridge mill above a set level in the year following this divestment.

84. **ARRIVA plc/Lutonian Buses Ltd** – Following publication of a report by the MMC in November 1998, the Secretary of State asked the DGFT to obtain from ARRIVA undertakings appropriate

to remedy the adverse effects of the merger. At the end of the year the undertakings were still under negotiation.

Newspaper transfers and mergers

85. 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.

86. 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 CC has reported on the matter. When a newspaper merger is referred, additional members may be appointed to the inquiry group, drawn from the specialist panel maintained for that purpose.

References to the CC

February 1999 Portsmouth & Sunderland Newspapers plc - Proposed acquisitions by Johnston Press plc (referred 5 February), Nesquest (Investments) Ltd (referred 9 February) and News Communications and Media plc (referred 11 February).

87. Portsmouth & Sunderland Newspapers plc published 35 local newspapers in the south and the north-east of England. Johnston Press plc published 155 newspapers in Scotland and England; Newsquest published 179 newspapers in England; and Newsom published 107 newspapers in England and Wales.

88. The CC received no evidence to suggest lack of accuracy in the reporting of news by any of the three potential acquirers, and concluded that the commercial logic of regional and local newspaper publishing dictated that editors should be free to edit their titles in a manner that retained local readers. Whichever bidder was successful would see its total circulation and distribution of local and regional and regional newspapers in the UK increase by just under 3 per cent, which the CC regarded as minor given the overlap of regional newspapers, and overlap at a local level was not sufficient to raise public interest concerns.

89. The CC concluded that the proposed transfers may be expected not to operate against the public interest in terms of the accurate presentation of news and free expression of opinion, or concentration of ownership at national, regional and local level, or efficiency and employment. The Secretary of State gave his consent to the proposed transfer.

March 1999 Mirror Group plc - Proposed acquisitions by Trinity plc and Regional Independent Media Holdings Limited (both referred 12 March).

90. Mirror Group published some 70 newspaper titles including *The Mirror*, *Sunday Mirror* and *Sunday People* in the UK as a whole, the *Daily Record* and *Sunday Mail* in Scotland, and various regional titles in the Midlands and Northern Ireland. It also engaged in magazine publishing and broadcasting. Trinity published 125 regional and local newspaper titles from centres around the UK, as well as specialist publications. RIM published some 60 regional and local newspapers in Yorkshire and Lancashire.

91. The CC did not believe that either of the proposed transfers would pose a general threat to the accurate presentation of news and free expression of opinion. In England and Wales, neither transfer would result in significant overlaps of regional or local titles. In Scotland, RIM had no titles, and the CC found that the extent of competition between Mirror and Trinity titles was limited.

92. In Northern Ireland the situation was more complex. RIM had no titles here, but both Trinity and Mirror had significant newspaper interests. There were concerns that Trinity's acquisition would lead to the *News Letter* losing its distinctive voice in representing Unionist opinion. The CC also considered whether the proposed transfer would threaten the future of *The Irish News*. This would be a serious public interest detriment, as it would deprive the nationalist community in Northern Ireland of its most important voice in the press. Furthermore, Trinity's acquisition of Mirror would increase the former's share of advertising in regional and local papers by 15 per cent to 67 per cent.

93. The CC concluded that the transfer to RIM of Mirror Group's titles may not be expected to operate against the public interest. They also concluded that the transfer to Trinity of these titles would not operate against the public interest in England and Wales, or in Scotland, but may be expected to do so in Northern Ireland. However they did not believe that the risks of a serious threat to the future of *The Irish Times* from the Trinity acquisition were such that they could have an expectation of occurring.

94. The CC recommended that if Trinity's acquisition of Mirror Group's titles was to take place, then Trinity should be required to dispose of Mirror's Northern Irish titles the *News Letter*, the *Derry Journal*, the *Belfast News*, the *North Down News* and the *Journal Extra*. However the Secretary of State thought the public interest detriment of a threat to *The Irish News* was sufficiently grave for him to take the risk into account. Therefore he gave consent to Trinity's acquisition on the condition that it disposed of its Northern Irish titles the *Belfast Telegraph, Sunday Life, Community Telegraph* and *Farm Trader*, explaining that the threat to *The Irish News* arose from the combination of Trinity's Northern Irish titles and Mirror Group's national titles.

