

## UNITED KINGDOM

2001

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## **Executive Summary**

1. The year 2001 was an important year for developments in competition law and policy in the United Kingdom. The first decisions were made under the Competition Act 1998, up to and including the appeals stage in two cases. The Office of Fair Trading (OFT), a growing organisation, was radically restructured. These and other developments described in this report show how the OFT and its role are being transformed – a process begun some years ago, which the enterprise legislation now before Parliament will take further.

2. While the Competition Act is new, one major competition result achieved by the OFT in 2001 marked the end of an era. In May a decision in the Restrictive Practices Court ended the exemption from the general ban on resale price maintenance enjoyed by branded over-the-counter medicines.

3. In February 2001 the Government announced that the OFT would have an explicit role reviewing new and existing laws and regulations for possible anti-competitive effects. Such activity by the OFT is not new. For example, last year's report on *Competition in Professions* – which the OFT is now following up – included a number of recommendations to Government. But the OFT's remit in this area is now clearer, wider and more systematic. With the Cabinet Office the OFT has issued guidance to help assessment across Government of how policies might impact on competition.

4. A new OFT division – for markets and policy initiatives – was created in October. The prime task of this division is to lead major market investigations. The division also leads the assessment of the competitive impact of proposed new laws and regulations, the preparation for government policy initiatives such as the proposed regulation by OFT of payment systems, and public liaison. With the creation of this new division, the former division for competition policy is now focused on enforcement of competition law.

5. The other key development in the OFT's structure last year was the establishment of an Advisory Panel. The members of the panel are from a consumer group, local government, and academia. The Panel adds independent external perspectives on the OFT's work and helps inform strategy.

6. This report focuses mainly on the activities of the Office of Fair Trading. Detailed information on the activities of the Competition Commission will be available in their annual report for the financial year 2001/2002 which is expected to be published in July 2002.

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

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

7. Under new regulations made in 2001, the OFT is responsible, along with the European Commission, for scrutinising agreements involving air transport services between the UK and non-EC countries under EC competition law.

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

8. To give consumers a stronger voice on competition issues, the OFT introduced a 'super-complaints' procedure in 2001. This ensures a fast-track response to concerns raised by designated groups such as the Consumers' Association and the National Association of Citizens' Advice Bureaux.

9. The following draft guidelines were issued in 2001:

- Public Transport Ticketing Scheme Block Exemption;
- Services of General Economic Interest Exclusion;
- Intellectual property rights.

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

10. In 2001 the government issued a White Paper '*Productivity and Enterprise: A World Class Competition Regime*' containing proposals for further legislation. This has now led to the Enterprise Bill, introduced into Parliament in March 2002. Among the key proposals in the Bill relating to competition are: enhancing the independent role of the competition authorities; criminalising hard-core cartel activity; basing the merger regime on clear competition grounds; and introducing a wider, more proactive role in investigating markets. It is proposed that the OFT and the Competition Commission will be given full responsibility for mergers and market investigations. There will be ministerial involvement in competition matters only in exceptional circumstances. The Government also intends to replace the public interest test for Competition Commission referrals with a more flexible test based on competition issues.

## **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**

11. In 2001, the competition enforcement division opened 1,298 complaint cases. Of these, 63 gave reasonable grounds to suspect an infringement of the Act had taken place, leading to a formal section 25 investigation. At the end of the year, 44 such cases were under active consideration (including one case under the Fair Trading Act's monopoly provisions). The OFT estimates that around a quarter of these will result in formal decisions.

12. Complaints came from a variety of markets and covered a wide range of practices and behaviour, from refusal to supply to alleged cartels. There were a surprisingly large number of complaints relating to resale price maintenance. Of the complaints received from businesses, by far the largest proportion came from small and medium-sized enterprises (SMEs), a group specifically targeted in the business education programme.

13. During 2001 the OFT published eight formal decisions. Two of these were infringement decisions, two were individual exemptions (of which one was conditional) and four were non-infringement decisions. One complaint rejection made during the year was later found to be a non-infringement decision by the Competition Commission Appeal Tribunals (see para XX).

