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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE UNITED KINGDOM

-- 2012 --

This report is submitted by the United Kingdom to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 June 2013.

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Executive Summary

1. It has been a busy 12 months for the UK's competition authorities, the Competition Commission (CC) and Office of Fair Trading (OFT).

2. With the ongoing international financial turmoil, especially within the Eurozone, the UK has continued to face very challenging economic conditions with low growth and fragile consumer confidence. This has impacted throughout the UK on both businesses and consumers. The UK's focus on driving competition, supporting economic growth and protecting vulnerable consumers is all the more important in such times.

3. In April 2013 Royal Assent was given to the Enterprise and Regulatory Reform Bill (ERR) which therefore became an Act of Parliament. The Act will bring in a new regime establishing the Competition and Markets Authority (CMA). In the 12 months leading up to this the OFT and CC have laid the foundation to increase cohesiveness in their working practices.

4. The OFT concluded several Competition Act 1998 (CA98) cases this year, imposing sanctions in two important cases: British Airways was fined £58.5 million in the passenger fuel surcharges case and fines in excess of £2.8 million were imposed in the Mercedes-Benz commercial vehicles case. Seven new cases were opened, including investigation into the distribution of road fuels in the Western Isles of Scotland by GB Oils Limited and swift intervention to end an arrangement that appeared to recommend prices for members of the UK Asbestos Training Association (UKATA) to provide training services.

5. The OFT also considered close to 100 mergers, referring 14 to the CC. The first NHS Foundation Trust merger was also considered under the Health and Social Care Act 2012. The CC was also engaged in three Communications Act appeals and one energy price control inquiry.

6. Motor insurance, private healthcare, personal current accounts, road fuel, dentistry and energy efficiency have all been subject to market studies. The first two of these resulted in market investigation references to the CC. Ongoing market studies into workplace pensions and online personalised pricing continue while a final report was published on remote communities and price comparison websites. In August 2012, the CC published the final report for the Movies on Pay TV market investigation. The CC concluded that Sky Movies, which offered the first pay movies of all the big Hollywood studios, was not a sufficient driver of subscribers' choice of pay-TV provider so as to give Sky an advantage over its rivals to harm competition. The CC also successfully defended a series of appeals made by BAA against the findings of its market investigation into airport services. BAA has now sold Edinburgh and Stansted airports in addition to Gatwick airport that was sold in 2009.

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

1.1 *Government proposals for new legislation*

- Royal Assent of the Enterprise and Regulatory Reform Bill

On 25 April 2013 the ERR Bill received Royal Assent thereby becoming an Act of Parliament. The Act will bring in a new competition regime establishing the CMA, in addition to a number of other reforms to support long term economic growth.

The CMA will bring together the competition functions of the OFT and the CC. It will be the UK's competition and consumer protection authority with wide ranging powers to tackle anti-competitive behaviour, and a faster, clearer and more effective approach to help make markets work well for consumers. It will have all the competition and consumer protection powers of the

OFT and CC. For further information see: <https://www.gov.uk/government/news/enterprise-and-regulatory-reform-bill-receives-royal-assent>

1.2 Other relevant measures, including new guidelines

- CA98 new decision-making processes and procedural enhancements

On 16 October 2012 the OFT set out new decision-making processes and procedural enhancements to boost the speed and robustness of CA98 investigations and increase engagement with parties involved. The updated guidance on CA98 procedures follows a consultation process launched in March 2012. For further information see <http://www.of.gov.uk/news-and-updates/press/2012/91-12>

- New guidance on penalties for breaches of competition law

On 10 September 2012 the OFT published new guidance on how it will set penalties for breaches of competition law. The OFT decided to update its guidance in the light of its experience of applying penalties and recent judgments of the Competition Appeal Tribunal and the Court of Appeal. The OFT has carried out a wide-ranging public consultation, involving lawyers, businesses and other interested parties, and drawing on international experience. The guidance will allow the OFT to continue to set substantial penalties to deter anti-competitive activity while ensuring that penalties are proportionate in the specific circumstances of individual cases. For further information see <http://www.of.gov.uk/news-and-updates/press/2012/78-12>

- Details of OFT role in Hospital Mergers

On 22 March 2013 the OFT published further details providing greater clarity on its remit and role in respect of National Health Service (NHS) mergers. In particular, the OFT explained how it will review mergers between NHS foundation trusts and NHS trusts under the provisions of the Enterprise Act 2002. For further information see <http://www.of.gov.uk/news-and-updates/press/2013/27-13>

