

## **Comments by Academic Economists: Covering Note**

The Competition Commission commissioned views from four external academic economists on four merger reports published by the Commission. The academics were each asked to read and consider the analysis contained in two of the four selected reports, and produce a written commentary on practical ways in which the analysis could be improved within the time and legal constraints facing the Commission.

The four reports considered were:

- The Littlewoods Organisation plc and Freemans plc, November 1997;
- National Express Group plc and Central Trains Limited, December 1997, (background reading: National Express Group plc and ScotRail Railways Limited, December 1997);
- British Sky Broadcasting Group plc and Manchester United PLC, April 1999; and
- CHC Helicopter Corporation and Helicopter Services Group ASA, January 2000 (background reading: Bond Helicopters Ltd and British International Helicopters Ltd, September 1992).

The reports produced by the academic economists are attached.

We have taken a number of actions which address the points identified in the reports.

- We have recently issued guidance on the approach the Competition Commission will take when investigating mergers under the Enterprise Act 2002 (available on our website <http://www.competition-commission.org.uk>). This lays out a clear and coherent framework for the economic analysis, and therefore addresses a number of the points made by the academics. In particular, the guidance sets out our general approach to defining the market, to analysing competition within the market, including the assessment of co-ordinated as well as unilateral effects, and to considering the effects of entry and buyer power.
- We will be recruiting a panel of expert economists to provide specialist economic advice to staff economists.
- We have taken a number of measures to improve the quality of decisions when choosing remedies, including developing new internal working methods to identify and analyse possible remedies and the appointment of the Chief Business Adviser with responsibility for remedies.
- Upon the introduction of the new merger regime under the Enterprise Act 2002, we intend to make a number of changes to our internal working practices which will have the effect of freeing up staff time for analysis and strategic assessment of mergers.
- We have arranged training for staff economists in quantitative methods and modelling, and training for other staff and members of the Commission in economic analysis.
- We intend to commission similar assessments on a regular basis.

We have found this a useful exercise. We have considered carefully the academics' commentaries and set out below actions that address their points. We also have the following comments on some of their detailed suggestions.

- In our view the amount of attention paid to market definition in Commission reports varies according to circumstances and is proportionate.
- We always survey relevant economic literature but references to such literature would only be included in the published report when directly relevant to the inquiry's findings.
- We are considering the use which might be made of more formal economic models and simulation analysis but we would not wish to place reliance on 'back of the envelope' estimates.
- With regard to some comments made on the National Express and Central Trains merger, in merger inquiries we can only consider the effects of the merger referred (compared to what would happen in the absence of the merger), not the effects of previous mergers and not the effects of an existing position of market power.

Competition Commission

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## **Report by Professor Steven Davies**

### **Introduction**

1. My report is in the form of four sections. The first two refer to the two cases I was asked to review in detail, and I try to respond to the specific questions asked in your briefing document. The last two comment only more briefly, and less systematically, on the other two cases. This structure makes the report longer than the requested five pages, but I think it is to be preferred to an overview which attempts a simultaneous discussion of all four cases - if only for the sake of clarity.
2. I should state at the outset that I have decided against trying to produce a 'hit list' of practical recommendations of how CC's analysis could be improved in general. Apart from anything else, the quality of analysis will inevitably vary between cases. Moreover, one can not be sure of what analysis has been conducted 'off-stage': obviously, not all the background analysis is suitable for publication. Nevertheless, several general themes should emerge from the following case summaries. Here, let me mention three.
3. One of the big issues, for me, is a continuing unease about the circumstances under which a merger is likely to have coordinated, as opposed to unilateral, effects. One gets the impression that this is treated in a rather ad hoc way, and that there may be inconsistency between cases<sup>1</sup>. I acknowledge that this is a difficult subject, not least because economic theory only takes us so far. Nevertheless, very often, it is the crucial question in any particular case: with unilateral effects only, the price raising effect of a merger may be marginal, especially where there are cost savings; but, with coordinated effects, it is almost certain that CC will rule against the merger.
4. Second, market definition *per se*, invariably attracts a disproportionate share of attention. CC (and other authorities) often goes to great lengths to justify its decision, and this must make up a large part of the cost and analytical effort in many investigations. My own view is that there is rarely an unambiguously 'correct' market definition. In practice, most products will have a distribution of rivals, with some being closer substitutes than others. In an ideal world, we would start with an open mind, attempt to estimate all cross-price elasticities, and only then draw the line at the marginal rival firm, whose strategic response will have little effect on the post-merger equilibrium. In other words, the appropriate market may only be finally resolved at a late stage in the analysis. The danger with front-loading so much effort into market definition is that there may be little time/enthusiasm left for analysing how that market will actually respond to the merger. However, let me hasten to add that I fully realise the legal obligation to sort out market definition up front, especially as this is invariably contested by the parties – so it is obviously important for CC to be seen to be 'rigorous' on this matter.
5. Third, given the complexity and special features of most cases, there must be a danger that one can get easily 'sucked in' to the case-specific details, whilst

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<sup>1</sup> Here, I do not necessarily mean inconsistency in the present sample of cases.

sometimes losing sight of the essence, or more general features, of the case. The cost of this may be that ‘every investigation is an island’, with little cross pollination or learning across cases. Precedent seems to have a low priority. I think there is something to be said for adopting a *modus operandi* which starts with an initial stage of background fact finding. But then, before embarking on substantive analysis of case-specific detail, perhaps there should be a pause for contemplation of two questions:

- “Suppose this case were to be included in some future textbook, as a case study for students, designed to illustrate general issues of antitrust and economic theory in practice. What would be those key issues, what would be the key body of theory, and what other previous cases share similar features?” (The purpose of this question would be to direct the team working on the case towards appropriate background reading.)
  - “Suppose we were to stop the investigation now. Can we make some back of the envelope estimates of the likely price-raising effects of the merger, under different scenarios, drawing only on simple theory, and only on those facts already at hand?” (The purpose of this question is to try to assess which issues really matter<sup>2</sup>.)
6. Of course, it may be that this already happens within CC investigations. Obviously, it would be “off-stage” since it would hardly be appropriate to include surveys of the literature in a published final report.

### **Helicopters: CHC and HSG (Brintel and Bond)**

#### *Brief description of case*

7. This was a merger between two of the three firms providing helicopter services for the (large multinational) oil and gas companies, from the mainland to rigs in the North Sea. The firms were Brintel (ranked 3) and Bond (ranked 2), owned respectively by CHC and HSG who both had worldwide operations in this industry. Prior to the merger, the North Sea was the only significant geographic market in which the two firms were in head-to-head competition.
8. The CC did not oppose the merger.

#### *Key features of the case*<sup>3</sup>

- This is a very small case: the turnover in what turned out to be the key geographical market<sup>4</sup> was only £123 million. In itself, the smallness of this market suggests that any direct benefits to consumers from intervention are

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<sup>2</sup> For example, it might be that one could establish that, were the merger to have only unilateral effects, the price rise might be trivial. If so, emphasis might then be placed on an analysis of the likelihood of coordinated effects. Similarly, a rough estimate of the likely magnitude of cost savings might give some feel for how much attention to devote to any claimed efficiency defence when estimating pass-through effects.

<sup>3</sup> This section reflects my initial brief reading of the report – my own assessment of the ‘essential’ features of the case.