14. The policy of informing businesses about the Act's provisions – rather than inviting notifications – was highly successful, and the OFT received only two requests for decisions and one request for

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guidance during the year. This allowed the OFT to focus resources on more serious cases of actual or suspected infringements. However, the OFT was also prepared to deal with requests for informal advice.

15. The value of the OFT's leniency programme, which encourages cartel members to blow the whistle on their fellow colluders, was again demonstrated. The OFT can reduce financial penalties for companies which provide evidence of a cartel's activities – and give total immunity to the first cartel member to come forward. The OFT received 13 applications for leniency in 2001 and agreed to leniency in six cases. Investigations are continuing in the outstanding cases.

16. A number of requests for interim measures directions were made during the year. Of these, two gave reasonable grounds for further investigation and were considered. As a result of these investigations three section 35 notices proposing directions were issued. Although none resulted in a formal direction, informal assurances were given in one case. Another was resolved between the parties.

17. Under The Competition Act, where there are reasonable grounds to suspect an infringement, the OFT may:

- require the production of specified documents or specified information (section 26);
- enter premises without a warrant (section 27);
- enter and search premises with a warrant (section 28).

18. To assist OFT investigations 1,040 section 26 notices were issued in 2001. The OFT conducted 15 'raids' some covering multiple sites. These involved the use of both section 27 and section 28 powers. Section 28 search warrants were obtained for 37 premises. The OFT also carried out 18 site visits with notice and nine without notice under section 27 powers.

### Fair Trading Act 1973 – complex monopolies

19. The complex monopoly provisions of the Fair Trading Act 1973 complement the powers contained in the Competition Act, generally allowing the formal investigation by the Competition Commission of markets which do not appear to be working well but where there is no evidence which infringes the Competition Act of anti-competitive agreements or abuse of dominant market position.

20. Complex monopoly situations can be referred to the Competition Commission for investigation under the Act if, amongst other matters, two or more companies in a market collectively have a share of supply of 25 per cent or more; and the companies, whether voluntarily or not, and whether by agreement or not, so conduct their affairs as in any way to prevent, restrict or distort competition.

### **Veterinary medicines**

21. The £200 million-a-year market for prescription-only veterinary medicines was referred to the Competition Commission in October when evidence emerged that UK prices appeared to be substantially higher than those in other European countries. Under section 58 of the Medicines Act 1968, these products can only be sold by veterinary surgeons or practitioners or by pharmacists acting on a written prescription.

22. The preliminary investigation, launched in response to complaints from farmers' groups and individual consumers, found that competition in the market was not working well. As well as voicing concern about the cost to consumers, the OFT noted a lack of transparency in prices, with medicines dispensed by vets in the course of treatment often not being itemised on the final bill. The OFT also found

evidence of reluctance by manufacturers to supply veterinary pharmacies, which may be restricting price competition.

### **Supermarket code**

23. In December, the Secretary of State for Trade and Industry accepted undertakings from the UK's top four supermarkets to abide by a code of practice drawn up by the OFT. This followed a Competition Commission report on the industry, published in October 2000. While the Competition Commission was satisfied that the industry was broadly competitive, it reached adverse findings on the supermarkets' pricing practices and their dealings with suppliers.

24. Under the code, which is legally binding, the four supermarket chains – Tesco, Sainsbury, Asda and Safeway – will comply with a number of standards designed to make their relations with suppliers clearer and more predictable. These include a commitment to pay invoices within a specified time, to give reasonable notice of changes to prices or order volumes and not to seek lump sum payments or better terms as a condition of stocking a supplier's products. The code also sets out a procedure for resolving disputes between parties, including independent mediation and, as a final resort, a referral to the OFT.

### **Newspaper distribution**

25. The OFT began a review of the industry code of practice for the supply of newspapers. This code was introduced in October 1994 following a report by the then Monopolies and Mergers Commission (now the Competition Commission). It sets out the criteria by which retailers are granted access to supplies of newspapers from a wholesaler. The OFT expects to publish the findings of the review in summer 2002.