- OFT reports on Price Relationship agreements

On 10 September 2012 the OFT published a report which explores the competition implications arising from price relationship agreements such as 'price match' or 'lowest price' guarantees. The report suggests that while some types of price relationship agreements could be attractive to buyers, they could also have a softening effect on competition. For further information see <http://www.of.gov.uk/news-and-updates/press/2012/79-12>

- OFT consultation on not requiring LPP waivers in leniency cases

On 10 October 2012 the OFT announced a supplementary consultation for its leniency review on a further policy option of not requiring legal professional privilege (LPP) waivers as a condition of leniency in cartel cases, even if there is a related criminal cartel investigation. It also proposes the use of independent counsel to advise the OFT on the merits of LPP claims made by a leniency applicant in some situations. For further information see <http://www.of.gov.uk/news-and-updates/press/2012/88-12>

- MOU on co-operation with the UK Intellectual Property Office

The OFT concluded with the Intellectual Property Office a Memorandum of Understanding (MOU) in July 2012. This establishes a framework cooperation and constructive communication between the two agencies. For further information see http://www.offt.gov.uk/shared_offt/MoUs/IPO.pdf

- New CC Merger Procedural Guidelines

In October 2012 the CC published the final version of its merger procedural guidelines. The guidelines set out the main stages of a merger inquiry and are intended to help parties prepare for their participation in a phase II merger review. For further information see <http://www.competition-commission.org.uk/media-centre/latest-news/2012/Oct/cc-publishes-merger-procedural-guidelines>

- New CC Guidance on Disclosure of Information

In October 2012, the CC also began its consultation as part of its review of the existing Chairman's Guidance on Disclosure of Information in Merger Inquiries and Market Investigations. The previous document was published in June 2003 and the revised document was published in April 2013. For further information see <http://www.competition-commission.org.uk/publications/consultations-open/consultations-closed/cc-review-of-chairman-guidance-on-disclosure-of-information>

- New CC Market Investigation Guidelines

In 2012, the CC also opened a consultation as part of its revision of the Guidelines for Market Investigations. The final document was published in April 2013 and replaced the previous guidelines published in June 2003. The new Guidelines distilled the lessons the CC has learnt from its practical experience of conducting cases. For further information see http://www.competition-commission.org.uk/assets/competitioncommission/docs/2013/publications/cc3_revised_.pdf

2. Enforcement of competition laws and policy

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

- British Airways to pay £58.5 million penalty in OFT fuel surcharge decision

On 19 April 2012 the OFT announced its decision that British Airways (BA) and Virgin Atlantic Airways (VAA) engaged in anti-competitive practices in relation to the pricing of passenger fuel surcharges, and has imposed a fine of £58.5 million on BA. VAA brought the matter to the OFT's attention and, under the OFT's leniency policy, has not been fined. The OFT has concluded that between August 2004 and January 2006, BA and VAA coordinated their surcharge pricing on long-haul flights to and from the UK through the exchange of pricing and other commercially sensitive information. This decision brings the OFT's investigation to a conclusion. For further information see <http://www.offt.gov.uk/news-and-updates/press/2012/33-12>

- Decision regarding MercedesBenz

On 27 March 2013 the OFT issued decisions finding that Mercedes-Benz and five of its commercial vehicles dealers infringed competition law. The nature of the infringements varied but all contained at least some element of market sharing, price co-ordination or the exchange of commercially sensitive information between 23 March 2007 and 26 January 2010. Following the findings fines totaling over £2.8 million were imposed. For further information see <http://www.of.gov.uk/news-and-updates/press/2013/30-13>

- Statement of Objections against GlaxoSmithKline

On 19 April 2013 the OFT issued a Statement of Objections to certain pharmaceutical companies alleging they acted to delay effective competition in the UK supply of a prominent antidepressant medicine. It alleged that GlaxoSmithKline (GSK) concluded agreements which infringed competition law with each of Alpharma Limited (Alpharma), Generics (UK) Limited (GUK) and Norton Healthcare Limited (IVAX) ('the generic companies'), over the supply of paroxetine in the UK. The OFT also alleges GSK's conduct amounted to an abuse of a dominant position in the same market. For further information see <http://www.of.gov.uk/news-and-updates/press/2013/36-13>

