

ANNUAL REVIEW & ACCOUNTS



1999/2000



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Chairman
Dr Derek Morris

This has been the first year of the Competition Commission's operations, comprising the new Appeal Tribunals established under the 1998 Competition Act, and the reporting side which took over most of the previous functions of the Monopolies and Mergers Commission. The President of the Appeal Tribunals, Sir Christopher Bellamy QC, took up his post in December 1999. A planning group headed by the Secretary worked closely with him throughout the year on preparations for the Appeal Tribunals. The President himself took charge of preparations in the run-up to 1 March 2000, the date on which the prohibition provisions of the Competition Act came into force. The President's statement on pages 10 and 11 deals with the Appeal Tribunals in more detail.

Work in 1999/2000

On the reporting side, work increased significantly. The monopoly inquiry into the supply of impulse ice cream was completed in September 1999; the monopoly inquiry into the supply of cars was completed in January 2000; and work continued throughout the year on the monopoly inquiry into supermarkets (due to report in July 2000). A fuller account of the Commission's workload is given in the Secretary's statement on pages 13 to 15 and a list of the reports published in the year, together with the cost of each inquiry, is given on page 32. This increased workload, and the addition of the Appeal Tribunals, together with the Government's plans for merger reform, and a variety of other new roles entrusted to the Competition Commission in legislation presently before Parliament, reflect confidence, I believe, in the standing of the Competition Commission as an expert, independent and impartial body. The new roles conferred on the Competition Commission also bring fresh responsibilities. In particular, if the role of the Secretary of State for Trade and Industry is significantly diminished (as proposed in the Government's plans for merger reform) we shall need to review our procedures, particularly in relation to remedies, in the light of the requirements of the new regime. This is likely to involve a slightly longer timescale for our work, although not necessarily for the process overall, given the withdrawal of Ministers.

Membership changes

During the period of the review, Nicholas Finney, Richard Prosser and Dr Ann Robinson completed their terms as members. Of the members appointed to special panels, Robert Kernohan completed his service on the newspaper panel; and David Fairbairn and Stephen Finch completed their service on the telecommunications panel. I am grateful to all of them. Work on Competition Commission inquiries is both complex and demanding. Beyond the individual contribution of each member it is the pooling of expertise and judgement of members, acting together in groups, that leads to robust decisions which promote and maintain competitive markets, and thus serve the interests of business and consumers.

In the latter part of the year, the Department of Trade and Industry held a special recruitment exercise to enable eight members of the specialist utility panels to convert to dual membership of those panels and the reporting panel. As a result, Nicholas Garthwaite, Professor Cosmo Graham, Graham Hadley, Dr Elizabeth Monck, Professor David Parker, Jeremy Seddon, Martyn Webster and Alan Young were appointed to the reporting panel. This exercise was a cost-effective means of deploying more widely the expertise available to the Competition Commission from those serving on the specialist panels. It has enabled the Commission to handle the large number of inquiries in the latter part of the year.



LEFT: **Deputy Chairman** Graham Corbett CBE
RIGHT: **Deputy Chairman** Denise Kingsmill CBE

“Given the Commission’s role and funding it is right that the public should know who the members are and what we do, and be able to assess how well we do it.”

Transparency

This year we initiated a wide-ranging consultation on our procedures designed to explore the support for measures to incorporate more transparency. The consultation took the form of a series of interviews held by consultants (Opinion Leader Research) on our behalf with companies, lawyers, other advisers, Government officials, regulatory offices, consumer organisations, trade associations and others with a direct interest in our work, supplemented by a written consultation paper available to the public generally. At one level it might seem that more transparency can only work for the public good and that any measures designed to achieve it would be widely supported. In fact, some difficult issues arise and some of our proposals proved controversial. Some of the information which we need if we are to conduct full and rigorous inquiries is commercially sensitive. It is an uncomfortable truth that competitive markets rarely thrive without secrecy. Reflecting this, section 133 of the Fair Trading Act 1973 in broad terms makes it a criminal offence for anyone in the Competition Commission to divulge information about any business obtained during an inquiry except for the purposes of the investigation. Although the Competition Commission has powers to require the provision of necessary information, their use is unwieldy and very time consuming. Swift decision-taking therefore needs the co-operation of those supplying information and so there is a balance to be struck between the advantages of transparency and those of effective and timely decisions.

Within the Competition Commission, we studied carefully the responses revealed through the consultation exercise. Members contributed to two seminars convened especially for this purpose. We experimented with various initiatives throughout the year. The open hearing held in London during the cars inquiry was one example; the open hearing on planning related issues arising on the supermarkets inquiry held in Birmingham was another. Both these hearings demonstrated the value that public discussion can bring. However, open hearings will never replace the need for private hearings where commercially sensitive matters can be explored. Some felt that the term ‘hearing’ also carried the connotation that those involved were in the dock and that the Competition Commission had pre-judged the issues. Rather, these are meetings at which opposing views can be put in public, but in a structured and even-handed way, in order that everyone interested can have a clear idea of the issues involved. I look to the press to report such meetings in a fair and balanced manner.

In February 2000, I issued guidance to members on procedures, as provided for under Schedule 7 to the Competition Act 1998. A full copy of my guidance is available on our website. I believe that our revised procedures achieve the right balance, enabling the public to be fully aware of the issues under consideration in our inquiries whilst not compromising the present tight timetables nor unreasonably disclosing information regarded as sensitive.

Given the Competition Commission’s role and funding it is right that the public should know who the members are and what we do, and be able to assess how well we do it. The media play a key role in this, thereby improving public accountability in its widest sense. I have therefore sought to encourage a dialogue with the press, including the specialist press, that enables them to understand the Competition Commission’s role and the context in which its work is carried out. That dialogue cannot extend to discussing issues on current inquiries: our full and thorough reports must speak for themselves here. Nevertheless, I appreciate that the Commission’s role, and the legislation under which it operates, is complex and can be difficult to understand. I shall therefore continue to do whatever I can to increase the general awareness and appreciation of our role.

LEFT TO RIGHT:
Graham Corbett CBE
Dr Derek Morris
Denise Kingsmill CBE



Merger reform

In July 1999, the Government published a consultation document outlining proposals for reforms to the merger control regime. The most significant changes proposed were that Ministers should relinquish their role in considering mergers, save for cases raising exceptional public interest matters such as national security; and that the test under which independent competition authorities would assess mergers should be changed from the present 'public interest' test to one focused on competition. This is clearly an important initiative and I look forward to the Government's final decisions.

Part of the Government's aim is to ensure that merger control decisions focus on those considerations which are important to maintaining open and competitive markets. In practice over the years, the Competition Commission's analysis of mergers very much focused on such considerations. It is only very rarely that wider public interest matters have proved critical to conclusions in merger reports. It is nonetheless right that, in seeking largely to withdraw Ministers from the process, the Government should consider whether a more precise and more focused test should be adopted. The consultation document discussed various alternatives for a competition-based test to replace the public interest test, and the Commission stands ready to implement whatever new test the Government decides to adopt.

Regulatory role

As foreseen in my statement in last year's review, the Utilities Bill confers a right of veto on the Competition Commission in relation to references on disputed licence modifications made by the Gas and Electricity Markets Authority. I understand that it is the Government's intention to introduce a similar role in relation to disputed licence modifications made by the Director General of Water Services and, depending on decisions yet to be made on the future of regulating the telecommunications industry, possibly in relation to disputed licence modifications made by the Director General of Telecommunications. A similar role is also conferred on the Competition Commission in relation to the Postal Services Commission under the Postal Services Bill; the Civil Aviation Authority under the Transport Bill in relation to air traffic services; and disputes concerning the level of access charges paid by train operators to Railtrack. These are all last-resort powers, designed to ensure that the right to an independent appeal is genuinely conferred on licensees in relation to changes to the licences under which they operate. Nevertheless, it will be important to ensure that the Competition Commission operates effectively in making final decisions on these matters. The timescales envisaged are, understandably, very short.

Under proposals in the Financial Services and Markets Bill, the Commission has a special role in ensuring that rules and practices of the Financial Services Authority (FSA) do not impede competition. The Director General of Fair Trading will examine the FSA's rules and practices. If he considers that they are having an anti-competitive effect, he will make a reference to the Competition Commission who will then investigate the matter. If the Commission finds that they do have an anti-competitive effect, then the Commission must also weigh up other considerations which the FSA will have had in mind in adopting the rules—for example the need for financial prudence and stability. If the Commission considers that, notwithstanding such factors, the measures could be amended to reduce or remove an anti-competitive effect, the Commission will report this to Treasury Ministers. The Competition Commission will also scrutinise the practices, rules and guidance of investment exchanges and clearing houses. The financial services sector is an important part of the UK economy and I welcome these proposals which should help to ensure that the right balance is struck between the need to keep the financial services market competitive whilst not jeopardising important protection for consumers.

“This year we initiated a wide-ranging consultation on our procedures designed to explore the support for measures to incorporate more transparency.”

“The new roles conferred on the Competition Commission also bring fresh responsibilities.”

Conclusion

The new Competition Act, reform of merger control and the numerous other Acts mentioned above all indicate the high priority which the government has given and continues to give to competition policy and, where necessary, effective regulation. The de jure or de facto appeal functions of the Commission across an increasing range of areas, together with its continuing investigative role in others, only increases the need for the Commission to discharge its duties in a consistent, dependable and transparent manner. As our recent very wide consultation process revealed, Competition Commission reports are widely respected for their rigour, thoroughness and expert analysis; and the way in which Competition Commission inquiries are conducted is also meticulously fair and has stood up to legal challenge through judicial review. Nonetheless, every organisation needs to be aware of and adapt to new demands. The Commission has a good record in evolving to meet new responsibilities and is, I believe, well prepared to meet the demands of the new regime in a robust and cost-effective manner.

I would like to take this opportunity to thank the members, management teams and staff for their tremendous efforts throughout an extremely busy year. The accuracy and robustness of our reports has, as always, critically depended on their expertise, experience and commitment.



Dr Derek Morris

CHAIRMAN

Dr Derek Morris was from 1970 to 1998 the Fellow and Tutor in Economics, Oriel College, Oxford and latterly a Reader in Economics, Oxford University. He was Economic Director at the National Economic Development Office (1981–1984), and from 1984 until 1998 was Chairman of Oxford Economic Forecasting Ltd. He has published a number of books and articles on economic topics, primarily in industrial economics and on corporate control and performance. He has published work on economic reform in Chinese enterprises, and was adviser to the Asian Development Bank on enterprise reform in Central Asia. He is an Emeritus Fellow Oriel College, Oxford.

DEPUTY CHAIRMEN

Graham Corbett CBE was named as the first Chairman of the new Postal Services Commission in March. From 1987 to 1996 he was Chief Financial Officer of Eurotunnel and previously Senior Partner of Peat Marwick (now KPMG) Continental Europe. He is a non-executive director of Kier Group plc and Chairman of RICA, a charity which tests goods and services for disabled people. He has an honorary doctorate from Brunel University.

Denise Kingsmill CBE is a solicitor, specialising in Industrial Relations, Employment Law and Corporate Governance. The early part of her career was spent in marketing with ICI and the International Wool Secretariat. She is a non-executive Deputy Chairman of MFI Furniture Group and of the Norwich and Peterborough Building Society. She is also Chairman of the Alzheimer's Research Trust, a Governor of the College of Law and an Honorary Fellow of the University of Wales, Cardiff.

REPORTING PANEL MEMBERS

Hugh Aldous, a chartered accountant, is a partner in Robson Rhodes and was the firm's Managing Partner from 1987 to 1997. He is Chairman of RSM International, a Deputy Chairman of Focus, a director of First Russian Frontiers Trust, of Gartmore Venture Capital Trust and of the European Repo Exchange.

Jack Beatson QC is Rouse Ball Professor of English Law at the University of Cambridge and Fellow of St John's College, Oxford. He was called to the Bar in 1972, and was a Fellow and Tutor in Law at Merton College, Oxford and a Law Commissioner. He has been a Recorder of the Crown Court since 1994.

Robert Bertram is a company and commercial lawyer by profession and retired as a partner in the legal firm of Shepherd & Wedderburn WS in 1997. He was a part time member of the Scottish Law Commission and currently serves on the governing bodies of Edinburgh University, the David Hume Institute and the UK Central Committee for Nursing.

Sarah Brown is a member of the Friendly Societies Commission, a non-executive director of Financial Services Compensation Scheme Ltd and of Look Ahead Housing and Care Ltd, and a member of the Civil Service Appeal Board. Formerly, she was Director of Company Law at the DTI.

Martin Cave is Vice-Principal and Professor of Economics at Brunel University. He has held these posts since 1996 and 1987 respectively. He has been adviser to a number of organisations including Ofstel and OFT.

Anthony Clothier is an independent consultant and is actively involved in woodland management. Formerly Chairman of Ofwat Wessex Customer Service Committee, President of the British Footwear Manufacturers Federation and of the European Shoe Federation, and a main board director of C&J Clark Ltd.

Roy Croft CB was Chief Executive of the Securities and Investments Board, and before that a Deputy Secretary in the DTI. He is currently a non-executive director of Morgan Stanley Dean Witter Bank Ltd.

Christopher Darke has been General Secretary of the British Air Line Pilots Association since 1992 and was previously a National Officer with the Manufacturing Science and Finance Union.

Nicholas Garthwaite is non-executive Chairman of Cicero Languages International and has been an independent telecommunications consultant at Cicero Strategy since 1996. He was Director of Telecommunications at Price Waterhouse Corporate Finance (1994–1996) and a Managing Consultant in the telecommunications group at Touche Ross (1986–1994).

Paul Geroski is Professor of Economics at the London Business School. He was President of the European Association for Research in Industrial Economics from 1995 to 1997 and of the Industrial Organisation Society in 1997. He is a member of the Council of the Royal Economic Society.

Cosmo Graham is Professor of Law at the University of Leicester and Director of the University's Centre for Utility Consumer Law.

Graham Hadley has been an Energy Consultant and part-time Senior Adviser to NERA since 1996. He was a Board Director of National Power (1990–1995) and Board Secretary of the Central Electricity Generating Board (1983–1990).

David Hammond is Chairman of BCA Holdings Limited, Deputy Chairman of Carlisle Holdings Limited and a non-executive director of Provant Inc. Previously he was Deputy Chairman of ADT Ltd.