### **Car supply and EU block exemption**

26. An OFT investigation into the discounts offered by car suppliers to dealers concluded that anti-discrimination rules had not been broken. The investigation related to alleged breaches of the Supply of New Cars Order 2000, which was put in place following an inquiry by the Competition Commission. This prohibits manufacturers from unjustifiably discriminating between discounts for fleet customers and dealers for the supply of similar volumes of cars.

27. The OFT found that, overall, the value of terms and conditions offered to dealers were broadly similar to those offered to fleet purchasers. There was no evidence that car suppliers had colluded in setting discounts for dealers.

28. On a wider front, the OFT remains concerned that unexplained EU price differentials persist. New car prices in the UK have come down by around 10 per cent since March 1999, but even allowing for exchange rate movements, the price gap between the UK and other parts of the EU has not narrowed appreciably.

29. The OFT has called for a number of reforms to the EU block exemption on car supply, which is currently under review by the European Commission.

### **Resale Prices Act 1976**

30. The one case outstanding under this now-repealed law - medicaments - was concluded in the Restrictive Practices Court. See paragraph XX

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### *b) Cases*

#### Cartel activity

##### **Arriva plc and FirstGroup plc**

31. The first cartel to be penalised under the Competition Act involved two national bus companies, Arriva and FirstGroup, whose Leeds and Wakefield subsidiaries entered into an unlawful agreement to share routes between themselves. The OFT set penalties for Arriva of £318,175 and for FirstGroup of £529,852. Both penalties were reduced under the OFT's leniency programme.

32. FirstGroup approached the OFT first and was granted 100 per cent leniency, subject to its full cooperation. As a result, it will not have to pay any of the financial penalty imposed. Arriva also benefited from the leniency programme, but only to the extent of a 36 per cent reduction, making a total financial penalty of £203,632. This decision, issued in February 2002, was the first involving an infringement of the Chapter I prohibition of the Competition Act.

33. Staff from subsidiaries of Arriva and FirstGroup in Yorkshire met in a hotel room and agreed that Arriva would withdraw its five buses from two routes, leaving FirstGroup with no competition. In return FirstGroup withdrew from two routes that Arriva took on. Both businesses accepted that their staff had attended meetings and had agreed who would run certain routes.

34. While the scope of the agreement was not large, the OFT imposed over £500,000 in extra penalties between the two companies as a deterrent to others.

#### Abuse of dominant position

##### **Napp Pharmaceutical Holdings Ltd**

35. The first financial penalty under the Competition Act was imposed in March when Cambridge-based drugs company Napp Pharmaceutical Holdings Ltd was fined £3.21 million for abusing a dominant market position. The company was found to have supplied its sustained-release morphine product MST to patients in the community at excessively high prices while supplying hospitals at a discount that blocked competition. This conduct was judged to infringe Chapter II of the Competition Act, which prohibits abuse of a dominant position in a market if it may affect trade in the UK.

36. The investigation showed that Napp's policy of reducing prices to hospitals impeded competition in the market for MST, which is used as a pain relief for cancer sufferers. The company offered discounts of well over 90 per cent in tendering for hospital contracts where it faced competition. This tactic enabled Napp to retain a market share in hospitals of more than 90 per cent. Because doctors' prescriptions are strongly influenced by the brands used in hospitals, Napp was able to secure a similarly high share of the much larger business of supplying patients in the community. The company's prices here were more than ten times higher than those charged to hospitals in some cases and up to six times the export price of MST.

37. In addition to a financial penalty, the OFT directed Napp to cease the infringements by reducing the price of MST tablets to the community and limiting the degree to which community prices exceed hospital prices – a move which would save the National Health Service about £2 million a year.

38. An appeal against the OFT's decision was heard by the Competition Commission Appeal Tribunals (CCAT) in September. The CCAT upheld the substance of the OFT's decision and its direction on the company's pricing policy. However, the CCAT considered that there were mitigating factors, most

notably the existence of a voluntary price regulation scheme within the industry and the fact that this was the first case of excess pricing under the Act. Taking these into account, the Tribunal reduced the financial penalty from £3.21 million to £2.2 million. Napp has sought leave to appeal against the CCATs' ruling.

