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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE UNITED KINGDOM

-- 2009 --

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1. Executive Summary

1. The Office of Fair Trading (OFT) and the Competition Commission (CC) have continued to focus their policy and strategy work on ensuring that the benefits of the UK competition and consumer regimes, and the role and functioning of markets, are properly understood and that market failures are addressed by regulation that does not unnecessarily or disproportionately restrict competition or consumer benefits. The UK authorities are well placed to deal with wider public policy issues using their existing competition tools. The OFT and CC are also strengthening relationships with government departments and other stakeholders, and engaging with them on cross-cutting issues and priority sectors for future economic growth.

2. Through its enforcement work, the OFT has demonstrated how the targeted and proportionate use of its statutory powers can help it towards achieving high-impact outcomes.

3. The OFT's most recent impact estimates show direct financial benefits to consumers of eight times the OFT's cost to the tax payer. The benefits for consumers of the OFT's competition work are estimated at £78m a year for competition enforcement; £132m a year for market studies and £131m a year for mergers. An independent report prepared for the OFT indicates that for every competition investigation taken on by the OFT many more businesses are successfully deterred from anti-competitive practices.

4. The OFT had considerable success in concluding major competition enforcement cases throughout the year while also progressing new cases. Furthermore, the OFT responded to the challenges posed by the global recession and made it clear to businesses that competition law continues to apply and to be enforced in difficult economic conditions. In one of the largest and most complex competition investigations taken on by a national agency, the OFT imposed fines totalling £129.2m on 103 construction firms that had colluded with their competitors on building contracts. In a separate case, it also imposed fines totalling £39.27m, on six recruitment agencies in the construction sector for taking part in a cartel in the supply of candidates. The OFT has also issued a Statement of Objections against Reckitt Benckiser, maker of Gaviscon, for alleged abuse of a dominant position in the supply of medicines to the National Health Service (NHS). The OFT's actions carry a strong deterrent message underlining the risks taken when firms collude or fix prices rather than compete – a temptation that may grow as the recession continues.

5. Equally, the OFT has worked with the CC to produce new Merger Assessment Guidelines incorporating their collective experience gained since the Enterprise Act 2002 came into force; the new joint guidelines, when finalised, will improve the transparency and predictability of UK merger control. The last year has seen the OFT continue to apply rigorously its existing failing firm test; however, it is has done this in a procedurally efficient way. The OFT has also strengthened its merger intelligence capabilities to help it target only those non-notified cases with the potential to harm UK consumers. These measures reduce the burden on businesses and the institutions in a regime where the notification of qualifying mergers is voluntary. The OFT reviewed 73 merger cases last year, referring seven of those to the CC for a further investigation.

6. Preventing harm in the first place is an essential complement to taking enforcement action afterwards. OFT has enhanced its engagement with businesses and trade organisations to raise awareness of their responsibilities and to encourage them to comply with the law. For instance, the OFT undertook research into drivers of compliance and non-compliance with competition law in order to gain a better understanding of the practical challenges faced by businesses seeking to achieve a competition law compliance culture. In addition, the OFT has prioritised its advocacy work to government, to ensure the Government continues to take competition into account when formulating policies for economic recovery.

In order to support its work the OFT published a report entitled 'Government in Markets: a guide for policy makers'.

7. Particularly during these tough economic times, businesses dealing with the OFT and the CC rightly expect institutions to be joined-up and the burdens on business to be minimised. The OFT has increased its use of short, focused market studies and it has also worked closely with the CC to make improvements to processes.

8. During the year the CC was challenged in the Competition Appeal Tribunal (CAT) on five occasions raising several different issues. This was an increase in the number of challenges and reflects the CC's status as a decision making body with the ability to impose remedies in both market and merger investigations. An appeal to the Court of Appeal following an earlier CAT judgment in respect of appeals by BSkyB and Virgin was successful and provided useful guidance on the standard to be met by the CC when finding a 'substantial lessening of competition' (SLC) analysis as well as confirming the CC's interpretation of the applicable public interest exemption. The CC has taken a number of lessons from its successes and failures in front of the CAT. The CC also established two reviews during the year, one into remedies work in market investigations, and one into how to deal with actual and potential conflicts of interest.

9. The CC reported on seven mergers during the course of the year, covering a range of products and services including sports goods, online genealogy services, live music tickets, as well as nuts, seeds and dried fruit. An SLC was found in two out of the seven cases. In both cases structural remedies were imposed.

10. In the course of the year the CC commenced one new market investigation into Local Bus Services. The CC also completed the reconsideration of aspects of its market investigation into groceries following remittal by the CAT. Reconsideration of aspects of the Payment Protection Insurance (PPI) decision is ongoing.

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

2.1 Summary of new legal provisions of competition law and related legislation

11. The OFT gained new powers under the Payment Services Regulations 2009 (S.I. 2009/209). Under Part 8, the OFT has powers to investigate and take decisions to enforce a new prohibition on restrictive rules on access to payment systems.

12. There is also a Competition Commission Order: the Domestic Bulk Liquid Petroleum Gas (LPG) Metered Estates Order. By virtue of clause 14 and Schedule 2, any person to whom the Order applies is required to provide the OFT with any information and documents which OFT may require for the purposes of monitoring compliance or giving effect to any of the provisions of the Order.

13. In 2009, the Local Transport Act 2008 partially entered into force and modified the application of competition law to, and the OFT's investigation and enforcement powers in respect of, certain agreements involving bus undertakings.

2.2 Government proposals for new legislation

2.2.1 Review of the media merger regime

14. In June 2009, the OFT published a final report on its review of the local and regional media regime (focusing on local and regional newspapers). The report forms part of the government's Digital

Britain review. The OFT concluded that the current Enterprise Act 2002 merger regime is suitable to deal with the market changes and challenges that the local and regional newspaper industry is facing (such as valid 'failing firm' arguments). The OFT therefore recommended that no legislative changes are needed to the media merger regime. However, it proposed to formally seek Ofcom's¹ view in future newspaper merger cases, given its specific sector knowledge in the UK.

15. For further information please access the following link to the OFT website: <http://www.of.gov.uk/news/press/2009/71-09>.

2.2.2 Regulation of sale and rent back sector

16. Following OFT's market study into the sale and rent back sector, HM Treasury laid before Parliament secondary legislation (The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009) to bring sale and rent back agreements within the scope of Financial Services Authority (FSA) regulation, as recommended by the OFT. The OFT had found in its market study that property sale and rent back deals have the potential to cause serious harm to consumers, many of whom are vulnerable.

2.3 Other relevant measures, including new guidelines

2.3.1 OFT/CC joint work to improve competition regime

17. In April 2009, the OFT and the CC reiterated their commitment to ensure that the UK competition regime is responsive, timely, efficient, cost-effective, robust, independent and provides consistency in policy and approach.

18. Focusing on the market investigation regime, the OFT agreed to consult on a reference to the CC within six months of launch (where this appears the most appropriate and proportionate outcome). In addition, the CC is looking to complete future market investigations in 18 months instead of the statutory maximum of 24 months, and less in the case of smaller markets.

2.3.2 OFT consultation on market studies guidance

19. In May 2009, the OFT started a 12-week consultation on its revised market studies guidance. The revision brings the guidance up to date. It explains the current processes and principles that the OFT applies to its market studies work. The guidance contains a chapter that explains how the OFT evaluates its market studies work, an area not covered in the initial 2004 guidance.