<sup>4</sup> The Northern zone of the UK Continental Shelf.

likely to be very limited. I suspect that the costs of the investigation could only be justified if there was a *potential deterrent* effect.

- The nature of the product is essentially homogeneous
- The product is an intermediate service, supplied by one set of firms to another. So, even if the merger were price-raising, the impact on the final consumer would depend on the extent to which buyers pass on their higher costs in higher prices for oil and gas. Moreover, helicopter services are only a very tiny part of the costs of the oil companies
- This would be a merger to duopoly, inevitably raising the possibility of coordinated effects (joint dominance)
- This is obviously a case of bilateral oligopoly, and, superficially at least, one would expect most of the bargaining power to reside with the buyers, given the massive size asymmetries. Arguably, the buyers have sufficient power – whether buying from two or three suppliers to extract full monopoly rent
- However, buying power isn't necessarily synonymous with size asymmetries. As is often the case, ease of entry will be important. How easily could the oil companies set up their own helicopter services (maybe a joint venture?)
- Given that price is determined by bargaining, it is not necessarily the case that any efficiency defence should be confined to marginal costs
- To the extent that the merger would increase seller power, it may still be that any impact on welfare will be confined to *how producer surplus is distributed*<sup>5</sup>
- One other starting observation is that this comes close to a repeat referral, in that the MMC had blocked a merger between the same firms in 1992 (when they had been under different ownership.) So it is natural for us to ask whether the Commission was being time consistent. Had circumstances changed sufficiently to justify the blocking of the first merger, but agreement to the second?

#### *The Commission's analysis*

9. The Commission sets out its approach very methodically at the outset. It assesses the case by posing and answering four questions.
  - *Would Brintel (the potentially 'weaker' firm) have remained in the market if the merger was blocked?* Yes, it probably would. Although Brintel had lost a major contract in the relevant market in 1998, it had recovered part of the lost revenue from another large contract in an adjacent geographical market in the following year
  - *Were barriers so high that entry would not occur post-merger?* It judged the market to be contestable. It identified three key barriers in principle: regulatory, limited facilities at the key Aberdeen airport, and shortage of helicopters to lease. However, it judged none of these to be significant. Liberalisation of air transport markets in the EEA had lessened regulatory barriers; Aberdeen airport reported that additional facilities could be found;

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<sup>5</sup> Indeed, one might even suggest that a merger may ameliorate double marginalisation.

and the shortage of available helicopters would not be a problem so long as the large buyers (the oil companies) let their contracts in a way which assisted entrants.

- *Would the resulting duopoly materially reduce competition?* CC accepted that a reduction from 3 to 2 competitors would necessarily mean reduced competition. However, it concluded that this would be confined to a unilateral effect, since “we see no reason to believe that (the two remaining firms) will not engage in independent pricing”
- *Was buyer power<sup>6</sup> sufficient to countervail any seller power?* CC pointed to the substantial size asymmetries between buyers and sellers, and the fact that two of the buyers – BP and Shell – accounted for about half of all contracts, by value. It also pointed to “evidence to suggest that in recent years they have become more determined to use their buyer power to force down the supply costs”

10. In other words, this was not a ‘failing firm’ case; CC did not anticipate any coordinated effects; and, in any event, the absence of significant entry barriers and buyer power suggested that the merger would not act against the public interest.

*Answers to checklist questions<sup>7</sup>*

### **Market definition**

11. *Are there any procedures and/or tests that could have been used in defining the market that might have lead to a different market definition, or that would have made definition more robust? What key information would have been needed? How would that information have been obtained?*

12. In this particular case, there is no controversy about market definition. In terms of product characteristics, CC explains convincingly why there are no substitutes to helicopters. In terms of the geography, the location of airports makes it sensible to distinguish the two sectors to the UK part of the North Sea. In principle, demand side simulation offers an alternative way of identifying the relevant market (in terms of significant cross-price elasticities), but, here, there is no need, given the nature of the product.

### **More general on definitions**

13. *How sensitive were the conclusions to definitions of the market, market shares and profitability? What alternative methods could have been used?*

14. Again, I don’t think there are any interesting definitional angles in this case, except, perhaps, over-reliance on crude market shares. Transactions are effected using a variety of different contracts, over which the suppliers compete. One type of contract is the ‘core’ exclusive long-term contract. Table 4.3 (p.51) shows 24 contracts worth £117mn, of which 8 are long-term exclusive and account for £62mn. Interestingly, Bristow (the ‘other’ firm) is the only such supplier for

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<sup>6</sup> Although I am impressed with the clarity of thought in this report, I do have a minor procedural quibble. Very often, and certainly here, it is misleading to treat entry barriers and buyer power as separable.

<sup>7</sup> In this first case only, I replicate the questions asked of us in the briefing document.

Shell, and Bond, the only supplier for BP. Brintel had no exclusive contracts, and only 'pay-as-you-use contracts for the smaller buyers. Not only does this suggest a rather marginal role for Brintel, but also, it might indicate that the two major suppliers are closely vertically linked to the major buyers. I would have liked more discussion of the reasons why. Was this the deliberate policy of the buyers or market sharing by the suppliers?

### **The equilibrium**

15. *Could alternative methods have been used in reaching an expectation about the post-merger equilibrium? What about the counterfactual equilibrium in the absence of the merger? What key information would have been needed? How could an expectation that this outcome was at least 50% likely have been formed and substantiated?*
16. There was no formal modelling of the equilibrium, but it is not difficult to infer the CC's implicit model from its four questions listed in the previous section. First, on firm numbers, it establishes that Brintel would not necessarily have exited the market were the merger to be blocked. This is a sensible first step in forming the counterfactual, and means that the immediate effects of the merger can be modelled as a reduction from three to two sellers. CC suggests that this would amount to a slight lessening in competition, and it is clearly referring to only a unilateral effect (paras 2.62 and 2.63). It does go on to discuss and reject the possibility of what we would call coordinated effects (paras 2.64-2.74).
17. Its discussion covers one particular event (the sale of some helicopters from Brintel's parent to Bristow's parent) and, more generally, whether the market conditions were conducive to tacit collusion. There is also some comparison with the Norwegian sector of the North Sea, in which there were only 2 competitors, and in which price appeared to be significantly higher. This might suggest that 2 can lead to coordinated effects. However, CC seems reassured by some analysis of Lexecon which shows that this could be accounted for by differentially higher costs in the Norwegian sector. I would have liked a deeper analysis.

### **Key competition issues and the academic literature**

18. *What do you see as the key competition issues in the case? Was there an accessible literature on these issue or precedents that could have been used as reference materials? Are there well developed tests or framework for analysis that could have been used?*
19. The key issues are (i) whether to model the post-merger equilibrium with unilateral or coordinated effects, (ii) whether even duopoly sellers will be able to exercise any market power when faced with much larger oligopolistic buyers. On (i), there is a growing literature on the likely conditions for tacit collusion, and the report does pay lip service to this implicitly in paras 2.64-2.74. CC tend to dismiss coordinated effects rather readily. In other cases, this might be seen as casual. In this case, it is perhaps understandable, given (ii). I suspect that (ii) is more common than we might think. It raises rather different welfare considerations than usual. As already mentioned, it could be argued that it is of little interest how the monopoly rent is divided between buyers and sellers. Arguably, the best solution would be for the oil companies to operate their own helicopter services through a JV.

