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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

DAF/COMP(2005)32/17  
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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE UNITED KINGDOM**

**-- 1 April 2004-31 March 2005 --**

*This report is submitted by the Delegation of the United Kingdom to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 19-20 October 2005.*

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## **Executive Summary**

1. Over the past year the OFT and CC have consolidated the transformation of their roles brought about by the Enterprise Act 2002 and, for the OFT, also the Competition Act 1998. The focus has been on improving – through better working methods, priority-setting and communication – the effectiveness of our efforts to make markets work well for consumers, for fair-dealing businesses and for the economy as a whole.
2. The OFT's key achievements during this period have included: the first of a series of cartel decisions relating to the construction industry; progress towards a better deal for consumers from payment systems (report published May 2005); a range of market studies, and reference to the Competition Commission of the markets for home credit and liquefied petroleum gas; upholding by the Competition Appeal Tribunal of our decisions on price-fixing of toys and of replica football kit.
3. The OFT also helped establish a new UK cross-government body, the Competition Forum, to enhance awareness of the UK and EU competition issues through regular discussion and analysis of policy proposals and their implications for consumers. A sub-group of economists was also set up to support the Forum's work.
4. On 1 May 2004, when the 'Modernisation' Regulation (1/2003) came into force, the OFT acquired responsibility to apply European competition law – Articles 81 and 82 of the EC Treaty – alongside the Competition Act to agreements or conduct that may affect trade between member states. Where there is no cross-border dimension, the Competition Act alone applies.
5. The CC's key achievements during the year have included: conclusion of 13 phase II merger investigations; development of practices for market inquiries (the CC had 3 market inquiries during this period, all of which are ongoing) and work on number of studies evaluating its decisions, analysis and choice of remedy.
6. The CC became the determinative body for phase II decisions in respect of mergers involving two or more licensed water and sewerage service providers, thus following the changes made to the UK merger regime generally by the Enterprise Act. Its role was also expanded in respect of the gas and electricity sectors to become an appeal body in respect of the regulator's decisions on energy codes and to consider appeals against price control conditions imposed by the telecoms and broadcasting regulator on certain telecom companies.
7. The OFT continued to play a leading role in European Community competition and consumer work, and in organisations such as the OECD and the International Competition Network, where the CC plays a significant role.
8. In March 2005, the OFT announced that Philip Collins, a senior partner at international law firm Lovells, would be the next OFT Chairman. Philip Collins will take up his position on 1 October 2005 for a four-year period, when Sir John Vickers completes his term of appointment on 30 September 2005. As required by the Enterprise Act 2002, the roles of Chairman and Chief Executive will be split. In July 2005, John Fingleton, presently Chairman of the Irish Competition Authority, was announced as the next Chief Executive of the OFT.
9. In this period, Professor Paul Geroski, already a deputy Chairman of the CC was appointed Chairman and two members, Diana Guy and Christopher Clarke were appointed as Deputy Chairman, bringing the number of Deputy Chairman to 3, including Peter Freeman. Professor Paul Geroski died on 28 August 2005 and his successor is yet to be announced.

## **I. Changes to competition laws and policies, proposed or adopted**

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

10. In the United Kingdom, the Competition Act 1998 and related secondary legislation were amended both to address the Modernisation Regulation and in order to ensure that the United Kingdom system was aligned to the EC system post modernisation.

11. The Competition Act 1998 is also enforced by the regulators for communications matters, gas, electricity, water and sewerage, railway and air traffic services (under section 54 and Schedule 10 of the Competition Act 1998). These regulators can exercise powers under the Competition Act 1998 concurrently with the OFT. These regulators will also be responsible for enforcing Articles 81 and 82 following the introduction of the Modernisation Regulation.

12. The OFT also worked alongside the changes brought about by the new European Community Merger Regulation (ECMR), which came into force on 1 May 2004.

13. The role of the Competition Commission (CC) was expanded. It was already the phase II body for the investigation and determination of mergers and market inquiries and the appeal body in respect of certain sector regulator decisions (including water, railways, energy, airports). It became the appeal body in respect of Ofgem's (the gas and electricity regulator) decisions relating to modification of energy codes, involving an adversarial process held in public. Following the implementation of the EU Telecoms Directive, appeals against price controls in conditions set by Ofcom (the telecommunications and broadcasting regulator) are referred to the Commission by the CAT under section 193 Communications Act 2003.

14. Changes were made to the merger regime that applies to mergers involving two or more licensed water or sewerage service providers ('water enterprise'). As a consequence Ministers are no longer involved with the majority of such mergers (exceptionally Ministers may intervene in public interest cases).

15. Under the new water merger regime, the OFT is subject to a duty to refer to the CC mergers between two or more water enterprises unless the turnover of the water enterprise being taken over or the turnover of each of the water enterprises belonging to person making the takeover does not exceed £10 million. CC assesses whether the merger has or may be expected to prejudice the ability of the water regulator, in carrying out his statutory functions, to make comparisons between different water enterprises. As in the case of the majority of mergers referred to it, the CC's decision is determinative and the CC has powers to impose remedies.

16. Additionally, the Freedom of Information Act 2000 came into force on 1 January 2005 enabling anybody to request information from the OFT and CC amongst other public authorities. The Act confers two statutory rights on applicants, namely the right to be told whether or not the public authority holds that information; and if so, to have that information communicated to them, subject to various exemptions applying. Experience is fairly limited to date though both authorities have received a number of requests from members of the public and also parties. In practice, business sensitive information remains protected.

### **2. Other relevant measures, including new guidelines**

17. The OFT provides advice and guidance on the potential competition impacts of proposed legislation, as well as a telephone helpline, as part of its' Regulatory Impact Assessment (RIA) work. During 2004-05, the OFT provided advice on over 130 RIAs, liaising closely with the Cabinet Office Regulatory Impact Unit to improve the quality of competition assessments and RIAs as a whole.

18. The OFT published 13 new or revised competition law guidelines during the year. These included documents revised in the light of EC Modernisation Regulation 1/2003, which have also been amended to reflect the provisions of the Enterprise Act 2002 and the OFT's experience in applying the Competition Act 1998<sup>1</sup>.

19. The OFT also published guidance on how the OFT selects and conducts its market studies. The new guidance outlines the general procedures followed by the OFT when conducting such research including, why the OFT does market studies, how the OFT chooses markets to study, and the different types of market study<sup>2</sup>.

20. The CC published guidelines on divestiture remedies in merger references, the new merger regime applying to mergers between water or sewerage service providers, Energy Code Modification Rules and guidance relation to energy code modification appeals.<sup>3</sup>

### **3. *Government proposals for new legislation***

21. Under the Enterprise Act 2002, the OFT has a general function to advise ministers or other public authorities on consumer protection and competition issues, including in relation to proposed changes in the law. The OFT provided direct input on draft legislation and policy initiatives, which had the potential to affect the OFT's enforcement work, we also played an active role in assessing new regulations for potential competition concerns.