20. For further information please access the following link to the OFT website: http://oft.gov.uk/advice_and_resources/resource_base/consultations/closed-awaiting/market-studies.

2.3.3 OFT/CC joint review of substantive merger guidelines

21. In April 2010, the OFT and the CC published a set of joint merger assessment guidelines for public comment. The joint guidelines feature sections on the operation of the UK merger regime and the questions that the CC and the OFT must consider when reviewing mergers. The guidelines also clarify how

¹ Ofcom is the communications regulator. It regulates the TV and radio sectors, fixed line telecoms and mobiles, plus the airwaves over which wireless devices operate. Ofcom operates under the Communications Act 2003. For further information, please consult: <http://www.ofcom.org.uk/about/sdrp/>

the OFT and the CC define a ‘relevant merger situation’, detail the criteria and methodology used by the authorities when assessing mergers and provide guidance on public interest cases.

22. The document followed a public consultation on an initial draft of joint merger assessment guidelines, which was issued in April 2009. The OFT and the CC revised the draft merger assessment guidelines to reflect many of the detailed drafting points contained in consultation submissions from third parties and in the light of substantive comments on aspects of the initial draft. Some other changes have been made in the light of the OFT and the CC’s further thinking, in particular on the topics of market definition, efficiencies and co-ordinated effects.

23. The CC and the OFT aim to issue final merger assessment guidelines in summer 2010.

24. For further information please access the following link to the CC website: http://www.competition-commission.org.uk/about_us/our_organisation/workstreams/analysis/cc2_review.htm and <http://www.of.gov.uk/OFTwork/mergers/publications/guidelines/substantive/>.

2.3.4 Revised guidance on jurisdictional and procedural mergers

25. In June 2009, the OFT published its revised guidance on merger jurisdiction and procedure guidance which provides information and advice to companies on the procedures it uses when reviewing merger cases.

26. The new guidance, which replaces the 2003 OFT publication “Mergers - procedural guidance”, reflects six years of practical experience of merger control by the OFT. It provides relevant information on legal issues including the jurisdictional test applied by the OFT. The guidance explains what is a relevant merger situation under the Enterprise Act 2002, considers the procedures for notifying mergers to the OFT (including the OFT's powers to investigate on its own initiative and in response to complaints). It also sets out the information to be provided in notifications, explains the assessment and decision-making processes and the procedures relating to the acceptance of interim undertakings and undertakings in lieu. The guidance also considers public interest mergers and the procedures for referral of cases to and from the European Commission.

27. The guidance is to be considered in conjunction with the joint mergers assessment guidance (see 2.3.3).

28. For further information please access the following link to the OFT website: <http://www.of.gov.uk/news/press/2009/76-09>.

2.3.5 Private litigation in competition cases

29. In March 2010, the OFT published guidance for smaller companies considering taking private actions where they have suffered loss as a result of breaches of competition law.

30. The guidance explains the circumstances in which businesses may seek redress by bringing claims in the courts or by pursuing other means of dispute resolution such as settlement or arbitration. It also summarises the framework for competition private actions in the UK courts, the steps involved in bringing a claim and the redress potentially available.

31. For further information please access the following link to the OFT website: <http://www.of.gov.uk/business-advice/competing/private-litigation>.

2.3.6 Consultation on exceptions to duty to refer

32. In October 2009, the OFT published a consultation on the text of revised guidance on the exceptions to its duty to refer merger cases to the CC and its ability to accept undertakings in lieu of a reference.

33. The new draft guidance, as well as being updated to reflect six years of developing practice since the Enterprise Act 2002 came into force, seeks to explain in more detail where the OFT may still make a CC reference even where some factors would point to use of its 'de minimis' discretion. It sets out how the OFT assesses whether the expected impact of a merger outweighs the public cost of a reference to the CC, and how the OFT can use this discretion not to refer in order to reduce overall merger review costs.

34. The OFT expects to publish the final revised guidance in early 2010.

35. For further information please access the following link to the OFT website: <http://www.of.gov.uk/news/press/2009/120-09>.

2.3.7 Design and evaluation of remedies in Market Investigations

36. In February 2010, the CC published recommendations arising from a review of its approach to remedies in market investigations. Among other matters, the review found that the amount of time spent considering competition problems in the market investigations it considered did not leave enough time to consider remedies in sufficient detail during the two-year statutory timetable. The review group has therefore recommended allowing more time for the remedies phase within the overall timetable for market investigations (which will aim for completion in 18 months) - in part by placing stricter time limits on the earlier stages of the investigation.

37. The review also recommended greater focus on the mechanisms and impacts of remedies, as well as a more structured framework for developing, expressing and scrutinising remedies decisions. The CC has also begun a more general review of its guidance on market investigations.

38. For further information please access the following link to the CC website: http://www.competition-commission.org.uk/our_role/analysis/remedies_review_prop_cc_action.pdf.

2.3.8 Treatment of conflicts of interest

39. Following the decision of the CAT in the BAA case (see 4.3.4), the CC has asked an independent panel to examine the CC's rules and practices in relation to possible conflicts of interest of its members. The panel will report later this year. Further information is available at http://www.competition-commission.org.uk/press_rel/2010/jan/29-10.pdf.

40. The CC has also appealed the CAT's decision.

3. Enforcement of competition policy and enforcement

3.1 Summary of action against anticompetitive practices, including agreements and abuses of dominant positions

3.1.1 Bid-rigging in the construction industry in England

41. Following its largest-ever investigation under the Competition Act 1998, the OFT imposed fines totalling £129.2m on 103 construction firms in England which had colluded with their competitors on building contracts.

42. The OFT concluded that the firms engaged in illegal anti-competitive bid-rigging activities on 199 tenders from 2000 to 2006, mostly in the form of 'cover pricing'.

43. The OFT also found six instances where successful bidders had paid an agreed sum of money to the unsuccessful bidder (known as a 'compensation payment'). These payments of between £2,500 and £60,000 were facilitated by the raising of false invoices.

44. The infringements affected building projects across England worth in excess of £200m including schools, universities, hospitals, and numerous private projects from the construction of apartment blocks to housing refurbishments.

45. 86 out of the 103 firms received reductions in their penalties because they admitted their involvement in cover pricing prior to the decision.

46. For further information please access the following link to the OFT website: http://www.of.gov.uk/advice_and_resources/resource_base/ca98/decisions/bid_rigging_construction.

3.1.2 Construction cartel case

47. In September 2009, the OFT imposed fines totalling £39.27m on six recruitment agencies for taking part in a cartel in the supply of candidates to the construction industry. Two other recruitment agencies which had been involved were granted immunity from fines in return for exposing the cartel.

48. The OFT concluded that the eight companies - A Warwick Associates, Beresford Blake Thomas (BBT), CDI AndersElite, Eden Brown, Fusion People, Hays Specialist Recruitment (Hays), Henry Recruitment and Hill McGlynn & Associates (HMG) - had engaged in the collective boycott of a rival company, Parc UK, for the supply of candidates to construction companies in the UK and in price-fixing.

49. For further information please access the following link to the OFT website: <http://www.of.gov.uk/news/press/2009/119-09>.