### **Aberdeen Journals**

39. An attempt by a regional newspaper publisher to drive a competitor out of business resulted in a fine of over £1.3 million being imposed in July. The OFT found that Aberdeen Journals, a company owned by Northcliffe Newspapers, part of the Daily Mail and General Trust group, was the dominant supplier of advertising space in paid-for and free local newspapers in the Aberdeen area.

40. The OFT considered that Aberdeen Journals had abused that dominant position in breach of the Chapter II prohibition, by continuing to sell advertising space in its free newspaper, the *Herald & Post*, at below cost price in March 2000. This behaviour had begun with the launch of the *Aberdeen & District Independent* in 1996 with the express intention of removing it from the market. A fine of £1,328,040 was imposed.

41. An appeal by Aberdeen Journals against this decision was upheld on procedural grounds in March 2002. While stressing that no conclusion had been reached on whether Aberdeen Journals was a dominant supplier or had abused its position, the CCAT ruled that there was insufficient evidence to support the OFT's definition of the market. The OFT was given two months to reconsider which newspapers constituted the relevant product market in this case.

### Individual exemption

#### **Link Interchange Network Ltd**

42. The OFT decided in October that the benefit of rules governing interchange fees for the Link network of automated teller machines (ATMs) outweighed their possible anti-competitive effects. Link, which is owned by the major banks and building societies, had asked the OFT to decide whether its rules infringed the Chapter I prohibition of the Competition Act and, if they did, to grant an exemption.

43. The OFT found that one element of Link's rules - the multilateral interchange fee - did infringe the Act. This is the fee paid by the card issuer to other members of the network when a cardholder uses an ATM of another card issuer. While Link members are free to negotiate their own charges to other members for using their ATMs, in practice only a few actually do. Link's rules do not cover charges by individual members to consumers for the use of ATMs.

44. However, the OFT concluded that this fee arrangement brought benefits that would not otherwise be achieved and outweighed its anti-competitive effects. The benefits include a widening of the ATM network. An individual exemption could therefore be granted.

### Resale price maintenance

#### **Medicaments**

45. A five-year campaign to end price controls on branded over-the-counter (OTC) medicaments ended successfully in May when pharmaceutical suppliers dropped their opposition to an OFT court action. The Restrictive Practices Court overturned an exemption, granted in 1970, which had allowed manufacturers to set minimum prices for OTC products such as painkillers, cough remedies and vitamins – a market worth about £1.6 billion a year.

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46. Within hours of the court's decision, some supermarkets announced price cuts on leading brands of between 25 and 50 per cent. Each percentage point off average prices is estimated to save consumers £16 million a year.

47. Medicaments were the last products to enjoy this particular exemption. Resale price maintenance on books was struck down by the Court in 1997, again following an application by the OFT. Suppliers had argued that the abolition of RPM would lead to the mass closure of community pharmacists, who would be unable to compete with supermarket prices. The OFT disputed this claim, observing that a very large proportion of a pharmacist's turnover and gross profit came from dispensing NHS prescriptions. There had also been a rise in own-label OTC medicines - not covered by RPM - which were available at much cheaper prices than their branded equivalents.

### Fair Trading Act 1973 - action under section 2

#### **Competition in the professions**

48. The rules, regulations and practices of three professions – law, architecture and accountancy – came under scrutiny in an OFT report published in March 2001. Following a comprehensive review, the OFT found that a number of professional rules appeared to be anti-competitive. These included restrictions on the freedom of professionals to advertise, to seek business, to form partnerships (including multi-disciplinary partnerships) and the ability to offer a wide range of services.

49. Following a key recommendation in the report, the DTI pledged to repeal Schedule 4 of the Competition Act, which allows certain professions to apply to the Secretary of State to have their rules 'designated' – in effect shielding them from the Chapter I prohibition. Provision for repeal is contained in the Enterprise Bill now before Parliament.