## Improving the methods and analysis used by CC either immediately or in the long-run

20. Apart from the above comments, I have nothing much to add. It seems to me that CC went about its data collection sensibly. Perhaps it would have been helpful to have more comparisons between different geographical markets in terms of how prices, margins and profits vary with the numbers of competitors<sup>8</sup>. However, this is really just confined to the Norwegian case just mentioned, and seeming acceptance of the evidence from the consultants.

### Substantial lessening of competition

21. I am still very uneasy, quite generally, with the term “substantial lessening of competition”. I suppose the obvious interpretation would be a substantial increase in price, although price will not always be the only or most important indicator – reduction in choice might also be relevant. However, for present purposes, suppose we consider only price. One framework might be to employ ‘back of the envelope’ simulation methods<sup>9</sup>

22. To see how this might work in the key Northern zone, consider the following statistics on the three competitors (1998: Northern Zone, p.58)

Firm	Turnover	Market share	Gross Profit as % of turnover
Brintel	27.3	22	10.0
Bond	27.8	23	15.0
Bristow	67.8	55	12.3
Total market	122.9		

23. I have had to use the firms’ total profits (p.38 for Bond), but profits by zone appear to be available, but not published

24. Suppose that, pre-merger, competition is Cournot, and suppose that demand is linear. It is easy to show that a reduction from three to two competitors will lead to a proportionate rise in price of  $M_X / N$ , where  $M_X$  is the exitor’s margin and  $N$  is firm numbers. In this case,  $M_X$  might be approximated by Brintel’s profit to revenue ratio (10%) and  $N=3$ . Thus, the increase in price would be 3.3%. This is the unilateral effect. To calculate the coordinated effect, suppose that the two remaining firms act as one. This can be crudely modelled as the removal of the second firm as well, leading to a further proportionate increase of  $12.3/2 = 6.1\%$  - overall a 10% increase in price.

25. Consider what these numbers might tell us. Absent cost savings, and assuming, unrealistically, that pricing is conducted in this way, the helicopter firms will raise price following the merger by between 3% and 10%. This will increase the oil companies’ costs by about £3-£10 million. As implied earlier, this particular

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<sup>8</sup> One of the attractive analytical features of any case where the product is homogeneous, but the market is geographically segmented, is that it offers the chance to compare seller numbers against price etc between localised markets. This was used most famously, of course, in the Staples/Office Depot case.

<sup>9</sup> These are discussed more fully in my forthcoming report for the OFT with Adrian Majumdar (2002).

investigation could probably only be justified if it were believed that there was an important deterrent angle.

What happened next?

26. Unsurprisingly, this market is not particularly well documented in publicly available sources. However, from a quick web search, it would appear that CHC has increased its market share substantially following the merger. Its own webpages claim that it is the “world leader in offshore helicopter support,....., capturing more than 63% of the largest offshore market in the world, the North Sea.” It also appears that the decline in demand which featured prominently in the CC report has been reversed: “In fact, deepwater expenditures are forecast to double by 2004.”

### **Agency mail order: Littlewoods and Freemans**

#### *Brief description of case*

27. This was a merger between two of the five firms supplying mail order non-food products, using the agency method. The firms concerned were ranked #2 (Littlewoods) and #3 (Freemans). Littlewoods (also in football pools and high street retail) was to acquire Freemans from Sears (a diversified retail clothing group.) Agency mail order is a traditional, and declining, sector of retailing of non-food (mainly clothing).

28. The CC suggested the merger should be blocked.

#### *Key features of the case*

29. In terms of sheer size, this is a significant case, the turnover in the relevant market (as defined by CC) was £4 billion.

30. How one characterises the **nature of the product** is, in my opinion, crucial. Mail order is part of the broader retail market for clothing, household and electrical goods. It is distinguished from the ‘High Street’ by greater convenience (in some respects). In turn agency mail order is a sub-branch, in which selling is conducted through ‘agents’ who place orders for their customers (and themselves.) CC describes this as ‘bundling’ – not only is there convenience, but also the offer of ‘free credit’<sup>10</sup>. So, clearly, agency mail order is differentiated from other forms of retail, even direct mail order. What is not so clear is whether different suppliers are differentiated from each other; but, given the use of agents and the ‘personal touch’, I suspect that they are, even if they offer near identical ranges of products in their catalogues.

31. Moving on, more formally, to market definition, the above suggests that this is bound to be contested territory. In my opinion, this is a classic example, where the need to first define the market can often constrain the direction in which the investigation will proceed. Clearly, there is local competition within agency mail

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<sup>10</sup> It seems to me that there is also an important (for some customers) factor, which is the ‘social’ nature of the transaction – the customer enjoys the social interaction, advice etc. of the agent. This may be important for the elderly customer, especially in tightly-knit lower-income communities – perhaps especially in the north.

order, but also (probably lesser) global competition with other forms of retail. Where the market boundaries are set is bound to be arbitrary. In practice, all cross-price elasticities are likely to be positive – it's just a question of how positive do they need to be for different sellers to be included in the relevant market. In an ideal (analytical) world, we would dispense with the SSNIP test and move directly to estimating the demand system.

32. Confining attention for the moment to only agency mail order, this was served by just 5 sellers. GUS was the largest (41%), and this merger would have created a new firm of roughly the same size; the two remaining firms would trail some way behind with about 10% each. Coordinated effects are possible, inasmuch as this merger would create a market structure with two firms controlling 80% of the market.
33. The market was at best static, and likely to become a declining one, especially as other forms of credit were becoming more readily available, even for lower income groups.
34. We should look at this particular merger in the wider context of other merger cases in the submarket: GUS and Empire (investigated by MMC in 1983), and, more important, subsequent to this case, Freemans and Grattan (Otto Versand), investigated by the European Commission (1999). Since the latter merger was not blocked, a comparison with the present case is clearly necessary (see below).

*The Commission's analysis*

35. As anticipated, much of the CC's report was devoted to market definition. It considered various alternatives, and ultimately chose the most narrow: agency mail order is a distinct market. The decisive factors in this judgement were (i) the use of agents, (ii) 'interest-free credit', (iii) a more 'down-market' feel, and narrower choice, in the agency mail order catalogues compared to direct order catalogues, (iv) the agency mail order prices were typically higher than high street by 15-20% (this would only be possible if they were not very close substitutes.) The background research conducted to support these conclusions included some sensible statistical analysis of the FES, analysis of a market research survey<sup>11</sup>, and a limited comparison (in-house) of the prices of 10 branded products in agency mail order and the high street.
36. CC also discussed a submission from Lexecon (employed by the parties) which argued that, even if credit-constrained consumers were entirely price-insensitive, there were sufficient non credit-constrained customers of agency mail order to render any unilateral price-rise by agency mail order unprofitable. Therefore, Lexecon suggested, agency mail order could not be seen as a distinct market. However, CC convincingly replied, showing that this conclusion could be overturned by only slightly varying the numerical assumptions used by Lexecon.
37. Having satisfied itself that this was the appropriate definition, the CC moved quickly to a judgement that a merger to something approaching duopoly in a market with significant barriers to entry would be against the public interest. It ruled out the possibility of explicit collusion, but then set out a scenario which can

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<sup>11</sup> The BMRB International Ltd survey of home shopping in 1997.

be identified fairly obviously as tacit collusion<sup>12</sup> – joint dominance (paras 2.112-2.120). There is a short discussion of whether tacit collusion is more or less likely in a market with a clear leader and four smaller majors, or in one with two equal sized leaders. The opinions on this of the firms themselves are cited at this point<sup>13</sup>. CC accepted that there might be an efficiency defence, but that this was insufficient to outweigh the likely price raising effects.