3.1.3 Disclosure of pricing information for loan products to professional services firms

50. In March 2010, the Royal Bank of Scotland (RBS) agreed to pay a fine of £28.59m after admitting breaches of competition law between October 2007 and February or March 2008. The agreement follows an OFT investigation which found that individuals in RBS's Professional Practices Coverage Team had unilaterally disclosed generic as well as specific confidential future pricing information to their counterparts at a competitor, Barclays Bank. The OFT also found evidence that the information was taken into account by Barclays in determining its own pricing. The matter was brought to the OFT's attention by Barclays under the OFT's leniency policy.

51. Given its continued co-operation with the OFT, Barclays was not expected to pay a fine in this case. The fine for RBS was reduced from £33.6m to reflect the bank's admission and its agreement to co-operate.

52. For further information please access the following link to the OFT website: <http://www.offt.gov.uk/news/press/2010/34-10>.

3.1.4 Alleged attempt by Reckitt Benckiser to restrict competition in heartburn medicines

53. The OFT issued a Statement of Objections in February 2010 alleging that Reckitt Benckiser abused its dominant position in the market for the NHS supply of alginate and antacid heartburn medicines.

54. The OFT alleges that Reckitt Benckiser sought to restrict competition to its Gaviscon brand by withdrawing and de-listing its National Health Service (NHS) packs of Gaviscon Original Liquid from the NHS prescription channel.

55. Where a patent has expired and a 'generic name' has been assigned, General Practitioners (GPs) can use their prescribing software to search for a well-known branded product and then provide patients with an 'open' prescription that lists its generic name. Pharmacies that receive these prescriptions can choose whether to dispense the relevant brand or equivalent but cheaper generic medicines. This choice provides for strong price competition between pharmaceutical suppliers and results in considerable savings to the NHS.

56. The OFT alleges that the withdrawal of NHS packs of Gaviscon Original Liquid from the NHS prescription channel was deliberately timed to occur before the publication of the generic name for this product so that when GPs search for 'Gaviscon' prescription packs they will identify Gaviscon Advance Liquid, which is patent protected, and not Gaviscon Original Liquid, for which an 'open' prescription could otherwise be provided.

57. For further information please access the following link to the OFT website: <http://www.offt.gov.uk/news-and-updates/press/2010/20-10>.

3.1.5 Collusion on dairy retail prices

58. The OFT continued its investigation into alleged collusion between certain large supermarkets and dairy processors over the retail prices of certain dairy products. In July 2009, the OFT issued a supplementary Statement of Objections to all parties involved in its investigation, setting out additional evidence in support of its provisional findings that the parties had colluded to increase the retail prices of certain dairy products in 2002 and/or 2003.

59. In April 2010, the OFT announced that detailed representations and new evidence received by it proved insufficient to support an infringement finding with regard to liquid milk in 2002 and value butter in 2003. As a result, the individual penalties that a number of early resolution parties had agreed to pay will be reduced. In addition, as the only allegation against one of the supermarkets under investigation, Morrisons, related to liquid milk in 2002, it is now no longer a party to the Dairy investigation.

60. The OFT expects to conclude and issue its decision by early summer 2010. For further information please access the following link to the OFT website: <http://www.offt.gov.uk/news/press/2010/45-10>.

3.1.6 *Campaign for Real Ale (CAMRA) super-complaint*

61. In October 2009, the OFT published its response to the Campaign for Real Ale (CAMRA) super-complaint² relating to the supply of beer in pubs. The OFT concluded that it had not found evidence that supply ties result in competition problems that are having an adverse impact on consumers.

62. In its complaint, CAMRA raised concerns about the operation of exclusive purchasing obligations by pub-owning companies, which require lessees to purchase beer solely through their pub-owning company landlord. CAMRA stated that these so-called 'supply ties' protect pub-owning companies from competition and lead to higher beer prices and less choice for consumers.

63. In February 2010, the OFT opened a consultation on its response to the super-complaint to allow CAMRA and any other interested persons or groups the opportunity to make representations about the findings it reached in its response to the super-complaint.

64. For further information please access the following link to the OFT website: <http://oft.gov.uk/news/press/2010/14-10>.

3.1.7 *Alleged collusion between Cathay Pacific Airways and Virgin Atlantic*

65. In April 2010, the OFT issued a Statement of Objections alleging that Cathay Pacific Airways and Virgin Atlantic had infringed competition law in relation to passenger services on the London to Hong Kong route.

66. The case concerns a number of alleged contacts between employees of the two airlines over a number of years which it is alleged had the object of co-ordinating the parties' respective pricing strategies regarding passenger fares through the exchange of commercially sensitive information on pricing and other commercial matters. The matter was brought to the OFT's attention by Cathay Pacific under the OFT's leniency policy, where a company which is the first to report its participation in cartel conduct may qualify for immunity from penalties. Provided it continues to co-operate, Cathay will be immune from any penalty imposed in this case.

67. For further information please access the following link to the OFT website: <http://www.oft.gov.uk/news-and-updates/press/2010/41-10>.

4. **Mergers and acquisitions**

68. A merger qualifies for investigation if the UK turnover of the business being acquired is over £70m, or if the merger will create or enhance a 25 per cent share of supply of a particular product or service in the UK, or a substantial part of the UK. The OFT investigates completed and anticipated mergers above a certain size to assess their anticompetitive effects; where the OFT believes they might result in a substantial lessening of competition (SLC), it refers mergers to the CC, or accepts undertakings instead of a reference. The CC conducts a more detailed investigation and decides whether a merger should be prohibited, allowed to proceed under conditions or cleared.

² Under the Enterprise Act 2002 (section 11(1)), designated consumer bodies can submit super-complaints if they have any concerns that 'any feature, or combination of features, of a market in the United Kingdom for goods or services is or appears to be significantly harming the interests of consumers'. Within 90 days after the day on which a super-complaint is received, the OFT must say publicly how it proposes to deal with it. The super-complaint process is intended to be a fast-track system for designated consumer bodies to bring to the attention of the OFT and the Regulators, market features that appear to be significantly harming the interests of consumers.

4.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws*

69. The OFT made 73 merger decisions under the Enterprise Act 2002 and referred seven mergers to the CC. The OFT reference test was met in a further 14 cases. Of these, the OFT accepted undertakings in lieu of a reference to the CC in four cases. The OFT cleared 10 cases on the basis that the relevant markets were not of sufficient importance to justify a reference (the 'de minimis' exception). The OFT also formally accepted undertakings in lieu of a reference in one case from 2008-2009 after a failure to find a suitable buyer (or buyers) to remedy previously identified competition concerns.

70. The CC reported on seven merger inquiries in 2009/10; it found an SLC in two out of seven cases.

4.2 *Summary of key cases*

4.2.1 *The Co-operative Group / Somerfield, the largest divestiture package in UK merger control*

71. In the previous reporting period, The Co-operative Group gave undertakings to the OFT to remedy competition concerns raised by its acquisition of around 880 Somerfield grocery retail stores. After accepting the undertakings, this year the OFT oversaw the divestment by The Co-operative Group of grocery retail stores in all affected local areas. Through this divestment process, 133 former Co-operative Group or Somerfield stores were sold to 15 different purchasers, including a significant new entrant to the grocery retailing sector.

