

THE UNITED KINGDOM

(2000)

Table of contents

Executive Summary	2
I. Changes to competition laws and policies, proposed or adopted	3
1. Summary of new legal provisions of competition law and related legislation	3
2. Other relevant measures, including new guidelines	4
3. Government proposals for new legislation	4
II. Enforcement of competition laws and policies	5
1. Action against anticompetitive practices, including agreements and abuses of dominant positions	5
a) Activities of competition authorities	5
Competition Act 1998	5
Notifications for a decision under the Competition Act	5
Fair Trading Act 1973 – complex monopolies	5
Undertakings given	6
<i>Monopoly reports by the CC in 2000 resulting from references</i>	6
<i>Action on earlier CC monopoly reports</i>	6
<i>Reviews of monopoly undertakings and orders</i>	6
<i>Resale Prices Act 1976</i>	6
<i>Cases</i>	7
2. Mergers and acquisitions	11
a) Statistics	12
Merger activity considered in 2000	13
<i>Cases</i>	15
<i>Merger references to the CC</i>	15
<i>Undertakings in lieu of a merger reference to the CC</i>	16
<i>CC merger reports published</i>	18
Action following CC reports	19
III. The role of competition authorities in the formulation and implementation of other policies	21
IV. Resources	21

Executive Summary

1. The most significant development of the year was the introduction of the major provisions of the Competition Act 1998 (CA98) on 1 March 2000. The CA98 is the single most important reform of United Kingdom competition law since the creation of the Office of Fair Trading (OFT) by the Fair Trading Act 1973.

2. The CA98 contains two prohibitions – the Chapter I and Chapter II prohibitions – which are modelled on Articles 81 and 82, respectively, of the Treaty of Rome. In contrast to the legislation it replaces, the new Act provides strong powers of investigation, provisions for interim measures, and powers to impose financial penalties on undertakings of effectively up to 30 per cent of their UK turnover for breach of the prohibitions.

3. Complaints have been coming in at over twice the rate under the old legislation, running at an annual rate of over 2,000. The new legislation has already started to have a deterrent effect. For example, in a number of cases, organisations alleged to have refused to supply goods and services finally met their obligations when the complainants explained that they had made a complaint to the OFT. Evidence also suggests that a number of suspected cartels ceased when the new law took effect.

4. The OFT continued to develop its new structure, launched in November 1999, to implement the new competition legislation. The strengthening of the OFT's role required an extensive training and recruitment programme. In addition, the Competition Policy Division put in place new systems and procedures to detect and stop cartels and other damaging anti-competitive behaviour, and introduced a range of tools to help staff apply the new legislation, including a casework management system and a procedures manual.

5. As well as an extensive campaign to encourage complaints and discourage businesses from unnecessarily notifying agreements under the CA98, the OFT adopted an 'open door' policy whereby the OFT offers free informal advice to those unsure whether a practice is anti-competitive or whether to notify an agreement.

6. Key areas under the new competition regime include:

- stopping cartels and other damaging anti-competitive behaviour
- stopping abuse of dominant market positions
- encouraging complaints and whistleblowers
- discouraging fail-safe notifications to minimise resources being diverted into addressing inappropriate notifications
- business education

7. The OFT also maintained constant contact with the specialist regulators for telecommunications, gas, electricity, water and sewerage and railway services who have concurrent powers under the CA98, in order to co-ordinate enforcement activity and ensure a consistency of approach.

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

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

Competition Act 1998

8. The Competition Act 1998 prohibits agreements, practices and conduct that have a damaging effect on competition in the United Kingdom. The CA98's Chapter I prohibition covers anti-competitive agreements and practices, while the Chapter II prohibition covers the abuse of a dominant position. These prohibitions are based on Articles 81 and 82 respectively of the Treaty of Rome.

9. The CA98 gives the OFT wide-ranging powers of investigation and enforcement. They can:

- enter premises to conduct investigations
- take interim measures before completing an investigation
- impose financial penalties of up to 10 per cent of UK turnover on businesses found to have infringed the law for each year of infringement up to a maximum of three years.

10. Provisions for transition from previous competition legislation to the CA98 applied during 2000. The transitional arrangements were intended to allow businesses a reasonable time to modify their agreements and practices to comply with the CA98's Chapter I prohibition (there are no transitional arrangements in respect of the Chapter II prohibition). Following its enactment on 9 November 1998, there was a period of approximately 16 months before the CA98 came into force when businesses could do this. In addition, most agreements made before then which complied with existing laws benefit from further concessionary transition periods of one or five years during which the Chapter I prohibition will not apply.

11. The Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976 were repealed when the CA98 came into force on 1 March. However, in order to allow businesses to concentrate on preparing themselves for the new regime, all agreements which would have been subject to registration under the Restrictive Trade Practices Act, except those that involved price-fixing, became non-notifiable and parties to them did not have to furnish particulars of them to the OFT.

12. The CA98 also contained provision for the treatment, after 1 March, of various matters under the Fair Trading Act 1973 and the Competition Act 1980. The framework which deals with monopolies in the Fair Trading Act 1973 is retained in addition to the CA98, which amended the Fair Trading Act to strengthen the powers of investigation for monopolies. It is not intended that the prohibitions in the Competition Act and the monopoly provisions in the Fair Trading Act should be used in parallel to investigate the same matters. A suspected infringement of the prohibitions will normally be investigated under the Competition Act.