December 1999 News Communications and Media plc - Proposed acquisitions by Newsquest (referred 16 December), Johnston Press (referred 21 December) and Trinity Mirror (referred 21 December).

95. At the end of 1999 the Competition Commission was in the process of investigating these cases, and due to report in March 2000.

Transfers not referred to the CC

9 September Northcliffe & 3i/Adscene
24 November Trinity Mirror/CML Community Magazines
16 December Johnstone Press/Tweeddale Press

3. Action on other competition issues

96. **Barriers to competition in e-commerce –** In September the Cabinet Office Performance and Innovation Unit published a report, *e-commerce@its.best.uk*, which asked the DGFT and the Director General of Telecommunications to examine and report on potential barriers to competition in UK e-commerce markets. A consultation exercise was arranged to seek the views of key industry players. The report is expected in the first half of 2000.

97. **BSkyB** – The broadcasting company BSkyB put proposals to the DGFT for a new wholesale ratecard, initially in August and in revised and final form in December. The DGFT rejected the proposed ratecard because he was not satisfied that the discounts it offered were reasonably attainable by the cable companies. The ratecard could thus be expected to discriminate against the cable companies and in favour of BSkyB's retail business, which would qualify for full discounts. The DGFT also decided that, in view of the rapid and continuing change in the pay-TV industry, the time was now right to begin a wide-ranging review of the informal undertakings BSkyB had given him in 1996.

98. **Charter airlines: seat allocation** – The DGFT began an investigation into this market in 1998. After extensive enquiries, he concluded that there was not enough evidence to substantiate the allegations that independent tour operators' difficulties in this area were the direct result of anti-competitive practices being pursued by the vertically integrated travel groups. However, he did confirm that, because of the rapid pace of consolidation within the travel industry generally, it would be prudent to re-examine the market after 12-18 months. A fresh enquiry therefore began in December 1999. The enquiry will consider whether there were significant changes in the overall number of charter aircraft seats sold to independent tour operators by vertically integrated charter airlines over the period covered by the 1997 to 2000 operating seasons; whether independent tour operators are being forced to accept less favourable take-off slots, and whether vertically integrated charter airlines are imposing less favourable terms of business on independent tour operators.

99. **Exclusive advertising deals** – Following a complaint that Community Media Ltd, publishers of the *Weston-Super-Mare Admag* and *Weston & Somerset Mercury*, offered discounts to advertisers who agreed not to advertise in rival publications, the company agreed to give the DGFT informal assurances under the Fair Trading Act 1973 that it will not engage in this practice.

100. **Funerals** – In 1998 the DGFT announced an inquiry into the 'at-need' funerals industry - that is, those funerals bought once someone has died rather than being paid for in advance. This followed allegations that some companies were taking unfair advantage of the bereaved. The first stage of the inquiry, principally concerned with ensuring that competition in the market is effective, is expected to conclude early in 2000 and is likely to be followed by further inquiries into the market, this time focusing on wider consumer issues.

101. **Home personal computers –** Following concerns about high prices in the UK, the DGFT investigated the market for home personal computers (PCs) to find out if there were any anti-competitive practices preventing the market from working properly. It uncovered no such practices.

102. When the international price differences were examined, it was noticeable that the UK consumer purchased more powerful and more highly specified PC systems than French or German consumers. The purchase of higher quality machines artificially inflated UK prices and could, in part, have been responsible for apparent high prices. Also, UK consumers could obtain systems at a wider range of prices than their foreign counterparts. In addition, competitive prices seemed to be available extensively in the UK, in particular from PC manufacturers who sell direct or from retailers who sell their own brands (as opposed to internationally recognised brands).