72. The OFT carefully assessed and consulted publicly on the proposed undertakings, as well as on the identity of the buyers in the 24 local areas that were subject to an up-front buyer provision. This is the largest divestiture package accepted in UK merger control and is the result of a constructive working partnership between the OFT and the parties throughout the OFT's review.

4.2.2 *Orange / T-Mobile joint venture*

73. As well as reviewing mergers under the Enterprise Act 2002, the OFT plays an active role in cases notified to the European Commission that have a potential impact on UK consumers. In early 2010, the OFT worked closely with the European Commission and Ofcom to review the proposed merger of the UK subsidiaries of Orange and T-Mobile. Following the offer of satisfactory remedies by the parties, the OFT withdrew its request under Article 9 of the EC Merger Regulation (ECMR) seeking the referral of this ECMR case from the European Commission.

74. For further information please access the following link to the OFT website: <http://www.of.gov.uk/news-and-updates/press/2010/23-10>.

4.2.3 *NBTY Europe Limited / Julian Graves*

75. In March 2009, the OFT referred the completed acquisition by NBTY Europe Limited (NBTY) of Julian Graves Limited (Julian Graves) to the CC.

76. This merger brought together the two largest UK specialist retailers of health products, with a combined portfolio of over 850 stores across the country. The OFT concluded that its obligation to refer this case to the CC was triggered in light of insufficient evidence to dismiss the OFT unilateral effects theory of harm.

77. In August 2009, the CC concluded that prior to the acquisition by NBTY, Julian Graves was failing, principally because it was overburdened with debt, and would only have survived with an investment of new equity. In respect of pricing, the CC found that neither Holland & Barrett nor Julian Graves targeted each other specifically in either their national pricing activity or their local promotions, and further found that the relevant product market included many retailers of NSF products. The CC concluded there was sufficient competitive constraint on the merged entity primarily from the large UK supermarkets. Thus, the CC concluded that it did not expect the merger to result in a substantial lessening of competition (SLC) in the retail supply of NSF in the UK or in any local market in the UK.

78. For further information please access the following link to the OFT website: <http://www.competition-commission.org.uk/inquiries/ref2009/holland/index.htm>.

4.2.4 *HMV / Zavvi*

79. HMV Group plc (HMV) and Zavvi Retail Limited (Zavvi) overlapped in the supply of entertainment products until Zavvi had entered into administration on 24 December 2008.

80. This case showed the flexibility of the regime in reviewing a case in which the parties argued the 'failing firm' defence. While the criteria to accept a 'failing firm' defence has not changed, that is it has not been lowered, during these troubled times, the OFT has adjusted its process to deal with this type of cases more speedily. In this case, in close co-operation with the applicant, it reviewed its representations on 'failing firm' at front and did not require to enter into a full substantive analysis.

81. For further information please access the following link to the OFT website: http://www.of.gov.uk/advice_and_resources/resource_base/Mergers_home/decisions/2009/hmv.

4.2.5 *Atlas Elektronik GmbH UK / Qinetiq's Underwater Systems Winfrith Division*

82. In May 2009, the OFT published a report to the Secretary of State for Business, Innovation and Skills (BIS) on the anticipated acquisition by Atlas Elektronik GmbH UK of the Underwater Systems Winfrith Division of Qinetiq Plc.

83. The report followed a special intervention notice given to the OFT pursuant to section 59(2) of the Enterprise Act 2002, on the basis that the Secretary of State had reasonable grounds for suspecting that the arrangements in progress or in contemplation, if carried into effect, would result in the creation of a special merger situation and that the national security public interest consideration was, or might be, relevant to the consideration of the merger.

84. The OFT identified certain national security concerns and advised the Secretary of State that adverse effects to the public interest may be expected to result from the special merger situation. It therefore advised the Secretary of State, in accordance with the statutory provisions, either to refer the merger to the CC or accept undertakings in lieu of such a reference.

85. In accordance with the OFT's advice, the Secretary of State announced the decision to accept statutory undertakings from Altas Electronik in order to remedy, mitigate or prevent the adverse effects identified. After a consultation on the text of the undertakings, the decision was confirmed in September 2009.

86. For further information please access the following link to the OFT website: http://www.of.gov.uk/shared_of/mergers_ea02/2009/atlas-elektronik.pdf.

4.2.6 *Stagecoach Group plc and Preston Buses Limited*

87. In May 2009, the OFT referred the completed acquisition by Stagecoach Group plc (Stagecoach) of Preston Bus Limited (Preston Bus) to the CC.

88. Before the acquisition, Preston Bus provided local bus services in Preston and South Ribble, while Stagecoach is one of the largest bus and coach companies in the UK, with operations in over 100 towns and cities including Preston.

89. The CC found that the merger (completed in January 2009) followed a period of abnormal competition from June 2007 to September 2008, initiated by Stagecoach, in which both companies operated at a significant loss, as a result of which Preston Bus' owners were left with little choice but to sell to Stagecoach. The CC did not accept Stagecoach's argument that it should regard Preston Bus as a failing firm. The CC found that before June 2007 Preston Bus was constrained by Stagecoach in the form of both actual and potential competition, and Stagecoach was constrained to a lesser extent by Preston Bus. The CC found that following the merger, entry on the scale that could counteract the loss of competition identified was unlikely to occur.

90. In November 2009, the CC published its report and concluded that the sale of a reconfigured Preston Bus will be the most effective way to restore competition and safeguard passenger interests. The CC will approve the successful bidder to ensure that it is capable of operating as an effective competitor to Stagecoach.

91. Stagecoach has appealed the decision; judgment from the CAT is awaited.

92. For further information please access the following link to the CC website: <http://www.competition-commission.org.uk/inquiries/ref2009/preston/index.htm>.

4.2.7 *Stagecoach Group plc / Eastbourne Buses Limited*

93. In May 2009, the OFT referred the completed acquisition by Stagecoach Group PLC (Stagecoach) of Eastbourne Buses Limited (EBL) and Cavendish Motor Services Limited (Cavendish) to the CC.

94. Prior to the acquisition both EBL and Cavendish had operated local bus services on many of the same routes in the Eastbourne area and Stagecoach only had a small presence.

95. In October 2009, the CC published its report on the completed acquisition by Stagecoach of EBL and Cavendish. Although the effect of the acquisitions was to reduce the number of competitors in the area, the CC did not expect that Cavendish would continue to compete on any significant scale. The CC concluded that the loss of competition was likely to have been small at most and the mergers did not lead to an SLC, and therefore cleared the merger.

96. For further information please access the following link to the CC website: <http://www.competition-commission.org.uk/inquiries/ref2009/stagecoach/index.htm>.

4.2.8 *Ticketmaster / Live Nation*

97. In June 2009, the OFT referred the anticipated merger between Ticketmaster Entertainment Inc and Live Nation Inc to the CC under the Enterprise Act 2002. The OFT concluded that the merger raised horizontal and possible vertical competition issues on the primary ticket agency market. On horizontal concerns, the OFT assessed whether the loss of an important competitor (should it exit the market as a

result of the merger) or as a result of that competitor becoming less effective could trigger its duty to refer the case to the CC. The OFT's examination of possible vertical foreclosure found that the merged entity would have the ability to foreclose rival events promoters, but it had insufficient evidence that the merged entity would have the incentive to do so. In light of the above, the OFT referred this case to the CC for a closer review

98. For further information please access the following link to the OFT website: <http://www.offt.gov.uk/news/press/2009/67-09> and the CC report at: <http://www.competition-commission.org.uk/inquiries/ref2009/ticketmaster/index.htm>.