Judith Hanratty is Company Secretary of BP Amoco plc. She is a member of the Council of Lloyd's, the Takeover Panel and of the Listing Authority Advisory Committee to the Financial Services Authority. She is also an Honorary Fellow, and former Trustee, of Lucy Cavendish College, Cambridge and a Governor of the College of Law.

Charles Henderson CB was Director General of Energy at the DTI until 1996. He is non-executive Chairman of Total Fina Elf Exploration UK and President of the Institute of Petroleum. He is a Fellow of the Institute of Actuaries.

David Jenkins MBE has been General Secretary of Wales TUC since 1983. He is a member of the Employment Appeals Tribunal, the Wales New Deal Task Force and the National Assembly for Wales Business Partnership. He is also Chairman of the Wales Co-operative Development and Training Centre.

Roger Lyons is General Secretary of the Manufacturing, Science and Finance Union; member of the TUC's General Council Executive Committee; and an executive member of the European Metalworkers Federation and of the Confederation of Shipbuilding and Engineering Unions. He is a trustee of the Charities Aid Foundation, and a Fellow of University College London.

Peter Mackay CB was Secretary of the Scottish Office Industry Department. He is a non-executive member of the board of the business banking division of the Bank of Scotland, and a member of the boards of Scottish Natural Heritage and the Northern Lighthouse Board.

Dr Elizabeth Monck is a member of a Drinking Water Inspectorate specialist committee, and an independent Adviser for Thames Water's in-house Customer Assistance Fund. She was chairman of the Ofwat Thames regional Customer Services Committee (1993–1997). She is a senior research officer at the Thomas Coram Research Unit, Institute of Education.

Kate Mortimer is an independent consultant, currently acting as a financial adviser to the government on UK Know How Fund for Central Europe and Russia. She is a non-executive director of British Nuclear Fuels plc, the Crown Agents Foundation Council and the Pennon Group.

Roger Munson is a chartered accountant. Formerly he was a partner with Coopers & Lybrand and a member of the Accounting Standards Board.

David Newbery FBA has been Professor of Applied Economics and Director of the Department of Applied Economics at the University of Cambridge since 1988. He is a Fellow of the Centre for Economic Policy Research and a member of the Environmental Economics Academic Panel, and an economic adviser to Ofgem and Ofwat.

Dr Gill Owen is an energy and environmental consultant, Chair of the Public Utilities Access Forum, and a member of the Management Board of Ofgem and of the Bedfordshire Police Authority. She has been Specialist Adviser to the House of Commons Environment Committee and Expert Adviser to the Economic and Social Committee of the European Communities.

David Parker has been Professor of Business Economics and Strategy at Aston Business School since 1997 and holds a visiting research post at the Centre for the Study of Regulated Industries. He is a member of the Institute of Management and a Fellow of the Royal Society.

Richard Prosser ceased to be a reporting panel member January 2000. See entry under appeal panel.

Arthur Pryor CB See entry under appeal panel.

Richard Rawlinson is a director of Monitor Company where he has been a strategy consultant since 1984. Previously he was a banking executive with J Henry Schroder Wagg & Co Limited and an Associate Fellow at Harvard Business School.

Judith Rees is Pro-Director and the Professor of Environmental and Resources Management at the London School of Economics. Previously she was Professor of Geography and Pro-Vice Chancellor at the University of Hull and was, until 1996, Chairman of the Southern Customer Service Committee of Ofwat.

Timothy Richmond MBE TD DL is a chartered accountant and accredited mediator. He is non-executive Chairman of Huthwaite International Limited, Direct Auto Services Limited and Frank Thomas Holdings Limited, and a non-executive director of the Nottingham Law School Limited.

Jonathan Rickford is a solicitor and independent consultant on regulation and European law and policy, Project Director of the Government's Company Law Review and a Council member of the European Policy Forum. Previously he held posts with BT, including Director of Corporate Strategy and Solicitor and Chief Legal Adviser.

Jeremy Seddon is Chief Executive of British Invisibles. He was head of BZW's Privatisation and Government Advisory Unit and Vice-Chairman of BZW Corporate Finance from 1987 to 1995.

Dame Helena Shovelton DBE is Chair of the Audit Commission and the National Lottery Commission. She is a non-executive director of the Energy Saving Trust and the Banking Code Standards Board. From 1994 to 1999 she chaired the National Association of Citizens Advice Bureaux.

Graham Stacy CBE is a chartered accountant and spent most of his career as a partner with Price Waterhouse. He was a founder member of the UK Accounting Standards Board. He is currently honorary treasurer of The United Reformed Church in the United Kingdom and also of Sanctuary Housing Association.

David Stark, a chartered engineer, was a main board director of Tomkins plc from 1986 to 1997. He is a trustee of the Norcross Security Plan, non-executive Chairman of Glentay Ltd and a non-executive director of the Royal Mint.

Anthony Steele is a chartered accountant and has been Professor of Accounting at Warwick Business School since 1985. His current research concerns issues of audit support and assessment of business performance.

Martyn Webster was Group Managing Director of Southern Water plc (1993–1996) and Group Finance Director (1989–1992). Previously, he was Group Financial Controller at Laporte plc and Financial Controller at NCR Ltd. He is a member of the Institute of Chartered Accountants in England and Wales.

Alan Young is a director of the consultancy firm Webster Young Limited, a non-executive director of Energy Power Resources Limited and a non-executive member of the UK Atomic Energy Authority.

SPECIALIST PANEL MEMBERS

Sarwar Ahmed founded Eastern Eye in 1989 and is now Managing Director of Smart Asian Media Limited. He was formerly Publisher of Ethnic Media Group, a subsidiary of Southnews plc.

Michael Bromwich is the Chartered Institute of Management Accountants' Professor of Accounting and Financial Management at the London School of Economics. He was a member of the Accounting Standards Committee and is a past President of the Chartered Institute of Management Accountants.

Linda Christmas has been a Senior Lecturer in Journalism and the Director of the Post-Graduate Course in Newspaper Journalism at City University, London, since 1989. She was an editor and reporter for *The Guardian* (1971–1982) and a reporter for BBC Newsnight (1987–1988).

Geoffrey Copeman DL is Vice-Chairman of Eastern Counties Newspapers Group Ltd and is Chairman of the Audit Bureau of Circulations. He was President of the Newspaper Society from 1995 to 1996.

William Gibson is Chairman of Kato Communication and a Director of MQ Publishing. He was Chairman and Chief Executive of Westminster Press Ltd (1995–1996) and Managing Director of Financial Times Business Information (1990–1995).

Tony Hadfield is Deputy Chairman of BCN Data Systems Ltd. Formerly, he was a director and Chief Executive of Teesside Power Limited, Chief Executive of Northern Electric and Chief Executive of Northern Ireland Electricity.

Patricia Henton is a member of the Natural Environment Research Council and Director of the Scotland and Northern Ireland Forum for Environmental Research. She has been Director of Environmental Strategy for the Scottish Environment Protection Agency since 1995 and is a past President of the Chartered Institution of Water and Environmental Management.

Gilbert Hogg is a self-employed Regulatory Consultant and former Director of Regulatory Operations, Director of Legal Services and Company Secretary at British Gas from 1984 to 1995. He is a member of the International Bar Association and The Law Society.

Gerald Holbrook MBE was Managing Director of Yorkshire Post Newspapers (1983–1995), Regional Director of United Provincial Newspapers (UPN) Ltd (1985–1995) and retired in 1996 as Executive Director of UPN. He was President of the Newspaper Society (1994–1995).

Joyce Hopkirk writes novels and is co-Chair of the Periodical Publishers' Association's award committee. She was Launch Editor of *Cosmopolitan*, Assistant Editor of the *Daily Mirror*, Women's Editor of the *Sunday Times*, Assistant Editor of the *Sunday Mirror* and Editor-in-Chief of *She* magazine.

Dr Malcolm Kennedy CBE is Chairman of PB Power Ltd (formerly Merz and McLellan which he joined in 1964), Chairman of Parsons Brinckerhoff International Inc since 1996 and President of the Institution of Electrical Engineers 1999 to 2000. He is a non-executive director of the Port of Tyne Authority.

Tony Kennerley is an independent management consultant and former Director of Intermatrix Ltd, Management Consultants (1984–1991). He is the Complaints Commissioner for the Channel Tunnel Rail Link, a Member of the Council of the British Institute of Management and a Director of Tecgen Limited.

Nigel Macdonald is a senior partner at Ernst & Young. He is a member of the review panel of the Financial Reporting Council, a member of the Board of the British Standards Institute and a member of DTI's Industrial Development Advisory Board.

Caroline Marland has been Managing Director of *The Guardian* and *The Observer* since 1995, having previously been Deputy Managing Director.

Eve Pollard is Chairman of Parkhill Publishing which produces the magazines *Wedding Day* and *Aura*. She is Honorary President and a founding member of Women in Journalism and was Editor of both the *Sunday Express* and *Sunday Mirror*. She is a regular TV and radio broadcaster.

Newspaper panel

Sarwar Ahmed
Linda Christmas
Geoffrey Copeman DL
William Gibson
Gerald Holbrook MBE
Joyce Hopkirk
Caroline Marland
Eve Pollard
Prof Donald Treford
Charles Wilson

Electricity panel

Prof Michael Bromwich
Prof Cosmo Graham
Tony Hadfield
Graham Hadley
Gilbert Hogg
Prof Tony Kennerley
Nigel Macdonald
Dr Elizabeth Monck
Prof David Parker
Jeremy Seddon
Alan Young

Telecoms panel

Nicholas Garthwaite
Prof Cosmo Graham
Dr Malcolm Kennedy CBE
Prof David Parker
Jeremy Seddon

Water panel

Prof Cosmo Graham
Graham Hadley
Patricia Henton
Gilbert Hogg
Dr Malcolm Kennedy CBE
Nigel Macdonald
Dr Elizabeth Monck
Prof David Parker
Jeremy Seddon
Martyn Webster

The following ceased to be members of the Commission during the period of this review:

Members

Nicholas Finney OBE
Richard Prosser
Dr Ann Robinson

Panel Members

David Fairbairn OBE
Stephen Finch OBE
Robert Kernohan OBE

Donald Treford has been Head of the Department of Journalism Studies at the University of Sheffield since 1994 and is Chairman of Baby Communications Limited. He was Editor and a director of *The Observer* (1975–1993) and Chief Executive (1992–1993).

Charles Wilson was Managing Director of Mirror Group plc (1992–1998) and Editorial Director of Mirror Group Newspapers. Formerly Editor of *The Times*, *Glasgow Evening Times*, *Glasgow Herald* and the *Scottish Sunday Standard*.

APPEAL TRIBUNALS

PRESIDENT'S STATEMENT



President
Sir Christopher
Bellamy QC

The Competition Act 1998, which came into force on 1 March 2000, introduces new prohibitions on anti-competitive agreements and on abuse of a dominant position, modelled on Articles 81 and 82 of the EC Treaty. These new prohibitions are enforceable by the Director General of Fair Trading (DGFT/the Director), and the other Regulators responsible for the telecommunications, electricity, gas, water and railway industries, who may order the cessation of infringements and impose financial penalties of up to ten per cent of the turnover of the undertaking concerned.

The existence of these new prohibitions and powers clearly gives rise to the need for an effective system of appeals. Under the Act, this task is entrusted to the Appeal Tribunals of the Competition Commission, which have been set up to hear appeals against the decisions taken by the DGFT or other Regulators. The Appeal Tribunals have wide powers to uphold, quash or vary the decision in question or the amount of any penalty, to remit the matter to the Director or relevant Regulator, or to take any decision which that Director or Regulator could have taken. Further appeals from the Appeal Tribunals lie, on a point of law or on the amount of any penalty, to the Court of Appeal in England and Wales, or the Court of Session in Scotland or to the Court of Appeal in Northern Ireland.

Much of the year under review has been concerned with the preparatory work necessary to set up this wholly new jurisdiction. Apart from the administrative tasks of creating the Registry, recruiting staff, establishing accommodation for hearings, and providing the necessary library and IT facilities, the principal challenges have been twofold: first, to adopt appropriate and modern procedures under which the tribunals will operate; and, secondly, to recruit and train tribunal members whose decisions will command the respect of the parties and the public.

The rules of procedure

The Appeal Tribunals are courts of law and must therefore operate in accordance with appropriate rules of procedure. Following the announcement of my own appointment as President-designate, it was decided that the most appropriate model for the Appeal Tribunal rules was the procedure used by the Court of First Instance of the EC, which deals with appeals from the competition decisions of the European Commission. After very considerable work by a Departmental working party and Commission staff, draft rules of procedure went out to consultation between October and December 1999. Almost all the responses received were supportive of the general approach adopted, and a number of helpful comments were incorporated into the relevant statutory instrument, which was laid before Parliament by the Secretary of State on 8 February 2000 and came into force on 1 March 2000 (SI 2000 no. 261).

The new Rules, which also take into account the recent changes in civil procedure known as the Woolf reforms, are based on five main principles: the early disclosure, in a fully argued document, of each party's case, and of the evidence relied on; active case management by the tribunal, enabling the main issues to be identified early on and delays avoided; strict timetables; effective procedures for establishing contested facts; and structured oral hearings conducted within defined time limits. This framework, which breaks new ground in terms of traditional court procedures, should enable the Appeal Tribunals to minimise the delays and expense often associated with complex litigation and to determine appeals efficiently and expeditiously. The Tribunals' present aim is to complete straightforward cases in less than six months.

The Appeal Tribunal Rules are accompanied by a more detailed 'Guide to Appeals under the Competition Act 1998' which is available on the Competition Commission website or from the Registry.

“Much of the year under review has been concerned with the preparatory work necessary to set up this wholly new jurisdiction.”

“The Tribunals’ present aim is to complete straightforward cases in less than six months.”

The appointment of appeal panel members

The members of the Appeal Tribunals are appointed as appeal panel members of the Competition Commission. To fill the necessary posts a public recruitment exercise was held in late 1999 in accordance with the Guidance on Appointments to Public Bodies popularly known as ‘the Nolan Rules’. Advertisements in the press produced nearly 800 replies. The Selection Panel responsible for sifting the applications and advising the Secretary of State consisted of a senior official of the Department of Trade and Industry, the Secretary of the Competition Commission, an independent member (Mr Matthew Patient) and, for those who might become chairmen of tribunals, a senior official of the Lord Chancellor’s Department. I myself had the opportunity to meet short-listed candidates and to give my views to the selection panel.

Because of the difficulty of completing the recruitment of the entire appeal panel before 1 March 2000 a ‘first tranche’ of eight appointments was made by the Secretary of State with effect from that date. It is expected that further appointments will be made shortly.