50. The professions were given a year to justify, amend or abolish anti-competitive rules outlined in the report. A progress report was published on 22 April 2002. Many professional rules have already been revoked or amended to allow greater competition. Positive steps have been taken by a number of professional bodies:

- the Bar Council lifted a ban on clients having direct access to barristers;
- the Law Society has agreed to allow solicitors employed by non-solicitors, such as supermarkets, to provide services to consumers;
- the accountancy professional bodies amended their rules to allow cold calling and comparative fee advertising.

51. However, further action is still needed to remove some remaining rules that unnecessarily inhibit full competition.

### European competition legislation

#### **British Airways/American Airlines**

52. A proposed alliance between British Airways and American Airlines was notified in August and considered in detail by the OFT under the new regulations under which the OFT is responsible, along with the European Commission, for scrutinising such agreements under EC law.

53. The alliance involved in-depth co-operation between the airlines, including joint price setting, schedule co-ordination and, on some routes, profit sharing. The two airlines sought an OFT decision on whether the alliance was anti-competitive and, if so, whether an exemption under Article 81 (3) of the EC Treaty should be granted.

54. Working closely with EC officials, the OFT considered whether the agreement was likely to have a detrimental effect on competition and, if so, whether that detriment would be outweighed by benefits to consumers. The alliance was also the subject of a separate investigation by the US Department of Transportation.

55. The OFT investigation ended in February 2002 when the two airlines informed the OFT that they had terminated the agreement.

## **2. *Mergers and acquisitions***

### *a) Statistics*

56. A merger qualifies for investigation, under the Fair Trading Act 1973 (FTA), if the gross (fixed and current) world-wide assets being acquired exceed £70 million, or if the merged company would be supplying or acquiring 25 per cent or more of a particular product or service in the UK, or a substantial part of the UK.

57. The OFT examined details of 356 mergers in 2001, compared with 315 in the previous year. Of these, 200 qualified for consideration under the FTA, eight more than in 2000.

58. Cases which raise significant competition issues are examined by the Mergers Panel, which is generally chaired by the OFT's Director of Competition Enforcement. In 2001 there were 37 of these cases.

59. There was a drop in the number of mergers recommended for reference to the Competition Commission, from 14 in 2000 to 10 in 2001. The Secretary of State accepted the OFT's advice in all these cases.

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Merger references

60. Mergers referred to the Competition Commission in 2001 were:

SCR Sibelco/Fife Silica Sands	9 January	Report published	Against public interest
Reed Elsevier/Harcourt	21 February	Report published	Not against public interest
Lloyds TSB/ Abbey National	23 February	Report published	Against public interest
General Healthcare/ Community Hospitals Group	20 March	Laid aside	
Octagon/ British Racing Drivers Club	17 April	Report published	Not against public interest
Blockbuster/ Apollo	2 May	Laid aside	
Duralay/ Gates	28 June	Report published	Not against public interest
HCA/ London Heart Hospital	20 July	Laid aside	
Kodak/ Colourcare	16 August	Report published	Not against public interest
Hilton/ BSkyB	10 October	Laid aside	

Advice on Competition Commission reports advising against merger

61. 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

62. 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.

63. Undertakings in lieu of a Competition Commission reference were given in the following cases:

National Express/ Prism	17 January
Nimbus/ National Air Traffic Services	5 March
BSkyB/ BiB	8 May
Insys/ Hunting	15 November
Dynegy/ BG Storage	23 November
EADS/ Nortel	30 November

## Article 9 cases under the ECMR

64. 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.

65. The UK made two Article 9 requests in 2001, both of which were granted by the EC. The mergers in question were Govia/Connex (COMP M/2446) and Cargill/Cerestar (COMP M/2505). The first of these was subsequently cleared on the advice of the OFT. The Secretary of State referred the second to the Competition Commission, on the advice of the Director General, in February 2002.

## Article 22 referral

66. Under Article 22 of the ECMR, cases that do not meet the ECMR turnover threshold may nevertheless be considered by the Commission at the request of one or more member states. The proposed merger of textile equipment manufacturers Promatech and Sulzer, which had been notified in a number of member states, including the UK, will now be subject to a single investigation and decision by the EC. This was the first joint request by several member states (including the OFT) under Article 22. The OFT made the request to streamline regulatory action to the benefit of consumers and the companies concerned.