4.2.9 *GlaxoSmithKline plc / Pfizer Inc*

99. In July 2009, the OFT confirmed that it had cleared the anticipated joint venture between GlaxoSmithKline plc (GSK) and Pfizer Inc (Pfizer) to create a specialist company that focuses solely on the research, development and commercialisation of HIV medicines. OFT's assessment concluded that it was not expected that the merger would result in a substantial lessening of competition within a market or markets in the UK. The merger was not referred to the Competition Commission.

100. For further information please access the following link to the OFT website: http://www.offt.gov.uk/advice_and_resources/resource_base/Mergers_home/decisions/2009/GlaxoSmithKline.

4.2.10 *JJB Sports plc stores / Sports Direct International plc*

101. In August 2009, the OFT referred the completed transfer of 31 JJB Sports plc (JJB) stores to Sports Direct International plc (SDI) to the CC. JJB, with over 250 stores in the UK, and SDI, with over 360 stores in the UK, compete in the sale of sports footwear, clothing and equipment. This reference followed the failure by SDI of complying with its undertakings of finding a suitable buyer for those stores which had led the OFT to find a SLC at local level.

102. In March 2010, the CC published its report. The CC concluded that the product market included only SDI and JJB. The CC looked at the effect of entry by JJB and other retailers on the revenues of SDI and found that JJB had a much greater effect than any other retailer. Further, the effect was consistent across the products offered by both retailers, which suggested that the product market was wider than individual products. Additionally, a survey provided strong evidence of SDI and JJB being each other's closest competitor. Any new entrant would have to be able to stock the same range of products at similar prices in order to replace any lost competition and would likely have to enter on the same scale as the parties in order to obtain the necessary supplier discounts.

103. The CC found that the store transfers might have provided an incentive to increase national prices very slightly. However, this effect was small and JJB remained in the market as SDI's closest national competitor and would continue to provide a constraint on SDI's national pricing. The CC concluded that this merger was not expected to result in an SLC in the retail supply of sports goods in the UK.

104. For further information please access the following link to the CC website: <http://www.competition-commission.org.uk/inquiries/ref2009/jjb/index.htm>.

4.2.11 *Capita Group plc / IBS OPENSsystems plc*

105. In November 2008, the OFT referred the completed acquisition by Capita Group plc (Capita) of IBS OPENSsystems plc (IBS) to the CC. Both Capita and IBS were suppliers of revenues and benefits (R&B) software systems and social housing (SH) software systems.

106. In June 2009, the CC published its report. In the R&B market, the CC found that the merger combined two closely competing bidders and that constraints from existing competitors would not be sufficient to prevent the merged entity exercising market power. The CC therefore concluded that an SLC might be expected to result from the completed acquisition. The CC did not find an SLC in the SH market as it was found that there had not been close competition between Capita and IBS prior to the merger and that the other suppliers in the market would be sufficient to constrain the combined Capita-IBS following the merger. The CC required Capita to sell the R&B business of IBS and in August 2009 the CC approved the sale of Capita's IBS R&B business to Civica plc.

107. For further information please access the following link to the CC website: <http://www.competition-commission.org.uk/inquiries/ref2008/ibs/index.htm>.

4.2.12 *Centrica plc / Lake Acquisitions Limited*

108. In August 2009, the OFT cleared the acquisition by Centrica plc of a 20 per cent shareholding in Lake Acquisitions, the subsidiary of EDF SA that owns British Energy plc. The OFT found that the transaction, which gives Centrica material influence over British Energy, would not raise any unilateral horizontal concerns, nor would it reduce potential strategic competition. The OFT also found that the merger would not give rise to concerns of a co-ordinated nature.

109. The OFT's assessment focused on the impact of the merger on liquidity in the wholesale electricity market. The OFT concluded that the merger would not cause any significant decrease in liquidity. It therefore announced it would not refer the merger to the Competition Commission.

110. For further information please access the following link to the OFT website: http://www.of.gov.uk/advice_and_resources/resource_base/Mergers_home/decisions/2009/centrica.

4.2.13 *Thomson Reuters / Abacus Enterprise suite of products and related business operations*

111. In December 2009, the OFT cleared the acquisition by Thomas Reuters (Legal) UK (Thomson Reuters) of the Abacus suite of products (Abacus).

112. Thomson Reuters is a provider of information services to companies in the financial, legal, tax and accounting, scientific, healthcare and media industries. In the UK, it supplies a number of tax accounting and compliance products.

113. Thomson Reuters acquired Abacus which provides services to corporations and their advisers in planning, complying and remitting income taxes and value added taxes.

114. The OFT found that Thomson Reuters did not have sufficient market power to give it the ability to foreclose competition and concluded that the merger would not be expected to result in a substantial lessening of competition in the supply of tax accounting and tax compliance software in the UK.

115. For further information please access the following link to the OFT website: http://www.of.gov.uk/shared_of/mergers_ea02/678502/Thomson_Reuters.pdf.

4.2.14 *Friends Reunited / Brightsolid Group*

116. In November 2009, the OFT referred the anticipated acquisition of Friends Reunited Holdings Limited by Brightsolid Group Limited to the CC for further investigation.

117. Brightsolid Group, which runs websites Find My Past.com and 1911 Census.com, and Friends Reunited, which owns Genes Reunited.com, are two of the three largest suppliers of online genealogy services in the UK. These websites allow users to search and access historical information and documents such as census results, birth, marriage and death records, and also supply family tree software.

118. The merging firms both compete with Ancestry.co.uk, the market leader, for these services. The OFT's investigation focused on the extent of direct competition between the merging parties, the level of competition provided by other smaller online genealogy providers and the potential for future entry or expansion in this market.

119. In March 2010, the CC concluded that the merger was unlikely to affect competition in the supply of digitisation services, or to result in any market foreclosure by affecting the availability of data to retailers of online genealogy services.

120. For further information please access the following link to the OFT website <http://www.offt.gov.uk/news/press/2009/129-09> and http://www.competition-commission.org.uk/rep_pub/reports/2010/fulltext/555final_report_excised.pdf.

4.2.15 London Stock Exchange Group Plc / Turquoise Trading Ltd

121. In February 2010, the OFT published the full text of its clearance decision on the anticipated acquisition by London Stock Exchange Group plc (LSE) of Turquoise Trading Limited. The OFT announced its decision not to refer this merger to the CC under the Enterprise Act 2002 as it concluded that the merger would not raise competition concerns in any markets in the UK.

122. Both parties operate trading platforms for the on-book trading of securities listed on the LSE. On-book trades are those that are facilitated by a trading platform such as an exchange (e.g., the LSE) or a multilateral trading facility (e.g., Turquoise).

123. The OFT found evidence of new market entry and considered that entry barriers are unlikely to be insurmountable. It also found indications that the largest customers of the LSE have some degree of buyer power. The OFT, therefore, concluded that there was not a realistic prospect that the merger may result in a substantial lessening of competition in any market in the UK.

124. For further information please access the following link to the OFT website: http://www.offt.gov.uk/shared_offt/mergers_ea02/678502/LSE-Turquoise.pdf.