- Action against UK Asbestos Training Association

On 26 March 2013 following an intervention by the OFT the UK Asbestos Training Association ended an arrangement that appeared to recommend prices at which its members provide training services. Assurances were also given not to enter into any similar arrangements from now on and UKATA will provide further guidance to its members on the importance of complying with competition law. For further information see <http://www.of.gov.uk/news-and-updates/press/2013/29-13>

- Statement of Objections against Roma Medical Aids

On 21 March 2013 the OFT issued a Statement of Objections alleging that Roma Medical Aids Limited, a manufacturer of mobility scooters based in Bridgend, Wales, and some of its retailers, have infringed competition law. The OFT has provisionally concluded that the parties entered into agreements, or engaged in concerted practices, that prevented the UK-wide online retailers in question from selling Roma-branded mobility scooters online or from advertising their prices online. Such practices can limit consumer choice and impede consumers' ability to compare prices and secure value for money. For further information see <http://www.of.gov.uk/news-and-updates/press/2013/24-13>

2.2 *Competition Appeal Tribunal judgments*

- Acquisition of minority stake in Aer Lingus by Ryanair Holdings plc

On 15 June 2012 the OFT referred the completed acquisition by Ryanair Holdings plc of a minority stake in Aer Lingus Group plc to the CC for further investigation, due to competition concerns. For further information see <http://www.of.gov.uk/news-and-updates/press/2012/47-12>

The CC's investigation into the proposed acquisition is ongoing due to Ryanair challenging the CC's statutory jurisdiction to review the acquisition (see section 2.3.2 below).

The reference was made following the successful defence in the Court of Appeal of a judgment by the Competition Appeal Tribunal (CAT) in July 2011 relating to a merger decision of the OFT in January 2011. The OFT had decided that it was not out of time to review the acquisition by one airline of a minority stake in another airline under the UK merger control provisions. The CAT had dismissed an appeal against the OFT's decision and accepted that the OFT was unable to apply its national merger control legislation whilst appeals were ongoing in the European courts. The OFT issued the following statement following the Court of Appeal's judgment: <http://www.offt.gov.uk/news-and-updates/presstatements/2012/41-12?screen=1024>

- Construction

In July 2012 the Court of Appeal handed down a judgment concerning a penalty imposed by the OFT in the Construction Decision, issued in September 2009. The Court of Appeal further reduced the penalty, which had been reduced by the CAT in the original judgment of March 2011.

- Newspaper and Magazine Distribution

In October 2012 the CAT handed down a judgment which upheld the OFT's prioritisation decision of March 2012 not to carry out an update review of the newspaper and magazine distribution sector. The judgment follows an application under section 179 of the Enterprise Act 2002 made by two trade groups requesting that the Competition Appeal Tribunal review the OFT's prioritisation decision. The OFT issued the following statement following the CAT's judgment: <http://www.offt.gov.uk/OFTwork/markets-work/othermarketswork/newspapers-magazines/>

- Dairy

During 2012 the OFT faced one appeal to the Dairy retail price initiatives decision, issued in August 2011. In a judgment on liability handed down in December 2012 the CAT upheld the OFT's findings that the appellant party broke competition law three times by co-ordinating increases in the prices consumers paid for cheese in 2002. The CAT also found that the appellant party did not infringe the law in relation to a number of other instances of exchanges of future pricing information. By an Order of the CAT made in January 2013 (as agreed between the parties), the outstanding issues in the appeal were brought to an end. Following that Order, the party has paid a penalty of £6.5 million.

The OFT issued the following statements following the CAT's judgment in December 2012 and following the CAT's Order bringing the outstanding issues in the appeal to an end: www.offt.gov.uk/news-and-updates/presstatements/2012/120-12 and <http://www.offt.gov.uk/news-and-updates/press/2013/18-13>.

- Extended Warranties on Domestic Electrical Goods

In March 2013 the CAT handed down a judgment which dismissed an application, brought in December 2012 pursuant to section 179 of the Enterprise Act 2002. The application had sought to challenge aspects of Undertakings in Lieu of a market reference, which included provision for the establishment of a price comparison website. The Undertakings were accepted by the OFT in June 2012. The OFT issued the following statement following the CAT's judgment: <http://www.offt.gov.uk/OFTwork/markets-work/othermarketswork/electrical-goods/>

- Tobacco

In March 2013, the CAT granted two applications for an extension of time to appeal the OFT's 2010 Tobacco Decision which concerned the pricing practices of certain manufacturers and retailers. The applications were brought by two addressees of the Decision who had entered into Early Resolution Agreements (ERAs) with the OFT in 2008, and did not appeal within the statutory time limit. Six other addressees of the Decision had previously brought appeals within the time limit and were successful in December 2011 in having the Decision overturned as it applied to them.