## **II. Enforcement of competition laws and policies**

### **1. *Action against anticompetitive practices, including agreements and abuses of dominant positions***

#### **a) *Summary of activities***

#### **Competition Act 1998**

22. In 2004-05, under the OFT's Competition Act 1998 powers and/or its powers under Articles 81 and 82 of the EC Treaty, the OFT opened 1,173 complaint cases, of which 27 involved possible cartel activity. Formal investigations were launched into 17 cases where the OFT had reasonable grounds to suspect an infringement had occurred. Three of these were potential cartel cases. These investigations resulted in nine decisions, of which four were new infringement decisions, three non-infringement decisions and two conditional exemption decisions.

23. The OFT conducted on-site inspections in six cases. Of these, five were under section 27 of Act, where the OFT has the power to enter premises without a warrant and require the production of documents, and one was under section 28, where the OFT has the power to enter and search premises with a warrant.

24. Under the OFT's leniency programme, fines are reduced for businesses which blow the whistle on cartels; and total immunity can be granted to those who first come forward to report the cartel, subject

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<sup>1</sup> Modernisation guidelines: [www.offt.gov.uk/Business/Legal+Powers/Modernisation](http://www.offt.gov.uk/Business/Legal+Powers/Modernisation)

<sup>2</sup> Guidance on market studies: [www.offt.gov.uk/Business/Market+studies](http://www.offt.gov.uk/Business/Market+studies)

<sup>3</sup> CC8 Application of Divestiture remedies in Merger Inquiries, CC9 Water Merger References: CC10 Energy Code Modification Rules: and CC12 Guide to Appeals in Energy Code Modifications. These and other CC publications are available at [www.competition-commission.org.uk](http://www.competition-commission.org.uk).

to the requirements of CA98. In 2004-05, the OFT entered into leniency agreements with six undertakings, and imposed total fines of £3,262,668, reduced to £2,265,382 after leniency.

25. There were significant successes for the OFT during this period. The decisions by the Competition Appeal Tribunal to substantially uphold three infringement decisions – relating to price-fixing by replica kit suppliers and manufacturers, price-fixing of toys and games and collusive tendering by West Midlands roofing contractors – confirmed the quality and rigour of its enforcement work. The OFT's continued effort to root out price-fixing in the construction sector also paid off, with infringement decisions against a further 10 roofing contractors and suppliers to the double glazing industry.

*b) Summary of Key Cases*

Chapter I and/or Article 81

- Double glazing product price-fixing

26. In November 2004, the OFT concluded that UOP Limited, the main supplier of IG desiccant to the UK market, colluded to maintain and/or fix resale prices with four of its distributors, breaching Chapter I of the Competition Act 1998, which prohibits anti-competitive agreements.

27. UOP and its distributors UKae Limited, Thermoseal Supplies Limited, Double Quick Supplyline Limited -DQS and Double Glazing Supplies Group plc – DGS, were fined a total of over £2.4m (reduced to £1.7m after leniency).

28. This case highlighted the benefits of how leniency for information providers can help expose cartels. UOP's fine was reduced from £1,540,000 to £1,232,000 on leniency; Thermoseal's fine was reduced from £279,000 to £139,000 on leniency; and UKae's fine was reduced from £278,000 to zero, also on leniency. The two other parties, DQS and DGS, were fined £109,000 and £227,000 respectively.

29. In January 2005, DQS appealed against both the decision and the financial penalty to the CAT. **Having regard to the specific circumstances of this case, the OFT consented to a reduction of the penalty to be paid by Double Quick Supplyline Limited in respect of the infringement from £109,000 to £36,210.**

- Scottish and North-east roofing contractors

30. Following the OFT's successful action in March 2004 against roofing contractors in the West Midlands (see Para 63), the OFT took action against roofing contractors in the north-east of England and Scotland.

31. The OFT investigation found that 10 contractors were involved in a series of individual agreements and concerted practices relating to tenders for flat-roofing contracts between 2000 and 2002 which set tender prices and, in some cases, allocated contracts to a particular party so that buyers were unable to obtain a competitive price. Among the contracts affected were those for a number of schools, a business park unit, a town hall and a lighthouse.

32. In March 2005, the OFT concluded the parties were in breach of the Chapter I prohibition of the Competition Act 1998 and fined the contractors were fined about £830,000 in total (reduced to just under £560,000 by leniency).

- British Horseracing Board

33. In June 2004, the OFT reached a provisional agreement with the British Horseracing Board (BHB) that proposed reforms of the running of British horseracing satisfied our competition concerns.

34. The changes were the subject of the first OFT commitments notice under new EC and UK competition law. Following Modernisation and changes to the Competition Act, the OFT has the power to accept binding commitments from businesses to address competition concerns. The notice, which was issued for public consultation, stated the OFT's intention to accept binding commitments from the BHB and to close its investigation file.

35. The BHB and the Jockey Club had notified the Orders and Rules of Racing to the OFT in June 2000. The preliminary finding, issued in April 2003, was that some of these infringed the Chapter I prohibition of the Competition Act relating to anti-competitive agreements. As well as provisionally accepting commitments from the BHB, the OFT decided that, in the light of those commitments, we no longer had sufficient grounds to continue proceedings against the Jockey Club.

- MasterCard UK Members Forum

36. In November 2004, the OFT issued a further statement of objections against MasterCard UK Members Forum Limited's agreement on the multilateral interchange fees charged for domestic transactions using MasterCard credit and charge cards (the MMF MIF agreement).

37. The statement set out the OFT's proposed findings that the parties to the agreement have infringed Article 81 of the EC Treaty and the Chapter I prohibition of the Competition Act.

38. The MMF MIF agreement establishes common fees charged between banks for transactions taking place in the UK using a UK-issued MasterCard. The OFT believes the agreement leads to an unduly high fee being paid to the cardholder's bank by the retailer's bank on every such transaction. The cost of these fees is passed on to retailers and ultimately to consumers in the form of higher prices.

- Independent schools

39. The OFT issued general guidance on the application of the Competition Act to the independent schools sector. Published on the OFT website, it answers frequently asked questions received from schools on this issue. These have arisen from the OFT's ongoing investigation into alleged anti-competitive practices in the sector. The guidance focuses on the exchange of information between independent schools on matters such as fees, staffing and costs, and the potential risk that this will infringe the Chapter I prohibition of the Competition Act.

- TV Eye

40. TV Eye and its member broadcasters provisionally agreed to give commitments to amend certain arrangements governing the sale of advertising airtime after the OFT put competition concerns to them. TV Eye is owned by ITV, GMTV, Channel 4 and Channel 5, and provides services to these and a number of smaller broadcasters.

41. The OFT was concerned that arrangements put in place by TV Eye enabled these broadcasters to agree collectively some of the terms and conditions under which they sell advertising airtime to media agencies. These placed media agencies in an unduly weak bargaining position and dampened competition between both media agencies and broadcasters.