103. As no retailer had any appreciable market share it was considered highly unlikely that there would be significant consumer detriment from any adverse behaviour by a retailer. In addition, because consumers showed no great preference for any particular make of computer no manufacturer would be able to exert any significant influence upon the market. From the information available it seemed that neither retailers nor suppliers were earning supra-normal profits. Market entry to retailing and manufacturing was also relatively easy. Overall, the market for home PCs was found to be very dynamic and highly innovative. Continual improvements in quality of the products ensured that prices actually fell rather than

rose. Any consumer detriment that may have been caused by some temporarily high prices in certain parts of the market was substantially outweighed by the benefits of rapidly improving product quality.

104. **Independent productions industry** – The Producers Alliance for Cinema and Television (PACT) complained to the DGFT that it was not receiving competitive terms for its independent television productions from broadcasters as a result of an alleged imbalance of bargaining power. The DGFT launched an informal inquiry and met with a wide range of producers and broadcasters. As a result of provisional analysis, further information was requested from PACT in support of its complaint. It was expected that provisional conclusions would be reached early in 2000, following which a decision would be made on any appropriate action.

105. **Newspaper pricing** – In May 1999 the DGFT accepted informal assurances from News International plc bringing an end to his investigation into newspaper cover pricing. His investigation followed complaints from the publishers of *The Independent*, *The Daily Telegraph* and *The Guardian* that News International, publisher of *The Times* newspaper, was using a predatory pricing strategy.

106. The DGFT concluded that News International had deliberately made a loss on *The Times* during the period June 1996 - January 1998 by pricing the Monday edition at 10p, and that this affected competition in the national daily newspaper market. News International agreed to submit a detailed business statement within ten days of implementing any future price cuts.

107. **Private medical insurance and private medical services** – In November 1999 the DGFT concluded an inquiry into the private medical insurance (PMI) and private medical services (PMS) sectors. The inquiry resulted from complaints received by the DGFT, principally from independent private hospitals and consultants, into a range of issues. The investigations focused on five main areas: the operation of hospital networks, principally by the leading PMI providers BUPA and PPP; the vertical integration of the leading PMI providers; the negotiation of hospital charges; the continued use of BUPA's Benefit Maxima; and the operation of BUPA's Consultant Partnership Scheme.

108. The DGFT cleared the PMI and PMS sectors of major competition problems but identified the need for greater clarity and accuracy in the information made available to policyholders by PMI providers and greater transparency in the procedures for selecting hospitals for inclusion on PMI networks. The DGFT will be working with the leading PMI providers to ensure that the concerns identified are addressed.

109. **The supply of generic prescription medicines** – Following a complaint by the Department of Health, the DGFT launched an inquiry in November into the price and supply of generic prescription drugs to the NHS. Price increases for generic drugs had been anticipated as a result of two supply shocks: the temporary closure by the Medicines Control Agency of pharmaceuticals Regent GM, accounting for 15 per cent of UK production, and the move into patient pack containers, where each pill is individually wrapped. Both the extent and duration of the price increases for many drugs warranted attention by the DGFT. The inquiry is concentrating on two main issues: the possibility of collusion at the manufacturing and wholesaling stages of production; and possible price perversities operating within the pharmacy reimbursement system.

110. **The supply of petrol, diesel and heating oil in the Highlands and Islands of Scotland** – In January 1999, the DGFT began an investigation into concerns about the size of the differential between the retail prices of these hydrocarbon fuels in the remote areas of the Highlands and Islands and elsewhere in the UK. The DGFT's 1998 report into the supply of petrol had concluded that the area north and west of the Great Glen, including the Orkneys, Shetlands, and the Inner and Outer Hebrides, was geographically in a separate market from the rest of the UK. The DGFT took evidence from the Highlands and Islands Action Group on Hydrocarbon Fuels (which comprises representatives of the regional councils in the area)

and obtained information from the main suppliers and distributors and a number of retailers. By the end of 1999 differentials had fallen, but enquiries continued to see whether a monopoly reference of the issue to the Competition Commission was justified.