The CAT granted the applications for an extension of time to appeal on the basis that it found there were 'exceptional circumstances'. The OFT has made an application for permission to appeal from the ruling to the Court of Appeal.

2.3 Mergers and acquisitions

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

7. Of the close to 100 mergers considered by the OFT in the past year 14 were referred to the CC. The following are of particular interest:

- Rank Group's anticipated acquisition of Gala Casinos

On 20 August 2012 the OFT referred the Rank Group PLC's anticipated acquisition of Gala Casinos Limited to the CC for further investigation, due to the OFT's concerns the merger will substantially reduce competition in the casino sector. For further information see <http://www.of.gov.uk/news-and-updates/press/2012/72-12>

In its final report, the CC found that the merger would damage competition in five areas of the UK. However the transaction would be permitted as long as the casinos in Aberdeen, Stockton-on-Tees, Bristol and Cardiff were not included. In addition, Rank would also have to sell the cold licence it held in Edinburgh to an upfront buyer approved by the CC or be prohibited from buying the Gala casino in Edinburgh. For further information see http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/rank-gala/rank_gala_final_report_excised.pdf

- Acquisition of Goonvean Ltd by Imerys Minerals Ltd

On 3 April 2013 the OFT referred the completed acquisition by Imerys Minerals Limited of the kaolin 'china clay' business of Goonvean Limited to the CC after an investigation by the OFT found that the merger created a near-monopoly reducing the number of companies supplying kaolin for specialty applications in the UK from three to two. For further information see <http://www.of.gov.uk/news-and-updates/press/2013/31-13>

The CC is due to issue its final decision in September 2013.

- Acquisition of Metlac Holding S.r.l by Akzo Nobel NV

On 23 May 2012 the OFT referred the anticipated acquisition of Metlac Holding S.r.l by Akzo Nobel NV to the CC for further investigation, following OFT concerns the merger may remove a

competitive supplier from the market. For further information see <http://www.offt.gov.uk/news-and-updates/press/2012/42-12>

The CC found that the merger could be expected to result in a substantial lessening of competition (SLC) in the supply of metal packaging coatings for beer and beverage cans in the UK. No suitable remedies short of full prohibition could be found. For further information see http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/akzo-nobel-metlac/main_report.pdf

AkzoNobel has challenged the CC's decision before the Competition Appeal Tribunal (see section 2.3.2 below).

- Acquisition of the Arriva Scotland West by McGill's Bus Services Ltd

On 18 April 2012 the OFT referred to the CC the completed acquisition by McGill's Bus Services Limited of the Arriva Scotland West local bus business. The OFT was concerned that, because of their strength in this area compared to other operators, the merger would result in a loss of competition of local bus services in this area. For further information see <http://www.offt.gov.uk/news-and-updates/press/2012/32-12>

The CC cleared the acquisition. It found that without the acquisition, both McGill's and ASW would have continued to provide services in the Renfrewshire area, but although they were each other's closest rivals, in future competition between them would have reduced. The CC also concluded that the threat of entry into the area by large bus operators located nearby would provide sufficient incentive for McGill's to avoid reducing frequencies or increasing fares as a result of the acquisition. For further information see http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/mcgills-arriva-west-scotland-inquiry/fr_final_report.pdf

- Acquisition of contract to manage Wembley Arena by AEG Facilities UK

On 22 March 2013 the OFT referred the completed acquisition by AEG Facilities UK of the contract to manage Wembley Arena to the CC, due to concerns the merger may substantially reduce competition in the live entertainment venue sector. For further information see <http://www.offt.gov.uk/news-and-updates/press/2013/26-13>

The CC is due to issue its final report on the merger in September 2013.

- Acquisition by A.G. BARR plc of Britvic plc

On 13 February 2013 the OFT referred the proposed acquisition by A.G. BARR plc of Britvic plc to the CC for further investigation due to concerns that it could reduce competition between certain brands of these two soft drinks suppliers. For further information see <http://www.offt.gov.uk/news-and-updates/press/2013/14-13>

The CC is due to issue its final report on the merger in July 2013.