42. As a result of the OFT's investigation, which was launched following a complaint by the Institute of Practitioners in Advertising, TV Eye proposed a number of formal commitments which were formally accepted by the OFT in May 2005. This is the first binding commitments decision by the OFT under the Competition Act.

#### Chapter II and/or Article 82

- Online property searches

43. In August 2004, an OFT investigation into the pricing of online property searches revealed no grounds for action under the Chapter II prohibition of the Competition Act, regarding pricing policies in the online property search sector.

44. TM Property Services Ltd, one of three online providers of property conveyance searches, had complained that a competitor, Transaction Online (TOL), and MacDonald Dettwiler (Hub) Ltd (MDA), the hub operator of the National Land Information Service, were abusing their dominant positions by adopting price policies designed to force it out of the market. TOL and MDA are both subsidiaries of MacDonald Dettwiler Ltd.

45. As there are currently significant alternative methods available for property searches – such as the use of direct postal searches or personal search companies – the OFT concluded that the online property search sector cannot, at present, be regarded as a separate relevant market. As a result, neither TOL nor MDA were found to hold a dominant position.

46. However, as a result of the investigation the OFT recommended that a market study be launched into the market as a whole. The study into the market for the provision of property information was launched in December 2004 (see Para 129) and the report, presenting the OFT's recommendations has now been published (September 2005<sup>4</sup>).

- First Edinburgh

47. In April 2004, the OFT decided that the balance of evidence in this case suggested that a reduction in fares and increase in services by the Scottish bus company, First Edinburgh Limited, was a reasonable commercial strategy from which passengers benefited, rather than an unlawful attempt to push a rival out of the market.

48. The OFT launched an investigation following a complaint from Lothian Buses plc, that First Edinburgh was abusing a dominant position by engaging in predatory pricing and increasing services in the Greater Edinburgh area. Lothian also alleged that First Edinburgh used profits from other routes to subsidise its routes in the area.

49. The OFT's investigation found that Lothian, rather than First Edinburgh, was the largest bus operator in Greater Edinburgh, but that First Edinburgh was likely to be dominant in the area surrounding Edinburgh.

50. First Edinburgh's fares were low enough in comparison with its costs to raise questions about predation. However, the OFT found evidence that First Edinburgh did not intend to drive Lothian from the market but instead was pricing low in an attempt to establish a more secure commercial basis for its Edinburgh operation.

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<sup>4</sup> OFT Market Study: Property Searches <http://www.of.gov.uk/news/press+releases/2005/174-05.htm>

51. The OFT therefore concluded that First Edinburgh's conduct represented legitimate competition and did not infringe the Competition Act.

CAT appeals (against CA98 decisions)

52. The Competition Appeal Tribunal (CAT) was set up to hear appeals against the OFT's decisions. This independent judicial body can confirm, set aside or vary an OFT decision, remit the matter back to the OFT or make any other decision the OFT could have made.

53. In 2004-05, the CAT responded to 10 appeals, and upheld three infringement decisions.

- Replica kit

54. The CAT rejected an attempt by Allsports Ltd and JJB Sports to set aside the OFT's decision that the parties had illegally fixed prices of replica football kits.

55. The tribunal upheld the vast majority of the findings contained in the OFT decision and confirmed that both parties had broken competition law. It also accepted that the chairman of JJB and the chief executive of Allsports, along with the managing director of Sports World, had personally agreed to fix the price of the Manchester United home shirt launched in August 2000.

56. Of the 10 parties found to have engaged in price-fixing agreements on replica kit, only JJB and Allsports appealed that finding.

57. In a later judgment, the CAT also upheld most of the OFT's approach to setting the penalties in this case. However, it reduced three penalties in view of findings it made about certain aspects of the price-fixing agreements and, for the first time, increased a penalty set by the OFT.

58. The fine for JJB Sports was reduced from £8.373m to £6.3m, Umbro's fine was reduced from £6.641m to £5.3m, Manchester United's fine was reduced from £1.652m to £1.5m and Allsports' fine was increased from £1.35m to £1.42m.

- Argos and Littlewoods

59. The CAT upheld an OFT decision that Argos Ltd and Littlewoods Ltd had each entered into an unlawful bilateral agreement or concerted practice with the toy and games supplier Hasbro UK and an unlawful trilateral agreement or concerted practice with Hasbro and each other to fix retail prices.

60. The OFT had found that the retailers agreed with Hasbro, and each other, to follow each other's prices (usually the recommended retail prices) for popular Hasbro products, such as Action Man and Monopoly. The object of these agreements was to maintain prices at higher levels than might otherwise have been the case.

61. Given the seriousness of the infringement, the OFT imposed financial penalties of £17.28m for Argos – the highest fine under the Competition Act – and £5.37m for Littlewoods. Hasbro was granted full leniency for coming forward with evidence and cooperating fully with the OFT's investigation.

62. In a separate judgment, the CAT upheld the approach adopted by the OFT in calculating the level of penalties imposed, and confirmed that this was reasonable and that the penalties were proportionate. The CAT nonetheless reduced the penalty on Argos to £15m, and set the penalty on Littlewoods at £4.5m, due to a reassessment of the penalties undertaken by the CAT with a view to taking a conservative approach.

These were, the CAT said, the lowest penalties that could reasonably be justified in the circumstances to meet the gravity of the case and to have an appropriate deterrent effect.

- West Midlands roofing contractors

63. The OFT welcomed the CAT's judgment on appeals brought by Apex Asphalt and Paving Co Ltd and Richard W Price (Roofing Contractors) Ltd. The CAT upheld the OFT decision that the two roofing contractors had, like seven others, participated in one (in the case of Price) or more (in the case of Apex) discrete agreements and/or concerted practices to fix prices by collusive tendering in relation to repair, maintenance and improvement services for flat roofing in the West Midlands.

64. The fine imposed on Apex (£35,922) was also upheld. The fine for Price was reduced from £18,000 to £9,000.

- Pernod-Ricard and Campbell Distillers

65. Following an investigation which began in June 2000, the OFT issued a notice proposing to make a decision that Bacardi-Martini (Bacardi) had abused its dominant position by entering into agreements which had the effect of excluding other suppliers of white rum. Bacardi subsequently gave the OFT voluntary assurances that it would not enter into or maintain such agreements and the OFT closed the file.

66. Pernod-Ricard SA and Campbell Distillers Limited (together 'Pernod') appealed the OFT decision to accept assurances and close the investigation. The CAT ruled that the OFT decision was an 'appealable decision' under section 46 of the Competition Act and therefore it had jurisdiction to hear the case. In their appeal, Pernod also argued that Bacardi's assurances did not adequately address the competition problem.

67. The CAT asked Pernod to put forward evidence to the OFT that the assurances were inadequate in practice. The OFT made enquiries into these allegations (some of which were completely new) and, in a report to the CAT, concluded that the existing assurances were adequate.

68. However, in order to bring appeal proceedings to an end, Bacardi offered to amend the assurances. The OFT indicated that it would accept these amendments and, in April 2005, the CAT ordered that there should be no further order in the proceedings and that the CAT's file be closed.