As can be seen from the biographical details of the new appeal panel members, to be found on page 12, I think we may count ourselves fortunate that candidates of such high calibre should have come forward to undertake this important work. I warmly welcome those appointments.

In addition to bringing with them their existing expertise, all the new appeal panel members are participating in a specially designed training programme covering the main issues of law, economics and procedure likely to arise on appeals.


Staff

I am also pleased to welcome Mr Charles Dhanowa, who has been appointed as the first Registrar of the Appeal Tribunals, and Mrs Orla Weston, who has been appointed as Assistant Registrar.

I would also like particularly to thank the Secretary of the Commission and all the members of the Commission Planning Group for the invaluable hard work that has been done in preparing for the setting up of the Appeal Tribunals, both before and since my arrival here in December 1999.

Conclusion

The success of the new Act will depend in no small measure on the way that the Appeal Tribunals discharge their duties. More particularly, public confidence will depend very largely on the appeal process being, and being seen to be, open, expeditious and, above all, fair. My colleagues and I are determined to ensure that that is so.



Sir Christopher Bellamy QC

APPEAL TRIBUNALS

COMMISSION MEMBERSHIP

PRESIDENT

Sir Christopher Bellamy QC was appointed the first President of the Appeal Tribunals on 16 December 1999. After qualifying as a barrister, he practised mainly in the fields of competition law, EC law and public law. He was appointed QC in 1986. From 1992 to 1999 he was a judge of the Court of First Instance of the European Communities.

APPEAL PANEL MEMBERS

Barry Colgate is a member of the Restrictive Practices Court and Chairman of Harrington Food Group. He is a non-executive director of the Michael Shanly Group and a Fellow of the Institute of Chartered Secretaries and Administrators. He used to be Group Director of Planning/Legal and Business Adviser in Rank Hovis McDougall.

Peter Grant-Hutchison is a Scottish advocate and a Temporary Sheriff and used to be a solicitor. He is a part-time Chairman of Social Security Appeal Tribunals and Disability Appeal Tribunals, and a part-time tutor at Edinburgh University.

Sheila Hewitt is a non-executive member and Regional Chairman of the Legal Aid Board and a member of the Radio Authority. She is a Justice of the Peace, a member of the London Rent Assessment panel and of the Immigration Appeal Tribunal and an Associate of the Chartered Institute of Bankers.

TOP ROW (LEFT TO RIGHT):

Peter Grant-Hutchison

Sheila Hewitt

Charles Dhanowa (Registrar)

Ann Kelly

Arthur Pryor CB

BOTTOM ROW (LEFT TO RIGHT):

Richard Prosser

Adam Scott TD

Sir Christopher Bellamy QC

Barry Colgate

David Summers



Ann Kelly is Chairman of the West Berkshire NHS Trust and is an independent consultant specialising in corporate governance, complaints and diversity. She was a member of the Police Complaints Authority, Manager of Equal Opportunities at the British Railways Board, and was with the Commonwealth Development Corporation.

Richard Prosser is Chairman of Aluminium Products Ltd, Managing Director of Hurley Hall Farms Ltd and Director of Quality Calves Ltd. He is also a non-executive director of Blythe Mill. Until recently he was a reporting panel member.

Arthur Pryor CB is an independent consultant working on competition policy issues and government affairs, and was Head of Competition Policy at the DTI until 1996. He is also a reporting panel member.

Adam Scott TD is a Senior Research Fellow at the University of St Andrews. He has worked mainly in the telecommunications industry and has held various posts in BT. He is also a Fellow of the Institute of Electrical Engineers.

David Summers is a publishing and media consultant, a Justice of the Peace, a board consultant for Central Law Training Ltd, and a non-executive director of the Royal Society of Medicine Press. Until recently he was a member of the Restrictive Practices Court. He used to be a director of Butterworths.



Secretary
Penny Boys

This review covers the first year of the Competition Commission's existence. The Competition Commission (CC) took over the functions ('reporting functions') previously carried out by the Monopolies and Mergers Commission and also has new 'appeal functions' through the creation of the CC Appeal Tribunals.

The Appeal Tribunals hear appeals from certain decisions made under the Competition Act 1998 by the Director General of Fair Trading (DGFT) and the utility regulators. Whilst the major part of the CC's activities in the year was concentrated on reporting functions, preparations for the Appeal Tribunals gathered pace so that they were operational by 1 March 2000 (the date on which the prohibition provisions of the Competition Act 1998 came into force). Overall, the CC spent £7,913,000 before net interest receivable in 1999/2000, of which £7,462,000 was allocated to reporting functions and £451,000 to appeal functions.

The Council

The Council is the management board of the CC. It is chaired by the Chairman of the CC. In 1999/2000 its members were:

Dr Derek Morris
Sir Christopher Bellamy QC (from 16 December 1999)
Mr Graham Corbett CBE
Mrs Denise Kingsmill CBE
Ms Penny Boys

The Council met on ten occasions in the year and considered 18 papers. Subjects covered included the Council's own rules of procedure, policies on recruitment, corporate records, the greening initiative, working practices, procurement arrangements and financial and management reports.

CC functions

The CC's functions and responsibilities are set out in a Management Statement agreed with the Department of Trade and Industry (DTI). The statement provides a structural and financial framework for the CC's operations and sets out the CC's and the DTI's respective roles and responsibilities. The CC's function is to carry out its statutory duties independently, impartially and fairly. The Council of the CC must:

- manage its expenditure of resources efficiently, economically and effectively;
- conduct its business in the light of the Citizens' Charter;
- operate a green housekeeping policy in line with guidance issued from time to time by the DTI; and
- agree financial and other management targets annually with the DTI.

Reporting functions

Through the work of its inquiry groups, the CC aims to produce thorough, accurate and rigorously-argued reports within the deadline specified or within agreed extensions. Because the workload in any one year is determined by Ministers, the DGFT and utility regulators, it is important to maintain a flexible organisation capable of responding swiftly to sudden changes.

Results

The workload in 1999/2000 was 134 units, 24 per cent higher than the previous year. A unit is an assessment of the resource consumption in performing a month of an inquiry. A single unit counts as one month of a merger inquiry involving two main parties. Thus a three-month merger is three work units; a three-month merger involving more than two main parties would be six work units. The monopoly inquiries covering the supply of ice cream and cars were counted as two units per month; the supermarkets inquiry was counted as four units per month. Regulatory inquiries are counted as two work units per month. The figures below show the work units completed in the last five years:

| 1999/00 | 1998/99 | 1997/98 | 1996/97 | 1995/96 |
|---------|---------|---------|---------|---------|
| 134 | 108 | 100 | 174 | 134 |

Performance measure

The Council agreed with the DTI that it would aim for a 2 per cent efficiency gain in 1999/2000 against the performance measure (£6 million + £10,500 per work unit set in 1997/98, up-rated by agreed inflation factors and adjusted for the 3 per cent efficiency target agreed for 1998/99). With 134 work units completed, this meant containing expenditure to £7,417,000. Expenditure exceeded this target by £45,000, mainly because of the need to spend more than planned on specialist external consultants on the ice cream and supermarkets inquiries. The efficiency gain for the year was thus only 1.3 per cent. Taken with last year, however, the efficiency gain has been over 8 per cent.

Appeals functions

Preparations to ensure the readiness of the Appeal Tribunals continued through the year. The appointment of Sir Christopher Bellamy QC as the President of the Appeal Tribunals was announced on 31 March 1999.

A planning group of CC staff ensured that support staff were recruited and that appropriate facilities (accommodation, library, training for members etc) were in place to enable the Appeal Tribunals to function from 1 March 2000 if necessary. Total expenditure on appeal functions was £451,000 in 1999/2000. This included an overhead charge reflecting accommodation, services and support from central functions.

Finance

The CC is financed through grant-in-aid from the DTI. Grant-in-aid was drawn down in line with forecast costs, quarter by quarter, reflecting the workload and the build-up of preparations for the Appeal Tribunals. The total grant-in-aid drawn was £8,093,000, higher than expenditure because of an increase in working capital, purchase of fixed assets and higher closing cash balances.

Members

On 31 March 2000 membership of the CC was as follows:

| | |
|---|---|
| <p>Reporting Panel (including the Chairman and Deputy Chairmen) 39 members</p> | <p>Telecommunications Panel 5 members, of whom 4 are also members of the reporting panel</p> |
| <p>Newspaper Panel 10 members</p> | <p>Water Panel 10 members, of whom 6 are also members of the reporting panel</p> |
| <p>Electricity Panel 11 members, of whom 6 are also members of the reporting panel</p> | <p>Appeal Panel 8 members, of whom 1 is also a member of the reporting panel.</p> |

Full details of members, from which the cross-membership between the panels can be more fully seen are set out on pages 6 to 9 and page 12.

On the reporting side, the size of groups dealing with inquiries varied between four and five. Mr Roy Croft chaired the Alanod/Metalloxyd merger inquiry and Dr Gill Owen chaired the Universal Foods/Pointings merger inquiry. The capability and readiness of members to chair inquiries again enabled the CC to handle its workload effectively with only two Deputy Chairmen.

A programme of seminars was held between May 1999 and January 2000 covering economic and accounting concepts, developments in competition law, discussion on the CC's revised procedures, the work of the Appeal Tribunals and discussion on feed-back from an external consultation on how the CC was perceived.

Staff

On 31 March 2000, the total number of full-time equivalent core staff was 81.6. The total for 31 March 1999 was 72.6. The increase is mainly accounted for by the replacement of agency or casual staff with permanent appointees and by two initial appointments to the Appeal Tribunals. Staff on short-term contracts were drawn on to meet peaks of work. Turnover among core staff was 10.5 per cent (3.6 per cent last year). Charles Dhanowa was promoted to the joint role of Registrar to the CC Appeal Tribunals and Head of Secretariat on 1 February 2000. When the case-load of appeals builds up, he will become full-time Registrar. Amongst the team managers, Andrew Mantle, on loan from the DTI, replaced Clive Brewer who left the CC in June 1999; Colin Farthing, on loan from the Treasury, replaced Alan Williams who left to take up a senior position at the Office of Fair Trading in December 1999. David Fisher moved to full-time team manager duties on 1 February 2000 following Charles Dhanowa's appointment. The number of team managers rose to seven.

Consultants

Consultants were used to provide specialist expertise which would not otherwise be available. With three major monopoly inquiries in progress for much of the year, it also proved necessary to use consultants to help with the workload. Expenditure on consultants, including consumer and price surveys, was £1,259,000, (£448,000 in 1998/99).

Environmental initiatives

The Council reviewed CC working practices to align them where possible with the Government's greening initiative. Through more effective working practices, it is hoped to reduce the number of drafts necessary before reports are finalised, thus reducing significantly the CC's consumption of paper. More extensive use of IT is also playing a part here.

Penny Boys

Secretary

Penny Boys

Division Heads

Charles Dhanowa
(Head of Secretariat and Registrar
from February 2000)

Tim Head

Jane Richardson

Dr Clive Rix

Geoffrey Sumner

Team Managers

John Banfield

Clive Brewer
(until June 1999)

Colin Farthing
(from January 2000)

Malcolm Field

David Fisher

Andrew Mantle

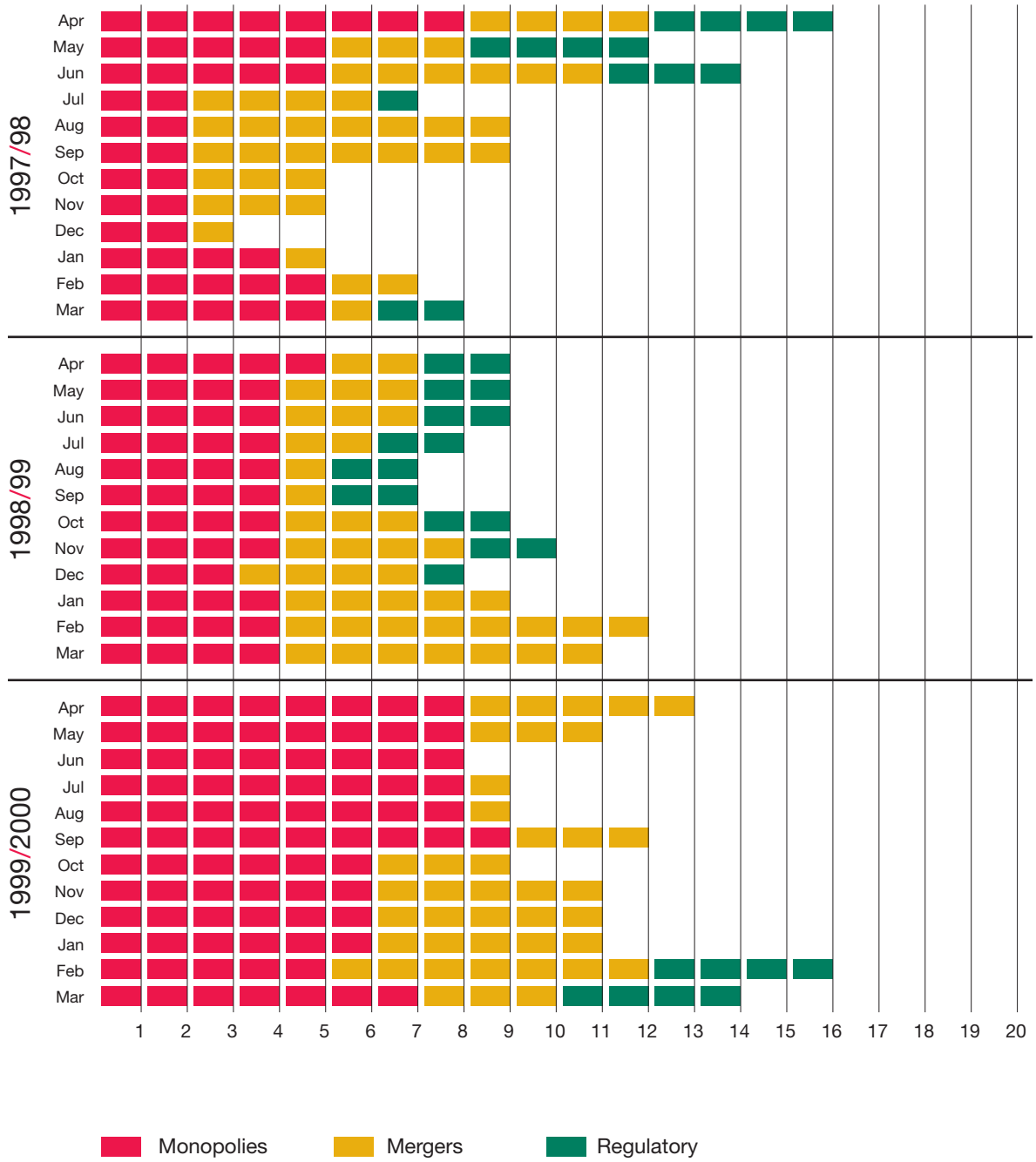
Margaret Smith

Barbara Varney

Alan Williams
(until December 1999)

REFERENCES UNDER INQUIRY

April 1997 to March 2000 – Units



Reports published
between **1 April 1999**
and **31 March 2000**

During this period 12 reports were published, including two inquiries published as Monopolies and Mergers Commission (MMC) reports.