IV. Resources

111. Over the period of this report the staff of the Competition Policy Division of the Office of Fair Trading averaged 153 (as against 130 in 1998). For accounting purposes, the OFT's financial year runs from 1 April to 31 March. For the financial year 1999/2000, the DGFT had a budget of £30.7million to meet running costs and capital spending. As a percentage of total running costs, running-cost resources were allocated among the activities reported on in sections II and III (including the respective shares of overheads and administration costs) as follows: monopolies, anti-competitive practices and general work under competition legislation - 28.2 per cent; mergers - 6.7 per cent; and special regimes (including financial services) - 2.3 per cent.

Appendix I: Mergers - Statistical analyses

1. These statistics broadly relate only to those mergers examined in the context of the DGFT'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 do not include mergers handled by the European Commission under the European Merger Control Regulation;
- 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 Secretary of State);
- 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; and
- 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 (ONS), 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 CC 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 per cent or more in a particular market.

Merger activity considered in 1999

3. In 1999, the DGFT considered 415 mergers and merger proposals under the terms of the Fair Trading Act (see Table 2). This represented a decrease of two per cent on the total for 1998, when 425 cases were considered. There was also a fall in the number of cases that qualified for reference to the MMC/CC - from 269 in 1998 to 254 in 1999 (see Table 1). The Secretary of State made ten references in total, one of which was against advice that had been offered by the DGFT.

4. There were 50 confidential guidance cases in 1999, compared with 61 in 1998. In addition there were 69 pre-notified cases, compared with 45 the year before.

5. The value of assets bid for in all qualifying cases decreased by 36.5 per cent (see table 3). (In order to give some indication of the real, inflation-adjusted value of assets bid for, the current asset values

shown have been deflated by the Gross Value Added - GVA - deflator). The average assets bid for fell from £667 million in 1998 to £459 million in 1999.

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: 1997-99

Year	*Proposals qualifying under the Fair Trading Act 1973: all cases*		***First Release***[1] *Numbers of cases*	*Fair Trading Act cases as percentage of* ***First Release*** *cases*
	Numbers	*Assets bid for: £m*		
1997	229	105 738	699	33
1998	269	179 660	887	30
1999	254	116 618	714	36

Source: Office of Fair Trading

1. Number of acquisitions of UK companies published in a *First Release* by the Office for National Statistics.

Table 2 Supplementary data on numbers of mergers examined and references to the CC: 1997-99

Year	Total numbers of cases examined	Found not to qualify, proposals abandoned, and informal guidance cases	Qualifying cases		Confi-dential guidance cases	Pre-notified cases	Qualifying cases less confidential guidance cases	References to the CC				Total references as % of:	
			Nos	% change				Recom-mended by Director General	Recom-mended but not made	Made but not recom-mended	Total references	Qualifying cases	Qualifying cases less confidential guidance cases
1997	396	167	229	-16.5	64	51	165	8	1	3	10	4.3	6.0
1998	425	156	269	+17	61	45	208	9	1	0	8	2.9	3.8
1999	415	161	254	-6.0	50	69	204	11	2	1	10	3.9	4.9

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: 1997-99

Year	*All cases: assets bid for*			
	at current prices		*at 1995 prices*[1]	
	£m	*% change*	*£m*	*% change*
1997	105,738	-31	99,565	-33
1998	179,660	+59	164,675	+65.4
1999	116,618	-35	104,590	-36.5

Source: Office of Fair Trading

1 Deflated by Gross Value Added (GVA) at basic prices. The total value of assets bid for in 1995 was £ 178 096 million.

2 Estimate used for deflator based on the first three quarterly figures only (not full year)

Table 4 References to the CC under the Fair Trading Act 1973: 1999

Findings of the CC	*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	1	0	1	2
Against the public interest	1	0	1	2
Proposal abandoned	2	2	0	4
Decision awaited	0	1	1	2
Totals	4	3	3	10
as percentage of all qualifying mergers in this category	3.5	2.9	7.5	3.9