- Genzyme

69. Following a CAT ruling in March 2004, the OFT were involved in seeking an appropriate remedy to an abuse of dominant position by the pharmaceutical company Genzyme Limited.

70. The CAT upheld an OFT decision that the company, which supplies a drug called Cerezyme for the treatment of the rare inherited disorder Gaucher disease, had infringed the Chapter II prohibition of the Competition Act by charging independent homecare service providers a price for Cerezyme that allowed them no possible margin. However, it overturned the OFT's finding that Genzyme had also abused its dominant position by 'bundling' the price of home delivery and the provision of homecare services into the price charged to the NHS for Cerezyme.

71. The ruling gave Genzyme the opportunity to negotiate with relevant parties to remedy the margin squeeze abuse. The OFT attended meetings with interested parties and made submissions to the CAT on the cost of homecare services for Gaucher patients and the discount needed to remove the abuse.

72. The CAT gave its judgment on an appropriate remedy in September 2005<sup>5</sup>. Furthermore, Genzyme have not yet paid the penalty (reduced on appeal by the CAT) as they have requested permission from the CAT to appeal to the Court of Appeal. CAT have not yet made their decision on this and so no financial penalty has yet been paid. This is because the appeals process is not yet exhausted.)

## 2. *Mergers and Acquisitions*

73. Under the Enterprise Act, the vast majority of UK merger decisions are taken by the OFT and the Competition Commission (CC) as specialist, independent competition authorities. The OFT investigates completed and anticipated mergers that meet certain turnover or share of supply thresholds, and refers such mergers to the CC where it believes is or may be the case that they may 'substantially lessen competition' (SLC).

74. A merger qualifies for investigation if the UK turnover of the business being acquired is over £70m, or if the merger will create or enhance a 25 per cent share of supply of a particular product or service in the UK, or a substantial part of the UK.

### a) *Statistics*

75. In 2004-05, the OFT examined a total of 257 mergers and merger proposals (including Confidential Guidance and Informal Advice cases). Of these 35 raised more complex competition issues and were considered at a case review meeting – an internal forum for rigorously testing the OFT's internal view before a decision is made.

76. The OFT referred 18 merger cases to the Competition Commission and accepted undertakings in lieu of reference in four cases. The OFT refers a case to the CC when it believes that it is, or may be, the case that a merger has resulted, or may be expected to result, in a substantial lessening of competition.

77. The CC completed 13 Phase II merger investigations, publishing its report during the period. Additionally, eight mergers were referred to the CC during the period and reported upon in the year 2005/6. The markets investigated included neonatal warming products, microscopes, rail and bus services, local newspapers, sugar and construction project information. Of these, two cases, (1) Drager Medical AG and Co KGaA and Hillenbrand Industries Inc. and (2) Carl Zeiss Jena GmbH and Bio-Rad Laboratories Inc concerned mergers between non-UK companies, the first of these cases resulting in an adverse finding and the acceptance of behavioral undertakings.

78. In 2004-05 the mergers listed below were referred to the CC by the OFT (under the Enterprise Act) for phase II consideration. The following table identifies the current status of the CC's investigation and the CC's conclusion:

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<sup>5</sup> [http://www.catribunal.org.uk/documents/Jdg\(shrt\)1016Genzyme290905.pdf](http://www.catribunal.org.uk/documents/Jdg(shrt)1016Genzyme290905.pdf)

| <b>Parties</b>   | <b>Date of Reference</b> | <b>Status</b>            | <b>Conclusion</b>                                  |
|--|--------------------------|--------------------------|--|
| Archant Limited / the London newspapers of Independent News and Media                          | 29 April 2004            | Report published         | No SLC   |
| DS Smith Plc / Linpac Containers Ltd   | 20 May 2004              | Report published         | No SLC   |
| National Express Group plc / the Greater Anglia Franchise                                      | 27 May 2004              | Report published         | No SLC   |
| Knauf / Superglass   | 17 June 2004             | Report published         | SLC finding. Merger blocked.                       |
| Emap / ABI   | 16 July 2004             | Report published         | No SLC   |
| Taminco NV / Air Products and Chemicals Inc  | 16 July 2004             | Report published         | No SLC   |
| Arriva plc / Sovereign Bus & Coach Company Ltd   | 3 August 2004            | Report published         | No SLC   |
| Arcelor SA / Corus Group plc   | 10 September 2004        | Report published         | No SLC   |
| Anglo American / Johnston  | 29 September 2004        | Cancelled                |  |
| Serviced Dispense Equipment Limited / the Technical Services function of Coors Brewers Limited | 29 September 2004        | Report published         | SLC finding – merger blocked                       |
| James Budgett Sugars Ltd / Napier Brown Foods PLC  | 12 October 2004          | Report published         | No SLC   |
| Brittany Ferries / P&O   | 7 December 2004          | Cancelled                |  |
| First Group plc / InterCity East Coast Franchise   | 21 December 2004         | Cancelled                |  |
| LINK Interchange Network Limited / Transaction Network Services (UK) Limited                   | 27 January 2005          | Cancelled                |  |
| Francisco Partners LP / G International Inc  | 22 March 2005            | Report published         | No SLC   |
| Somerfield plc / Wm Morrison Supermarkets plc  | 23 March 2005            | Consultation on remedies | SLC finding – partial divestment. On Appeal to CAT |

| <b>Parties</b>                                | <b>Date of Reference</b> | <b>Status</b>            | <b>Conclusion</b> |
|---|--------------------------|--------------------------|-------------------|
| London Stock Exchange plc / Euronext          | 29 March 2005            | Consultation on remedies | ongoing           |
| London Stock Exchange plc / Deutsche Borse AG | 29 March 2005            | Consultation on remedies | ongoing           |

1. Undertakings in lieu of a reference to the Competition Commission were given to the OFT in the following cases:

| <b>Parties</b>                                | <b>Date of Reference</b> |
|---|--------------------------|
| iSOFT Group plc / Torex plc                   | 29 April 2004            |
| Arriva plc , Wales and Borders Rail Franchise | 9 July 2004              |
| Greene King plc / Laurel Pub Holdings         | 6 October 2004           |
| Capital Radio plc / GWR Group plc             | 8 March 2005             |