The following section describes briefly the key points in those reports.

For a full account the reader should refer to the published reports.

Milk: the supply of raw cows' milk in Great Britain

Referred

27 January 1998

Completed

26 February 1999

Published

6 July 1999

Inquiry GroupDenise Kingsmill CBE
(Chairman)Anthony Clothier
Christopher Darke
Prof Paul Geroski
Graham Stacy CBE

Christopher Darke

The MMC was asked to investigate and report on the supply in Great Britain of raw cows' milk. Some milk is processed on farms, but nearly all is transported to dairies, where it is either processed into fresh liquid milk or milk products such as butter, cheese and milk powder, or used as an ingredient in other dairy products.

The MMC found that Milk Marque Limited (Milk Marque), the farmer's co-operative and successor to the Milk Marketing Board for England and Wales, was a scale monopolist in that it supplied just under one-half of all the milk produced in Great Britain in 1997/98. The MMC also found that Milk Marque had exploited its monopoly position by engaging in several practices that enabled it to raise average milk prices above levels that would otherwise have been reached. Since Milk Marque effectively set the floor price for producers, milk prices were raised throughout Great Britain. In addition, the MMC found that the planned expansion of Milk Marque's vertically integrated processing capacity would enable it to exploit further the scale monopoly situation in its favour.

The MMC found that Milk Marque's behaviour had brought about great uncertainty and higher costs for dairy processors in Great Britain, resulting in lower levels of investment by them, than would otherwise have been the case. It also found that consumers paid more for fresh liquid milk than they would otherwise have done. Milk Marque's exploitation of its scale monopoly position thus operated against the public interest.

The MMC considered that behavioural remedies would be inadequate to address long term the adverse effects it had identified. It therefore recommended a structural solution, namely that Milk Marque should be divided into several independent bodies. The division need not necessarily produce a simple regional split; each new body might, for example, purchase milk in two or more geographically distinct areas, thereby increasing the scope for competition with other milk groups. The new bodies should have separate corporate identities and no common directorships. The MMC said that the purpose of its recommendations was to eliminate the market power of Milk Marque, to create a more competitive market for the supply of milk and to provide fresh opportunities for producers and processors to develop commercial relationships that served their interests, as well as the interests of consumers. As the new bodies would not have market power, they should be allowed to devise their own methods for selling milk and, if they so wished, to engage in their own processing operations.

The MMC recommended that a number of interim behavioural remedies should be put in place as short-term measures pending the implementation of its recommendations on the division of Milk Marque.

The supply of impulse ice cream



Jonathan Rickford

This inquiry concerned the supply of impulse ice cream in the UK. Unilever plc (Unilever), primarily through its subsidiary Birds Eye Wall's Limited (BEW), accounts for about 55 per cent of the supply of impulse ice cream in the UK, but about 65 per cent of wrapped impulse ice cream (the other categories of impulse ice cream being soft ice cream and scoop ice cream). The CC identified a scale monopoly situation in favour of Unilever in the supply of impulse ice cream by manufacturers, and complex monopoly situations in favour of Unilever, Mars and Nestlé in respect of freezer exclusivity and outlet exclusivity.

The CC received a wide range of complaints from manufacturers and distributors (although few from retailers or consumers), particularly about arrangements for distribution, freezer exclusivity, outlet exclusivity and discounts and other terms to retailers, particularly on the part of BEW, but also on the part of other major manufacturers.

The CC found that BEW's published terms to independent wholesalers were considerably below the unit costs of its exclusive distribution system. These terms were also below the level needed to make an independent wholesaler sector, of such size and coverage as to offer effective distribution of all manufacturers' products, economically viable in the longer term. The CC concluded that BEW's distribution arrangements adversely affected competition between distributors. This in turn had adverse effects on manufacturers.

The CC concluded that the practice of freezer exclusivity, particularly by BEW but also by Mars and Nestlé, restricted competition between manufacturers and distributors. As regards outlet exclusivity, the CC found that the major manufacturers (BEW, Mars and Nestlé) had entered into agreements with some retailers to stock only their respective products, which had also adversely affected competition between manufacturers and between distributors. Finally, it found that BEW had offered retailers bonuses and other terms which operated retrospectively (that is, higher bonuses were applied to the full value of purchases over a period once a particular level of purchases was reached), as well as unpublished discounts and price incentives, which affected the ability of other manufacturers and distributors to compete.

The CC found that the effect on competition (and on the public interest) of each of these individual practices on the part of BEW was enhanced by the existence of the others, and by BEW's market share, its level of advertising expenditure and its strong brand.

The CC concluded that a number of practices operated and might be expected to operate against the public interest: the establishment and maintenance by BEW of a distribution system which was exclusive and which BEW already used for a considerable part of its sales and deliveries, and its supply to independent wholesalers on published terms that were below both the unit cost of its own distribution system and the level necessary to make an effective independent wholesale sector economically viable in the longer term; BEW's arrangements for exclusive freezers; the outlet exclusivity arrangements of any major manufacturer with a turnover of more than £10 million in Great Britain; and BEW's offering to retailers of retrospective bonuses and other terms, and of unpublished discounts and price incentives. These practices adversely affected the ability of other manufacturers and distributors to compete, resulting in a reduction of choice of wrapped impulse ice cream available to the consumer, and in a higher level of prices than would otherwise be the case, and ultimately in a reduction of the quality of product and innovation.

On freezer exclusivity, the CC recommended that BEW be prohibited from entering into any agreement or arrangement for capacity in any freezer in any retail outlet used to stock wrapped impulse ice cream, to be reserved for BEW's products unless 50 per cent of the display space and all of the storage space of the freezer were permitted to be used for other manufacturers' products. On outlet exclusivity, it recommended that any manufacturer with a turnover of more than £10 million in wrapped impulse ice cream in Great Britain—currently BEW, Mars and Nestlé—be prohibited from entering into any arrangement with a retailer or controller of retail outlets where the wrapped impulse ice cream products of other manufacturers cannot be supplied at any outlet. On terms to retailers, it recommended that BEW be prohibited from offering to any retailer or controller of a retail outlet any scale of bonuses, discounts or rebates which operate retrospectively or under which the price for incremental sales is less than incremental costs.

On distribution, the CC believed that prohibition of the sale or delivery by BEW to retailers or controllers of retail outlets, other than national accounts, was the only action that would adequately remedy the adverse effects identified.

Referred

22 December 1998

Completed

21 September 1999

Published

28 January 2000

Inquiry Group

Graham Corbett CBE
(Chairman)

David Hammond
Peter Mackay CB
Prof David Newbery
Jonathan Rickford

British Sky Broadcasting Group plc and Manchester United PLC



Roger Munson



David Jenkins MBE

Referred

29 October 1998

Completed

12 March 1999

Published

9 April 1999

Inquiry GroupDr Derek Morris
(Chairman)

Nicholas Finney OBE

David Jenkins MBE

Roger Munson

Dr Gill Owen

This inquiry concerned the proposed acquisition of Manchester United by British Sky Broadcasting (BSkyB). At the time of the inquiry BSKyB was the broadcaster of Premier League football matches and Manchester United was the strongest Premier League club. The inquiry took place concurrently with the hearing of a case, brought by the Director General of Fair Trading, in the Restrictive Practices Court challenging the Premier League's rules relating to the collective sale of the broadcasting rights to its matches.

The MMC found that the relevant football market in which Manchester United operated was no wider than the matches of Premier League clubs and the relevant broadcasting market was the market for sports premium TV channels. Given BSKyB's very high market share, together with difficulties of entry into the sports premium channel market, the MMC concluded that BSKyB had market power in this market.

In looking at the effects of the merger on competition among broadcasters for Premier League rights, the MMC considered four scenarios, one of which it believed might be expected to occur:

- (a) continuation of collective selling of Premier League rights and no other mergers between broadcasters and Premier League clubs;
- (b) individual selling of rights by Premier League clubs and no other broadcaster/club mergers;
- (c) continuation of collective selling and other broadcaster/club mergers being precipitated by this one; and
- (d) individual selling of rights and other broadcaster/club mergers being precipitated by this one.

Under the first scenario, the MMC concluded that the effect of the merger would be to give BSKyB influence over and information about the Premier League's selling of rights that would not be available to competitors. It would also benefit from its ownership stake in the rights, providing it with a further advantage. Taken together, these factors would significantly improve

BSkyB's chances of securing the rights and would influence BSKyB's competitors to bid more cautiously, and in some cases not at all. This would enhance BSKyB's already strong position arising from its market power and its position as incumbent broadcaster of Premier League football. The effect would be to reduce competition for Premier League rights leading to less choice for the Premier League and less scope for innovation in the broadcasting of Premier League football.

The MMC also concluded that under each of the other scenarios the effect of the merger would be to reduce competition for Premier League rights, with adverse effects similar to those identified under the first scenario.

The MMC concluded that, in most situations, the merger would enhance BSKyB's ability to secure Premier League rights in future, and that this would further restrict entry into the sports premium channel market, causing the prices of BSKyB's sports channels to be higher and choice and innovation less than they otherwise would be. Reduced entry by sports premium channel operators would feed through into reduced competition in the wider pay-TV market.

The MMC also concluded that the merger would have the adverse effect of damaging British football in two ways:

- (a) it would reinforce the trend towards increasing inequalities between the larger and smaller clubs, thus weakening the latter; and
- (b) it would give BSKyB additional influence over Premier League decisions on football matters, leading to some decisions which did not reflect the long term interests of the game.

These effects would be more pronounced if the merger precipitated other mergers between broadcasters and Premier League clubs.

The MMC considered that there were no undertakings by BSKyB which would be effective in remedying the adverse effects identified. Accordingly it recommended that the merger should be prohibited.

Rockwool Limited and Owens-Corning Building Products (UK) Limited

The inquiry concerned the proposed acquisition of the stone wool manufacturing business of Owens-Corning Building Products (UK) Limited (OCBP) by Rockwool Limited (Rockwool). Stone wool is a kind of insulating material.

Rockwool already had 78 per cent of all UK sales of stone wool by manufacturers and importers, whilst OCBP had 18 per cent, mostly from the output of its plant at Queensferry. The CC found that, whilst OCBP's position was in some respects weak, the company represented a significant source of competition to Rockwool. Following the merger OCBP would continue to sell some stone wool imported from overseas suppliers or purchased from Rockwool but its sales would fall by around two-thirds. Given its sourcing arrangements, the CC did not consider that OCBP would present price competition to Rockwool.

The parties argued that various factors would constrain Rockwool's pricing: customers' ability to switch to other materials; Rockwool's inability to differentiate in pricing between customers who could easily switch and those who could not; the potential for imports; and the power of the big distributors which were the main direct customers. The CC identified a number of areas, however, where the merger would give Rockwool scope to raise prices, representing a significant minority of Rockwool's sales. Internal evidence from the companies lent support to the view that Rockwool could be expected to raise prices in some areas as a result of the merger.

In addition the CC believed some OCBP customers would face less favourable terms from Rockwool and would either incur higher costs or pay higher prices because they would have to buy through distributors. These effects, and the loss of customers' ability to choose between two UK producers of stone wool, would impair competition in the distribution and fabrication sectors.

If the merger did not go ahead the CC thought it possible that OCBP would continue to run the Queensferry plant at a reduced level or, after a time, close it; but considered it most likely that the plant would be sold to another party. Such an outcome would not have the adverse effects on competition and prices that the CC believed the merger would have.

The merger would lead to an improvement in the efficiency of production and distribution of stone wool in the UK but the CC did not expect the benefits to be passed on to consumers. There would be certain environmental benefits.

On the balance of factors the CC believed that the merger might be expected to operate against the public interest because prices for stone wool would be higher than otherwise, costs incurred by customers would be increased and competition in the distribution and fabrication sectors would be impaired.

Bearing in mind that the areas where Rockwool could be expected to raise prices represented a minority of its sales, the CC considered whether a form of price control would be a satisfactory remedy but concluded that it would not. Nor was it able to identify any other remedy, behavioural or structural, that would deal with the adverse effects identified. The CC therefore recommended that the merger be prohibited.

Referred
21 December 1998

Completed
1 April 1999

Published
7 May 1999

Inquiry Group
Denise Kingsmill CBE
(Chairman)
Peter Mackay
Kate Mortimer
Timothy Richmond
David Stark

British Airways Plc and CityFlyer Express Limited

Referred

20 January 1999

Completed

28 April 1999

Published

20 July 1999

Inquiry Group

Dr Derek Morris
(Chairman)

Robert Bertram

Anthony Clothier

Arthur Pryor CB



Anthony Clothier

This inquiry concerned the proposed acquisition of CityFlyer Express Limited (CityFlyer) by British Airways Plc (BA). BA's traditional base was London Heathrow Airport (Heathrow) where it provided a network of long-haul and short-haul services interconnecting at the airport in a so-called 'hub' operation. Because of growing congestion at Heathrow, it had, since the early 1990s, developed a similar hub operation at London Gatwick Airport (Gatwick) making use of franchisees. CityFlyer was set up by its managers in 1991 with backing from four institutional investors. It became BA's first franchisee at Gatwick in 1993. It operated services from Gatwick to 12 destinations in the UK, Channel Islands and elsewhere in Europe, with aircraft painted in BA's colours.

To assess the effect of the merger on competition, the CC considered whether services from Heathrow, Stansted, Luton and London City airports were substitutable for those from Gatwick. It concluded that this was generally not the case as far as passengers transferring between flights at Gatwick were concerned. But there was evidence of growing competition for these connecting passengers from airlines offering interconnections at major hubs elsewhere in Europe or further afield. Gatwick was also subject to substantial competition from Heathrow.