Source: Office of Fair Trading

Appendix II - Publications on competition issues

Published by the Office of Fair Trading

Published documentation on the Competition Act 1998

What Your Business Needs to Know (OFT 247) - January
The Major Provisions (OFT 400) - March
The Chapter I Prohibition (OFT 401) - March
The Chapter II Prohibition (OFT 402) - March
Market Definition (OFT 403) - March
Powers of Investigation (OFT 404) - March
Concurrent Application to Regulated Industries (OFT 405) - March
Transitional Arrangements (OFT 406) - March
Enforcement (OFT 407) - March
Trade Associations, Professions and Self-Regulating Bodies (OFT 408) - March
How Your Business Can Achieve Compliance (OFT 424) - August
Assessment of Individual Agreements and Conduct (OFT 414) - September
Assessment of Market Power (OFT 415) - September
Exclusions for Mergers and Ancillary Restrictions (OFT 416) - September

Under Investigation (OFT 426) - December

Documentation on the Competition Act 1998 published in draft form for consultation, to be replaced by definitive editions in 2000

The Application of the Competition Act in the Telecommunications Sector (OFT 417) - January
The Director General of Fair Trading's Procedural Rules (OFT 411) - March
The Application of the Competition Act in the Water and Sewerage Sectors (OFT 422) - July
The Director General of Fair Trading's Guidance as to the Appropriate Amount of a Penalty (OFT 243) - August
The Director General of Fair Trading's Rules on Fees (OFT 425) - December

Documentation on the Competition Act 1998 in preparation at the end of 1999

Intellectual Property Rights
Services of General Economic Interest
Vertical Agreements and Restraints
Land Agreements

UNITED KINGDOM

Research papers

No 17: *Quantitative techniques in competition analysis* (OFT 266) by LECG Ltd - October
No 19: *Merger Appraisal in Oligopolistic Markets* by NERA (OFT 267) - November

Other publications on competition matters

New editions

Mergers (OFT 036) - March
Merger Submissions (OFT 148) - March

Published by The Stationery Office Ltd

Copies of the following publications can be purchased from Stationery Office bookshops or, by post, from: The Stationery Office Publications Centre, PO Box 276, London SW8 5DT; general enquiries tel: 0870 600 55 22; orders fax: 020 7873 8200

HMSO *Annual report of the Director General of the Office of Fair Trading* 1998 (HC 524, ISBN 0-10-270899-1), £16.50

Cendant Corporation & RAC Holdings Ltd (Cm 4196, ISBN 0-10-141962-7) £19.55, February

Underwriting Services for Share Offers (Cm 4168, ISBN 0-10-141682-2) £22.15, February

IMS Health Inc & Pharmaceutical Marketing Services Inc (Cm 4261, ISBN 0-10-142612-7) £14.30, February

BSkyB plc & Manchester United plc (Cm 4305, ISBN 0-10-143052-3) £20.40, April

Rockwool Ltd & Owens-Corning Building Products (UK) Ltd (Cm 4330, ISBN 0-10-143302-6) £17.10, May

Portsmouth & Sunderland Newspapers plc & Johnston Press plc/Newsquest Ltd/News Communication & Media plc (Cm 4358, ISBN 0-10-143582-7) £16.90, June

Milk (Cm 4286, ISBN 0-10-142862-6) £42.50, July

British Airways plc & CityFlyer Express Ltd (Cm 4346, ISBN 0-10-143462-6) £21.90, July

Mirror Group plc & Trinity plc & Mirror Group plc & Regional Independent Media Holdings Ltd (Cm4393, ISBN 0-10-143932-6) £16.50, July

NTL Communications Corporation & Newcastle United plc (Cm 4411, ISBN 0-10-144112-6) £3.65, July

Universal Foods Corporation & Pointing Holdings Ltd (Cm 4544, ISBN 0-10-145442-2) £13.30, December

Published by the Competition Commission

Copies are available from: the Competition Commission Information Centre, New Court, 48 Carey Street, London WC2A 2JT; tel: 020 7271 0243; fax: 020 7271 0367.

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