*b) Selected cases***Interbrew/Bass Brewers**

67. In September, the Secretary of State for Trade and Industry ordered Interbrew to dispose of either Bass Brewers or Carling Brewers, following advice from the OFT.

68. It was the Government's second action to remedy the adverse effects of Interbrew's acquisition of Bass Brewers, the UK brewing interests of Bass plc, which were first identified in a Competition Commission report published in January 2001. A decision by the previous Secretary of State that Interbrew should divest itself of Bass Brewers was quashed by the courts on procedural grounds in May.

69. The acquisition had originally been referred to the UK competition authorities by the EC in August 2000 under Article 9 of the European Community Merger Regulation (ECMR), following a request from the UK.

70. In its report, the Competition Commission found that the merger would operate against the public interest by creating a duopoly in the industry between the two largest brewers/distributors, Interbrew and Scottish and Newcastle. It recommended that the UK business of Bass Brewers be disposed of to a buyer approved by the OFT – a remedy accepted by the then Secretary of State, Stephen Byers.

71. This decision (and the relevant paragraphs of the Competition Commission's report) were set aside in judicial review proceedings, which, while rejecting the main substance of Interbrew's case, found

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that the Competition Commission had acted unfairly in not allowing the company to comment on the grounds for rejecting an alternative possible remedy. The question of the appropriate remedy was referred back to the OFT by the Secretary of State for further advice.

72. Following consultations with Interbrew and third parties, the OFT confirmed that the Bass Brewers disposal favoured by the Competition Commission would address the adverse effects of the merger, but also identified a second remedy – allowing Interbrew to retain parts of Bass Brewers but requiring it to sell the Carling brand and other beer brands and related assets (the so-called Carling Brewers remedy).

73. The present Secretary of State accepted that either of the two remedies would address the adverse effects of the merger and asked the OFT to obtain appropriate undertakings from Interbrew to achieve one or other of the disposals. The Secretary of State accepted undertakings given by Interbrew in January 2002.

### **Abbey National/Lloyds TSB**

74. The Secretary of State accepted the Competition Commission's conclusion – endorsed by the OFT – that the proposed takeover of Abbey National by one of the Big Four UK clearing banks would have resulted in higher prices and a loss of innovation in the personal banking sector. The OFT had warned that the acquisition of Abbey National by Lloyds TSB would lead to the elimination of one of the most significant branch-based competitors to the 'Big Four'. It would also strengthen the position of what was already the largest provider of personal current accounts – the core product in personal banking.

75. Allowing the takeover would have increased the share of personal current accounts held by the Big Four – Barclays, HSBC, Lloyds TSB and RBS/NatWest – from 72 per cent to 77 per cent, with Lloyds TSB's own share rising from 22 per cent to 27 per cent. The Competition Commission considered a range of remedies but concluded that blocking the merger was the only action likely to address the adverse effects.

### **Bank of Scotland/Halifax plc**

76. Following a recommendation from the OFT, the proposed merger of the Bank of Scotland and Halifax plc was cleared by the Secretary of State in July without reference to the Competition Commission.

77. The OFT had noted that the market share of the merged entity would be much lower than those of the four main clearing banks. The branch networks of the two companies were largely complementary and there was little geographic overlap. Unlike the Lloyds TSB/Abbey National merger, the proposal did not involve one of the Big Four and the OFT concluded that it would not have a detrimental effect on competition.

### **Sibelco/Fife Silica Sands**

78. The UK's largest supplier of sand for glass manufacture was required to divest itself of a former competitor following a Competition Commission report. SCR Sibelco SA had completed its acquisition of Fife Silica Sands Ltd and Fife Resources Ltd in September 2000. This merger saw Sibelco's market share for sales of silica sand in the UK rise to almost 90 per cent.

79. In his advice to the Secretary of State, the Director General said that he was not convinced by the parties' claim that Fife was no longer a viable business. He argued that the company's mineral and land assets – in particular a quarry it owned in Scotland – appeared to have significant and lasting value.