- Merger of two NHS Trusts

On 8 January 2013 the OFT referred the proposed merger of two NHS foundation trusts to the CC for an in-depth investigation. This is the first merger between two NHS foundation trusts

examined by the OFT since the enactment of the Health and Social Care Act 2012 (HSCA), which confirmed the OFT's role in assessing the competition aspects of mergers involving foundation trusts. For further information see <http://www.of.gov.uk/news-and-updates/press/2013/01-13>

The CC is due to issue its final report on the merger in June 2013.

- Acquisition by Booker Group plc of Makro Holding Ltd

On 8 November 2012 the OFT referred the completed acquisition by Booker Group plc of Makro Holding Limited to the CC for further investigation due to concerns that it could reduce competition between cash and carry outlets. For further information see <http://www.of.gov.uk/news-and-updates/press/2012/101-12>

The CC issued its summary of provisional findings in March.

For further information see http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/booker-makro/booker_makro_summary.pdf

- Acquisition by Eurotunnel of former assets of SeaFrance

On 29 October 2012 the OFT referred the completed acquisition by Groupe Eurotunnel S.A. of certain assets of former ferry operator, SeaFrance S.A. to the CC for further investigation, due to concerns the merger could substantially reduce competition in the provision of cross channel transport services. For further information see <http://www.of.gov.uk/news-and-updates/press/2012/100-12>

The CC is due to issue its final report on the merger in June 2013.

- Acquisition by Global Radio Holdings Ltd of Real and Smooth Ltd

On 11 October 2012 the OFT referred to the CC the completed acquisition by Global Radio Holdings Limited of Real and Smooth Limited for a detailed investigation. For further information see <http://www.of.gov.uk/news-and-updates/press/2012/90-12>

The CC concluded that the merger was likely to lead to higher prices for advertising in seven areas of the UK. Global was required to sell some of the acquired Real and Smooth stations, or its own stations broadcasting in those areas. For further information see http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/global-radio-gmg/130521_final_report.pdf

- Acquisitions by DCC Energy UK Ltd

On 4 April 2012 the OFT referred to the CC the completed acquisition by DCC Energy UK Limited of a number of businesses previously owned by Total Downstream UK plc. GB Oils and Total Butler both supply oil products to a range of domestic, commercial and agricultural customers in the UK and each has a sizeable network of oil depots. For further information see <http://www.of.gov.uk/news-and-updates/press/2012/27-12>

The CC cleared the merger, finding that the range of customers supplied by these businesses would not suffer from a substantial lessening of competition as a result of the acquisition. Customers with large load requirements, such as service stations, would continue to have a range of supply options; local customers with smaller requirements would face a reduction in choice in some areas but the ease of small-scale entry for other companies would counteract this and customers requiring smaller loads across a number of sites (multi-site non-bulk) could and already sourced from a number of suppliers and most were prepared to switch in response to price rises. For further information see http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/dcc-rontec/dcc_rontec_final_report.pdf

2.3.2 *Judicial Review Challenges to CC Merger Decisions*

- Merger inquiry into the completed acquisition by Ryanair Holdings plc of a shareholding in Aer Lingus Group plc

In July 2012 the OFT referred to the CC for investigation the acquisition by Ryanair Holdings plc (Ryanair) of a 29.82% shareholding in Aer Lingus Group plc (Aer Lingus). Shortly after the reference was made, Ryanair announced a public bid for the remaining shares in Aer Lingus. That bid fell for consideration by the European Commission (EC) under the EU Merger Regulation. However, the EC did not have jurisdiction to consider the acquisition of the 29.82% interest.

The CC therefore decided that it should continue with its investigation while the EC considered the proposed acquisition of the remaining shares. Ryanair applied to the CAT for an order preventing the CC from doing so pending the outcome of the considerations of the EC. It argued in particular that the “duty of sincere co-operation” under Article 4(3) of the Treaty on European Union (TEU) prevented the CC from doing so. In August 2012 the CAT rejected that application; Ryanair appealed to the Court of Appeal. In December 2012 the Court of Appeal dismissed that appeal. It concluded a stay of the CC’s investigation was neither necessary nor appropriate pending the conclusion of the EC’s consideration of the public bid.

Ryanair has sought leave to appeal against that decision to the Supreme Court but in the meantime the CC has continued with its investigation.