2. In 2004-05 the CC published 13 reports in respect of mergers referred to it by the OFT. The following identifies the key points of interest:-

| <b>Parties Involved</b>   | <b>Date Referred</b> | <b>Significant Issues</b>   |
|---|----------------------|---|
| Drager Medical AG & Co KGaA / Hillenbrand Industries, Inc                 | 18 December 2003     | <ul style="list-style-type: none"> <li>• International jurisdiction issues</li> <li>• Behavioural remedies agreed including price controls</li> <li>• Recommendations put to UK health departments to take action to encourage market entry and strengthen buyer power of NHS trusts</li> </ul>             |
| Carl Zeiss Jena GmbH / Bio-Rad Laboratories Inc                           | 30 December 2003     | <ul style="list-style-type: none"> <li>• Intellectual property issues</li> <li>• Involvement of multinationals</li> <li>• Failing firm defence</li> </ul>   |
| FirstGroup plc / the Scottish Passenger Rail Franchise                    | 13 January 2004      | <ul style="list-style-type: none"> <li>• Behavioural undertakings agreed to remedy the SLC finding</li> </ul>   |
| Archant Limited / the London Newspapers of Independent News and Media Ltd | 29 April 2004        | <ul style="list-style-type: none"> <li>• CC's first newspaper case under the Enterprise Act regime which meant that the CC looked at the acquisition solely on competition grounds rather than on the wider public interest test as had previously been the case under the Fair Trading Act 1973</li> </ul> |

| <b>Parties Involved</b>                                   | <b>Date Referred</b> | <b>Significant Issues</b>  |
|---|----------------------|--|
| DS Smith Plc / Linpac Containers Ltd                      | 20 May 2004          | <ul style="list-style-type: none"> <li>• The inquiry focussed on possible coordinated effects in the cardboard sheet and associated markets</li> <li>• CC cleared the merger but recommended OFT investigate allegations made to it of explicit collusion</li> </ul>                                   |
| Knauf Insulation Limited / Superglass Insulation Limited  | 17 June 2004         | <ul style="list-style-type: none"> <li>• The relevant market was already highly concentrated. If the merger went ahead, the merged entity's share would be 50 to 60 per cent</li> <li>• Only effective remedy was to prohibit the merger</li> </ul>  |
| Emap plc / ABI Building Data Ltd                          | 01 July 2004         | <ul style="list-style-type: none"> <li>• Combined entity held over 70 per cent market share</li> <li>• The merger removed the main competitor and left customers with less choice and possible price rises</li> <li>• Only effective remedy was divestment as the merger had been completed</li> </ul> |
| National Express Group plc / the Greater Anglia Franchise | 27 May 2004          | <ul style="list-style-type: none"> <li>• Use of passenger surveys</li> <li>• Analysis of demand elasticity and potential profit incentives</li> <li>• Analysis of coach/rail substitutability and demand elasticity</li> </ul>   |
| Taminco NV / Air Products and Chemicals Inc               | 16 July 2004         | <ul style="list-style-type: none"> <li>• Analysis of the counterfactual – lessening of competition was inevitable compared to status ante</li> </ul>   |
| Arriva plc / Sovereign Bus & Coach Company Ltd            | 03 August 2004       | <ul style="list-style-type: none"> <li>• No material direct competition found between the parties' 31 bus service overlaps and effective competition from third parties on the other overlaps</li> </ul>   |
| Arcelor SA / Corus Group plc                              | 10 September 2004    | <ul style="list-style-type: none"> <li>• Difficulty of finding an appropriate and proportionate remedy for a completed merger</li> <li>• Recommendation that the market be closely watched by the EC and OFT</li> </ul>  |

| Parties Involved   | Date Referred     | Significant Issues  |
|--|-------------------|---|
| Serviced Dispense Equipment Limited / the technical Services function of Coors Brewers Limited | 29 September 2004 | <ul style="list-style-type: none"> <li>• Complexities in dealing with multiple parties</li> <li>• The large size of the merged entity would lead to less competition and likely lower standards and price rises</li> <li>• Recommendation that OFT consider whether a market investigation into the pricing or supply of beer may be appropriate</li> </ul> |
| James Budgett Sugars / Napier Brown Foods PLC  | 12 October 2004   | <ul style="list-style-type: none"> <li>• Involved a public policy interface (EU sugar regime)</li> <li>• The acquisition was cleared but the CC voiced concerns about the lack of effective competition in the sugar market</li> </ul>  |

b) *Summary of key cases*

- Archant – Independent News & Media

79. The completed acquisition by Archant Limited of the London regional newspapers, formerly owned by Independent News & Media plc, was referred to the Competition Commission in April 2004.

80. This was the first newspaper reference since the implementation of the Communications Act 2003 gave the OFT jurisdiction over relevant newspaper mergers. It followed a reference to the CC by the Secretary of State for Trade and Industry of the anticipated acquisition of the same titles by Newsquest (London) Limited in 2003.

81. The OFT took the view that the acquisition by Archant of three titles in North and East London had similar characteristics to transactions that had previously given the CC concern, and that the transfer of another four titles might result in the creation of a near monopoly in some areas. For these reasons, the OFT thought that the test for reference was met and that the CC should look at the merger in greater depth.

82. The CC eventually concluded that the acquisition would not lead to a substantial lessening of competition in the market for advertising in those areas affected by the takeover. Final clearance of the merger was given in September 2004.

- Capital Radio – GWR Group

83. Capital Radio plc's anticipated acquisition of GWR Group plc, which owns Classic FM and 36 local radio stations, was cleared without a reference to the Competition Commission after satisfactory undertakings were given to address the OFT's competition concerns.

84. The OFT's investigation found that, while the merged entity would have a 40 per cent share of radio advertising revenue, the stations owned by Capital and GWR were in largely different parts of the UK. Advertisers would be able to switch from the merged entity to alternative stations when running a national campaign.

85. However, this was not the case in the East Midlands, where the OFT believed that it was the case that the merger may be expected to result in a substantial lessening of competition in the supply of radio advertising airtime.

86. In response to the OFT's concerns, the parties offered to divest Capital Radio's station in the East Midlands, Century 106FM. The OFT accepted this undertaking in lieu of a reference to the CC in March 2005.

- Taminco – Air Products and Chemicals

87. The OFT referred the anticipated acquisition by Taminco N.V. of the European methylamines and derivatives business of Air Products and Chemicals Inc (AP) to the Competition Commission in July 2004.

88. AP decided in spring 2003 to withdraw from the European market for methylamines and methylamine derivatives, which are used in products such as solvents and coatings. This led to the closure of its manufacturing plant at Billingham and the proposed sale of the remaining parts of the business to Taminco.

89. Concerns had been raised about the parties' ability to increase prices post-merger, particularly in relation to alkylalkanolamines (AAAs), a methylamine derivative, where the merger would reduce the number of European players from three to two. The parties had argued that the expected closure of AP's European methylamines and derivatives business meant that the acquisition would have no effect on competition in the UK.

90. However, on the basis of the evidence provided, the OFT concluded that it may be the case that the proposed merger may be expected to result in a substantial lessening of competition within the markets for the supply of AAAs.

91. Following its own investigation, the CC was satisfied that AP would withdraw from the supply of these chemical products in any event and that its customers would not be adversely affected by the takeover. The acquisition was therefore cleared.

- Terra Firma – UCI & Cinema International Corporation

92. The OFT decided not to refer the acquisition by Terra Firma Investments (GP)2 Ltd of United Cinemas International (UK) Ltd and Cinema International Corporation (UK) Ltd to the Competition Commission, provided that satisfactory divestment undertakings were given.

93. The merger followed Terra Firma's acquisition of the Odeon cinema chain, which was cleared by the OFT in November 2004.