In considering the consequences of the merger for the public interest the CC looked first at the loss of competition between CityFlyer and BA on the routes served by both airlines—the 'overlap routes'. It then looked at the wider effects of BA's acquisition of CityFlyer's substantial holding of take-off and landing slots, both in terms of the extra flexibility that it gave BA to 'shuffle' slots between services and the possibility of foreclosure of further competition at Gatwick.

As CityFlyer's shareholders wished to sell the business it seemed unlikely that the status quo would be maintained. The CC concluded that the merger would have little effect on the level of competition on the overlap routes. Some of those routes were well served by other airlines from one or more London airport. Others were thinner routes and the CC considered it unlikely, in any event, that CityFlyer's services on these routes would be maintained if the merger were not to proceed.

The CC considered the effect of BA's acquisition of CityFlyer's slots to be more significant. It would strengthen BA's competitive position by increasing its flexibility to reorganize its schedules and services. This would enable it to respond more rapidly than its competitors to new opportunities or competitive threats and to absorb into its network slots which airlines with a smaller portfolio of slots and services would find it difficult to use.

The CC found that the merger would have certain benefits to the public interest. In particular, it considered that there would be a greater diversity of routes which could profitably be operated if the merger were to proceed than would otherwise be the case. But its judgement was that, on balance, the merger might be expected to operate against the public interest primarily because of its effects on competition, with the result that fares for air services would be higher than would otherwise be the case.

The CC considered and rejected the option of prohibiting the merger. It considered that the detriments could best be remedied by giving BA's competitors more scope to access the slots becoming available at Gatwick over the next five years. To this end, the CC recommended that the share of slots at Gatwick used by BA and its subsidiaries should be capped at a level of 41 per cent of available slots. To ensure that the appropriate capacity remained available to BA's competitors in the peak operating periods, the CC also recommended that there should be a cap of 70 per cent on the share of slots available in any one hour held by BA and its subsidiaries and franchisees and a cap of 65 per cent on their share of slots in any two-hour period.

Portsmouth & Sunderland Newspapers plc and Johnston Press PLC/Newsquest (Investments) Limited/ News Communications & Media plc



Judith Hanratty

Johnston Press PLC (Johnston), Newsquest (Investments) Ltd (Newsquest) and News Communications & Media plc (Newscom) each wished to acquire the local newspaper titles and related assets of Portsmouth & Sunderland Newspapers plc (PSN).

The CC was required, by the newspaper merger provisions of the Fair Trading Act 1973, to take into account the need for accurate presentation of news and free expression of opinion. In so doing, it considered the independence that the bidders gave to the editors of their newspapers. The commercial logic of regional and local newspaper publishing dictated that editors should be free to edit their newspapers in a manner that attracted and retained local readers. An attempt by a publisher to dictate or standardize the editorial content of individual titles, or to impose a uniform style and approach, would risk a loss of readership, leading to reduced advertising revenues and, in the case of paid-for titles, loss of circulation revenue. The CC found no reason to question the accuracy with which the bidders reported news or to doubt their commitment to editorial freedom. There was no suggestion that they had introduced, or were likely to introduce, standardized editorial products.

If any of the bidders acquired PSN it would increase the share of total circulation and distribution of regional and local newspapers in the UK by just under 3 per cent which the CC regarded as minor. It would neither adversely affect powerful national advertisers, nor would it affect cover prices, given the importance of retaining readers in order to maximise revenues.

None of the proposed transfers would involve the overlap of regional newspapers. Given the essentially local nature of the advertising and the importance of retaining local readers, the CC did not believe that any of the proposed transfers would give rise to regional concerns that were additional to or distinct from those raised by concentration at local level.

At the local level, the CC examined areas of overlap where at least one newspaper of a bidder and PSN had household penetration rates of 10 per cent or more. It also considered in relation to each title whether the overlap areas were part of that newspaper's core, ie the area in which the bulk of the copies were circulated or distributed and in which the interests of the local inhabitants might be expected to influence editorial policy, advertising rates and, in the case of paid-for titles, cover prices.

Johnston and PSN overlapped in several areas within West Sussex; Newsquest and PSN overlapped in one area within West Sussex and another in the North-East of England; and Newscom and PSN overlapped in two adjacent areas within south Hampshire. The proposed transfers would, to differing degrees, enhance the positions of the bidders in the areas of overlap. However, most overlap areas were not part of the core areas of the newspapers concerned and had little influence, if any, on editorial policy, advertising rates and cover prices. Where an overlap area was part of a core area, the successful bidder might be better placed to raise advertising rates and, in the case of paid-for titles, cover prices. But given the competition it would continue to face, primarily from other advertising publications but increasingly from other media, the CC regarded such an outcome as unlikely.

Efficiencies would be achieved as a result of removing PSN head-office functions; enhanced purchasing of newsprint and other materials; and savings through better use of printing resources. While there would be consequential job losses, primarily at PSN's head office, the CC concluded that the proposed transfers might be expected not to operate against the public interest on the grounds of efficiency and employment.

The CC concluded, therefore, that the proposed transfers might be expected not to operate against the public interest in terms of the accurate presentation of news and free expression of opinion, or concentration of ownership at national, regional and local level, or efficiency and employment.

Referred

5 February 1999
9 February 1999
11 February 1999
3 March 1999

Completed

12 May 1999

Published

16 June 1999

Inquiry Group

Graham Corbett CBE
(Chairman)

Judith Hanratty
Robert Kernohan OBE
Richard Prosser

Trinity plc/Mirror Group plc and Regional Independent Media Holdings Limited/Mirror Group plc

Referred

12 March 1999

Completed

10 June 1999

Published

23 July 1999

Inquiry GroupDenise Kingsmill CBE
(Chairman)

Charles Henderson CB

Dame Helena

Shovelton DBE

Prof Donald Treford



Prof Donald Treford

This inquiry concerned the proposed transfers of the newspapers published by Mirror Group plc (Mirror Group) together with related assets to Trinity plc (Trinity) and to Regional Independent Media Holdings Limited (RIM).

The CC found no evidence to cast doubt on Trinity's and RIM's policy of editorial independence for their newspapers or on their stated intention to maintain *The Mirror's* left-of-centre political stance. It considered that neither Trinity's and RIM's lack of experience of managing national newspapers nor the financial pressures that would arise from either transfer was a serious risk to the quality and survival of the Mirror Group newspapers. It concluded that neither transfer would threaten the accurate presentation of news or free expression of opinion.

The transfer would give Trinity a 24 per cent share and RIM a share of just over 17 per cent of the circulation/distribution of all regional and local newspapers in the UK. The CC decided that these shares had little relevance for competition because they added together circulation figures for newspapers serving different areas. It believed that diversity of the press would be adequately protected by editorial independence, except in Northern Ireland.

The CC considered the effects of the overlap of Mirror Group's national newspapers and the regional and local newspapers of Trinity and RIM. It decided that the extent of competition between these different types of newspaper was too limited for that aspect of the transfers to cause concern.

Transfer of the Mirror Group's newspapers to RIM would create no regional and local overlaps. Transfer to Trinity would, in the CC's view, create no significant overlaps except in Northern Ireland, where Trinity published the *Belfast Telegraph*, a daily evening newspaper, and Mirror Group published the *News Letter*, a daily morning newspaper. Both also published a number of other newspapers. The majority of the members believed that if both these daily newspapers were owned by Trinity, they would be likely to converge, leading to the loss of the *News Letter's* distinctive voice in representing Unionist opinion. One member, Charles Henderson, agreed that this was a risk but did not believe that he could have an expectation of its occurring. All members agreed that loss of the *News Letter's* distinctive voice would threaten adequate representation in the press of the range of political opinion in Northern Ireland and would be against the public interest.

The transfer would give Trinity a 67 per cent share of advertising in the regional and local press in Northern Ireland. The CC believed that this high concentration would reduce competition for newspaper advertising, leading to higher costs for advertising in Northern Ireland than would otherwise be the case. This would be against the public interest.

The CC concluded that the transfer to RIM would not operate against the public interest. It recommended that consent should be given to the transfer to Trinity only on condition that it undertook to dispose of the *News Letter* and Mirror Group's other Northern Ireland titles within six months of the completion of the transfer.

NTL Communications Corp and Newcastle United PLC

This case arose from an agreement by Cameron Hall Developments Limited, the majority shareholder in Newcastle United PLC (Newcastle United) to sell 9 million shares (6.3 per cent) to Premium TV Limited (Premium TV), a wholly-owned subsidiary of NTL Communications Corp (NTL); and further, if Premium TV made a general offer for all remaining Newcastle United shares at the same price (111.7p), to accept that offer in respect of the balance of its shareholding. Before the inquiry began in earnest, however, NTL withdrew from the acquisition and asked that the reference be abandoned.

As far as the first part of the terms of reference was concerned, dealing with possible arrangements in progress or in contemplation which could result in a merger, the Secretary of State for Trade and Industry consented to its being laid aside. However, the second part of the reference asked the CC to examine the possibility that a merger qualifying for investigation had already been created. The powers in the 1973 Fair Trading Act to lay aside references do not cover references dealing with mergers in being. And once a reference is made, then, unless it is laid aside, the CC considers that it has a duty to report. It duly did so with findings that no merger situation qualifying for investigation currently existed and that, if such a situation had existed earlier, it did not currently operate against the public interest nor could it be expected to do so.

Referred

9 April 1999

Completed

30 June 1999

Published

27 July 1999

Inquiry GroupGraham Corbett CBE
(Chairman)Peter Mackay CB
Jonathan Rickford

Alanod Aluminium-Veredlung GmbH & Co and Metalloxyd Ano-Coil Ltd

Referred

15 July 1999

Completed

26 November 1999

Published

19 January 2000

Inquiry Group

Roy Croft CB
(Chairman)

Christopher Darke
Judith Hanratty
Graham Stacy CBE



Roy Croft CB

This inquiry concerned the acquisition of Metalloxyd Ano-Coil Ltd (Ano-Coil) by Alanod Aluminium-Veredlung GmbH & Co (Alanod). The effect of the merger was to increase Alanod's share of the market in the UK for anodized aluminium coil for use in lighting, including its vacuum deposition MIRO products, from about 35 per cent to about 75 per cent.

Ano-Coil had been an effective competitor to Alanod in the UK and the CC believed that, had the merger not occurred, it would have survived as a viable competitor, at least for a reasonable period. The acquisition of the largest supplier of anodized aluminium coil for use in lighting in the UK by the second largest supplier had resulted in a loss of competition.

The CC considered Alanod's arguments that competition from other producers of anodized aluminium coil, customers' ability to switch to other materials and the scope for new entry into the market would constrain its ability to achieve prices above those that would otherwise have prevailed and ensured continuing choice for customers. While it accepted that the ability of end-users to change supplier would continue to have some constraining effect on the merged entity, the CC believed that Ano-Coil would have provided more effective competition than could be expected of any of the other anodizers in the post-merger situation. It considered that there was only limited scope for substitution of alternative materials, particularly in the short to medium term. While recognizing that there were no substantial technical barriers to entry, the CC considered that the commercial barriers were such as to deter any newcomer from entering the market.

The CC believed that the merger had diminished competition and produced a dominant supplier, having both the incentive and the means to exploit its market power by charging higher prices. The possibilities for price discrimination in a market traditionally lacking price transparency would be enhanced. In addition, with the dominant supplier being the sole source of another range of treated aluminium materials in luminaire manufacture (MIRO), greater potential existed for the tying-in of this product range with pre-anodized aluminium than would otherwise have arisen. Having regard to all these matters, prices would, in the CC's view, be more likely to be higher with the merger than if the merger had not taken place.

The CC accepted that the merger had created opportunities for cost savings by Alanod and had led to investment at Milton Keynes which together were likely to have increased to some degree the security of production and employment there. However, it did not believe that these benefits were sufficient to balance the adverse effects identified above, and therefore concluded that the merger might be expected to operate against the public interest.

The CC considered structural remedies but concluded that, in current market conditions, the prospect of a sale of Ano-Coil leading to a strengthening of effective competition in the UK market for anodized aluminium coil for the lighting industry was too uncertain. They considered as impracticable any more radical structural changes beyond divestment.

The CC considered that a package of behavioural remedies was the most appropriate means to alleviate the detriment to the public interest it had identified. It recommended that the Director General of Fair Trading should obtain a package of undertakings from Alanod and Ano-Coil covering maximum prices; continuing supply of existing grades of aluminium; not linking sales of MIRO to sales of anodized aluminium; supplying MIRO products to competitors; cancelling an agreement with a manufacturer of plant for the MIRO process; not giving retrospective rebates; and maintaining arm's length business relationships with Jordan Reflectors Limited which had ownership links with Alanod.

Universal Foods Corporation and Pointing Holdings Limited

Universal Foods (UFC), a US corporation, acquired Pointing Holdings Ltd (Pointing), a privately-owned UK company. Prior to the merger, Warner-Jenkinson Europe Limited (WJE), UFC's UK subsidiary, was the largest manufacturer and distributor of synthetic food colours to the UK food industry, with a market share of approximately 51 per cent. Pointing had a market share of approximately 23 per cent.

Both companies had much smaller market shares in respect of the supply of natural food colours, colours for use in household goods and, in WJE's case, colours for use in cosmetics and pharmaceuticals. The merger also gave rise to a minor increment in UFC's market share in supply of food flavours. The CC considered that no issues arose in these markets.

In respect of food colours the CC concluded, contrary to UFC's submission, that the manufacture and supply of synthetic and natural colours constituted separate markets, the main reason being that, although they were often technically substitutable, there were significant cost differences between the two such that, unless there were marketing reasons for doing so, a food manufacturer would have no incentive to switch from synthetic colours, which were much cheaper, to natural colours. Synthetic colours were also superior in terms of consistency, strength, stability and shelf life. On the supply side, where the processes involved in the manufacture of natural and synthetic colours were significantly different, the CC concluded that it would be impossible for a manufacturer of natural food colours to switch to production of synthetics without significant investment in plant, machinery and technical knowledge. As to the geographic market, the CC concluded that it was the UK given both the importance placed on local customer service and the fact that all the main colour manufacturers had a presence in the UK.

By a majority of 3 to 1 the CC concluded that the merger could be expected not to operate against the public interest. In support of this conclusion the CC considered that the other major manufacturers in the synthetic colours market, principally two Indian manufacturers with UK-based supplier partners, as well as an Italian firm, would continue to compete vigorously with WJE, the Indian firms having the advantage of lower production costs and prices. The CC also believed that the merger had not given WJE the ability to raise prices, as customers would be prepared to switch to other suppliers if they did. In any event the larger customers had a degree of buyer power and those that did not had the option of purchasing from distributors who did.