13. The complex monopoly provisions of the Fair Trading Act are retained for activities which are not caught by the CA98 prohibitions; where, for example, a group of companies all adopt similar practices or engage in parallel behaviour which appears to be anti-competitive, but there is no evidence of collusion or agreement. The scale monopoly provisions are intended for dealing with the situation where a prior infringement of the prohibitions has already been proven but where there is a real prospect of further abuse by the same company. The structural remedies available under the monopoly powers may be the only effective means of preventing further abuse.

UNITED KINGDOM

Financial Services and Markets Act 2000

14. Also during 2000, preparations began for new responsibilities under the wide-ranging Financial Services and Markets Act. The Act will see the existing self-regulating organisations replaced by the Financial Services Authority (FSA). It received Royal Assent in 2000 but is not yet in force.

15. The Act empowers the OFT to keep the regulating provisions and practices of the FSA and the regulatory provisions and practices of recognised investment exchanges and recognised clearing houses under scrutiny. The Act also contains provision for the future expansion of the OFT's role to include keeping the regulating provisions and practices of the official listing authority (currently the FSA) under review. These new duties supersede the OFT's responsibilities under the competition regime in the Financial Services Act 1986.

Transport Act 2000

16. The Transport Act 2000 will, when it comes into force, give local authorities powers to intervene in transport markets by making 'schemes' with which operators would be bound to comply. Under the Act, the OFT is required to carry out a competition test on these schemes. Local authorities are not required to notify schemes to the OFT, but they will be able to ask him for guidance on their proposals. Any operator who is, or is likely to be, affected by a scheme may apply to the OFT for a decision.

Packaging waste

17. Up until 1 March all new packaging waste schemes had to be given competition clearance by the OFT under the Producer Responsibility (Packaging Waste) Regulations 1997. When the CA98 came fully into force on 1 March this section of the 1997 Regulations was repealed. Now all schemes (new and old) are subject to normal competition scrutiny under the CA98 1998 and the Fair Trading Act 1973.

2. Other relevant measures, including new guidelines

18. A number of technical guidelines on the CA98 were published in 2000. These were:

- The application of the Competition Act in the telecommunications sector
- Vertical agreements and restraints
- Land agreements
- The application of the Competition Act in the water and sewerage sectors
- The application of the Competition Act to the energy sectors
- The application of the Competition Act to railway services
- Director general of Fair Trading's Guidance as to the appropriate amount of a penalty

3. Government proposals for new legislation

19. The Department of Trade and Industry announced plans to give the OFT an enhanced role in the merger control process. Under the proposed reforms, The OFT will continue to conduct preliminary investigations, but will be able to refer cases requiring further investigation to the CC without ministerial

involvement save in a small minority of cases which raise exceptional ‘public interest’ issues, such as national security.

20. Primary legislation is required to enact the proposed reforms. In the interim, the Secretary of State for Trade and Industry announced he would accept the OFT’s advice on whether to refer mergers to the CC – again, in all but exceptional cases.

21. In addition, the planned reforms will retain the system of voluntary notification for all mergers, tighten the timetables for investigations and ensure decisions are made against a competition-based test. The DTI is also consulting on a proposal to exempt small and medium-sized enterprises from merger fees.

II. Enforcement of competition laws and policies

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

a) *Activities of competition authorities*

Competition Act 1998

22. Eleven enterprises filed notifications with the OFT under the Competition Act - seven were notifications for a decision and four were for guidance. Guidance was provided in eight cases, including a number of those notified under the early guidance provisions prior to 1 March 2000. Neither notifications for guidance nor the guidance given are published. However, summary details of notifications for decision are available on the Public Register of Competition Act cases.

23. There were four cases where a leniency application from a company was agreed for a cartel member under the OFT's leniency policy.

Notifications for a decision under the Competition Act

<i>Date of registration</i>	<i>Case</i>
2 March	MasterCard/Europay UK Ltd
11 May	Link Interchange Network Limited
20 July	The General Insurance Standards Council
3 August	The British Horseracing Board and The Jockey Club
22 September	The Society of Film Distributors
22 November	BSkyB/NTL channel supply agreement
6 December	Memorandum of understanding on the supply of oil fuels in an emergency

Fair Trading Act 1973 – complex monopolies

24. Section 2 of the Fair Trading Act 1973 requires the OFT to keep commercial activities in the UK under review in order to detect monopoly situations and investigate areas of concern. The OFT monitors

UNITED KINGDOM

markets to identify monopoly situations. It pays particular attention to the economic importance of firms with large market shares, taking account of information on price levels and movements, profits and market behaviour. It also takes note of complaints and other representations from business and the public.

25. The OFT can refer monopoly situations to the CC . Alternatively, he can seek remedial undertakings in lieu of a reference. If the situation is referred, the CC investigates and reports on the effects on public interest. If it finds that a monopoly situation exists and that it operates against the public interest, the Secretary of State for Trade and Industry can take steps to remedy the matter. The OFT is typically asked by the Secretary of State to negotiate appropriate undertakings from the company or companies concerned, and subsequently monitors and reviews them.