### *Answers to checklist questions*

#### **Market definition**

38. As mentioned already, the necessity to first define the market is not always helpful. This report is dominated by market definition, and this is the main area of controversy. In reality, there is no ‘correct’ answer – all retailers are in competition with each other, to a greater or lesser extent. An alternative way to proceed (conceptually) would be to first construct an appropriate demand system, encompassing all forms of selling. This could be done either with a nested logit model or with a random utility model, based on retailer characteristics – convenience, quality, availability of credit. (See Nevo, Rand 2000 or Pinkse and Slade 2000 for examples in other contexts). I would not want to underestimate the magnitude of this task, nevertheless, suppose we are able to estimate the elasticities of price with respect to these characteristics. This would enable us to estimate cross-price elasticities of demand between retailers. Amongst other things, this would provide an estimate of how much value consumers place on the provision of ‘free credit’. If this turns out to be 15-20%, then this could explain the above mentioned differential, and it would weaken the CC’s observation that the differential necessarily means agency mail order is a different market. Rather, agency mail order firms supply an extra characteristic which earns them this premium.

#### **The equilibrium**

39. Armed with a calibrated demand system, it would be possible to simulate a unilateral pre-merger equilibrium, to be compared with a post-merger equilibrium which might be alternatively, unilateral or coordinated. As already mentioned, CC more or less presumes that the post-merger equilibrium will be coordinated; although it recites a sort of standard checklist of the conditions facilitating tacit collusion, this is more a statement of faith than a convincing analytical argument. Of course, one should not be too critical since the existing literature offers no hard and fast pointers to the sorts of market structure which will give rise (with 50% certainty!) to tacit collusion.

#### **Key competition issues and the academic literature**

40. There is no doubt that the key issues are market definition and whether or not the merger will have a coordinated effect. The former is highlighted, the latter is not. Of course, there are standard literatures on both subjects, but there are not well

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<sup>12</sup> Unsurprisingly, this term is not used explicitly.

<sup>13</sup> Interestingly, the market leader was in favour of the merger, but the two smaller firms were against – if tacit collusion were more likely, all should be in favour, if more intensive competition was likely, all should be against!

developed tests. Simulation, using econometrically estimated demand systems would be one costly option.

**Substantial lessening of competition**

41. Again, let me contemplate what back of the envelope simulation might tell us about by how much competition would be lessened. The size of the agency mail order market in 1997 (p.69) is shown below.

Firm	Market share	Turnover excl VAT	Gross Profit as % of turnover
GUS	40.6	1581.8	8.2
Littlewoods	27.9	1050.9	4.8
Freemans	13.1	494.1	4.4
Grattan	10.4	499.7	3.8
Empire Stores	8.1	299.7	6.0
Total market		£3926.2	

42. Applying a diversion ratio analysis (eg Shapiro 1995), the price rise following a merger in such a market under very stringent assumptions would be:

$$Dm / \{1 - D - m\}$$

where D is the diversion ratio and m is the margin of the exiting firm. In this case,

D = 13.1/72.1 = 0.181: the proportion of non-Littlewoods customers accounted for by Freemans,

m = 0.044: Freeman’s price cost margin (approximated very badly I suspect) by its profits to revenue ratio.

43. This gives a predicted price change of only 1.18%.

44. Among the many assumptions required, we need to assume that no customers would be lost to other forms of retailing, and that all five companies are equal substitutes for each other. The basic idea here is that the merger reduces Littlewoods’ elasticity of demand because, as it raises price, Freemans no longer steals part of its market (since its prices are also rising.) The reason the estimate is so low is that margins are very low. The implication is that, pre-merger these firms have very little market power due to very elastic demand.

45. I should stress that these calculations are for illustrative purposes only. For example, I may be badly wrong in imputing the above margin. Nevertheless, they do suggest that a unilateral effect alone, without significant cost savings, would be insufficient incentive for the merger.

*What happened next?*

46. I have followed up this case using two sources:

47. *EC’s decision on the subsequent merger between Freemans and Grattan (Otto Versand), Document No 399M1527, 16.6.1999.*

48. In a much briefer (6 page) paper, the European Commission announced its decision not to oppose this merger (Freemans again, but this time with the number 4 ranked firm.) The EC does not quite come off the fence on market definition. It points out that, in earlier similar cases, it had defined the market as all home shopping, but it acknowledges CC's use of a narrower definition. However, it perhaps reveals its own preference by dwelling on the parties' argument in favour of the wider definition. Nevertheless, it argues that, however the market is defined, this particular merger would create a new entity still ranked only #3 behind GUS and Littlewoods. It concludes "Given this market structure the proposed operation would not substantially increase the likelihood of coordinated behaviour such as to create a position of oligopolistic dominance between these three players."
49. Taking the two judgements together, and accepting the narrow market definition, this sends out a message which is (at least superficially) clear: a merger which creates a duopoly with 82% is likely to lead to coordination, but one which creates a triopoly with 92% is not.
50. *Verdict Report on Home Shopping 2001 (summary posted on the web at [http://retailindustry.about.com/library/bl/q4/bl\\_ver100801.htm](http://retailindustry.about.com/library/bl/q4/bl_ver100801.htm))*
51. It appears that agency mail order has declined drastically in the last five years. "In 2000, Agency catalogues accounted for just 33% of the market, down from 39% in 1999 and 54% in 1995" Verdict accounts for this decline by pointing to a slowness to embrace new customer information software and the attraction of emerging store-based (hard) discounters' low prices. Even if true, this does not necessarily mean that the CC was 'wrong' in its market definition – as already stated, I'm not sure there is such a thing as a 'correct' market definition, and, anyway, these discounting stores appear to have been a post 1997 development. But perhaps it overstated the scope for coordinated effects following a Littlewoods-Freeman's merger.

### **The other two cases more briefly**

#### *National Express/Central Train*

52. This seems a straightforward case. CC shows that there are only "a few routes where there may be an element of substitutability between bus and rail" (p.29). Moreover, the regulatory and contractual controls exercised over Central by Centro, the Franchising Director and the Rail Regulator serve as an important constraint on the exercise of market power.
53. Although the report presents some evidence on cross-price elasticities (paras 2.77-2.82), it does not seem to play a material part in the story. CC concludes (perhaps a little limply) "We believe that... there is an element of competition between the two modes, particularly for leisure passengers". But this is not really followed up (at least in print) by any estimates of how much price might rise following the removal of such competition. This is a little frustrating, especially as we are told (para 2.77) "that when coach fares were cut (after deregulation), about half the newly-generated demand was from passengers transferring from rail". If one believes that, pre deregulation of coaches, there was no rail/coach competition in pricing, this might have been used as a natural experiment for presentational

purposes. Of course, this comment can be countered by appealing to the constraints imposed by Centro and the Regulator. But if those constraints are so binding, was there really the need for this investigation in the first place?