While Indian-based manufacturers still suffered from a reputational hurdle as to quality, the CC believed that those which met EC and US standards, such as the two major companies active in the UK, were successfully overcoming this hurdle.

Similarly, the CC did not believe that the merger would affect WJE's ability to discriminate between customers as to the price paid for the same colour, in view of the alternative sources of supply and the existence of a degree of buyer power.

Because the CC considered that importers, such as the major Indian colour manufacturers, had the ability to enter and exit the market with relative ease, the merger would not give WJE the opportunity to price aggressively in the short term so as to damage its competitors and thereby raise prices in the long term.

For these reasons the CC concluded that the merger might be expected not to operate against the public interest.

Dame Helena Shovelton dissented from some of these conclusions. She considered that it was likely that WJE would price aggressively in the short term in order to raise prices in the longer term. She also considered that customers of colour producers would be reluctant to switch suppliers; and that this feature constrained competition and acted as a significant barrier to entry, coming on top of a diminishing number of competing firms, lack of entry in the last decade by any European firm and over-capacity in the colours industry. She also considered that the Indian manufacturers suffered from serious reputational problems.

Referred

17 August 1999

Completed

23 November 1999

Published

21 December 1999

Inquiry Group

Dr Gill Owen
(Chairman)

Kate Mortimer
Dame Helena
Shovelton DBE
Prof Anthony Steele

CHC Helicopter Corporation and Helicopter Services Group ASA

Referred

17 September 1999

Completed

15 December 1999

Published

19 January 2000

Inquiry GroupGraham Corbett ^{CBE}
(*Chairman*)Paul Geroski
Richard Prosser
Arthur Pryor ^{CB}

This inquiry concerned the acquisition by CHC Helicopter Corporation (CHC), a Canadian company, of Helicopter Services Group (HSG), a Norwegian company. Brintel Helicopters Ltd (Brintel), CHC's UK subsidiary, and Bond Helicopters Ltd (Bond), HSG's UK subsidiary, were two of three main suppliers of helicopter services to oil and gas installations on the UK Continental Shelf (UKCS). Brintel and Bond together accounted for 44 per cent of the market in 1999.

The market had declined by about 40 per cent in real terms between 1991 and 1999. Further decline was forecast for 2000. Some oil and gas companies doubted that the market could now sustain three helicopter operators. The CC was not convinced that Brintel, although weakened by the loss of a major contract to Bristow, the third UK supplier, in 1998 would have left the market in the absence of the merger.

The CC found that barriers to entry had eased since 1992 when a MMC recommendation had led to a previous bid by Bond for Brintel's predecessor British International Helicopters Ltd, being prohibited. The integration of Brintel and Bond would release surplus facilities at Aberdeen Airport, the main base for servicing UKCS installations. Even if those facilities were not offered to another operator, the airport management would be ready to make available other facilities.

The CC doubted that inability to obtain helicopters would be a major barrier to entry, as a number of second-hand Super Pumas (the preferred type for the main part of the UKCS) were available. In addition, regulatory barriers to entry were now lower as a result of the liberalisation since 1992 of air transport markets within the European Economic Area. In practice, North American companies could enter the market, usually through joint ventures. The CC concluded that the market was contestable.

The CC saw no reason to believe that Brintel/Bond and Bristow would not engage in independent pricing. It concluded, nevertheless, that there was likely to be some loss of competition from the reduction in the number of current competitors.

The CC noted that the oil companies, which were the main customers of the helicopter operators, were much larger and commercially stronger organisations than their suppliers. They were determined to reduce their supply costs and had apparently been successful in doing so. They controlled the procurement process, and could and would encourage new entrants to tender for contracts if they were dissatisfied with existing helicopter operators. The threat of new entrants would influence the helicopter operators, making them less likely to take advantage of any reduction in competition arising from the merger. The CC concluded that the buyer power of oil companies would be sufficient to prevent any such reduction in competition leading to higher prices or other adverse effects.

The CC concluded accordingly that the acquisition did not operate against the public interest and might not be expected to do so.

NTL Incorporated and Cable & Wireless Communications plc



Prof Anthony Steele

The inquiry concerned the proposed acquisition by NTL Incorporated (NTL) of the cable business of Cable & Wireless Communications plc (CWC).

NTL was the second largest operator of cable telephone and pay-TV services in the UK, and CWC the third largest. The combined company would account for 27 per cent of all subscribers to pay-TV in the UK, the leading supplier of which is British Sky Broadcasting Group plc (BSkyB) with a 50 per cent share. NTL and CWC both argued that the further industry consolidation that the merger would bring about was necessary to enable the cable industry to achieve competitive scale and to compete more effectively with BSkyB.

The reference elicited strong expressions of concern about a number of issues important to the further development of the cable industry, although views were divided. Main concerns were about the merger's effect on the wholesale market for pay-TV content and on the balance of market power between pay-TV platforms and, in particular, between cable and satellite services. But there was also some concern about the effect of the merger on telecommunications services.

The CC found that NTL and CWC operated in different geographical areas, and hence the merger had no direct effect on competition between them. Nor did it find any evidence that the merger would materially reduce potential direct competition or indirect competition, such as competition amongst cable operators themselves in innovation or the copying of best ideas. One of the main concerns was whether the merger could increase or enhance the market power of the merged entity in relation to that of pay-TV channel or programme providers. The CC

did not believe the merger was likely substantially to affect the market power of NTL relative to content providers. Although NTL had the objective of securing better terms from content providers, it would continue to need to offer consumers a variety of content equivalent to that of other pay-TV platforms, and this need would increase when the introduction of digital technology increases the number of channels that can be carried. Also, the content providers would themselves have a degree of countervailing power. Nor did the CC believe that NTL's intention to acquire broadcasting rights would distort competition in the market for the acquisition of such rights.

The CC also did not believe that the merger might be expected adversely to affect competition between platforms, but rather that it was likely to enhance the efficiency with which the technological advantages of cable could be deployed. This would have a beneficial effect, particularly on competition between pay-TV platforms, which would result in benefit to consumers in the longer term. Nor did the CC see adverse effects on competition in telecommunications given the low market shares of both NTL and CWC, compared with British Telecommunications plc.

The CC therefore considered that the merger would not adversely affect competition or impact adversely on consumers. It acknowledged, however, that there was considerable uncertainty about how the relevant markets would develop. Should NTL—or the cable industry in general—prove to have market power in future, the industry was already subject to a regulatory structure with the powers to examine such issues at that time to remedy any adverse effects that might be seen to have arisen. The CC concluded that the merger might not be expected to operate against the public interest.

Referred

12 November 1999

Completed

25 February 2000

Published

22 March 2000

Inquiry Group

Denise Kingsmill CBE
(Chairman)

Robert Bertram
Christopher Darke
Prof Anthony Steele

Foreword

Brief history and background of the Competition Commission

The body originally established in 1949 as the Monopolies and Restrictive Practices Commission became the Monopolies and Mergers Commission (MMC) under the Fair Trading Act 1973. Under the provisions of the Competition Act 1998 the functions of the MMC were transferred to the Competition Commission (CC) on 1 April 1999 and the MMC was dissolved. Since 1 April 1995 the CC and the MMC have been funded by grant-in-aid from the Department of Trade and Industry (DTI). This report and accounts covers the first year of the CC's activities up to 31 March 2000.

Principal activities

The CC has two main functions: to investigate and report on matters that are referred to it and to hear appeals against decisions made by the Director General of Fair Trading (the Director) or the sectoral regulators. These are referred to respectively as the reporting side and the appeal side. The provisions of the Competition Act 1998 that set up the Appeal Tribunals only came into force on 1 March 2000. Consequently no segmental cost information is given. The CC has no power to initiate its own investigations.

The reporting side

References are made to the CC by the Secretary of State for Trade and Industry, the Director General of Fair Trading, the regulators of privatised industries or, in cases referred under the terms of the Broadcasting Act, by the Independent Television Commission or the Channel 3 licensees.

There are four main types of reference:

- (i) Mergers
- (ii) Newspaper mergers
- (iii) Monopolies
- (iv) Utility licence references

The first three types of reference are made under the provisions of the Fair Trading Act 1973. References concerning the licensing of utilities are made under the terms of the appropriate privatisation statutes. References can also be made under the provisions of the Broadcasting Act 1990 and the Competition Act 1980.

At the end of each main type of inquiry the CC submits a report to the Secretary of State or in the case of a utility licence reference to the appropriate regulator, setting out its conclusions and the evidence upon which these are based.

The appeal side

The Competition Act 1998, which came into force on 1 March 2000, prohibits:

- certain agreements or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom ('the Chapter I prohibition')
- the abuse of a dominant position in a market if it may affect trade within the United Kingdom ('the Chapter II prohibition').

These provisions may be enforced by the Director General of Fair Trading who may give directions for bringing the infringement to an end and impose penalties of up to 10 per cent of the turnover of the undertaking concerned. Similar powers are exercisable by other regulators in the fields of telecommunications, electricity, gas, water and railways.

Under sections 46 and 47 of the Act, decisions taken by the Director (or other regulator) may be appealed to an Appeal Tribunal of the CC. The Appeal Tribunals may confirm, set aside, or vary the Director's decision, or remit the matter to the Director, or make any other decision that the Director could have made. No appeals were received in 1999/2000.

Membership

At 31 March 2000 the membership comprised the Chairman, the President of the Appeal Tribunals (the President) and two Deputy Chairmen, 36 members of the reporting panel and 25 members on specialist panels (of whom 8 were also members of the reporting panel). On the appeal side there were eight members, one of whom was also a member of the reporting panel. All members are appointed by the Secretary of State for Trade and Industry. Each reporting side inquiry was conducted by a Group, normally consisting of from four to six members, appointed by the Chairman. No appeals were heard. Biographical details of CC members are given in the Review.

Review of activities

The Secretary's statement in the Review outlines the CC's reporting workload in 1999/2000. A table in the Review provides a summary of the inquiries completed and the work in hand.

Financial performance

Activities of the CC are funded by grant-in-aid provided by the DTI. In 1999/2000 the CC had an excess of income over expenditure (after adjustments) of £217,000 (1998/99 deficit £453,000) after receiving a revenue grant-in-aid of £7,999,000 (1998/99 £5,843,000) and £83,000 deferred grant (1998/99 £84,000).

Grant-in-aid received is accounted for on a cash basis while the costs are on an accrual basis. Arising from a demand from the CC's landlord, the Valuation Office Agency, to return to rent paid in advance, the CC found it necessary to draw cash from the DTI to meet this demand. This, taken with increased closing cash balances, results in a reported surplus.

The CC and the DTI agreed that the CC would operate cost effectively within its budget for the year or, if that should prove impossible, alert DTI to the need for an increase in the budget in good time. The CC received £545,000 more (1998/99 £2,118,000 less) than its allocated grant-in-aid. (See note 3 to the financial statements.) The DTI was informed in good time and periodically of the increased requirement.

A performance measure for the reporting side for 1999/2000 was agreed between the CC and the DTI. The measure took into account the need to keep available capacity to meet a normal workload and recognised the lack of influence that the CC had over its workload. It incorporated a flexible element to reflect variations in the workload. The measure included a target for efficiency improvements after allowing for inflation. The measure agreed in 1997/98 allowed the CC £6,000,000 to meet its core costs plus £10,500 for each unit of work completed, the total to be reduced by a 3 per cent efficiency gain in 1998/99 and a 2 per cent gain in 1999/2000. Work units are an assessment of the resources required to complete one month of an inquiry. A single unit per month is attributed to a merger involving only two main parties whereas two units are given to utility licence inquiries. Monopolies vary greatly in size and complexity and are assessed from one to four units per month.

In 1999/2000 the CC reporting side completed 134 work units (1998/99 108). The target cost under the performance measure was £7,417,000 (1998/99 £7,125,000). The actual cost was £7,462,000 which was 0.7 per cent above (1998/99 9 per cent below) target.

Inquiry costs

The costs of each inquiry for which a report was published during the year are shown on page 32. All the costs of the CC were attributed to inquiries or to the preparation costs for the Appeal Tribunals.

Income arising from CC activities not reported in the financial statements

Under certain Privatisation Acts a statement of costs incurred by the CC in its inquiries is provided to the appropriate regulator, who is responsible for collecting these costs from the regulated body. The regulators collect these costs and surrender the proceeds directly to the Consolidated Fund. The CC also provides a statement of the costs of merger inquiries to the Office of Fair Trading (OFT) which is responsible for setting the level of merger clearance fees. The OFT included the CC's costs of merger inquiries in the memorandum trading account used in accounting for merger fees.

Employee involvement

The CC maintains an open management style. The minutes of the Secretary's consultation group are made available to all staff. Employees are also invited to participate through the use of the staff suggestions scheme.

Employment of the disabled

The CC adheres to the DTI's policy statement set out in their code of practice on the employment of disabled people.

Payment of creditors

The CC agrees to pay all properly authorised invoices by the due date or within 30 days of receipt if no due date has been agreed. Throughout the year the average payment period was 22 (1998/99 19) days.

Signed

Penny Boys

Secretary and Accounting Officer

14 June 2000

Inquiry and development costs

| | Brought forward from previous years £'000 | Costs in 1999/2000 £'000 | Total cost £'000 |
|---|--|--------------------------------|------------------------|
| Mergers | | | |
| British Sky Broadcasting Group plc and Manchester United PLC | 507 | 3 | 510 |
| Rockwool Limited and Owens-Corning Building Products (UK) Limited | 321 | 23 | 344 |
| Portsmouth & Sunderland Newspapers plc and Johnston Press PLC | 169 | 116 | 285 |
| British Airways Plc and CityFlyer Express Limited | 286 | 162 | 448 |
| Trinity plc/Mirror Group plc and Regional Independent Media Holdings Limited/Mirror Group plc | 56 | 202 | 258 |
| NTL Communications Corp and Newcastle United PLC | | 36 | 36 |
| Universal Foods Corporation and Pointing Holdings Limited | | 242 | 242 |
| Alanod Aluminium-Veredlung GmbH & Co and Metalloxyd Ano-Coil Ltd | | 341 | 341 |
| CHC Helicopter Corporation and Helicopter Services Group ASA | | 204 | 204 |
| NTL Incorporated and Cable & Wireless Communications plc | } | 404 | 404 |
| Vivendi SA and British Sky Broadcasting plc | | | |
| Newsquest (Investments) Limited/News Communications & Media plc | } | 178 | 178 |
| Johnston Press PLC/Trinity Mirror plc | | | |
| Monopoly | | | |
| Milk | 1,435 | 29 | 1,464 |
| The supply of impulse ice cream | 247 | 748 | 995 |
| New cars | 35 | 1,417 | 1,452 |
| References laid aside and references completed in earlier years | – | 15 | 15 |
| Unpublished reports and inquiries in progress | – | 3,297 | 3,297 |
| Total costs of inquiries in 1999/2000 | 3,056 | 7,417 | 10,473 |
| Preparation costs for the Appeal Tribunals | | 448 | |
| Total costs in 1999/2000 | | 7,865 | |

The reconciliation between total inquiry and development costs and the income and expenditure account is:

| | £'000 |
|--|--------------|
| Expenditure per income and expenditure account | 7,913 |
| Interest receivable net of tax | (48) |
| | 7,865 |

Interest received has been used to reduce the cost of inquiries.