- Merger inquiry into the anticipated acquisition by AkzoNobel N.V. of Metlac Holding S.r.L

In December 2012, the CC published its decision to prohibit the proposed acquisition by AkzoNobel of Metlac Holdings (see section 2.3.1). AkzoNobel challenged the CC’s decision in the CAT submitting that the CC erred in 3 respects:

- a) In concluding that AkzoNobel carried on business in the UK and so could be prohibited from acquiring Metlac;
- b) In finding that Metlac competes more aggressively on price than other competitors;
- c) In finding that the transaction would lead to a loss of competition in innovation.

The CC awaits the CAT’s decision.

3. Summaries or references to new reports, market investigations and studies on competition policy issues

3.1 *Selected OFT market studies*

- Defined contribution workplace pension market study

On 17 January 2013 the OFT began a study to examine whether the defined contribution workplace pension market is working well for consumers. By 2018 up to eight million workers will be automatically enrolled into a defined contribution workplace pension scheme by their employer. As a result, the sector will experience a major structural shift in a very short period of time. The OFT therefore considers it timely to take a look forward at how the market is likely to develop. It will consider whether competition between providers is set up to work in the best interests of savers to deliver low cost, high quality pension schemes. For further information see <http://www.of.gov.uk/OFTwork/markets-work/pensions/>

- Dentistry

On 14 September 2012 the OFT concluded its study as to whether the UK dentistry market is working well for patients. It examined how dentistry services are sold and the extent to which patients have access to accurate and impartial information to help make informed decisions. It considered patients' ability to assess and act on the information that is provided, as well as the nature of competition between providers of dental services. These issues were considered within the context of both NHS and private dentistry. For further information see <http://www.of.gov.uk/OFTwork/markets-work/dentistry>

- Private Healthcare

On 4 April 2012 the OFT referred the market for privately funded healthcare services in the UK to the CC (see section 3.3.1 below) for further investigation. This followed the OFT's provisional decision to make a market investigation reference when it published its private healthcare market study in December 2011. The OFT continues to hold the view that the private healthcare market could work better for patients, and that there are reasonable grounds for suspecting that there are features of the market that prevent, restrict or distort competition. For further information see <http://www.of.gov.uk/news-and-updates/press/2012/26-12>

- Motor Insurance

On 28 September 2012 the OFT referred the UK's private motor insurance market to the CC for further investigation (see section 3.3.1 below) amid concerns that the market is not working well for motorists. A market study gave it reasonable grounds for suspecting that there are features of the market that prevent, restrict or distort competition. For further information see <http://www.of.gov.uk/news-and-updates/press/2012/85-12>

3.2 *Research papers/studies*

- Petrol Prices

In September 2012 the OFT launched a call for information on the UK road fuel sector in September last year to determine whether there are competition problems that need to be addressed. On 30 January 2013 the OFT reported rises in pump prices for petrol and diesel over

the last 10 years have been caused largely by higher crude oil prices and increases in tax and duty and not a lack of competition. The evidence gathered by the OFT suggests that at national level competition is working well in the UK road fuel sector, although it has identified an absence of pricing information on motorways as a concern and does not rule out taking action in some local markets if there is persuasive evidence of anti-competitive behaviour. For further information see <http://www.of.gov.uk/news-and-updates/press/2013/12-13>

- School Uniforms

The OFT's report on the supply of school uniforms in UK state schools was published in August 2012. The survey found that almost three-quarters of state schools (74 per cent) continue to place restrictions on where uniforms can be bought. In relation to competition for the market, the survey shows that just 38 per cent of all schools who restrict the availability of uniform items used a selection process when appointing that retailer (including 55 per cent of secondary schools). For further information see <http://www.of.gov.uk/OFTwork/markets-work/othermarketswork/school-uniforms>

- Review of personal current accounts in the UK

In January 2013 the OFT published a review of the PCA market in the UK. The review, published as part of the OFT's ongoing programme of work on retail banking, found that since the OFT's last detailed look at this market in 2008, concentration among the large providers has increased, new entry remains infrequent and switching rates are still low. The review found there had been some specific improvements, in particular from a substantial fall in unarranged overdraft charges. For further information see <http://www.of.gov.uk/OFTwork/markets-work/othermarketswork/pca-review/>

3.3 *CC Market Investigations*

8. Over 2012-13, the CC had five market investigations underway including Movies on Pay-TV which reported in August 2012.