80. The acquisition was referred to the Competition Commission, which decided that it would have adverse effects on competition and on glass sand prices. This finding was accepted by the Secretary of State, who ordered Sibelco to sell the Fife companies to a purchaser approved by the OFT.

## Investigating markets

### a) *Role of the OFT*

81. In its July 2001 White Paper *Productivity and Enterprise: A World Class Regime*, the Government signalled a major extension of the OFT's activities. It proposed a more proactive and outward-looking role for the OFT in examining specific markets and sectors and suggesting how they can be made to work better for consumers.

82. The OFT already has a duty to review commercial activities relating to goods and services in the UK and to identify practices that may harm consumers. With the help of significant extra resources from the Government, OFT are conducting more investigations into markets where concerns have been raised but where enforcement does not appear, at first sight, to be the appropriate response. These studies are open and exploratory - no one is in the dock. Rather their aim is to gain the best possible understanding of how markets work and whether the needs of consumers are being met. The OFT might research one particular market in detail, or investigate how common practices operate across a range of markets.

83. Investigations may be triggered in a number of ways: for example, by information received by the competition enforcement and consumer regulation enforcement divisions, or from local authority trading standards departments. They could also arise from 'super-complaints' – the new route by which consumer organisations can alert the OFT to concerns they have about markets – or from complaints made directly to the OFT by consumers. Investigating teams will canvass a wide range of opinion and gather information for analysis. The results of each study will be communicated widely.

84. If a market receives a clean bill of health, that decision – and the thinking behind it – will be open to public scrutiny. However, if a study reveals grounds for further investigation and action, the OFT will use its powers accordingly. Possible outcomes include:

- recommendations for changes in laws and regulations;
- enforcement action by the OFT's competition and consumer regulation divisions;
- a reference of the market, with explanation, to the Competition Commission;
- recommendations to regulators, self-regulatory bodies and others to consider changes to their rules;
- a campaign to promote consumer education and awareness;
- no further action.

85. An investigation may be launched where there is evidence that a market is failing to meet the needs of consumers. This might be due to:

- competition problems, such as restrictions on supply, low innovation and price discrimination;

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- consumer detriment, such as high prices, product or contractual complexity, lack of information or questionable sales practices an interaction between the two, for example where a limited number of suppliers caused by high entry barriers leads to restricted consumer information and high prices.

86. Other factors that will be considered before an investigation is launched are whether:

- the market is of clear significance to consumers;
- the OFT is the most appropriate body to examine the matter;
- an investigation is preferable to the immediate exercise of enforcement powers;
- there is a prospect that the necessary evidence can be obtained;
- there is a prospect that a remedy can be found.

### *b) Investigations*

#### **Consumer IT goods and services**

87. The market for IT goods and services – ranging from word processing to internet service provision – has grown rapidly and has brought large benefits to many consumers. More than 40 per cent of households now have a personal computer. The study covers hardware, software and related services and is investigating consumer concerns. These include the availability of information for consumers before purchasing an IT product and the quality and availability of after-sales support.

88. The OFT has commissioned two consumer surveys, one on purchasing and the other on after-sales experiences. Consultations are also taking place with manufacturers, retailers, trade associations, Government departments and trade journals. The OFT plans to report its findings in the autumn of 2002.

#### **Pharmacies**

89. The OFT is looking at the market for retail pharmacy services and, in particular, whether consumers are best served by the system that regulates where pharmacies can open. Since 1987, pharmacies have needed a contract from their local health authority to dispense NHS prescriptions. This business is essential to many chemists and drug stores. The overall turnover of these businesses last year was £18.7 billion. Many customers want to buy medicines over the counter with the benefit of a pharmacist's advice, or need frequent prescriptions, so it is important that a convenient service is readily available. Restrictions on where chemists can open may well affect competition.

90. The OFT is reviewing the system to see how present restrictions affect competition and consumer interests and whether there are better ways of achieving public interest objectives. The OFT has conducted interviews with the leading pharmacy chains. The views of independent pharmacists have been elicited. The OFT is also holding discussions with the appropriate professional bodies, industry regulators and Government officials. Research has also been commissioned, including economic modelling of retail pharmacy markets, a review of pharmacy regulations in other countries and analysis of the sale values of pharmacies. The OFT plans to report in the autumn of 2002.