Statement of the CC's and the Accounting Officer's responsibilities

Under section 12 of the Competition Act 1998 the Secretary of State with the approval of the Treasury has directed the CC to prepare a statement of accounts for each financial year in the form and on the basis set out in the Accounts Direction on pages 46 and 47. The accounts are prepared on an accruals basis and must give a true and fair view of the CC's state of affairs at the year-end and of its income and expenditure, total recognised gains and losses and cash flows for the financial year.

In preparing accounts the CC is required to:

- observe the Accounts Direction issued by the Secretary of State, including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis;
- make judgements and estimates on a reasonable basis;
- state whether applicable accounting standards have been followed, and disclose and explain any material departures in the financial statements;
- prepare the financial statements on the going concern basis, unless it is inappropriate to presume that the CC will continue in operation.

The Accounting Officer for the DTI has designated the Secretary to the CC as the Accounting Officer for the CC. My relevant responsibilities as Accounting Officer, including my responsibility for the propriety and regularity of the public finances and for the keeping of proper records, are set out in the Accounting Officers' Memorandum issued by the Treasury and published in Government Accounting.



Signed

Penny Boys

Secretary and Accounting Officer

14 June 2000

Statement on the system of internal financial control

As Accounting Officer, I acknowledge my responsibility for ensuring that an effective system of internal financial control is maintained and operated by the CC.

The system can provide only reasonable and not absolute assurance that assets are safeguarded, transactions authorised and properly recorded, and that material errors or irregularities are either prevented or would have been detected within a timely period.

The system of internal financial control is based on a framework of regular management information, administrative procedures including the segregation of duties, and a system of delegation and accountability. In particular, it includes:

- comprehensive budgeting systems with an annual budget which is reviewed and agreed by me;
- regular reviews by me of periodic and annual financial reports which indicate financial performance against the forecasts;
- setting targets to measure financial and other performance; and
- as appropriate, formal project management disciplines.

The CC has a contract with Pannell Kerr Forster (PKF) to provide internal audit services. PKF operate to standards defined in the Government Internal Audit Manual. Their work is informed by an analysis of the risk to which the body is exposed, and annual internal audit plans are based on this analysis. The analysis of risk and the internal audit plans are endorsed by the CC's Audit Committee and approved by me. PKF provide me annually with a report on internal audit activity in the CC. The report includes PKF's independent opinion on the adequacy and effectiveness of the CC's system of internal financial control.

My review of the effectiveness of the system of internal financial control is informed by the work of the internal auditors, the Audit Committee which oversees the work of the internal auditor, the executive managers within the body who have responsibility for the development and maintenance of the financial control framework, and comments made by the external auditors in their management letter and other reports.

Implementation of the Turnbull Report

As Accounting Officer, I am aware of the recommendations of the Turnbull Committee and I am taking reasonable steps to comply with the Treasury requirement for a statement of internal control to be prepared for the year ended 31 March 2002, in accordance with guidance to be issued by them.



Signed

Penny Boys

Secretary and Accounting Officer

14 June 2000

Certificate and report of the Comptroller and Auditor General to the Houses of Parliament

I certify that I have audited the financial statements on pages 36 to 45 under the Competition Act 1998. These financial statements have been prepared under the historical cost convention as modified by the revaluation of certain fixed assets and the accounting policies set out on page 39.

Respective responsibilities of the Commission, the Accounting Officer and Auditor

As described on page 33 the Commission and its Accounting Officer are responsible for the preparation of the financial statements and for ensuring the regularity of financial transactions. They are also responsible for the preparation of the other contents of the Annual Review. My responsibilities, as independent auditor, are established by statute and guided by the Auditing Practices Board and the auditing profession's ethical guidance.

I report my opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Competition Act 1998 and directions made thereunder, and whether in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them. I also report if, in my opinion, the Foreword is not consistent with the financial statements, if the Commission has not kept proper financial accounting records, or if I have not received all the information and explanations I require for my audit.

I read the other information contained in the Annual Review and consider whether it is consistent with the audited financial statements. I consider the implications for my certificate if I become aware of any apparent mis-statements or material inconsistencies with the financial statements.

I review whether the statement on page 34 reflects the Commission's compliance with the Treasury's guidance, 'Corporate governance: statement on the system of internal financial control'. I report if it does not meet the requirements specified by the Treasury, or if the statement is misleading or inconsistent with other information of which I am aware from my audit of the financial statements.

Basis of opinion

I conducted my audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts, disclosures and regularity of financial transactions included in the financial statements. It also includes an assessment of the significant estimates and judgements made by the Commission and the Accounting Officer in the preparation of the financial statements, and of whether the accounting policies are appropriate to the Commission's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations which I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by error, or by fraud or other irregularity, and that, in all material respects, the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements.

Opinion

In my opinion:

- the financial statements give a true and fair view of the state of affairs of the Competition Commission at 31 March 2000 and of the surplus, total recognised gains and losses and cash flows for the year then ended and have been properly prepared in accordance with the Competition Act 1998 and directions made thereunder; and
- in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

I have no observations to make on these financial statements.

Signed

John Bourn

Comptroller and Auditor General
19 June 2000

National Audit Office
157-197 Buckingham Palace Road
London SW1W 9SP

Income and expenditure account

for the year ended 31 March 2000

| | Note | 1999/2000 £'000 | 1998/1999 £'000 |
|---|------|--------------------|--------------------|
| Income | | | |
| Government grant-in-aid | 3 | 7,999 | 5,843 |
| Transfer from deferred Government grant account | 14 | 83 | 84 |
| | | 8,082 | 5,927 |
| Expenditure | | | |
| Members' salary costs | 4 | 797 | 707 |
| Staff salary costs | 5 | 3,505 | 3,060 |
| Depreciation | 10 | 63 | 50 |
| Permanent diminution in value of fixed assets | 10 | 1 | 18 |
| Other operating charges | 6 | 3,547 | 2,596 |
| Costs met by the DTI | 7 | – | 47 |
| | | 7,913 | 6,478 |
| Operating surplus/(deficit) | | 169 | (551) |
| Interest receivable | 8 | 60 | 66 |
| Notional cost of capital | 8 | – | (6) |
| | | 60 | 60 |
| Surplus/(deficit) on ordinary activities before taxation | | 229 | (491) |
| Corporation tax | 9 | 12 | 15 |
| Surplus/(deficit) for the financial year after taxation | | 217 | (506) |
| Add back – costs met by the DTI | | – | 47 |
| – notional cost of capital | | – | 6 |
| | | – | 53 |
| Overall surplus/(deficit) for the financial year | | 217 | (453) |

Statement of total recognised gains and losses

There were no recognised gains and losses other than the surplus for the financial year shown above.

Balance sheet

as at 31 March 2000

| | Note | 2000 £'000 | 1999 £'000 |
|--|------|---------------|---------------|
| Fixed assets | | | |
| Tangible fixed assets | 10 | 190 | 160 |
| Current assets | | | |
| Debtors | 11 | 65 | 66 |
| Cash at bank and in hand | 12 | 250 | 98 |
| | | 315 | 164 |
| Current liabilities | | | |
| Creditors: amounts falling due within one year | 13 | (404) | (451) |
| Net (liabilities) | | | |
| | | (89) | (287) |
| Total assets less current liabilities | | | |
| | | 101 | (127) |
| Financed by | | | |
| Deferred Government grant reserve | 14 | 203 | 192 |
| Income and expenditure account | 15 | (102) | (319) |
| | | 101 | (127) |



Signed

Penny Boys

Secretary and Accounting Officer

14 June 2000

Cash flow statement

for the year ended 31 March 2000

Annual Report 99/00

| | 1999/2000 £'000 | 1998/1999 £'000 | |
|--|------------------------|--------------------|-------------------------|
| Net cash inflow/(outflow) from operating activities (note (i)) | 196 | (96) | |
| Capital expenditure (note (ii)) | (92) | (111) | |
| Return on investments (note (ii)) | 60 | 60 | |
| Taxation | (12) | (15) | |
| Increase/(decrease) in cash (note (iii)) | 152 | (162) | |
| Note (i) Reconciliation of operating deficit to operating cash flows | | | |
| Operating surplus/(deficit) | 169 | (551) | |
| Movements not involving cash | | | |
| Depreciation | 63 | 50 | |
| Permanent diminution of value of computers | 1 | 18 | |
| Deferred income—capital grant-in-aid | 94 | 113 | |
| Surplus on disposal of fixed assets | (2) | (2) | |
| Transfer from capital grant-in-aid | (83) | (84) | |
| Costs met by the DTI | — | 47 | |
| Notional cost of capital | — | 6 | |
| | 242 | (403) | |
| Decrease in debtors | 1 | 51 | |
| (Decrease)/Increase in creditors | (47) | 256 | |
| Net cash inflow/(outflow) from operating activities | 196 | (96) | |
| Note (ii) Analysis of cash flows for headings netted in the cash flow statement | | | |
| Capital expenditure | | | |
| Payments to acquire tangible fixed assets | (94) | (113) | |
| Proceeds from the sale of fixed assets | 2 | 2 | |
| | 92 | (111) | |
| Return on investments | | | |
| Interest received | 60 | 66 | |
| Notional cost of capital | — | (6) | |
| | 60 | 60 | |
| Note (iii) Analysis of changes in net funds | | | |
| | At 1 April 1999 | Cash flow | At 31 March 2000 |
| | £'000 | £'000 | £'000 |
| Cash in hand, at bank | 98 | 152 | 250 |

Notes to the financial statements

1 Period of financial statements

These financial statements cover the CC's first year of operations from 1 April 1999 to 31 March 2000. The MMC, the predecessor body, was dissolved on 31 March 1999.

2 Accounting policies

(a) Accounting convention

The financial statements have been prepared under the modified historical cost convention. Without limiting the information given, the financial statements meet the accounting and disclosure requirements of the Companies Acts and best commercial practice including accounting and financial reporting standards issued or adopted by the Accounting Standards Board. They are in accordance with the accounts direction reproduced as an annex to these financial statements.

(b) Income

The CC is financed by grant-in-aid from the DTI Class IX Vote 1. The revenue portion of the grant-in-aid is credited to income in the year to which it related. The portion receivable for capital expenditure is credited to a deferred Government grant account and released to the income and expenditure account over the expected useful lives of the relevant assets.

(c) Tangible fixed assets

(i) Expenditure on tangible fixed assets is capitalised. The main fixed asset of the CC is its computer network which is subject to replacement on a four-year rolling basis. Assets are reviewed annually using relevant producer price indices and suppliers' replacement prices where appropriate.

(ii) The legal ownership of the fixed assets was transferred from the DTI on 1 April 1999.

(d) Depreciation

Depreciation is provided on all capitalised tangible fixed assets at rates calculated to write off the cost or valuation of each asset, less any estimated residual value, evenly over their expected useful life as follows:

| | |
|------------------------|---------------|
| Computer equipment | 4 years |
| Other office equipment | 4 to 5 years |
| Fixtures and furniture | 5 to 10 years |

(e) Stocks

Stock consists only of consumable items which are charged to the income and expenditure account in the year of purchase.

(f) Notional charges

In accordance with Treasury requirements, notional charges are levied on the CC as follows:

(i) interest on capital is chargeable at a notional rate per annum on the average net capital employed in the business;

(ii) costs incurred by other Government bodies in respect of the CC's activities;

(iii) costs of litigation (see (h) below).

(g) Taxation

(i) The CC is liable for corporation tax on interest earned on bank deposits.

(ii) The CC is not registered for VAT, and therefore did not recover VAT. Expenditure in the income and expenditure account was shown inclusive of VAT, and VAT on the purchase of fixed assets was capitalised.

(h) Legal costs

The CC bears the cost of general legal advice and the DTI bears the cost of litigation which are treated as notional costs.

Notes to the financial statements

| | 1999/2000 £'000 | 1998/1999 £'000 |
|---|--------------------|--------------------|
| 3 Government grant-in-aid | | |
| The total grant-in-aid from the DTI in the year was as follows: | | |
| Allocated by the DTI from Class IX Vote 1 | 7,548 | 8,074 |
| Drawn down | 8,093 | 5,956 |
| Net grant-in-aid | 8,093 | 5,956 |
| Revenue – to income | 7,999 | 5,843 |
| Capital – to deferred Government grant reserve (Note 14) | 94 | 113 |
| Net grant-in-aid | 8,093 | 5,956 |
| The reconciliation to the cash drawn from the DTI was: | | |
| Net cash drawn from the DTI | 8,093 | 5,921 |
| Balance on account for 1999/2000 | – | 35 |
| Net grant-in-aid | 8,093 | 5,956 |

Notes to the financial statements

| | 1999/2000 £'000 | 1998/1999 £'000 |
|--|--------------------|--------------------|
| 4 Members' salary costs | | |
| (a) The cost of members' remuneration was: | | |
| Salaries | 669 | 630 |
| Social security costs | 67 | 61 |
| Pensions of retired members (see below) | 61 | 16 |
| | 797 | 707 |

(b) Members of the CC during the year are listed in the Review. Reporting members normally work one and a half days each week. Terms and conditions of appointment for members are determined by the Secretary of State with the approval of the Treasury. Appointments are normally for three years with the possibility of reappointment in line with guidance issued by the Office of the Commissioner for Public Appointments.