4.2.16 Ambassador / Live Nation theatres

125. In February 2010, the OFT cleared the acquisition by Ambassador Theatre Group of the theatres formerly owned by Live Nation. Ambassador and Live Nation owned the two major portfolios of theatres in the UK, with venues in 22 locations including the West End of London.

126. The OFT investigated the completed acquisition on its own initiative following receipt of a complaint from a concerned third party. The case raised horizontal and non-horizontal issues. The OFT assessed closely the level of pre-merger competition between the parties and concluded that while both parties owned the two largest portfolios of theatres in the UK, the actual rivalry between them was limited.

127. After careful consideration of all the evidence, the OFT found no indication that theatregoers would lose out through higher prices or an overall reduction in choice of productions or theatres.

128. For further information please access the following link to the OFT website: <http://www.of.gov.uk/news-and-updates/press/2010/16-10>.

4.3 Judicial Review Challenges to CC Merger Decisions

4.3.1 Rights of third parties - CTS Eventim V Competition Commission

129. This challenge by a third party related to the CC's finding that the anticipated merger of Live Nation, Inc (Live Nation) and Ticketmaster Entertainment, Inc (Ticketmaster) would not be expected to give rise to an SLC (report published December 2009).

130. Ticketmaster is a ticket agent, selling tickets for a range of live events, and Live Nation is a live music promoter and venue operator. Ticketmaster was Live Nation's preferred global ticket agent. This relationship ended in the USA at the end of 2008 and was due to expire in the UK at the end of 2009. To replace it, Live Nation had signed a global agreement with CTS Eventim AG (Eventim), a ticketing services provider, ticket agent, and promoter of live music events, headquartered in Germany.

131. The CC concluded that the merger was unlikely to result in an SLC in any UK market. In clearing the merger, the CC's conclusion had changed from its provisional decision, published for consultation in October, in which it expressed concern that the merger could inhibit the entry of Eventim into the UK. In response to this consultation, the CC received significant new evidence and arguments. When considered alongside the existing evidence, the CC found, among other things, that prior to the announcement of the merger Live Nation had never intended to support Eventim's entry into the UK beyond its obligations under the agreement, which would remain unchanged by the merger.

132. Eventim challenged the CC's decision on the basis that, among other things, the CC had denied Eventim a reasonable opportunity to respond to the main reasons for the CC's change of view.

133. The CC requested that the CAT remit the matter back to the CC for reconsideration, on the basis that the ground relating to failure to consult was arguable given the particular circumstances of the case and that remittal was a more efficient and less costly means of dealing with the issue (in particular as remittal was the relief that the CAT would have been able to order if it had upheld Eventim's challenge). On 11 February, the CAT agreed to remit the matter to the CC for reconsideration within a period of three months. On 12 February 2010, the CC reissued its 22 December 2009 report as a Further Provisional Findings and will issue its report in May 2010.

134. For further information please access the following link to the CC website: <http://www.competition-commission.org.uk/inquiries/ref2009/ticketmaster/index.htm>.

4.3.2 Proportionality of remedies - Barclays Bank PLC v Competition Commission

135. This challenge by a main party related to the CC's conclusion in the Payment Protection Insurance (PPI) Market Investigation that certain features of the PPI market, including the sale of PPI at the point of sale of credit, gave rise to an adverse effect on competition (AEC) and proposed a package of remedies, which included the point-of-sale prohibition (POSP), to address the AEC.

136. In March 2009, Barclays Bank PLC (Barclays) challenged aspects of the CC's report, including the inclusion of the POSP in the package of remedies. Lloyds Banking Group PLC (Lloyds) and Shop Direct Group Financial Services Ltd (SDGFS) intervened in support of Barclays; the Financial Services Authority (FSA) intervened in support of the CC.

137. In October 2009, the CAT quashed the CC's decision to impose POSP as part of the remedies package on the grounds that, in its proportionality analysis it had failed to take account of a material consideration namely the effect of the loss of convenience of purchasing PPI at the point of sale of credit on take-up rates, which should also have been included in the modelling of the effects on consumer welfare of the remedies package. In November 2009, the CAT directed the CC to reconsider the imposition of its POSP as part of its remedies package and the remittal is currently underway.

138. For further information please access the following link to the CC website: <http://www.competition-commission.org.uk/inquiries/ref2007/ppi/index.htm>.

4.3.3 *Decisions reviewable by the CAT - Sports Direct International plc (Sports Direct) v Competition Commission*

139. This challenge by a main party related to the CC's merger investigation of the acquisition by Sports Direct of 31 stores from JJB Sports (see 4.2.8 above), Sports Direct challenged the CC's refusal to disclose information redacted from two working papers on the grounds of commercial confidentiality or of public interest (to protect an OFT cartel investigation). The challenge was made before the CC had published its Provisional Decision and while the CC was reviewing the evidence it had received.

140. Sports Direct claimed it was essential for it to see the redacted information in order to prepare for a hearing due to be held prior to publication of the Provisional Decision. The CC argued that it was not clear whether the redacted passages would, in fact, be relevant to the main party hearing or to its reasoning in provisional findings, and that a challenge was premature.

141. The CAT ruled that the challenge was not premature. As a result, the CC withdrew its decision that had led to the information being redacted and stated that it would reconsider the matter in the light of the CAT's full judgment. On this basis, the CAT did not consider the merits of Sports Direct's challenge.

142. The CAT considered that in the context of applications for review of preliminary decisions the primary concern of the CAT is whether what has happened could have resulted in real injustice. On this basis the application was not premature.

143. For further information please access the following link to the CC website: <http://www.competition-commission.org.uk/inquiries/ref2009/jjb/index.htm>.

4.3.4 *Conflicts of interest - BAA v Competition Commission*

144. This challenge related to the Airports Market Investigation (March 2009) the CC requiring BAA to sell both Gatwick and Stansted airports, as well as either Edinburgh or Glasgow airports, within two years. In relation to Heathrow airport BAA was also required to improve consultation with airlines and in relation to Aberdeen airport, BAA was required to improve consultation with airlines and publish certain financial and other information.

145. In May 2009, BAA applied for the review of the report on the grounds of apparent bias on the part of the Group of CC members appointed to conduct and decide the case and the proportionality of the divestiture remedy; Ryanair intervened in support of the CC. The first of these grounds concerned a question of whether certain links between a member of the Group and an undertaking interested in acquiring airports that BAA might be required to sell could give rise to apparent bias (rather than actual bias) on the part of the member concerned and of the Group. In relation to the second ground, BAA submitted that, in assessing the proportionality of the divestiture remedies, the CC failed to take account, or carry out an assessment of, material considerations relating to the costs of divestiture, particularly in the context of the current financial and economic environment.

146. In December 2009, (BAA Limited v Competition Commission [2009] CAT 35) the CAT upheld BAA's application on the ground of apparent bias, whilst rejecting BAA's second ground of challenge, concerning the proportionality of the divestiture remedy. In February 2010, the CAT quashed the findings in the report relating to the adverse effects of, and remedies for, BAA's common ownership airports, and remitted these matters back to the CC for reconsideration by a freshly constituted group of members. In the same judgment the CAT denied both the CC's and Ryanair's applications for permission to appeal.

147. In March 2010 the Court of Appeal granted the CC and Ryanair permission to appeal the findings of the CAT. The Court of Appeal's hearing of this matter is scheduled for June 2010.