Undertakings given

<i>Date</i>	<i>Case</i>	<i>For summary see paragraph</i>
16 February	Birds Eye Walls Ltd	36

Monopoly reports by the CC in 2000 resulting from references

<i>Date of publication</i>	<i>Case</i>	<i>For summary see paragraph</i>
January	Supply of Impulse Ice Cream	36
April	New Cars	52
October	Supermarkets	33
December	Scottish Milk	31

Action on earlier CC monopoly reports

<i>Date of publication of advice</i>	<i>Case</i>	<i>For summary see paragraph</i>
December	The supply of beer	41

Reviews of monopoly undertakings and orders

<i>Date of completion</i>	<i>Case</i>	<i>For summary see paragraph</i>
July	Petrol	30
October	White salt	40
-	Yellow Pages	27

Resale Prices Act 1976

26. There is only one case outstanding under this now-repealed law - medicaments. See paragraph 43.

Cases

BSkyB and pay-TV

27. During 2000, the OFT undertook a competition review of BSkyB's position in the market for wholesale pay television and of the undertakings it gave in 1996 to meet concerns about competition in the market. Following the review, in December the OFT launched a Competition Act investigation into the company's activities.

Yellow Pages

28. The OFT launched a review of undertakings given by BT in respect of its Yellow Pages classified directory advertising business. A 1995 Monopolies and Mergers Commission (now CC) inquiry concluded that Yellow Pages was able to exploit its monopoly position. BT subsequently agreed to a range of measures including a price cap on advertising rates of two per cent below the level of inflation. The OFT is examining the effectiveness of the undertakings, given under the Fair Trading Act, and whether they need to be varied or superseded.

Predatory fuel pricing accusations

29. High world oil prices and public pressure on UK retail prices – and not anti-competitive behaviour – resulted in the squeeze on diesel and petrol margins late in the year. That was the conclusion of an inquiry in the wake of complaints from independent retailers that oil majors had been selling fuel to them at prices that were higher than pump prices on their own branded and tied forecourts. The OFT, which routinely monitors oil companies' margins, found no evidence of price fixing agreements or abuse of a dominant market position by the oil companies.

Petrol prices in the Highlands and Islands

30. An investigation of petrol and diesel prices in the Highlands and Islands concluded that, although they were three to four pence per litre higher than the UK average, they were not excessive. Therefore, there was no case for a reference to the CC. The OFT's second major inquiry into wholesale and retail margins in the Highlands and Islands found no evidence of anti-competitive behaviour or profiteering. In general, higher pump prices in the Highlands and Islands could be explained by suppliers having to cover higher fixed and variable costs from lower volumes of fuel sold, the OFT concluded. The exception was the Western Isles where prices were around 5.5 pence per litre more than the Highlands and Islands average. The OFT found this could not be fully justified on the information available, and launched a separate examination, still ongoing, of competition in this area.

Petrol wholesalers' undertakings

UNITED KINGDOM

31. After advice from the OFT, the Competition and Consumer Affairs Minister released petrol wholesalers from undertakings given in 1966 concerning relations with retailers, since they no longer had any practical application in the current marketplace. The voluntary undertakings covered exclusive petrol supply agreements between wholesalers and retailers, control of forecourt shops and tenancy/licensing agreements.

The supply of milk in Scotland

32. In February, the OFT ordered a CC investigation of the supply of fresh processed milk in Scotland under the monopoly provisions of the Fair Trading Act. The move followed a preliminary inquiry into allegations of anti-competitive behaviour made against Robert Wiseman Dairies Plc (Wiseman), the largest player in the market. The OFT asked the CC to examine the supply of milk to 'middle-ground' customers – retailers other than the large supermarket chains.

33. The CC concluded Wiseman did have a monopoly in this market and that it operated or might be expected to operate, against the public interest. The four members of the group that investigated the market were evenly divided on the main facts of the case. The group's Chairman, who was also a voting member of the group, used her casting vote in favour of the decision. However, as less than two-thirds of the members of the group supported the conclusion, the Secretary of State for Trade and Industry was required, under the terms of the Competition Act, to disregard the group's conclusion. The group did not, therefore, consider or propose any remedies. The Secretary of State asked the OFT to keep the market under close review with regard to potential infringements of the prohibitions in the Competition Act.

Supermarkets

34. The CC reported its findings following an investigation into the supply of groceries from multiple stores. The report followed the decision by the OFT to refer the industry in April 1999. The CC concluded that, taking all matters into consideration, they were satisfied the industry was broadly competitive and that overall excessive prices were not being charged or excessive profits earned.

35. However, the CC identified three situations where it felt competition was distorted and operated against the public interest, and made a series of recommendations that were accepted by the Secretary of State for Trade and Industry. Recommendations included the establishment of a code of practice to put relations between supermarkets and their suppliers on a clearer and more predictable basis. The Secretary of State asked the OFT to work with the larger supermarket chains to draw up this code of practice, and this has since been agreed.

36. The CC also expressed concern about the limited choice of supermarkets in certain areas, and considered that the situation should not be allowed to deteriorate. The Secretary of State therefore asked the OFT to continue to monitor the market and stated that, if he finds signs of the situation deteriorating, appropriate legislation would be considered to require the larger chains to have to seek the OFT's approval before being allowed to acquire or develop large new stores close to their existing stores.

Impulse ice cream

37. In January, the Secretary of State for Trade and Industry published the CC's report on the supply of impulse ice cream and, during the year, the OFT negotiated a series of undertakings with the major manufacturers – Birds Eye Wall's, Nestlé and Mars – to remedy the problems identified in the report.

38. Initially, the Secretary of State accepted interim undertakings in February from Birds Eye Wall's that guaranteed minimum terms of supply to independent wholesalers to help secure the wholesale distribution network on which effective competition in this market depends. They were to operate until longer-term distribution remedies were put in place.