54. Evidently, there was a flurry of similar coach/rail mergers, including NEG's acquisition of MML and NEG/Scotrail. This is reminiscent of the many cases of predatory behaviour and/or mergers in the bus industry following deregulation. One wonders whether there might be scope for exploiting economies of scale (in investigation) by commissioning background briefing papers which could be used across a number of investigations<sup>14</sup>.
55. Although horizontal, I'm not sure that this case exhibits much commonality with the two previous ones. Market definition is not an issue. Nor, according to CC, is coordinated effects: "we are satisfied that this competition (from other TOCs) is enough to deter NEG from exploiting its position (on some specific routes)" (para 2.96) Is this justified?

*Manchester United/ B Sky B*

56. Of course, this differs from the previous cases in being vertical. It was also considerably more complicated by virtue of the uncertainty about the simultaneous RPC case. Moreover, live football is perhaps singular in the extent to which consumers have brand loyalty to the sellers - most customers attending football feel that they 'belong' to the seller – the ultimate captive audience. Perhaps the last mentioned is less pronounced when considering televised football – here, the viewing audience will not be confined to just the supporters of the participating clubs in any particular match. However, even here, personal introspection leads me to the thought that the apparently disinterested TV viewer may, in fact, be 'captive' insofar as he sees a match between other clubs through the perspective of his own club<sup>15</sup>.
57. Thus, it is fair to conclude that there is a large degree of market power, through extreme brand loyalty, and this is a basic condition of the market, over which anti-trust authorities have little or no control. In this sense, we are most definitely in a second best world. CC recognises this by correctly defining the market as televised Premiership matches, but I wonder whether the conventional arguments in favour of merger to avoid double marginalisation have been given sufficient prominence.
58. CC identifies the problem as one relating to competition between broadcasters for the rights to televise matches, and in one sense I agree with this. But, presumably, antitrust policy is only concerned with the interests of competitors insofar as this impacts on the price paid by the final consumer? If so, perhaps the question should be "is it better, for the consumer, if the upstream monopolist sells via a partly integrated downstream monopolist or through an unintegrated downstream oligopoly?"
59. Ultimately, of course, the purpose of the present review process is not to criticise CC's decision in a particular historical case, but to draw more general lessons

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<sup>14</sup> The report commissioned for the MML inquiry might be thought of as one such.

<sup>15</sup> For example, as an Arsenal fan myself, matches involving local rivals and/or teams with which Arsenal are competing for the championship are 'must see'.

about its procedures and the quality of its analysis. Elsewhere in the report, CC displays an awareness of contemporary theory (e.g. in the discussion based on auction theory), and, as usual, there is an exhaustive analysis of market definition. However, I am just a little uneasy that what might be called the traditional arguments on vertical mergers (double marginalisation and reduction of transactions costs) may have been downplayed.

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## **Report by Professor Paul Grout**

60. This note considers two investigations by the Competition Commission, CHC Helicopters Corporation and Helicopter Services Group ASA and British Sky Broadcasting Group plc and Manchester United Football Club. Comments are packaged under four headings - market definition, important factors, post-merger equilibrium and key issues. The note then finishes with two brief comments.

### **Market definition**

#### *CHC Helicopters Corporation and Helicopter Services Group ASA*

61. Market definition is frequently contentious since a finding of dominance/market power is far less likely the larger the market. The market definition in this case was determined initially by product definition and then dissected according to geographic market. As is generally the case the decision was driven heavily by demand-side factors. The market was defined as helicopter services to offshore oil and gas installations on the UK continental shelf and cut into two distinct geographic markets – Northern Zone (north of 56N) and the Southern Zone. The case decided on the product as a separate market on the basis of an implicit rather than explicit SSNIP test. The geographic split arises from the different nature of helicopters needed in the two zones and differences in onshore bases. The latter are very limited for the Northern Zone but not for the Southern Zone.

- Given the nature of the contracts signed between gas and oil companies and the helicopter companies there is insufficient evidence to conduct anything approaching a formal demand analysis of the product or geographic market. This is true for most inquiries particularly once one considers the time constraints. Therefore, although unsatisfactory in many respects, a SSNIP approach based on informed judgement rather than empirical analysis is almost all that is available. Any additional tests that can be brought to bear to test the robustness of the market definitions derived in this way are beneficial. One procedure that could have been adopted in this case would have been to identify predictions of economic relationships based on the characteristics of the separate markets and to confront these with whatever evidence is available. For example, the Northern Zone has both very limited flexibility in onshore bases and specialist helicopter equipment when compared to the Southern Zone. If these two were indeed separate markets then one would expect changes in the oil and gas market to be reflected in greater volatility in returns in the Northern Zone than the Southern Zone (where helicopters and onshore facilities have greater alternative uses). From the limited data available in Table 4.9 this prediction appears to be backed up by the evidence. The general point is that where evidence for SSNIP tests is poor then identifying core predictions arising from the characteristics of the proposed market and testing them against the limited evidence can provide a cross check on the plausibility of the definitions. Note this is separate from the normal approach (e.g., as in 3.6 of OFT Market Definition, T403) of looking at price changes to identify similar movements in price as a test whether two products are in the same market.

Here one is being more ‘proactive’. Essentially postulating the nature of the price differences one would expect to observe given the characteristics of the two markets and confronting this with the evidence. The approach would require a more formal listing of the characteristics of each market and specification of the economic implications and differences between the markets. The evidence required should be no harder to obtain than existing data.

- The geographic separation of Northern and Southern zones is based in part on product characteristics (since the helicopters used in each section differ). It would have been useful to revisit and re-test the Southern Zone definition of the market once it was separated from the Northern Zone. Once the Southern Zone is viewed as a separate entity the supply side may become important.

*British Sky Broadcasting Group plc and Manchester United Football Club*

62. The market definition was based on an explicit but non-quantified SSNIP test. The relevant broadcasting market was taken as sports premium TV channels. The relevant football market is matches of Premier League clubs.
63. Although the general approach is an explicit SSNIP test, the decision to define the market as matches of Premier league clubs rather than drill down to separate markets according to club, home or away, derby fixtures, specific fixtures, etc., is not based on a SSNIP approach. A hypothetical monopolist of any of these subgroups would probably define a market based on a SSNIP test. It appears that it the existing contractual structure, in particular the Premier league as a negotiating entity, is defining the market. Furthermore, the SSNIP test claims to be one based on the competitive price but as far as I can see no correction is made to introduce competitive prices. In this report the market definition is almost defined as being what the Commission wish to investigate rather than the result of a formal model. I have some sympathy with this approach in cases such as this. A useful exercise would be to specify more formally a reasonable range of markets that are consistent with the stated approach and to assess the robustness of the conclusions to the definition. This procedure was followed in an informal way in this case.

**Important factors**

*CHC Helicopters Corporation and Helicopter Services Group ASA*

*Market definition:*

64. This was not important in the case. Similar results would have been found if the two zones were one market or if the non-Northern Zone market was far broader.

*Market shares:*

65. Market shares mattered in that neither party was ‘too’ large. In particular, if CHC and HSG were very large in aggregate there would probably have been greater concern.

*Profitability:*

66. The absolute level of profitability was not an issue. However, the fact that profitability overall was falling and that profitability for one party was falling rapidly was a factor in the Commission approving the merger.

*British Sky Broadcasting Group plc and Manchester United Football Club*

*Market definition:*

67. This was not important in the case. Similar results would have been found unless the market definition was considerably broader.