(c) The remuneration of members of the Council of the CC is given in the table below.

| Council members' remuneration | Age | Salary | Pension contributions | Taxable expenses | 1999/2000 total |
|--|-----|---------|--------------------------|---------------------|--------------------|
| Dr Derek Morris | 54 | 123,600 | | 11,920 | 135,520 |
| Sir Christopher Bellamy (as from 16.12.1999) | 53 | 36,271 | | | 36,271 |
| Mrs Denise Kingsmill | 52 | 72,141 | | | 72,141 |
| Mr Graham Corbett | 65 | 54,106 | | | 54,106 |
| Ms Penny Boys | 52 | 86,199 | 15,947 | | 102,146 |

The remuneration of the Chairman, President and Deputy Chairmen are included in total members' remuneration above.

Deputy Chairmen are usually appointed on a part-time basis. Mrs Kingsmill is contracted to work four days per week and Mr Corbett three days per week. The Chairman and Deputy Chairmen of the CC are not members of the Principal Civil Service Pension Scheme (PCSPS) but are pensioned by analogy to that scheme, gaining benefits commensurate with their salary and service. During the year ended 31 March 2000 payments of £65,511 (1998/99 £63,315) were made to retired Chairmen and Deputy Chairmen all of which (1998/99 £15,955) was paid by the CC. In 1998/99 the balance was paid by the DTI (Note 7). Other CC members are not in receipt of pension benefits. At 31 March 2000 the CC and the DTI had a liability to pay annual pensions of £74,994 (1999 £69,673) and lump sum payments of £32,423 (1999 £20,043). The CC is satisfied that any obligation it is unable to meet in the normal course of its activities in respect of members' pensions would be met by the Secretary of State for Trade and Industry.

Sir Christopher Bellamy is a member of the Judicial Pension Scheme and will gain the benefits of that scheme commensurate with his salary and service.

Notes to the financial statements

| | 1999/2000 £'000 | 1998/1999 £'000 |
|---|--------------------|--------------------|
| 5 Staff salary costs | | |
| (a) The cost of staff remuneration was: | | |
| Salaries | 2,830 | 2,484 |
| Social security costs | 243 | 204 |
| Pension costs | 432 | 372 |
| | 3,505 | 3,060 |

(b) Number of employees

The average monthly number of employees, including secondees from Government departments and other organisations and including staff employed on short-term contracts, is shown below:

| | 1999/2000 No | 1998/1999 No |
|----------------------------|-----------------|-----------------|
| Employed on references | 58 | 51 |
| Administration and support | 26 | 27 |
| | 84 | 78 |

Staff of the appeals side commenced late in the year and there was only one full-time member of staff in post at 31 March 2000

6 Other operating charges

| | 1999/2000 £'000 | 1998/1999 £'000 |
|--------------------------------------|--------------------|--------------------|
| Consultants' fees | 1,259 | 448 |
| Accommodation | 1,207 | 1,232 |
| Travel, subsistence and hospitality: | | |
| Members | 102 | 92 |
| Staff and contractors | 42 | 33 |
| General administration | 928 | 781 |
| Profit on the sale of fixed assets | (2) | (2) |
| Audit fee | 11 | 12 |
| | 3,547 | 2,596 |

7 Costs met by the DTI

| | 1999/2000 £'000 | 1998/1999 £'000 |
|---------------|--------------------|--------------------|
| Pension costs | - | 47 |

The CC now pays the pension costs of Chairmen and Deputy Chairmen who retired before 1 April 1995. These costs were previously met by the DTI.

Notes to the financial statements

| | 1999/2000 £'000 | 1998/1999 £'000 |
|--------------------------|--------------------|--------------------|
| 8 Interest | | |
| Interest receivable | 60 | 66 |
| Notional cost of capital | – | (6) |
| | 60 | 60 |

Interest was received on funds deposited with the office of HM Paymaster General. In accordance with Treasury guidelines, notional interest payable on capital employed was calculated at 6 per cent on the average capital employed by the CC for the year. The average capital employed was negative, leading to no charge.

| | 1999/2000 £'000 | 1998/1999 £'000 |
|-------------------------|--------------------|--------------------|
| 9 Taxation | | |
| Corporation tax payable | 12 | 15 |

Corporation tax payable was based on 20 per cent (1998/99 21 per cent) of gross interest receivable.

10 Tangible fixed assets

| | Computer equipment £'000 | Other office equipment £'000 | Fixtures and furniture £'000 | Total £'000 |
|-------------------------|--------------------------------|------------------------------------|------------------------------------|----------------|
| Current cost | | | | |
| At 1 April 1999 | 248 | 13 | 191 | 452 |
| Additions at cost | 69 | 1 | 24 | 94 |
| Disposals | (38) | – | – | (38) |
| Revaluation | (1) | – | – | (1) |
| At 31 March 2000 | 278 | 14 | 215 | 507 |
| Depreciation | | | | |
| At 1 April 1999 | 116 | 13 | 163 | 292 |
| Provision for the year | 50 | – | 13 | 63 |
| Released on disposal | (38) | – | – | (38) |
| Revaluation | – | – | – | – |
| At 31 March 2000 | 128 | 13 | 176 | 317 |
| Net book value | | | | |
| At 1 April 1999 | 132 | – | 28 | 160 |
| At 31 March 2000 | 150 | 1 | 39 | 190 |

The revaluation related to a permanent diminution in the value of computer equipment.

Notes to the financial statements

| | 2000 £'000 | 1999 £'000 |
|--|---------------|---------------|
| 11 Debtors and prepayments | | |
| Debtors falling due within one year at the end of the year were: | | |
| Advances to staff | 26 | 25 |
| Payments in advance | 19 | 21 |
| Sundry debtors | 18 | 18 |
| Interest accrued | 2 | 2 |
| | 65 | 66 |

| | 2000 £'000 | 1999 £'000 |
|------------------------------------|---------------|---------------|
| 12 Cash at bank and in hand | | |
| Paymaster General | 234 | 93 |
| Other account and cash in hand | 16 | 5 |
| | 250 | 98 |

The CC keeps as its main account an interest-bearing current account with the Paymaster General's Office.

| | 2000 £'000 | 1999 £'000 |
|--|---------------|---------------|
| 13 Creditors and accruals | | |
| Amounts falling due within one year at the end of the year were: | | |
| Sundry creditors | 392 | 437 |
| Tax on interest received | 12 | 14 |
| | 404 | 451 |

| | 1999/2000 £'000 | 1998/1999 £'000 |
|--|--------------------|--------------------|
| 14 Deferred Government grant reserve | | |
| The movements on the deferred Government grant reserve were: | | |
| Balance at 1 April 1999 | 192 | 163 |
| Add: capital grant received (Note 3) | 94 | 113 |
| Less: transferred to income and expenditure account | (83) | (84) |
| Balance at 31 March 2000 | 203 | 192 |

Notes to the financial statements

| | 2000 £'000 | 1999 £'000 |
|--|---------------|---------------|
| 15 Income and expenditure account | | |
| Balance at 1 April 1999 | (319) | 118 |
| Transfer from insurance fund reserve | – | 16 |
| Surplus/(Deficit) for the year | 217 | (453) |
| Balance at 31 March 2000 | (102) | (319) |

16 Staff and members' pension costs

Ordinary and panel members of the CC are not pensioned.

Staff of the CC are covered by the PCSPS. In the year to 31 March 2000 contributions of £431,536 (1998/99: £372,391) were paid to the Paymaster General at rates determined from time to time by the Government Actuary and advised by the Treasury. The rates for the year were dependent upon the salary of each employee and varied from 12 to 18.5 per cent of salary.

17 Capital commitments and contingent liabilities

The CC had no material capital commitments nor any contingent liabilities at 31 March 2000.

18 Related party transactions

The CC is a Non-Departmental Public Body sponsored by the DTI and funded by a grant-in-aid from that department. The DTI is regarded as a related party. During the year, the CC had various material transactions with the DTI all of which were conducted at arm's length prices. In addition, the CC had a small number of material transactions with other Government departments and other central government bodies, all conducted at arm's length prices. Other than as disclosed in these financial statements none of the CC members or key managerial staff undertook any material transactions with the CC during the year.

19 Financial targets

No specific financial targets were set by the DTI.

20 Urgent Issues Task Force (UITF) Abstract 20—compliance with millennium date changes

The CC did not experience any system problems with the change of date at the millennium and no significant costs were incurred.

Accounts Direction given by the Secretary of State

- 1** The statements of accounts which it is the duty of the Commission to prepare in respect of the financial year ended 31 March 2000 and subsequent financial years until this Direction is amended or replaced shall comprise:
- (a) a foreword;
 - (b) a statement of accounting officer's responsibilities;
 - (c) a statement on the system of internal financial control;
 - (d) an income and expenditure account;
 - (e) a statement of total recognised gains and losses;
 - (f) a balance sheet; and
 - (g) a cash flow statement

including in each case such notes as may be necessary for the purposes referred to in the following paragraphs.

- 2** The statement of accounts referred to above shall give a true and fair view of the income and expenditure, state of affairs and cash flows of the Commission. Subject to the foregoing requirements, the statement of accounts shall also, without limiting the information given and as described in Schedule 1 of this Direction, meet:
- (a) the accounting and disclosure requirements of the Companies Acts;
 - (b) best commercial accounting practices including accounting standards issued or adopted by the Accounting Standards Board;
 - (c) the accounting and disclosure requirements given in 'Government Accounting' and in 'Executive NDPBs: Annual Reports and Accounts Guidance', as amended or augmented from time to time;
 - (d) the disclosure and accounting requirement contained in the 'Fees and Charges Guides' (in particular those relating to the need for appropriate segmental information for services or forms of service provided) and in other guidance which the Treasury may issue,

insofar as these are appropriate to the Commission and are in force for the financial year for which the statement of accounts is to be prepared.

- 3** Additional disclosure requirements are set out in Schedule 2 of this Direction.
- 4** The income and expenditure account and balance sheet shall be prepared under the historical cost convention modified by the inclusion of:
- (a) fixed assets at their value to the business by reference to current costs; and
 - (b) stocks at the lower of net current replacement cost (or historical cost if this is not materially different) and net realisable value.

Jonathan May

An official of the Department of Trade and Industry

25 May 2000

Schedule 1

Application of the Accounting and Disclosure Requirement of the Companies Act 1985 and Accounting Standards

Companies Act 1985

- 1 The disclosure exemption permitted by the Companies Act shall not apply to the Competition Commission unless specifically approved by the Treasury.
- 2 The Companies Act requires certain information to be disclosed in the Directors' Report. To the extent that it is appropriate, the information relating to the Competition Commission shall be contained in the foreword.
- 3 When preparing its income and expenditure account, the Competition Commission shall have regard to the profit and loss account format 2 prescribed in Schedule 4 to the Companies Act.
- 4 When preparing its balance sheet, the Competition Commission shall have regard to the balance sheet format 1 prescribed in Schedule 4 to the Companies Act. The balance sheet totals shall be struck at 'Total assets less current liabilities'.
- 5 The Competition Commission is not required to provide the additional information required by paragraph 33(3) of Schedule 4 to the Companies Act.
- 6 The foreword and balance sheet shall be signed by the Accounting Officer and dated.

Accounting standards

- 7 The Competition Commission is not required to include a note showing historical cost profits and losses as described in FRS 3.

Schedule 2

Additional Disclosure Requirements

- 1 The foreword shall, inter alia:
 - (a) state that the accounts have been prepared in a form directed by the Secretary of State with the consent of the Treasury in accordance with the Competition Act 1998; and
 - (b) include a brief history of the Competition Commission and its statutory background.
- 2 The income and expenditure account will show, inter alia:
 - (a) the total amount of grant-in-aid or any other grant received;
 - (b) the net surplus or deficit on any revenue earnings activities that may be initiated;
 - (c) any other income (detailed as appropriate); and
 - (d) the surplus or deficit arising from normal activities.
- 3 The balance sheet will show, inter alia, the balance on the income and expenditure account, separately, under the heading 'Financed by'.
- 4 Notes to the statement of accounts will show, inter alia:
 - (a) an analysis of 'other operating charges' over appropriate headings (bad debts, audit fee, leasing charges etc). Travel, subsistence and hospitality costs for staff and Commission members should be separately identified;
 - (b) the amounts committed in respect of capital expenditure.
- 5 The Accounts Direction shall be reproduced each year as an appendix to the accounts.

REFERENCES IN THE REVIEW PERIOD

April 1999 – March 2000

MONOPOLY INQUIRIES

| | |
|--|----------------------|
| Milk | Published |
| Supply of impulse ice cream | Published |
| New cars | Awaiting publication |
| Supermarkets | In hand |
| Supply of fresh processed milk in Scotland | In hand |
| Supply of banking services by clearing banks to SMEs | In hand |

MERGER INQUIRIES

| | |
|---|----------------------|
| British Sky Broadcasting Group plc and Manchester United PLC | Published |
| Rockwool Limited and Owens-Corning Building Products (UK) Limited | Published |
| British Airways Plc and CityFlyer Express Limited | Published |
| Portsmouth & Sunderland Newspapers plc and Johnston Press PLC/ Newsquest (Investments) Limited/News Communications and Media plc | Published |
| Trinity plc/Mirror Group plc and Regional Independent Media Holdings Limited/ Mirror Group plc | Published |
| Hepworth plc and Naylor Industries plc | Laid aside |
| NTL Communications Corp and Newcastle United PLC | Published |
| Whitbread plc and Allied Domecq Retailing plc | Laid aside |
| Alanod Aluminium-Veredlung GmbH & Co and Metalloxyd Ano-Coil Ltd | Published |
| Universal Foods Corporation and Pointing Holdings Limited | Published |
| CHC Helicopter Corporation and Helicopter Services Group ASA | Published |
| NTL Incorporated and Cable & Wireless Communications plc | Published |
| Vivendi SA and British Sky Broadcasting Group plc | Awaiting publication |
| News Communications & Media plc and Newsquest (Investments) Limited | Awaiting publication |
| News Communications & Media plc and Johnston Press plc | Awaiting publication |
| News Communications & Media plc and Trinity Mirror plc | Awaiting publication |
| United News & Media plc and Carlton Communications Plc | In hand |
| Granada Group PLC/Carlton Communications Plc and Granada Group PLC/United News & Media plc | In hand |
| Independent News & Media PLC and Belfast Telegraph & other titles | In hand |

REGULATORY INQUIRIES

| | |
|---|---------|
| Mid Kent Water plc and Sutton & East Surrey Water plc | In hand |
|---|---------|



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