39. In April, he accepted undertakings from Birds Eye Wall's, Nestlé and Mars, not to enter into or renew outlet exclusivity agreements with shops. He accepted further undertakings from Birds Eye Wall's on freezer exclusivity and retrospective discounts for retailers. These undertakings meant Birds Eye Wall's was no longer able to reserve more than 50 per cent of an outlet's freezer display space for its products, and none of the freezer storage space, and was prohibited from offering or giving retailers bonuses, discounts or rebates which operated retrospectively.

40. Finally, after a period of public consultation on remedies concerning distribution by Birds Eye Wall's, the company gave undertakings not to sell its impulse ice cream direct to retailers (other than national accounts) and to distribute through independent wholesalers on non-exclusive and non-discriminatory terms to be notified in advance to the OFT.

White salt

41. The OFT reviewed undertakings given by Staveley Industries on behalf of its subsidiary British Salt and submitted its findings to the Department of Trade and Industry in October. The undertakings, which determined the maximum permitted level of British Salt's prices, were first given following a 1986 Monopolies and Mergers Commission (now CC) report and were revised in 1992. During 2000, Staveley Industries sold British Salt.

Review of Beer Orders

42. Restrictions on the number of pubs brewers can own were lifted when the key element of the Beer Orders was revoked by the Department of Trade and Industry. The Orders, which govern the brewing and pubs industry, were introduced in 1989 to widen consumer choice, reduce prices and reduce barriers to market entry. But following a review and recommendations by the OFT to the Secretary of State for Trade and Industry, the cap on the size of brewers' tied estates was no longer felt to be necessary.

43. However, some elements of the Beer Orders were retained including the guest-beer provision which protects publicans' right to offer a guest beer even if their pub is owned by a major brewer. Also retained was the rule which prevents brewers stopping a pub being used as a pub in future when they sell it.

Medicaments

44. In October, the Restrictive Practices Court began hearing the OFT's case for removal of the 30-year-old exemption which allows manufacturers and suppliers of more than 2,000 branded, over-the-counter medicaments and related goods to set minimum prices to the public.

45. The Court decided in 1970 that resale price maintenance (RPM) on medicaments was in the public interest given the prevailing circumstances. Thirty years on, the OFT believes that removing RPM would lead to lower prices to the public on a significant range of branded medicaments because of:

- competition between retail outlets

UNITED KINGDOM

- pressure from retailers for better terms of supply, encouraging manufacturers to lower their production and distribution costs
- more competition between rival manufacturers.

46. The OFT also feels removing RPM would result in better service as traditional chemists would compete with supermarkets by focusing on their own particular strengths.

47. After the Court struck down a similar exemption relating to books in 1997, medicaments are now the only goods in the UK on which manufacturers and suppliers can legally set minimum resale prices to the public. The hearing to decide this matter had to be abandoned in November following a decision by the Court of Appeal that the members of the court could appear to be biased. A new hearing, before a new judge and lay members, will start in April 2001.

Cement

48. Following an approach by the OFT, three leading cement producers agreed to supply bulk cement for resale. The OFT had received a complaint that the companies had refused to do so. Blue Circle Industries of London, Castle Cement of Birmingham and the Rugby Group of Warwickshire gave non-statutory assurances that they would supply bulk ordinary Portland cement (OPC) to customers who intended to resell it in bags in the UK. The companies sell bulk OPC to concrete product manufacturers and ready-mixed concrete producers, and sell packaged OPC in bags to builders' merchants.

Professions review

49. During 2000, the OFT launched a review of competition in the professions in England and Wales to identify significant restrictions on the provision of services. Under examination were professional rules and codes, including fee scales; restrictions to entry caused by strict standards for obtaining the right to practise; restrictions that require certain professional services to be conducted only by members of the profession with particular qualifications or seniority; and restrictions in permissible business arrangements.

50. The review set out to balance the maintenance of professional and ethical standards with the restrictive effect on competition that rules, regulations, conventions and codes – originating from legislation or custom – might have. Lawyers, accountants, auditors and insolvency practitioners were among those covered by the review. The findings were published in April 2001, after the period covered by this report.

Public transport ticketing consultation

51. The OFT invited views from public transport operators, passenger groups and the general public about whether certain types of public transport ticketing agreements should be exempted from the provisions of the Competition Act. The OFT felt that, because they involve an element of fare-fixing, agreements between public transport operators to provide interchangeable travel-card and through-tickets would be likely to infringe the Chapter I prohibition of the Act which concerns agreements that prevent, restrict or distort competition.

52. However, certain agreements may qualify for exemption if they benefit consumers without imposing undue restrictions on competition, and the OFT can recommend to the Secretary of State for

Trade and Industry that he should make an Order granting a block exemption for agreements falling within a particular category. The OFT believes travelcard and through-ticketing agreements may be appropriate categories of agreement to benefit from such a block exemption. It was planned to conclude consultation and advise the Secretary of State by February 2001.

Competition in banking

53. In the wake of Don Cruickshank's report on competition in UK banking, published in March, the OFT was involved in discussions with the Treasury about what measures could be taken to remedy the significant competition problems Mr Cruickshank had found in the markets for money transmission and for services to small and medium-sized businesses (SMEs). During 2000, the OFT started dealing with several notifications and complaints under the Competition Act 1998 related to payment systems, and provided assistance to the CC in its investigation of the possible existence of a complex monopoly in the supply of banking services to SMEs. The CC is expected to report by June 2001.