*Market shares:*

68. Market shares mattered in that BSKyB market share counted heavily against them.

*Profitability:*

69. Profitability was not a large issue.

70. The results in these two cases appear to fit a general picture:

- market definition is not important unless plausible alternatives can have a very large impact on market share
- profitability is not a major driver
- market shares are extremely important.

### **Post merger equilibrium**

*CHC Helicopters Corporation and Helicopter Services Group ASA*

71. The post merger market assumed two firms competing fairly strongly for business from cost conscious oil and gas companies. This was based loosely on the ongoing three firms situation that exhibited constant or falling profit. However, the three-firm equilibrium implicit in the report did not explain why one party (Brintel) was being squeezed out the market. Until one had a clear view of this it is worrying to carry over the three firm situation into the two firm world.

72. An alternative scenario would have the two companies (Bristow and the new joint company) implicitly colluding. One of the parties would be stronger than the other. A central arrangement pre-merger was that CHC (Brintel) sold 12 helicopters to the market leader OLOG (Bristow). This allowed CHC to finance its takeover of HSG (Bond). One interpretation of this strategy is that by joining together, CHC and HSG take the spare capacity out of the Northern Zone thus avoiding a costly price war until Brintel finally exited the market. Selling the helicopters to OLOG allowed the market leader to bear the main cost of this exercise and provided sufficient capacity for the market leader to police the implicit collusion (a strategy consistent with modern game theory models of punishment).

73. The Commission assessed the price of the trade and decided that the sale was ‘a normal commercial deal in which both sides sought to secure the maximum business advantage for themselves’ (2.67). Further information and in particular the timing of actions and the knowledge of the parties, e.g., how much OLOG and others were aware of the possibility of a deal and that the purchase of the

helicopters were central to any arrangement between CHC and HSG, would be useful. Further analysis of this in the context of Bristow's ability to punish and absorb spare capacity would have been useful.

74. It would also have been useful to look further at the market patterns elsewhere in the world in some detail to identify models that may be plausible post-merger.
75. Finally, some consideration from the oil companies' side – notably in the context of build versus buy literature – may have been enlightening.
76. The counterfactual is heavily influenced by whether Brintel would leave or not. The Commission took the view that they were unlikely to. Indeed, CHC's wish to buy HSG indicates their desire to stay in the market. Against this scenario the merger may have not significantly lessened competition in terms of the long run equilibrium but may have significantly lessened competition compared to the over capacity/low price equilibrium that may have happened in the immediate future if the merger had been disallowed.
77. It is not clear whether one needs attach a 50% probability to the counterfactual. If Brintel exits the industry then the counterfactual may have looked little different from the post merger situation. If Brintel do not exit then it may be very different from the post merger situation. Whether the non-exit case is 40%, 50% or 60% probable may have little impact on the final decision.

*British Sky Broadcasting Group plc and Manchester United Football Club*

78. The counterfactual equilibrium in the absence of a merger in this case is relatively straightforward because it would have been reasonable to suppose that there would be no immediate changes to the status quo if the merger did not happen. In the status quo BSKyB had an 'already strong position arising from its market power as a sports premium channel provider'. Furthermore, BSKyB is likely to have a greater than 50% chance of retaining its successful bid for Premier League football.
79. The core competitive impact was the extent that a merger would reduce the payments to the Premier League. The probability that the Premier League will receive less money in a post-merger situation is likely to be well in excess of 50%. The report addressed these issues particularly the effect on bidding strategies in detail. One way of estimating a probability would be to outline the base post-merger case and then identify which critical parameters, e.g., new entrants, etc. would have to change to reverse the result and try to assess the probabilities that these events occur. In the context of this case this process seems to be unnecessary.

**Key competition issues**

80. The key competition issues in both cases have been stated in the previous section. However, in both cases there were secondary but significant competition and public interest issues that were not considered.

*CHC Helicopters Corporation and Helicopter Services Group ASA*

81. A particular feature of this case is that the failing company ‘raided’ the more efficient company. That is, Brintel, which had been do so badly that it had no presence in Southern Zone after 1995 and performed so badly in the Northern Zone that its share had fallen from over 30% to 12% in two years, was taking over Bond which had substantial and growing market share. The current government’s heavy emphasis on the new ‘competition agenda’ is justified through appeals to its impact on productivity. It is interesting therefore that this merger appeared to be working in the opposite direction and that this was not a central part of the report. I would have expected a detailed account of the decline in Brintel, the comparative rise of Bond and the processes by which CHC would expect to prevent a recurrence of Brintel’s failings. This has clear competition effects since a weak Brintel/Bond would leave Bristow as a dominant leader and public interest consequences since protecting Brintel at a cost of overall inefficiency in the market place is not in the public interest. Under the new significant lessening of competition approach only the former would be valid.

*British Sky Broadcasting Group plc and Manchester United Football Club*

82. A particular feature of the BSKyB case is that the finance of the Premier League is passed on to soccer clubs and manifests itself in higher wages and transfer fees. This makes it extremely hard to define the competitive price when it comes to defining a market. Furthermore, monopoly power in the hands of BSKyB could manifest itself in terms of lower wages since the Premier League’s monopoly position has a countervailing power. Has this obviously significantly lessened competition?
83. At a theoretical level the ability of firms with monopoly power to reduce input prices makes the conventional SSNIP test inadequate. A hypothetical monopolist may well have significant effects on competition and the public interest even though a conventional SSNIP test fails to identify the activity as a market.

**Tangential suggestion**

84. With the greater emphasis on remedies in merger cases within the Competition Commission it is important to ensure that the best remedies are available. It is sometimes stated that the Commission does not provide enough innovative remedies and fails to achieve the best competitive mix. Part of the problem is that remedies appear late in the day in any investigation, even where it is clear early-on that there are problems, and this limits scope for correct analysis and assessment of all remedies. One potential is to try to bring remedies into the process at an earlier stage to allow for greater discussion and analysis of alternatives. Clearly this needs to be conducted in a hypothetical manner (this is the case even under current arrangements).

**Substantial lessening of competition (SLC)**

85. Although I do not like the ‘factors’ approach I can’t see any way of doing this other than to have a list of relevant factors that affect competitiveness and a list of

typical potential abuse categories. If there is a significant worsening of several of these factors and increased likelihood of a particular abuse as a result of a merger then this would be a significant lessening of competition although there should always be scope to trade off items against each other. The problem with adopting a more specific model based approach is that it runs into the problem that many modern industrial organisation models are sensitive to assumptions and the specifics of the model. Essentially, the notion of SLC cannot be fully divorced from a market power debate which also takes a list based approach. Of course, there is clearly an emphasis in SLC about the likelihood of that power being used unlike existing market power analysis in competition policy which is a separate stage before the assessment of potential abuse. The formal finding of SLC would then consist of four relatively explicit stages:

- description of the post merger and counterfactual equilibria
- mapping from these onto the 'list'
- comment on likelihood of outcomes
- final assessment

## **Report by Professor Norman Ireland**

### **Preface**

86. Parts I and II represent my notes on reading the two reports assigned to me. Part III considers the two reports from the standpoint of the kind of questions I was asked to address, and also includes brief mention of the other two reports from reading of the summaries only. Clearly, no reading of the reports can be the same as attending the hearings and discussions themselves, and so apparently clear criticisms may in fact originate from my many misunderstandings or from the desire to set up straw men. Indeed, the two Inquiries I considered in detail had unconventional elements which made them difficult to fit within any standard model.