3.3.1 *Description of CC Market Investigations*

- The supply and acquisition of Movies on Pay-TV

In August 2012, the CC published its report into the supply and acquisition of subscription pay-TV movie rights and the wholesale supply and acquisition of packages including core premium movies channels. The three largest providers of traditional linear (i.e. scheduled, broadcast) pay TV were Sky, Virgin Media and BT Vision. They offered movie services on both a subscription basis and an on-demand basis. In almost all cases, the on-demand services were distributed over 'closed' Internet connections. In its final report, the CC concluded:

- More consumers attached importance to other service attributes, like having access to a broad range of content and to price, than they do to seeing recent movie content;
- The launch of new and improved movie services by Netflix and LOVEFiLM, reflected an increasing trend of audiovisual content being delivered over the internet, has increased competition and consumer choice, and

- The recent launch of Sky Movies on Now TV gave consumers for the first time a choice of subscribing to Sky Movies separately from their subscription to other pay-TV content (from whichever provider).

The CC therefore concluded that Sky Movies, in offering the first pay movies of all the big Hollywood studios, was not found to be a sufficient driver of subscribers' choice of pay-TV provider to give Sky such an advantage over its rivals as to harm competition for pay-TV subscribers. No adverse outcome on competition (AEC) was found and no intervention by the CC was therefore necessary. For further information see <http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/movies-on-pay-tv-market-investigation>

- Statutory Audit Services

The OFT referred to the CC the market for audit services in late 2011. Provisional Findings for the investigation were published in February 2013. In its Provisional Findings report, the CC found that competition in the audit market was restricted by factors which inhibited companies from switching auditors and by the tendency for auditors to focus on satisfying management rather than shareholder needs. The main points the CC provisionally found were that:

- Companies faced significant hurdles in comparing the offerings of an incumbent auditor with those of alternative suppliers other than through a tender process.
- It was difficult for companies to judge audit quality in advance due to the nature of audit.
- Companies and firms invested in a relationship of mutual trust and confidence from which neither will lightly walk away as this means the loss of the benefits of continuity stemming from the relationship.
- Company management faced significant opportunity costs in the management time involved in the selection and education of a new auditor.
- Mid Tier firms faced experience and reputational barriers to expansion and selection in the FTSE 350 audit market.
- Auditors had misaligned incentives, as between shareholders and company management, and so competed to satisfy management rather than shareholder demand, where the demands of executive management and shareholders differed.
- Auditors faced barriers to the provision of information that shareholders demanded (in particular, from the reluctance of company management to permit further disclosure).

For further information see http://www.competition-commission.org.uk/assets/competitioncommission/docs/2011/statutory-audit-services/provisional_findings_report.pdf

The CC's statutory deadline for its final decision and report is October 2013.

- Aggregates, cement and ready-mix concrete

Following a market study, the OFT referred the market for aggregates, cement and ready mix concrete to the CC in January 2012.

In May 2013, the CC published its provisional findings report for the inquiry. It provisionally found that coordination between the three major cement producers (Lafarge Tarmac, Cemex and Hanson) in the cement market was likely to result in higher prices for all cement users. The CC's finding did not relate to explicit collusion between these producers. Rather, as the cement market was highly concentrated with only four producers across Great Britain, who had an unusually high level of understanding of each other's business, this had created conditions that allowed three of them to coordinate their behaviour, thereby softening competition and resulting in higher prices for consumers. Following publication of the report, the CC would look at a wide range of possible remedies to increase competition in the cement market. For further information see http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/aggregates-cement-and-ready-mix-concrete/130521_summary_of_provisional_findings_report.pdf

The statutory deadline for investigation is in January 2014.

- Private Healthcare

The OFT referred the private healthcare market to the CC in April 2012. The focus of the CC investigation was on privately-funded acute healthcare services provided primarily in private hospitals. These were the services which were the focus of the competition issues that had been identified by the OFT in its market study and by parties in their submissions.

The CC published the statement of issues in June 2012 which set out the theories of harm the CC would be exploring in the investigation. In February 2013, the CC published an annotated issues statement which set out its current thinking based on the evidence received and the analyses undertaken to date. The document highlighted those issues that were likely to be the focus of the investigation going forward although the CC is yet to reach any final view. The theories of harm that remained relevant to the CC's inquiry were identified as: market power of hospital operators in certain local areas; market power of individual consultants and/or consultant groups in certain local areas; market power of hospital operators in negotiations with insurers; buyer power of insurers in respect of individual consultants; barriers to entry at different levels; limited information availability; and vertical effects.