New car prices

54. Measures to encourage greater competition in the £24 billion-a-year new cars market were introduced in July in the wake of a 1999 inquiry which had found an imbalance of power between manufacturers and dealers which was distorting competition. Under the Supply of New Cars Order, which came into force on 1 September, motor manufacturers now have to offer dealers similar discounts to those offered to fleet buyers, and they cannot refuse to supply dealers because of their advertised prices. In addition, manufacturers are not allowed to discriminate against dealers who sell cars they have obtained from authorised dealers in other EU countries.

55. A CC report, triggered by the initial inquiry, found that new car prices in the UK were around 10 per cent higher than elsewhere in Europe. The OFT continues to monitor the market and, if it is found the measures in the Order need to be reinforced, the Secretary of State for Trade and Industry will consider a ban on recommended retail prices

2. *Mergers and acquisitions*

56. Under the Fair Trading Act 1973, the OFT is required to keep himself informed of actual or prospective merger situations and to recommend to the Secretary of State whether a merger which qualifies for investigation should be referred for more detailed investigation to the CC .

57. One or more parties to a merger can ask the OFT for confidential guidance on the chances of the merger being referred to the CC by the Secretary of State once it is in the public domain.

58. There is a statutory procedure to allow parties to a merger to pre-notify the OFT of the details of the merger. In such cases, the Secretary of State must announce his decision on whether to refer it to the CC within 20 days of the OFT receiving the completed pre-notification form (35 days if the OFT exercises his power to extend the timetable), otherwise the power to refer the merger is lost.

Advice on Competition Commission reports advising against merger

UNITED KINGDOM

59. If, after a case has been referred to the CC, it finds that a merger operates or is likely to operate against the public interest, the Secretary of State can make orders to obtain undertakings from the parties to remedy the adverse effects identified in the Commission's report. The OFT gives advice to the Secretary of State for Trade and Industry on whether to accept the action suggested by the CC.

Undertakings in lieu of reference to the Competition Commission

60. In lieu of a reference to the CC, the Secretary of State may – should the OFT so recommend – accept undertakings from the parties to remedy any adverse effects the OFT has identified.

Article 9 cases under the ECMR

61. Under Article 9 of the ECMR, a member state may request that a merger notified under the ECMR is instead examined by the national competition authority on one of two possible grounds: it threatens to create or strengthen a dominant position as a result of which effective competition will be significantly impeded in a market within that member state which presents all the characteristics of a distinct market; or it affects competition in a market within that member state, which presents all the characteristics of a distinct market and which does not constitute a substantial part of the common market.

62. The UK made three Article 9 requests in 2000, all of which were granted by the EC.

- Hanson/Pioneer (see para 75)
- Interbrew/Bass (see para 67)
- C3D/Rhone/Go-Ahead - this proposed acquisition concerning buses in South London was abandoned after the EC granted the UK's request.

63. Anglo American/Tarmac was repatriated to the UK at the beginning of 2000 in response to a request at the end of 1999, and led to a reference to the CC (see para 74).

a) Statistics

64. The statistics shown in the tables which follow broadly relate only to those mergers that were examined in the context of the OFT's responsibilities under the Fair Trading Act 1973. They do not represent an estimate of total merger activity in the UK. The following points should be borne in mind:

- the figures do not include mergers handled by the European Commission under the ECMR;
- 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 merger provisions of the Fair Trading Act (which are considered separately by the DTI);
- the figures include requests for confidential guidance as well as publicly announced mergers - although confidential guidance cases that subsequently become public are not included twice;
- because some time may elapse between the opening of a file on a case and a decision by the Secretary of State for Trade and Industry on whether to make a reference to the CC, the mergers that are referred in any particular year may not necessarily correlate to the cases first recorded in that year.

65. A better indicator of overall merger activity in the UK 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 the first table.

66. 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 2000

67. In 2000, the OFT considered 315 mergers and merger proposals under the Fair Trading Act (see Table 2). This represented a decrease of 24 per cent on the total for 1999, when 415 cases were considered. There was also a fall in the number of cases that qualified for reference to the CC - from 254 in 1999 to 192 in 2000 (see Table 1). The Secretary of State made a total of 14 references, all of them in accordance with the advice given by the OFT.

68. There were 21 qualifying confidential guidance cases in 2000, compared with 35 in 1999. In addition there were 60 qualifying prenotified cases, compared with 62 the year before.

69. In previous years this report has included figures on the value of assets bid for in merger proposals during the year, at current and at constant prices. The OFT has concluded that the likely value of this information to readers does not justify the level of resources which are necessary to obtain accurate figures on assets bid for (beyond what is necessary to establish whether a merger qualifies for investigation under the terms of the Act) and to make the calculations necessary for the production of these figures. It has, therefore, been decided to omit this information from this report.