### **I National Express and Central Trains**

#### *The case and issues*

87. NEG control two businesses: a network of long-distance coaches (NEL) and buses in the West Midlands (WMT). The winning of rail franchises for Scotrail, Central Trains (CT), North London Trains and Midland Main Line (and eventually others) meant that these train operating companies would become part of the NEG group. The Central Trains merger was also problematic from a competition point of view due to the possible loss of consumer choice within the West Midlands area. To address concerns, the role of the WMPTE (Centro) in supplying rail services within the West Midlands, using Central Trains as its agent, was important, and the setting out of a schedule (Schedule 14) of provisions to reduce the possibility of anti-competitive behaviour, for the Rail Franchiser, was in effect the result of Centro lobbying. The monopoly issues were thus
- a. Was the joint ownership of Central Trains and NEL against the public interest?
  - b. Was the joint ownership of Central Trains and WMT against the public interest?
88. However, the case was complicated by the joint consideration of the NEG-ScotRail merger (here the point was like (a) and a divestment of a part of the coach business was called for) and the prior consideration of the MML-NEG merger (MMC, 1996). In the latter, price and other guarantees were required rather than divestments. (Note: I have not thought it necessary to track the implementation of these outcomes since presumably this was not known at the time of the Central Trains enquiry.)

#### *The approach*

89. The two issues (a) and (b) were considered separately. Also there were few references to the other MMC NEG inquiries. The approach to (a) was to identify how many “overlaps” in provision existed between CT and NEL. Then to consider the likely competition from other coach / TOCs. Mostly however the main

competition was considered to be the car, and so the monopoly power identified was thought to have little potential impact. Thus the inquiry did not recommend any divestments of coach services (unlike the Scotrail case where Citylink coach services were to be separated from NEL). Some evidence on cross elasticities of demand from the MML inquiry were referred to, but potential competition from other TOCs made refinements difficult.

90. The approach to (b) was to assess the extent to which rail and bus (also the Midland Metro) served the same market. The different route systems suggested relatively little substitution possibility. The fact that Central Trains' fares on Centro routes were set by Centro removed some of the potential for strategic price adjustments. Entry inhibiting mechanisms such as consumer information restrictions are disallowed by the Schedule 14. Evidence was presented to the effect that most rail use was for commuting, whereas most bus use was for leisure purposes, and that the length of bus journeys was much less on average than rail journeys.

#### *Evidence*

91. Submissions were received from a wide range of interested parties but issues raised were largely self-interested. Some points which seemed to occur regularly were the importance of the Schedule 14 and of Centro) in avoiding some of the market power effects, the use of WMT Travelcard rather than all-bus travel cards, and possible anti-competitive behaviour relating to small bus companies. In terms of (a) some concerns related to routes in Wales where alternatives to NEL and CT were sparse, rather than in the Birmingham-Sheffield region where alternative TOCs were present to some extent and likely to increase in routes offered.
92. Data tabled showed car, bus and train modes of peak travel (Table 4.2), revenue of NEG and CT (Table 4.4), bus operators share of routes (Table 4.5), WMT's fare structure (Table 4.6), some rather elderly data on the mode of the next stage of rail journeys (Table 4.8), and more recent survey of alternative forms of transport for long-distance travel (Table 4.10). Tables 4.11 – 4.13 give information on the market shares along particular overlapping routes as well as some limited comparison fares between rail and coach. Own and cross-price demand elasticities estimated in a previous study were reported (Table 4.9).
93. No specific estimation of demand effects were made, although these may not have illustrated significant phenomena (the low cross-price elasticities and near-unity own price elasticities reported in Table 4.9 appeared to be accepted measures).

#### *Analysis*

94. The careful analysis of points where CT and NEL were the main provider suggested that the car was the main source of competition for all public transport in inter-urban travel. Other TOCs were active on most of the key routes where CT were important. The Schedule 14 was accepted as a mechanism to prevent anti-competitive practices by WMT/CT in respect of other bus operators. Centro was seen as being influential in setting prices for Centro train services operated by Central Trains. The need for an "integrated" transport policy was indicated.

## *Comments*

### *Background*

95. This inquiry was one of at least 3 which considered the issue of the major coordinating and ticketing coach company being in the same Group and under the same ownership as TOCs following privatization. Issue (a) was very similar to those considered in other inquiries and a more practical process would have been to consider the operation of NEL with TOCs as a whole. Issue (b) could then have been considered separately if and only if the NEL/TOCs issue was approved. Taken one step back, the monopoly power issue of long-distance coach and bus transport being in the same hands could have been decided prior to the franchising process. On balance, it seems very strange to end up with a fragmented TOC structure but a strong coach/train relationship in terms of ownership by NEG and other operators like Stagecoach. None of this reflects the actual working practice and methods within this inquiry, but it colours the conclusions on this aspect where only evidence of major monopoly routes were being sought, and not the overall monopoly picture in the wider view. Taken one at a time, the MML inquiry, the Scotrail inquiry (which required divestment of some major inter-urban coach travel) and the CT inquiry all made reasonable decisions concerning the relatively low level of public interest at stake in each inquiry. However, whether NEL would now wish to launch a massive innovation (say (imaginatively) of interlinking fast motorway services with seamless links to individual towns or cities) aiming to increase the share of coach travel in the UK, must be in doubt.

### *Private versus public transport for long journeys*

96. The analysis of the individual route-level markets show that the coach is a small player. On the other hand it is usually the cheapest operator. Central Trains (plus through routes via NLT and MML) offer the closest competition to the coach since they use relatively slow track, compared for example with Virgin and GNER. The detailed analysis sticks to the specific routes within the CT area, (2.47-2.48 and supporting tables) and does not look at the wider picture (eg coach travel to London). The analysis is more than adequate, and no further clarity is achievable. There is no doubt that monopoly power is increased (2.79 for previous demand elasticities), but that competition from the car is very important is self-evident. Also developments in competition from other TOCs were difficult to judge at that time (and perhaps still). The monopoly power of the network provision of NEL and its impact on the difficulty of entry by other coach providers other than under contract to NEL is not so clear from the Report. It would seem likely to be problematic.

97. The report recognizes but discounts the difficulties. In particular, one could focus on the following points not covered:

- i. Car parking and coach/bus connections at train stations. An interest exists for TOCs in developing parkway / rural stations to attract car drivers away from both long-distance journeys and city centres. The issue is whether this would reduce connecting coach / bus services in city centres. The use of non-city-centres as coach / train interfaces, might also reduce the advantages of long-distance coach travel.

ii. The development of train / coach combinations (eg to airports), which bring issues of exclusion or assistance to competitors: which would the merged company find the stronger force?

iii. The Report points to “integrated transport” but at no place is there any real indication of how this would take place within the coach / rail provision. 2.100 states that NEG is well-placed to propose integration initiatives. However, it is clear that NEG emphasized that NEL and CT would act independently and play no joint strategy despite hand-waving on integration, also Schedule 14, 3.2.1, ensures no cross-information. Without cross-information and a realization and acceptance of additional market power from the merger, it is not clear that the goal of integration is at all assisted by the merger.