148. For further information please access the following link to the CC website: <http://www.competition-commission.org.uk/inquiries/ref2007/airports/index.htm>.

4.3.5 *Intensity of review, standard of proof, counterfactual, remedies, public interest issues (media plurality) – BSKyB and Virgin*

149. This legal challenge related to the merger investigation of BSKyB's acquisition of approximately 17.9 per cent of ITV plc. The merger had raised public interest considerations (media plurality) so that the Secretary of State for Business, Enterprise and Regulatory Reform (now Business, Innovation and Skills – BIS) (SoS) had intervened. The CC carried out an investigation addressing both competition and public interest issues, the SoS being bound by the CC's competition analysis, but able to determine the case (including remedies) on public interest grounds.

150. The CC concluded overall that BSKyB's acquisition may be expected to operate against the public interest, and that remedial action should be taken (requiring BSKyB to divest its shareholding in ITV to a level below 7.5% and neither seek nor accept ITV board representation). BSKyB lodged an application for review of the CC's decision with the CAT on 22 February 2008. The CAT handed down its judgment on 29 September 2008, dismissing BSKyB's application.

151. Following receipt of the CAT's judgment, BSKyB obtained permission from the Court of Appeal to appeal, BSKyB challenged the CAT's judgment which upheld the CC's and SoS's decisions on competition grounds and the consequent remedy. The CC and the SoS also appealed against the CAT's decision on media plurality (involving legal interpretation) and Virgin Media appealed on a contingent basis against the CAT's decision not to remit matters to the CC following the quashing of the CC's media plurality decision.

152. BSKyB argued that the CAT had erred in law in its approach to the standard of review in that it should have exercised a more intensive scrutiny because it was a specialist tribunal. BSKyB also argued that the CAT should have set aside the CC's decision on competition because it applied the relevant standard of proof and the necessary counterfactual analysis wrongly, and that the CC's decision to reject alternative remedies proposed by BSKyB was incorrect in law. In relation to media plurality BSKyB, the CC and the SoS each contended that the CC's approach to the relevant media public interest issue was correct and the CAT was wrong to set aside that part of the decision. Virgin contested this, arguing the CAT's decision should be upheld.

153. In its judgment in January 2010³ the Court of Appeal dismissed all the arguments relating to the competition findings, upholding the CAT's decision. Specifically it confirmed that the CAT had applied the appropriate standard of review and had rightly rejected BSKyB's challenge to the standard of proof and counterfactual analysis. It also dismissed BSKyB's appeal relating to remedies.

³ <http://www.bailii.org/ew/cases/EWCA/Civ/2010/2.html>.

154. Noting that as a matter of statutory construction the interpretation of the media plurality consideration was finely balanced, the Court of Appeal held that the CC's approach was to be preferred to that of the CAT because it allowed the CC to take into account the actual extent of the control exercised. It therefore allowed the appeals brought by BSkyB, the CC and the SoS on this issue and quashed the CAT's decision overturning this aspect of the CC's report. The Court of Appeal noted that it was unsatisfactory that the provisions had been open to these conflicting interpretations and noted that it might be desirable to amend the legislation if the protection of media plurality afforded by the Court's interpretation was not considered adequate.

155. Following the judgment BSkyB gave undertakings to the SoS to reduce its shareholding in ITV to below 7.5 per cent and shortly thereafter completed the disposal required.

156. For further information please access the following link to the CC website: <http://www.competition-commission.org.uk/inquiries/ref2007/itv/index.htm>.

4.3.6 Interim Relief - Wm Morrison Supermarkets plc v Competition Commission

157. This challenge related to the CC's investigation of a completed merger in which Tesco Plc purchased a store from Co-op, the CC having found an SLC and ordered Tesco to divest the store (April 2009). In December 2009, (after exchange of contracts but before completion), Morrisons lodged a draft application for interim relief at the CAT seeking to prevent the completion of the sale. This was to be in support of a proposed application for judicial review of the CC's decision to approve Sainsbury's as purchaser. The application from Morrisons was heard on 3 December by the CAT at a hearing attended by Morrisons, Tesco, Sainsbury's and the CC. On 4 December the application was refused. A key reason for the refusal was that the CAT considered, because of its delay in seeking interim relief, that Morrisons had allowed Sainsbury's and Tesco to alter their position by entering into a legally binding contract for the sale of the site.

158. Effective disposal has now taken place and we therefore consider that Tesco has complied with the Order. As the Redevelopment Option Approved Purchaser, Sainsbury's has a number of continuing obligations under the order which will require a small continuing role for the CC in monitoring its progress in building the store.

159. For further information please access the following link to the CC website: <http://www.competition-commission.org.uk/inquiries/ref2007/tesco/index.htm>.

5. Summaries / references to new reports, market investigations and studies on competition policy issues

5.1 OFT market studies

5.1.1 Home buying and selling

160. Launched in February 2009, the OFT market study into home buying and selling was published in February 2010. It concluded that the housing market remains dominated by traditional estate agents with weak competition between them on price. As property prices rise during housing booms, so too do estate agents' fees. The OFT also found that overall satisfaction with estate agents had improved in recent years. It encouraged innovation in this sector, in particular through online services, as it could have a dramatic impact on the cost of buying and selling a home.

161. For further information please access the following link to the OFT website: <http://www.of.gov.uk/OFTwork/markets-work/completed/buyingandselling>.

5.1.2 *Isle of Wight ferry services*

162. The OFT published its study of Isle of Wight ferry services in October 2009. The study found limited evidence of consumer problems that could be addressed by a market intervention. While it found that both passenger satisfaction and the availability of performance information could be improved, the report acknowledged that voluntary measures had already been implemented to address issues such as publishing punctuality, reliability and pricing information. For that reason, the market was not referred to the Competition Commission.

163. For further information please access the following link to the OFT website: http://oft.gov.uk/advice_and_resources/resource_base/market-studies/completed/iow-ferries/.

5.1.3 *Corporate insolvency*

164. In November 2009, the OFT launched a market study into corporate insolvency practitioners. The study looks at the structure of the market, the regulatory framework, the appointment process for insolvency practitioners and any features in the market which could result in harm. The market study was motivated by a range of factors, including the strategic significance of the market, its size, public reports on market performance, and concerns raised in the media, government and academia. Initial findings will be published by the end of June 2010

165. For further information please access the following link to the OFT website: <http://www.oft.gov.uk/news-and-updates/press/2009/132-09>.

5.2 *CC Market Investigations*

166. Under the Enterprise Act 2002 (section 131), the OFT has the power to refer a market to the CC for further investigations where it has reasonable grounds for suspecting that any feature, or combination of features, of a market in the UK for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of goods or services in the UK or part of the UK. It is for the CC to decide if this is the case and, if so, whether action should be taken.

167. If it identifies adverse effects on competition (AEC), the CC has the duty to consider appropriate remedial action and has the power to impose remedies. When deciding upon the remedy, it may take into account the impact of the remedy on relevant customer benefits. As well as the ability to impose structural (including divestment) remedies, the CC may make recommendations to others of action they should take.