Table 1: Merger Activity: 1998-2000

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
1998	269	887	30
1999	254	714	36
2000	192	765	25

Source: Office of Fair Trading

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

UNITED KINGDOM

Table 2: Supplementary Data on Numbers of Mergers Examined and References to the CC: 1998-2000

Year	Total nos of cases examined	Found not to qualify, proposals abandoned and informal guidance cases	Qualifying cases		Confidential guidance cases	Pre-notified cases	Qualifying cases less confidential guidance cases	References to the CC				Total references as % of:	
			Nos	% change				Recommended by OFT	Recommended but not made	Made but not recommended	Total references	Qualifying cases	Qualifying cases less confidential guidance cases
1998	425	156	269	+17	45	45	224	9	1	0	8	2.9	3.8
1999	415	161	254	-6.0	35	62	219	11	2	1	10	3.9	4.9
2000	315	123	192	-24	21	60	171	14	0	0	14	7.3	8.2

Source: Office of Fair Trading

Table 3: References to the CC under the Fair Trading Act 1973: 2000

<i>Findings of the CC</i>	<i>Qualification criteria under the Fair Trading Act 1973</i>			
	<i>Share of supply of at least 25%</i>	<i>Assets in excess of £70 million</i>	<i>Meeting both criteria</i>	<i>Totals</i>
Not against the public interest	0	1	2	3
Against the public interest	2	2	1	5
Proposal abandoned	2	0	0	2
Decision awaited	1	1	2	4
<i>Totals</i>	5	4	5	14
<i>as percentage of all qualifying mergers in this category</i>	2.6	2.1	2.6	7.3

Source: Office of Fair Trading

Cases

Merger references to the CC

Interbrew/Bass

70. In accordance with the OFT's advice, the proposed merger between Interbrew SA and the brewing interests of Bass plc, known as Bass Brewers, was referred to the CC by the Secretary of State in September. The acquisition by Interbrew was originally notified to the European Commission in July. The Commission referred the case to the UK in August, under Article 9 of the EC Merger Regulation. The Secretary of State was considering the CC's report at the end of the reporting period.

Grundfos/Myson

71. The Competition and Consumer Affairs Minister decided in October to refer to the CC the proposed acquisition of certain assets of Baxi Partnership Limited, namely its pumps manufacturing business Myson Pumps, by Grundfos Holding AG. The decision was in accordance with the advice of the OFT who advised that the acquisition raised competition concerns in the market for water circulator pumps for domestic heating and ventilation systems. The reference was subsequently laid aside.

UNITED KINGDOM

Adtranz/Railcare

72. The Minister for Consumers and Corporate Affairs decided to refer the proposed acquisition of Railcare Limited by DaimlerChrysler Rail Systems (UK) Limited (Adtranz) to the CC in November. The decision was in accordance with the recommendation of the OFT who advised that the acquisition raised competition concerns in the market for heavy maintenance of railway rolling stock. The reference was subsequently laid aside.

CAIK/Icopal

73. The Competition and Consumer Affairs Minister decided to refer the completed acquisition of Icopal A/S by CAIK Holding AF to the CC. The decision was in accordance with the advice of the OFT that the acquisition raised competition concerns in the market for the supply of bituminous flat roof coverings, pitched roof under-linings and high-performance damp proof courses. The CC's investigation was still ongoing at the end of the reporting period.

BASF/Takeda

74. In December, the Competition and Consumer Affairs Minister decided to refer the proposed acquisition of certain assets of Takeda Chemical Industries Ltd by BASF AG to the CC. The decision was in accordance with the advice of the OFT that the acquisition raised competition concerns in the market for the supply of vitamins C and B2. The CC's investigation was still ongoing at the end of the reporting period.

City Technology/Marconi

75. In accordance with OFT advice, the merger between City Technology Ltd and Marconi Applied Technologies Ltd was referred to the CC by the Secretary of State in December. The acquisition raised competition concerns in the market for catalytic combustible gas sensors or pellistors. The CC's investigation was still ongoing at the end of the reporting period.

Undertakings in lieu of a merger reference to the CC

ARRIVA/MTL

76. The OFT negotiated undertakings in lieu of a reference to the CC for a merger between ARRIVA plc and MTL Services plc. The Competition and Consumer Affairs Minister accepted the undertakings in June. The OFT had advised the Minister that the acquisition raised competition concerns in the supply of bus services in Merseyside. The undertakings required ARRIVA to dispose of the former MTL depot at Gilmoor as a going concern with most of the bus services operated from that depot. ARRIVA also gave undertakings relating to the launch of new services and the timing of, and fares on, those of its services which would be competing with the services it was required to sell.

Anglo American/Tarmac

77. Following OFT advice the Competition and Consumer Affairs Minister accepted undertakings from Anglo American in March in lieu of reference to the CC of its proposed acquisition of Tarmac. The OFT negotiated the undertakings with Anglo American. They required the company to divest, to purchasers approved by the OFT, such assets, sites and quarries as would reduce its market share to an agreed level within an agreed area. The proposed acquisition was originally notified to the European Commission in November 1999. The Commission referred the case to the UK in January under Article 9 of the EC Merger Regulation.

Hanson/Pioneer

78. The Competition and Consumer Affairs Minister, again following OFT advice, accepted similar undertakings from Hanson plc in April in lieu of reference to the CC of its proposed acquisition of Pioneer plc. The proposed acquisition was originally notified to the European Commission in February and referred to the UK in March under Article 9 of the EC Merger Regulation.

Gala/Riva

79. Following the OFT's advice, the Minister for Competitiveness accepted undertakings in August from Gala Group Limited in lieu of a reference of its acquisition of Riva Clubs Limited. The acquisition had raised competition concerns in the market for licensed bingo. The undertakings required the parties to divest bingo clubs in five areas where Gala and Riva overlap within six months, and to continue to participate in the National Game for five years. The undertakings also provided for the appointment of an independent trustee if a buyer had not been identified in six months. The trustee would effect the sale of any of the clubs Gala was unable to dispose of.

Thomson/Racal

80. Following the OFT's advice, in September the Secretary of State for Trade and Industry accepted behavioural undertakings from Thomson CSF in lieu of a reference of its acquisition of Racal Electronics to the CC. The OFT had advised the Secretary of State that the acquisition raised public security concerns relating to the confidentiality of sensitive information and to the maintenance of a UK capability for developing, operating or maintaining technologies essential to national security.