### **Extended warranties for electrical goods**

90. The market for extended warranties for electrical goods is growing fast and is worth over £1 billion a year. The market is changing rapidly with the introduction of cashback warranties and more widespread use of non-insurance backed warranties. The review will consider issues such as the value for money provided by these warranties, whether there is evidence of high-pressure selling, and the degree of competition and price transparency in the market.

91. As part of the investigation, the OFT conducted a mystery-shopping exercise involving 1,000 electrical retailers, together with surveys of 2,000 consumers and over 3,000 independent electrical repairers. Consultations are also planned with trade associations, consumer bodies and Government departments. The inquiry report will be published in summer 2002.

### **Super-complaints**

#### ***a) Role of the OFT***

91. The super-complaints procedure ensures a fast-track response to concerns raised by designated groups such as the Consumers' Association and the National Association of Citizens' Advice Bureaux.

92. Super-complaints are concerned with how markets operate, rather than the activities of particular companies. Complainants must provide reasonable evidence that market structures or practices are working against the consumers' interest. Preliminary work by the OFT will establish if this evidence is strong enough to take the complaint forward, for example by a full market investigation or enforcement action. The OFT investigate super-complaints quickly and publishes a clear, public response within 90 days. If OFT decide not to take further action, the announcements fully explain the reasons why.

#### ***b) Investigations***

### **Private dentistry**

93. The £1-billion-a-year market for private dentistry was the subject of the first super-complaint, submitted in October by the Consumers' Association. The Association claimed to have identified a number of areas where patient interests were not being met. These included a lack of price transparency in the provision of services, the failure of new entrants to the market to bring down prices and the difficulties consumers face in seeking redress for poor treatment.

94. The OFT found that the questions raised by the Association warranted a detailed market investigation. This investigation will use powers under Section 2 of the Fair Trading Act 1973 to examine the markets, including how NHS and private dental services work together, the incentives for dentists to treat patients under the NHS or privately and the constraints on new services. It will also study the expectations and rights of consumers and the quality of information available to them. The findings will be reported by the end of 2002.

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

95. The Enterprise White Paper outlined a further role for the OFT – ensuring the Government's own actions do not hinder competition. The Government has asked the OFT to examine the impact of its rules

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and regulations and advise on how competition can be made more effective. The OFT will work with Government and others, including business organisations, to highlight key areas for such work.

### **IV. Resources**

96. The OFT's financial year runs from 1 April to 31 March. The total budget for the Competition Enforcement and Markets & Policy Initiatives Divisions for the financial year ending 31 March 2001 (excluding extraordinary costs) was £22.1m which cannot be easily dis-aggregated between operating divisions. This was an increase of just over 55% on the previous financial year and was largely due to additional funding of £7.7 million to enhance competition enforcement and to create a new division. (It should be noted that some of the work of that division deals with consumer issues, but it is not possible to dis-aggregate the costs.)

97. At the end of the financial year, there were 35 lawyers working on competition issues. In OFT as a whole there were 39 economists, some of whom worked on consumer regulation enforcement.

98. Of the 152 staff in the Competition Enforcement Division at the end of the financial year, approximately 120 were engaged on enforcement of the CA98 and other matters relating to the general competition regime, and 32 on work related to mergers. Recruitment was continuing. Separate information is not available on the extent to which competition advocacy was carried out by the staff of that division. In the Markets & Policy Initiatives Division, there were 80 staff (as with budget, it is not possible separately to assess the extent to which those staff may have dealt with consumer issues). Where advocacy is concerned, plans were made for a team of three staff to be set up in 2002 to deal with the OFT's new role of advising on competition implications of proposed legislation.

99. For the Competition Commission, total costs for the financial year were approximately £9.17m, of which the costs of the appeal side (CCAT) were £1.527m. The latter figure represents an increase of approximately 60% on the previous financial year, reflecting the fact that appeals under the CA98 began to be dealt with during the year. Around 90 staff were employed during the year.