5.2.1 *Local bus services*

168. In January 2010, the OFT referred UK local bus services, excluding London and Northern Ireland, to the CC. This decision followed consultation on the results of an OFT market study into the industry. The study found evidence that limited competition between bus operators tends to result in higher prices and lower quality for bus users and may represent poor value for money for taxpayers. The OFT market study identified the following issues for further analysis:

- a stable and concentrated national market picture where large national operators appear to largely respect each others' territories;
- the majority of local services, in many different local areas, being operated by a small number of large bus companies;

- complaints alleging predatory behaviour of incumbent firms designed to eliminate competition from new entrants; and
- low numbers of bids for supported service contracts in many areas, with just one bidder for a quarter of tenders.

169. In February 2010, the CC issued its timetable, by which it envisaged publication of the CC's provisional findings in October, leaving eight months for the remedies process.

170. For further information, please access the following links on the CC and OFT websites: <http://www.offt.gov.uk/news/press/2010/01-10> and <http://www.competition-commission.gov.uk/inquiries/ref2010/localbus/index.htm>.

5.3 Government in Markets

171. In September 2009, the OFT published a guide for policy makers in Whitehall and beyond on how they can identify and minimise unintended long term impacts on markets when fulfilling other policy objectives. The Guide, 'Government in Markets: why competition matters - a guide for policy makers', also provides an analysis of how Government intervention can affect markets for the good as well as for the bad.

172. The paper argues that, left to themselves, markets do not always deliver the best outcomes for consumers or businesses and so government has a legitimate role in shaping them to correct failures or achieve specific policy objectives. When intervening, government must remain conscious that it can affect markets either through direct participation - such as by creating public sector markets or by buying and supplying services - or through indirect participation in private markets via regulation, taxation or subsidy.

173. For further information please access the following link to the OFT website: <http://www.offt.gov.uk/news-and-updates/press/2009/109-09>.

5.4 OFT's work on Transparency

174. As part of a project looking at how the OFT can be more transparent, OFT has talked to businesses, individuals and their advisers, and, in July 2009, issued a consultation asking for comments and suggestions about how the OFT can increase its transparency.

175. The OFT's concept of transparency has two important elements. The first element covers the information that it provides to stakeholders about the systems and processes that are used. For example, the work the OFT is doing, why and how it is doing it, how long it is going to take and how OFT intends to involve stakeholders in the process.

176. The second element is about the 'culture' of engagement with OFT stakeholders. By culture, the OFT means the values and attitudes that the stakeholders can expect it to adopt when it engages with them on a day-to-day basis.

177. The OFT's proposals to increase transparency on which it consulted included:

- publishing summary information about all competition and consumer enforcement cases when opened
- considering the circumstances in which we can provide timetables, including giving more notice of our intention to collect substantial amounts of information

- inviting suggestions about how we should best share provisional thinking on cases and projects
- making permanent the pilot of publishing contact details for OFT staff responsible for specific pieces of work.

178. The consultation document and the responses to the consultation are available on the OFT website at: <http://www.offt.gov.uk/about/transparency>. The OFT's final report will be published in the summer of 2010.

5.5 *OFT's Financial Services Plan*

179. In July 2009, the OFT published its Financial Services Plan. This sets out the OFT's intended short and medium term approach to the financial services sector.

180. The Plan focuses on two main themes: advocating choice and competition, and promoting fairness and responsibility between the credit industry and its customers. In relation to advocacy, the OFT will work with government and regulators to ensure that competition considerations are adequately taken into account in the design of new regulation. In addition, it will work with government to ensure that any short-term actions taken by it to stabilise financial markets do not unduly distort competition over the long-term and that its divestment of UK banks is as pro-competitive as possible. The OFT will also conduct further work to evaluate competition in financial markets and to further understand the drivers and limitations of competition. The Plan also sets out the OFT's work priorities in relation to the credit sector.

181. For further information please access the following link to the OFT website: http://www.offt.gov.uk/oft_at_work/markets/services/fss/.

5.6 *Drivers of compliance*

182. In May 2010, the OFT will publish research it conducted into drivers of compliance and non-compliance with both consumer and competition law. The project is intended to enable the OFT to inform and review its existing approach, to identify new factors or prompt a change in the way it addresses compliance. The research also explores competition law compliance challenges that businesses face in the conduct of their business.

5.7 *Remedies Progress on Investigation in the grocery market*

183. During the year, the CC continued the work of implementing remedies identified in the CC's report into the UK groceries market (2008) and reconsidered its decision to recommend the inclusion of a competition test in planning decisions relating to larger grocery stores, the recommendation being part of a package of remedies intended to address the competition concerns found in highly-concentrated local markets and barriers to entry. The recommendation had been successfully challenged by Tesco.

184. In August 2009 the CC made The Groceries (Supply Chain Practice) Market Investigation Order requiring designated grocery retailers to comply with a revised Groceries Supply Code of Practice, train staff to respect the Code, appoint an in-house compliance officer, provide an annual compliance statement and, on request, other information to the OFT and puts in place a formal Dispute Resolution Scheme.. In August 2009, the CC formally recommended to the Department for Business, Innovation and Skills (BIS) that it should establish an Ombudsman to arbitrate on disputes between grocery retailers and suppliers and investigate complaints under the new Groceries Supply Code of Practice. .

185. In October 2009, the CC having reconsidered its decision, published its decision recommending to government (including the devolved administrations in Scotland, Wales and Northern Ireland) that a

competition test in planning decisions be introduced in respect of planning applications relating to larger grocery stores. Compared to the original recommendation, the competition test is modified by the introduction of materiality threshold applicable to small extensions of stores (less than 300sq metres provided the store had not been extended in the previous five years).

186. In April 2010 the CC made the Groceries Market Investigation (Controlled Land) Order imposing obligations on certain large grocery retailers (requiring the release of certain restrictive covenants, prohibiting new restrictive covenants that may restrict grocery retailing, prohibiting enforcement of certain exclusivity arrangements and prohibiting new exclusivity arrangements for terms greater than five years; and imposing information requirements including a requirement to notify the OFT of the acquisition of Large Grocery Stores or land previously used for such purposes).

187. For further information please access the following link to the OFT website: <http://www.competition-commission.org.uk/inquiries/ref2006/grocery>.

6. Resources of competition authorities

6.1 Resources overall (current numbers and change over previous year)

6.1.1 Annual budget (in your currency and USD):

188. At the OFT there is no formal split between the OFT's competition and consumer work, so there is no 'competition-related budget' as such. However, following an analysis of work carried out by relevant parts of the organisation, the OFT estimates the breakdown of the total settlements from HM Treasury for 2009-2010 as being £18.7m. This excludes market studies work.

189. 2009-2010 is the second year of a three-year HM Treasury funding cycle. The OFT's budget has decreased by 5 per cent in real terms on the previous year, and will also fall by 5 per cent year-on-year for the remainder of the funding cycle.

6.1.2 Number of employees (person-years):

190. The OFT does not formally distinguish between its competition and consumer functions and instead exploits the extensive synergies between the two by adopting a flexible and innovative approach to finding solutions in markets.

191. However, the OFT estimates that its externally facing competition interventions (including casework, policy and advocacy, as well as strategic and other support functions) account for approximately 189 staff (full-time equivalent). This does not include staff involved in general markets work, which has competition and consumer dimensions.

192. Approximately 125 of the OFT's staff working on competition enforcement have non-administrative roles, of which 22 are economists and 33 are lawyers.

193. The OFT's Mergers team consists of 27 non-administrative staff.

6.2 Period covered by the above information

194. April 2009 – April 2010