81. The proposed acquisition was first notified to the European Commission in May 1999. Under the terms of the EC Merger Regulation, member states may take appropriate measures to protect legitimate interests; accordingly, the Secretary of State announced in June that he would decide what measures, if any, to take under the Fair Trading Act to protect the UK's security interests.

National Express/Prism

82. Following the OFT's advice, the Secretary of State for Trade and Industry agreed in September that undertakings should be sought from National Express Group plc in lieu of a reference of its acquisition of Prism Rail plc to the CC. The OFT had advised the Secretary of State that the acquisition raised competition concerns in the market for rail and coach services between London and Stansted Airport. At

UNITED KINGDOM

the end of the year undertakings concerning the price and quality of its services were being negotiated with National Express.

BSkyB/BiB

83. Following the OFT's advice, the Competition and Consumer Affairs Minister agreed in October that undertakings should be sought from BSkyB in lieu of a reference of its proposed acquisition of British Interactive Broadcasting Holdings Limited (BiB). The OFT had advised the Minister that the acquisition raised competition concerns in the market for pay-television. At the year-end undertakings were being negotiated with BskyB which would require it to offer versions of the pay-television channels that it provides to its rival distributors without interactive elements which might not work properly on other platforms.

CC merger reports published

CHC/HSG

84. The CC concluded in January that the acquisition of Helicopter Services Group ASA (HSG) by CHC Helicopter Corporation (CHC) did not operate against the public interest. The reference to the CC came after the OFT, in 1999, had raised competition concerns about the market for helicopter support services from the UK to oil and gas installations in the UK Continental Shelf (UKCS). In the market, CHC's subsidiary, Brintel, was in direct competition with HSG's subsidiary, Bond, and a third operator, Bristow.

85. The CC concluded that, although there had been a reduction in demand for helicopter services, it was not likely that Brintel (the smallest of the three main UKCS helicopter operators) would have left the market in the absence of the merger. And although the CC saw no reason to believe that Brintel/Bond and Bristow would not engage in independent pricing, it nevertheless thought it was likely that there would be a loss of competition arising from the reduction in the number of competitors as a result of the merger. However, a significant reduction in barriers to entry into the market by other helicopter operators and the buyer power of the oil companies would, the CC concluded, together be sufficient to prevent any reduction in competition from the acquisition leading to higher prices or other adverse effects.

Vivendi/BskyB

86. In April, the CC cleared the acquisition by Vivendi SA of an interest in BSkyB plc after it found the deal was unlikely to operate against the public interest. The CC concluded that Vivendi's July 1999 acquisition of a 24.44 per cent stake in BSkyB and the right to appoint a director to its board created a merger situation qualifying for investigation under the Fair Trading Act.

87. The main concerns expressed to the CC about the merger situation related to the acquisition of broadcasting rights for sports and films, and the supply of conditional access technology. However, the CC considered that the merger situation was unlikely to result in any significant enhancement of the position of BSkyB in relation to sports or film rights, and that there would be no adverse effects on the supply of conditional access technology. However, the CC noted that the pay-TV market was evolving rapidly as a result of technological and other developments, and would merit continued scrutiny by the regulatory authorities.

Air Canada/Canadian

88. In August, the CC cleared the merger between Air Canada and Canadian Airlines Corporation. The CC found that the merger had increased concentration on routes between Heathrow and Toronto, Calgary and Ottawa. However, prior to the merger, Canadian Airlines had been making substantial losses and was experiencing serious cash-flow problems. The CC believed the potential detriments to competition from greater concentration arose as a result of the failure of Canadian Airlines to sustain competition, and irrespective of the merger. They concluded that the merger did not, and was unlikely to, operate against the public interest.

89. The reference had been made by the Minister for Consumers and Corporate Affairs on 2 May, in accordance with the advice of the OFT. The reference was varied on 27 June to make sure that the CC could look at all relevant circumstances.

Nutreco/Hydro

90. The merger between Nutreco Holding NV (Nutreco) and Hydro Seafood GSP Ltd (GSP) was blocked by the Competition and Consumer Affairs Minister in December, after the CC concluded it would be against the public interest. The CC found that the merger would reduce competition in the market for salmon feed and lead to increased prices. Although the merger would not increase Nutreco's share of feed supply, the CC concluded its already strong position in the market, coupled with an increased share of the customer base through the acquisition of GSP, would enhance its position in the market at the expense of competitors and customers.

91. Nutreco's position in the market would enable it to raise prices to salmon producers, and as salmon feed is a major component of the costs of salmon production such price increases could lead to increased prices for end-consumers. In particular, the CC concluded that those customers and end-consumers who specifically wanted Scottish salmon could face higher prices.

92. The CC considered a range of remedies for these adverse effects, including behavioural remedies to control salmon prices, requiring Nutreco to divest itself of production capacity in feed or salmon, and requiring Nutreco to buy feed from other suppliers. It concluded that these would not be sufficient and therefore recommended prohibition of the merger as the only viable remedy. The OFT agreed with the CC's conclusions and recommendations, and the decision to block the merger was in accordance with his advice.