94. The OFT concluded that it may be the case that the acquisition by Terra Firma of UCI and Cinema International Corporation may be expected to lessen competition substantially, to the detriment of cinemagoers, in 11 local areas where both UCI and Odeon operate.

95. The parties offered to divest a cinema in each of these areas to address our concerns. The OFT accepted this undertaking in lieu of a reference to the CC in May 2005.

- iSOFT Group – Torex

96. In April 2004, the OFT accepted undertakings from iSOFT Group plc to divest the Laboratory Information Management Systems (LIMS) business of Torex Plc to remedy competition concerns about the merger of the two healthcare IT companies.

97. As a result of these undertakings, the OFT decided not to refer the merger to the Competition Commission. The OFT's original decision to clear the merger was appealed to the Competition Appeal Tribunal by a third company, IBA Health Ltd, in November 2003. The CAT upheld this appeal and asked the OFT to reconsider its decision.

98. The OFT's April 2004 decision took account of the CAT ruling and of a subsequent Court of Appeal judgment, which clarified the Enterprise Act test for merger references to the CC. In January 2005, the OFT approved Clinisys as a buyer of Torex's LIMS business and cleared the resulting merger without reference to the CC.

99. The OFT subsequently amended its published guidance on the substantive assessment of mergers to take account of the Court of Appeal's ruling.

- Phoenix Healthcare – East Anglian Pharmaceuticals

100. The OFT's decision to clear the proposed acquisition of East Anglian Pharmaceuticals Limited (EAP) by Phoenix Healthcare Distribution Limited in December 2004 was the subject of an appeal by a rival company, UniChem.

101. While the merger raised no concerns on a national level, it would reduce the number of full-line wholesale suppliers of pharmaceuticals in East Anglia from four to three. It would also create the largest full-line wholesale supplier of ethical pharmaceuticals to dispensing doctors in the region.

102. However, the OFT concluded that the other full-line wholesalers, AAH and UniChem, were well placed to compete for EAP's business, and that dispensing doctors had no specific needs which would prevent them switching to another supplier. As a result, the OFT did not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition.

103. The Competition Appeal Tribunal ruled that, while much of the decision was soundly based, the OFT had taken insufficient account of contested matters of fact – particularly regarding the reach and logistics of UniChem's network. It therefore remitted the matter to the OFT for reconsideration.

- London Stock Exchange

104. The OFT referred the rival bids for the London Stock Exchange plc (LSE) made by Deutsche Börse AG (DBAG) and Euronext N.V. (Euronext) to the Competition Commission in March 2005.

105. The OFT found that the test for reference in relation to the supply of on-exchange trading services for equities in the UK was met in both cases. DBAG's bid also raised concerns about the supply of clearing services for equities trades in the UK.

106. The proposed bids come at a time of emerging competition in equities trading between LSE, DBAG and Euronext. The OFT felt that further investigation was needed to determine if either merger would substantially lessen future competition.

107. Although both DBAG and Euronext proposed undertakings instead of reference, the OFT concluded that neither proposal resolved all of our competition concerns in a sufficiently clear-cut manner.

108. The CC is expected to report late October 2005.

- IMS Health

109. The OFT reviewed merger undertakings given by IMS Health Inc in 1999 in relation to the supply of specialised pharmaceutical data services.

110. These undertakings were accepted by the Secretary of State for Trade and Industry following a report of the Monopolies and Mergers Commission, now the Competition Commission, into IMS Health's acquisition of Pharmaceutical Marketing Services Inc (PMSI).

111. The OFT extended the data licensing provision of the undertakings (the only provision that was time limited) for six months to consider the effects of the undertakings further. Following that review, the data licensing provision was allowed to lapse in February 2005, but no changes were made to the rest of the undertakings, which remain in force.

c) *EC Merger Regulation and Casework*

112. The new ECMR (Council Regulation (EC) No 139/2004) came into force on 1 May 2004, replacing Council Regulation (EEC) No 4064/89. The European Community Merger Regulation (ECMR) gives the European Commission exclusive jurisdiction over mergers that exceed certain turnover thresholds.

113. As the competent authority in the UK, the OFT received details of all mergers notified under the ECMR. The OFT examined significant cases and provided the UK's views to the European Commission. The OFT also represented the UK at all hearings and Advisory Committee meetings at which the European Commission's draft decisions were considered by member states.

114. The OFT continued to play an active part in the European Competition Authorities (ECA) multi-jurisdictional mergers subgroup, which is a forum for informal cooperation on merger cases among EU member states. In addition to ongoing case liaison and information exchange, the ECA revised its guidance on referrals to the European Commission to reflect changes to the ECMR. Discussions also began on strengthening the role of the Advisory Committee within the ECMR process in Brussels.

115. The OFT made one request under Article 9 of the ECMR to refer to the UK competition authorities a merger previously notified to the European Commission. This request, which concerned the acquisition of NHP by Blackstone, both providers of care and nursing homes for the elderly in the UK, was granted by the Commission.

116. The OFT decided against referring to the Commission under Article 22 the two competing bids for the London Stock Exchange by Deutsche Börse and Euronext. The OFT concluded that since the primary competitive impact of the proposed transactions appears to be in the UK, and the OFT has considerable experience in the markets concerned, it was appropriate to retain jurisdiction over both bids in the UK. Both bids were subsequently referred to the Competition Commission. (see Para 103).

117. The OFT considered a number of requests for pre-notification referral of a merger either from the UK to the European Commission (under Article 4(5) ECMR) or from the European Commission to the UK (under Article 4(4)). We vetoed one Article 4(5) request (Bayard – Landis & Gyr) on the grounds that the main effect of the merger appeared to affect only the UK.

118. The OFT agreed to one Article 4(4) request transferring jurisdiction to the UK (in respect of an agricultural merchanting joint venture – Associated British Foods plc and Cargill plc). These mergers were subsequently examined under the provisions of the Enterprise Act.

### **III. Resources of competition authorities**

#### ***1. Annual Budget***

119. For 2004-05, the total OFT budget for competition enforcement work was £18.3m (approx. \$32.3m). These figures excludes support services such as accommodation, IT services, HR, Finance etc, as well as budget for litigation, for that year.

120. The CC expenditure for 2004-05 was approximately £23 million (£7 million represents accommodation costs, and includes IT costs).

#### ***2. Number of employees***

121. The OFT dedicated a total of 243 staff to competition enforcement activities in 2004-05. Of this, 160 were employed in the Competition Enforcement division, 23 in our in-house Legal division, and 44 in Markets, Policy and Initiatives (MPI) division. Further, the equivalent of 16 members of staff from our professional economic advice branch were dedicated to provide advice on the OFT's competition enforcement work.

122. The breakdown of OFT staff by specialists as at the 31 December 2004 is as follows: 67 economists - includes seven financial analysts and four statisticians; 84 lawyers; 92 other professionals - some of these competition staff may hold legal and/or economic qualifications below university degree level.