For further information see http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/private-healthcare-market-investigation/130228_final_ais.pdf

The CC's statutory deadline for its final decision and report is in April 2014.

- Private Motor Insurance

The OFT referred the Private Motor Insurance market to the CC in September 2012. The OFT's market study provisionally found that the insurers of drivers responsible for an accident ('at-fault' drivers) appeared to have little control over the way repairs and replacement vehicles are provided to the 'not-at-fault' driver. This may enable the insurers of not-at-fault drivers, and others such as insurance brokers, credit hire organisations and repairers, to engage in practices which appeared to result in the cost of replacement vehicles and vehicle repairs provided to not-at-fault drivers being higher than they might otherwise be.

In February 2013, the CC published an updated issues statement in February 2013 setting out the key areas that the CC was examining at that stage of the inquiry. Those issues were presented in

the form of theories of harm and were: harm arising from the separation of cost liability and cost control (moral hazard); harm arising from the beneficiary of post-accident services being different from and possibly less well informed than the procurer of those services; harm due to horizontal effects (market concentration); harm arising from providers' strategies to soften competition; harm arising from vertical relationships (vertical integration).

The statutory deadline for completion of the inquiry is September 2014. For further information on the CC's updated issues statement on private motor insurance see <http://www.competition-commission.org.uk/media-centre/latest-news/2012/Dec/private-motor-insurance-investigation-issues-statement>

3.3.2 *Judicial Review Challenges to CC Market Investigation Decisions*

- Market investigation into BAA airports

The CC's report into the supply of airport services by BAA in the UK, published in May 2009, identified a number of features of the market which had an adverse effect on competition including the common ownership of certain airports by BAA. The remedies required included a requirement for BAA to divest Gatwick and Stansted airports. BAA sold Gatwick airport in 2009, but appealed the decision to require the sale of Stansted airport. This challenge ended in October 2010 when the Court of Appeal (CA) ruled in favour of the CC.

However, in the light of a change in government policy since the original report was published, the CC then considered whether there had been a material change of circumstance (MCC) since the making of its original report that justified varying the original decision to require the sale of Stansted. In July 2012 the CC decided there had been no MCC. That decision was appealed by BAA to the CAT and then the CA.

In July 2012 the CA rejected BAA's appeal. In doing so it restated established case law concerning the standards the CAT should apply when considering the reasoning expressed in a CC report (they must be read as a whole and in a common sense way); and endorsed the approach the CC had taken to enabling BAA to obtain a fair market value for the assets it was required to sell. The CC was awarded its costs in the CAT and CA. BAA was refused leave to appeal to the Supreme Court and in February 2012 completed the sale of the airport.

4 Resources of competition authorities

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

9. 2012-2013 is the second year of a four-year HM Treasury funding cycle. The OFT's budgets have been set for 2012/13 to 2014/15 following the Spending Review 2010. As such, the OFT's budget will be reduced by 25 per cent in real terms over the four years of the funding cycle.

10. Over 2012/13, the CC was requested to find a reduction of 3.9 per cent to its budget over the previous year.

4.1.1 *Annual budget (in your currency and USD):¹*

11. 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, we estimated the breakdown of the total settlement from HM Treasury for 2012-13:

12. Competition Enforcement work: c23 per cent of total OFT budget equal to £15.5m. This excludes consumer enforcement and market studies but includes merger review.

13. The CC was allocated a budget of £17.1 million for 2012/13, reduced from £18.3 million in 2010/11 and £17.8 million in 2011/12. The CC also had around £300,000 of capital funding available for 2012/13, a reduction of 47 per cent against the 2010/11 budget of £565,000 (which was reduced in year to £300,000).

4.1.2 *Number of employees (person-years)*

14. 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 200 staff (full-time equivalent). This does not include staff involved in general markets work, which has competition and consumer dimensions.

15. Approximately 159 of the OFT's staff working on competition enforcement have non-administrative roles, of which 41 are economists and 53 are lawyers. The OFT's Mergers team consists of 65 non-administrative staff.

16. The CC has 156 employees, approximately 116 of whom work on competition enforcement and have non-administrative roles, 21 are lawyers, 39 are economists and 21 are financial and business advisers.

4.2 *Period covered by the above information*

17. April 2012 – April 2013

¹ Assuming an exchange rate of GB £1 = US \$1.5735