*Action following CC reports**ARRIVA/Lutonian*

93. The OFT secured undertakings in February from ARRIVA plc, requiring it to sell Lutonian Buses Ltd and subject itself to behavioural controls over its future conduct towards the sold business. The undertakings had been recommended by the MMC (now CC) and the OFT following an adverse MMC report into ARRIVA's acquisition of Lutonian. The acquisition had raised competition concerns in the supply of bus services in the Luton area.

UNITED KINGDOM

Sylvan/Locker

94. In accordance with the OFT's advice, the merger between Sylvan International Ltd and Locker Group plc was referred to the CC in June. The CC found that the merger had adverse effects on the public interest in the markets for timber, plywood and cardboard drums. A majority of the CC inquiry team considered that the adverse effects could be adequately addressed by a package of behavioural remedies. A minority considered that the only appropriate remedy was the separation of the two businesses. The OFT agreed with the minority conclusion, as did the Minister. The Minister therefore asked the OFT to seek appropriate undertakings, which was taking place at the end of the reporting period.

Granada/Rental Holdings

95. The OFT negotiated undertakings in lieu of reference to the CC in relation to the merger of the consumer rental businesses of Granada Group and Rental Holdings to form Box Clever. The Secretary of State accepted the undertakings on 23 June. The OFT had advised that the merger raised competition concerns in the market for the rental of electrical goods - primarily televisions. The undertakings require the parties not to increase rental charges (except for tax increases) for customers who rent for more than five years without upgrading the customer's equipment; not to charge an administration fee for upgrading (except for direct-to-home rental where the fee is capped); and to make a one-off offer to renters for more than five years, who had not previously upgraded or added to their equipment, to upgrade at no extra cost.

Alanod/Ano-Coil

96. The OFT negotiated undertakings with Alanod Aluminium-Veredlung GmbH & Co following an adverse CC report on its merger with Metalloxyd Ano-Coil Ltd. The CC concluded that the acquisition increased Alanod's market share in the supply of aluminium coil in the UK to 75 per cent, resulting in a clear loss of competition and producing a dominant supplier with an incentive and means to exploit its market power by charging higher prices. The undertakings, which were recommended by the CC and endorsed by the OFT, included a price cap. They were given in August.

BUPA, CHG and Salomon

97. In accordance with the advice of the OFT and CC, in December the Secretary of State for Trade and Industry blocked the acquisition of Community Hospitals Group (CHG) by British United Provident Association Ltd (BUPA). He had referred this proposed merger to the CC in June and in August he had also referred the completed mergers between BUPA, CHG and Salomon International LLC (Salomon) and between CHG and Salomon. The CC found that both the one proposed and the two completed mergers had adverse effects on the public interest.

98. BUPA, already the country's largest provider of private medical insurance with 40 per cent of the UK market, would also have become the largest provider of private medical services if its take-over of CHG had gone ahead. The CC found that BUPA's market power in both private health insurance and private healthcare, coupled with vertical linkages between the two businesses, would have reduced competition and led to inflated prices.

99. At the end of the reporting year, the OFT was seeking undertakings to ensure that the take-over by BUPA of CHG did not take place and to enforce the sale of the 26.8 per cent shareholding that BUPA, acting together with Salomon, had already acquired in CHG.

Cable and Wireless and NTL

100. The merger between NTL Incorporated and the cable interests of Cable and Wireless Communications was referred to the CC by the Secretary of State in November 1999, against the advice of the then Director General of fair Trading. The CC cleared the merger, having concluded that it was unlikely to operate against the public interest.

ITV mergers

101. In accordance with the advice of the OFT, three proposed alternative independent television mergers were referred to the CC by the Secretary of State in February: Carlton/United News and Media, Granada/United News and Media, and Granada/Carlton. The CC cleared the two proposed mergers involving Granada noting that certain divestments would be required to comply with the Broadcasting Act but concluded that the merger between Carlton and United News and Media was likely to operate against the public interest. In accordance with the CC's recommendation and the OFT's advice, the Secretary of State decided to allow the merger on the condition that the parties gave an undertaking to dispose of the Meridian licence. Carlton indicated that it would not proceed with the merger on these terms and Granada subsequently acquired the television interests of United News and Media. Granada gave non-statutory assurances to the OFT in accordance with a suggestion in the CC report.

III. The role of competition authorities in the formulation and implementation of other policies

102. The competition authorities have no formal legislative role in the formulation or implementation of other policies, such as regulatory reform, trade, or industrial policies, but the OFT is represented on the Trade Policy Group, which brings together several government departments, where issues relating to trade and competition are concerned.

IV. Resources

103. The annual running costs budget for the OFT's competition activities for the financial year to 30 March 2001 was £14.239m (approximately \$20.22m). This excludes the cost of both in-house legal advice, which cannot be disaggregated by activity, and external legal services. This was an increase of £2.639m, or 18.5%, over 1999/2000. There were 170 staff in the Competition Policy Division at the end of financial year 2000/2001, an increase of 55. These increases were due to the increased staffing and resources required by the coming into force of the CA98.

104. While it is not possible to give figures for all those with economics or law qualifications working in the Competition Policy Division, most of the 55 newly-created posts were filled by staff with qualifications in law or economics. Some of these recruits filled casework posts; others filled posts in the Competition Policy Co-ordination Branch. The staff of that branch included four dedicated economic advisers, three financial analysts, and two statisticians, and the branch dealing with mergers had eight economic advisers.

105. Of the staff in the Competition Policy Division, approximately 135 were engaged on enforcement and other matters relating to the general competition regime, and 35 on work related to mergers. Separate information is not available on the extent to which competition advocacy was carried out by these staff.