123. At the OFT, of the 243 staff identified above, 152 were involved in enforcement against anticompetitive practices, and 37 were involved in merger review and enforcement.

124. During 2004-2005, the CC had a total of 147 staff, including 24 economists, 12 lawyers, 58 other professionals (including accountants, business advisers and senior administrators), and 51 support staff.

125. The CC staff support the CC members (generally, a group of five members considers a case). There are 46 members, all of whom are part-time. Additionally, the Chairman and three Deputy Chairmen are members of the Commission and, together with the Chief Executive and two non-executive members are members of the Council (the strategic management board).

#### ***3. Period covered by the above information***

126. The OFT financial figures provided are for financial year 1 April 2004 to 31 March 2005, and staff figures are for the position at the end of the year, 31 December 2004. The CC financial figures and staff figures provided are for 1 April 2004 to 31 March 2005.

#### IV. Summaries of or references to new reports and studies on competition policy issues

##### 1. *OFT Market Studies*

127. The OFT's approach to selecting and conducting market studies was set out in guidance published in November 2004.

##### a) *Published Market Studies*

- **Doorstep selling** - In May 2004, the OFT study concluded that legislation on doorstep selling should be updated to combat the psychological tactics employed by many salespeople. The study found that sophisticated influencing techniques were leading consumers to make inappropriate purchases, which they later regretted, highlighting a gap in consumer protection. The OFT recommended that the government extend the law to give cancellation rights for solicited as well as unsolicited visits, and consider closing a loophole which allows unscrupulous traders to undermine these rights by unnecessarily installing goods during the cooling-off period. The Department of Trade and Industry launched a consultation on the OFT's recommendations in July 2004, and concluded in November 2004 (report yet to be published). The OFT ran a consumer campaign, in conjunction with interested consumer groups.
- **Public sector procurement** – The OFT's published preliminary research, carried out by independent consultants, DotEcon Ltd, on the positive and negative effects of public sector procurement on competition (in September 2004). The research indicated that public procurement can enhance competition as well as restrict or distort it. DotEcon identified nine sectors where public procurement practices is more likely to impact on competition (eg. 'sewage and refuse disposal, sanitation and similar activities', which includes waste management).
- **Public subsidies** – The OFT published stage one of its investigations into the effects of public subsidies on competition (November 2004). In the report published, the OFT developed an analytical framework for considering the competition effects of subsidies and identifies the need to improve aspects of the current approach to controlling subsidies. Using the framework, the OFT found that existing rules and guidance at a European and national level do limit such competition distortions, but could go further. The second stage of the study will focus on specific issues and case studies to develop recommendations to government on subsidy design.
- **Financial Services and Markets Act 2000 (FSMA)** – The study, conducted as part of a two-year review of the FSMA and researched by Oxera, concluded that the FSMA does not appear to have had a significant negative impact on competition in financial markets. Furthermore, the study concluded that FSMA promotes competition by addressing market failures where these exist, for example by addressing information asymmetries in the provision of investment services through the regulation of financial advisers. The OFT announced in March 2005 that it would not carry out further research into markets affected by FSMA at this time.
- **Ticket agents** - Though most consumers buying from ticket agents were happy with their last purchase, the OFT study identified a need for better price information and clearer contract terms. The OFT recommended a change to Committee for Advertising Practice (CAP) guidance so that all non-broadcast event advertising indicates the face value of the ticket and that additional fees may apply. The report also concluded that some of the terms in ticket agents' consumer contracts were potentially unfair. The Society of Ticket Agents and Retailers agreed to work with the OFT to produce model terms for its members.

b) *Ongoing Market Studies*

- **Property searches** - The OFT launched a market study into the £200m property search sector in December 2004, following a number of complaints from property search companies about access to property information and competition in the market as a whole. Information is often collected or held exclusively by bodies such as local authorities and the Land Registry. The aim of the study is to assess the structure of the market and how consumer needs are being met in terms of the collection, accessibility and pricing of information. (This study was published in September 2005.)
- **Liability insurance follow-up review** - In the OFT's 2003 report on liability insurance, the OFT pledged to keep these markets under review. The OFT launched a follow-up study in December 2004 to look again at premium levels and the availability of cover to determine if the markets are working better. The study also examines claims that 'after the event' insurance, which is taken out when an individual pursues a claim against a liable party, has contributed to the rise in liability insurance premiums.
- **Care homes** - In response to an informal super-complaint from the Consumers' Association (now Which?), supported by a number of organisations in the Social Policy Ageing Information Network, a study was launched in June 2004 into care homes for older people. The study explores how prospective residents and their representatives choose a home and how this affects the market. It also looks at price transparency, the ease with which clear and accurate information on moving into a home can be obtained, whether care home contracts offer sufficient protection against unreasonable price increases, and the ability of older residents and their representatives to make complaints. (This study was published on May 2005.)

c) *Market investigation references to the CC*

128. Under the Enterprise Act, the OFT has the power to refer markets to the CC for further investigations, where it believes there are reasonable grounds for suspecting that any feature, or combination of features, of a market is preventing, restricting, or distorting competition. It is for the CC to decide if this is the case, and, if so, whether action should be taken.

129. If it makes an adverse finding, the CC has the duty to consider appropriate remedial action and the power to impose undertakings. When deciding upon the remedy, it may take into account the impact of the remedy on relevant customer benefits. As well as the ability to impose structural (including divestment) remedies, the CC may make recommendations to others of action they should take. The CC must complete their investigations within 2 years. The UK government has committed itself to respond to any such recommendations made to it within 90 days.

130. In this period, the OFT referred two markets to the CC: the provision of Home Credit (typically small sum cash loans, the repayments being collected at the borrower's home) and the supply in bulk of Liquid Petroleum Gas to domestic customers. Both inquiries have provisional completion dates falling within the 2005/6 reporting year.

- **Liquid Petroleum Gas** – In July 2004, the OFT referred the market for the supply of bulk liquefied petroleum gas (LPG) for domestic use to the CC. A preliminary review, prompted by complaints to the OFT from consumers, found that features of the market appear to prevent, restrict or distort competition, and may lead to customers paying higher prices for their

household LPG supply. (The CC published its 'Emerging Thinking' in April 2005 and published its provisional findings in August 2005.)

- **Home Credit Services** – In December 2004, the OFT referred the market for the supply of home credit to the CC following a super-complaint made by the National Consumer Council. The OFT's analysis and consultation found that competition in the market appears to be restricted, with lenders having limited incentive to compete on price or attempt to win business by taking over other lenders' loans. The CC proposes to publish its 'Emerging Thinking' in the autumn of 2005 and its final report in March 2006.

131. In January 2005, the CC published its 'Emerging Thinking' identifying what it then thought to be the key issues on the market for the supply of **store card services** to retailers and of consumer credit through store cards. This reference was made to the CC in April 2004. In March 2005, the OFT varied the terms of reference at the request of the CC to now include network cards and insurance services connected to store cards. (Following further hearings and consideration of the evidence, the CC published its provisional findings in September 2005.)

## 2. *Reviews*

- Review of remedies

132. The OFT is required to keep under review action taken in compliance with undertakings or orders, and from time to time consider if these remedies are having their intended effect of making markets work better. The OFT's role is purely advisory: the power to vary, revoke or make new undertakings or orders rests with the Competition Commission and the Secretary of State for Trade and Industry.

133. Two reviews were announced in November 2004. The first examines undertakings given in relation to classified advertising in telephone directories; the second looks at undertakings given by Macfarlan Smith Ltd on the pricing and supply of opium derivatives used in a wide range of painkillers and cough medicines.

134. The OFT's review of undertakings given by suppliers of postal franking machines concluded that these were outdated and inadequate, and that a market investigation reference to the CC was appropriate. In response to this decision, new undertakings were offered to the OFT by the two leading suppliers of postal franking machines in the UK and the Royal Mail. The OFT consulted on these in February 2005. In December 2004, the Secretary of State accepted the OFT's advice, subject to consultation, that orders relating to car parts and film distribution were no longer needed. In March 2005, the Secretary of State Accepted the OFT's advice, subject to consultation, that an order relating to specialist advertising services should be revoked.

- Supermarket code review

135. The OFT found that supermarkets are, by and large, complying with the Supermarkets Code of Practice, but that the Code is not being used to resolve disputes.

136. A compliance audit carried looked at the relationships between grocery suppliers and the big four supermarkets, and found that relatively little evidence that the Code was being breached.

137. The OFT urged suppliers to overcome their fear of complaining and to make better use of the Code's dispute resolution procedure, and also recommended that supermarkets and suppliers put their terms of business in writing to avoid misunderstandings and to ensure that deals are honoured.

138. The OFT concluded that, based on the evidence seen, the market for the supply of groceries seems to be working well for consumers, but invited further evidence and comments on the issues raised by the audit, and on wider competition concerns.

- Reform of the legal professions

139. The OFT published its response to the Clementi review on the regulation of legal services in England and Wales and advised the DCA on implementing Clementi's recommendations. The OFT welcomed the recommendations as an important step towards promoting competition and innovation in the profession.

140. The OFT's 2001 report, 'Competition in the Professions', highlighted a number of significant restrictions on the provision of legal services. Although some of these have since been addressed, others remain – including a ban on barristers entering partnerships, and on solicitors entering partnerships with members of the professions. The Clementi Report recommends new legal disciplinary practices, which would substantially reduce these restrictions.

### 3. Super-complaints

141. The OFT received two super-complaints, both of which were responded to within 90 days:

- Home credit - received June 2004, response September 2004
- Northern Irish banks - received November 2004, response February 2005 (referring the market to the CC for further investigation in May 2005)

### 3. *Reports and studies on competition policy issues.*

142. The UK competition regime has faced considerable changes in recent years with the introduction of the wide-ranging reforms embodied in the Competition Act 1998 and the Enterprise Act 2002. This is now one of several areas of legislation currently being evaluated.

143. In evaluating competition policy, the Government's overarching focus is to assess the regime against the Government's high-level target of a "world-class competition regime". This high-level objective is evaluated through a biennial process of peer review against international comparators. The authorities are undertaking further work and case studies with the aim of evaluating more detailed aspects of the competition regime, namely overall competition policy objectives and the performance of the UK's competition authorities. The evidence gathered through these evaluation exercises can be used to inform future Government policy-making and the interventions of the UK competition authorities to ensure they are focused, effective and make the best use of resources.

144. The studies published during the year 2004/5 were:

- **DTI Study: The Benefits of Competition**

145. In 2004 the Department of Trade and Industry published a study it had commissioned from academics at the University of East Anglia which assessed the benefits resulting from the introduction of competition in a number of sectors where previously competition had been muted. Using a case study approach, the research evaluated policies promoting sectoral liberalisations and deregulation, in addition to competition interventions by the OFT and the Competition Commission. These interventions and policy

changes were assessed against the policy objectives of removing market imperfections and thereby reducing prices for consumers.

146. The report found that the introduction of competition can sometimes lead to substantial reductions in price. For both international telephone calls, which were deregulated in the UK, and European economy airfares, which were affected by the liberalisation of the sector across the European Union, average price was more than halved within a decade of the intervention. Prices of new cars fell by around ten per cent following an investigation by the Competition Commission and in the market for replica football shirts, prices fell on average by 15 per cent following the OFT's intervention on price fixing. In the latter case, the report found that the outcome vindicated the changes to the competition regime brought about by the introduction of the Competition Act 1998. However, in two of the sectors examined (book sellers and retail opticians) the results were not conclusive.

147. The report also illustrates that introducing competition into a market can promote innovation, for example the new business model introduced by budget airlines. Assessing innovation ex-ante is unpredictable, but the benefits derived highlight that introducing competition can have wider benefits than simply lowering prices. Overall, the study found little conclusive evidence of any harmful side effects as a consequence of the policy intervention and showed, in general, that the competition policies had been a success.

- **The PwC Economics Report on ex-post Evaluation of Mergers**

148. In March 2005 a report by consultants PwC Economics was published<sup>6</sup>. It had been commissioned jointly by the Office of Fair Trading (OFT), the Competition Commission (CC) and the Department of Trade and Industry (DTI). PwC were asked to carry out an ex-post evaluation of mergers occurring between 1990 and 2002, which following consideration by the OFT, had been referred by the Secretary of State for Trade and Industry to the CC and subsequently cleared by the CC.

149. The findings of the PwC study were encouraging. It concluded that:

- (i) Following clearance, there appeared to be effective competition in all cases considered with only one possible exception. In this one case, competition was hard to gauge because the merger had occurred shortly before the study and the market was in flux following an exogenous event – the failure of a grain harvest in a merger of a glucose syrups producers.
- (ii) In only two of the ten cases did there appear to have been any short-run competition concerns resulting from a merger. In both cases these were resolved through new entry.
- (iii) The CC is generally good at assessing competitive constraints ex-ante. The study found that the competitive constraints deemed salient by market participants ex-post were for the most part those identified ex-ante by the CC. Notably, the CC's record is very strong in predicting where new entry (or threat thereof) is likely to resolve competition problems.
- (iv) The CC was, however, less successful in assessing one competitive constraint ex-ante – buyer power. The CC occasionally anticipated a reduction in buyer power, for example in markets

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<sup>6</sup> <http://www.offt.gov.uk/NR/rdonlyres/4E8F41F9-5D96-4CD4-8965-8DDA26A64DA8/0/oft767.pdf>  
[http://www.competition-commission.org.uk/our\\_role/evaluation/ex\\_post\\_evaluation\\_of\\_mergers.pdf](http://www.competition-commission.org.uk/our_role/evaluation/ex_post_evaluation_of_mergers.pdf)

served by few suppliers, where none actually occurred. Conversely, the CC sometimes expected there to be more buyer power than actually resulted post-merger in markets where there were a number of credible suppliers.