#### *The local bus / train competition*

98. Again, the substitutability of buses (WMT), the Metro and the CT routes is certainly limited. Clearly fares and frequencies on CT are largely set by Centro and this reduces the monopoly power of the merged enterprise. The key issue is the Travelcard, which is only usable on NEL buses, not those of other operators. Non-interavailable bundle tickets are not in the consumer’s interest relative to a card which can also be used on rival providers (greater frequency and competition). The extension to CT of such cards would disadvantage inter-available cards (Centrocard) and rival bus operators.
99. Finally, the CENTRO negotiation with CT over prices and qualities may become more difficult if alternative providers become scarcer or less suitable. The merger may have had an impact on future bargaining.

## **II British Sky Broadcasting and Manchester United PLC**

### *The case and issues*

100. The Premier League acts as a monopoly seller of TV rights. BskyB is the major buyer of sports events’ TV rights. The merger of BskyB and Manchester United would involve the merger of Manchester United whose assets exceed £70m. Issues included the Restrictive Practices case referred by DGFT relating to the monopoly approach of the Premier League. Also the wider issues of the future of UK Premiership football.

### *Approach*

101. The approach taken considers the market to be the market for Premiership football TV rights. This definition was justified on the grounds of substitutability: non-premiership games not good substitutes, etc. The vertical integration of the major buyer of sports rights and the major football club would involve BskyB in having a financial interest and privileged information in the allocation process of TV rights. The further question was whether BskyB could (further) abuse its monopoly position as a provider of programmes.
102. This approach did not really consider the need for audiences to be restricted in order to maintain the level of live attendances at premiership and other professional football games: this presumably is a key issue in the allocation of rights. Free-to-air companies cannot guarantee the maximum size of audience in

the UK, etc. BskyB's argument (2.29) that shifting competition from free-to-air to a second pay-to-view channel would have no competitive effect ignored income effects and other factors (2.32), but the effect on the price of sports rights could also be very high. Perhaps because of the RPC investigation, this kind of issue was not considered. However, future entry issues into the sports TV market should be a relevant factor, and historical records of entry make depressing reading.

103. Public interest issues relate to the competition for TV rights (essentially whether monopoly power would be transferred from Premier League to BskyB), and the effects on consumers and on the football industry (presumably for consumers of football).

#### *Evidence*

104. Considerable evidence on the possible increase of power that might be achieved by BskyB within the allocation mechanism for premier league TV rights was gathered. For example, arguments (Bulow et al) on toehold effects were considered. Also considered was the "magnet effect" of why exclusive deals might be worth more money. Evidence on the effect on "fans" via possible increased prices or quality changes (eg timing) was also considered.
105. A number of tables were informative. In particular, Table 3.15 (Manchester United revenue breakdown), Table 4.1 (pay TV viewing shares), Table 4.2 (2<sup>nd</sup> degree price discrimination by BskyB), and a number of tables showing shares of football TV. Also tables like 4.33 which shows that Manchester United only obtained 7.4 % of TV payments.

#### *Analysis*

106. Different scenarios were considered: whether or not the Premiership monopoly selling arrangements were to continue and whether or not further vertical mergers took place. Given the assumptions made about the Premiership were that it would be essentially static, the overall outcome of the merger was deemed to favour BskyB. Other aspects were less clear, but the analysis pointed towards greater inequality of the premier league clubs for the same reasons as BskyB would be favoured in the competition for TV rights.

#### *Comment*

107. The weight given to the power gain for competition for the Premier League rights seems excessive: information and toehold advantages would exist if the allocation method did not adjust. However, a move towards non-exclusivity in the auction design would gain significant bidder numbers or interest, and limits on market shares or mechanisms for extracting premium fees for large packages of matches would safeguard the Premier League's income in the long term. It seems strange that a MMC report would wish to safeguard the monopoly position of the Premiership: the key link - that the premier league acted itself in the public interest - was not pursued. If the merger progressed, the allocation method could have been designed to keep (or indeed increase) the number of bidders, and by this means might have reduced the monopoly power of BskyB in the distribution sector.
108. The weight given to consumers and the possibility of diminished opportunities to fans to see their teams had to be balanced by the likely extra opportunities to see

televised football. This did not seem to get sufficient attention. Possibly given the RPC case, there was little weight put on a scenario where vertical integration was common and where neither the League nor the channel had monopoly rights.

109. There was some reference to foreign football examples of vertical integration. These were not deemed to be particularly relevant. In terms of the principle involved, comparisons in other sports, not just football, could have been instructive, see Table 3.12.

### **III Working Methods: Analysis**

#### *Table*

110. I have attempted a concise table, summarizing the main features of the inquiries, and allocating +/- indicators for positive and negative aspects of the process.

#### *Specific questions – NEG and Central Trains*

111. There were 2 separate markets being considered (CT/WMT and CT/NEL). For CT/NEL, the market could be thought to be nation-wide networked travel (coaches versus trains) and the impact of some trains (CT plus others, including Scotrail and MML, both considered by MMC inquiries) being owned by NEG assessed. Key information would then be how many users would consider prices of both before deciding which to choose. When a series of MMC inquiries are undertaken with a common party, it would seem reasonable to revisit and confirm or overturn previous decisions: thus if A and B merged in one year and A and C merged in the next then should not the comparison status quo in the second inquiry be independent A,B and C? Presumably this would be a significant change to process.
112. Although cross elasticities were referred to, their relevance was unclear (NEG/MML inquiry had more details and pensioners/students elasticities) and they were assembled from previous work. Also prices of rail journeys had been increased significantly prior to privatization, so that monopoly prices may have been largely already achieved. Tests of the “small but significant non-transitory increase in price” (SSNIP) variety may thus suffer from the fact that the current price is not the competitive price. (Although I would not claim that the report suffered from the Cellophane Fallacy: there is no real evidence of what the competitive rail prices were in the re-organized rail industry. (for Cellophane fallacy see OFT, EDP2, 2001.)) The market definition used was refined to those specific routes where NEG would have little competition. Market dominance was however then disregarded since the proportion of business along these routes was very small and not very profitable relative to all activities.

## SUMMARY TABLE

Stage	Central Trains and NEG	BSkyB and Man Utd
<i>Approach</i>		
Basis of inquiry	Market share in WMidlands	Asset value of Man Utd
Current Market	2: CT vs coach & CT vs WMT buses How balanced / aggregated? (-)	bi-lateral monopoly: BskyB vs Premier League but free-to-air competition? (-)
Complications	New TOC franchise  Earlier and parallel MMC inquiries (-)	RPC investigation: 4 scenarios appropriate?(-)
<i>Evidence</i>		
Monopoly power	Argument of limited substitutability of train for bus, coach (+) Written and verbal evidence consistent (+)	Argument of no substitutes: unique (+)  current evidence of BskyB monopoly (+), particularly at wholesale level
Entry barriers	Evidence of higher entry barriers post merger from WMT/CT (+)	Evidence of higher barriers post merger  effect on Premier League monopoly and distributional issues for football revenue (+) But Premier League objectives (?)
Market Innovation	Not thoroughly considered (-)	Digital innovations: effect unclear (-)
<i>Analysis</i>		
Testing	Most evidence uncontroversial Evidence of Centro regulation and Schedule 14  accepted without questioning how  alternative provider could be found, how value for money could be assessed (-);	Most evidence uncontroversial Model presented by BskyB criticized (+) evidence from Premier League weak (-) relative to Inquiry conclusions
New analysis	none  No real analysis of benefits from integration	none, except for multiple scenarios due to RPC investigation Auctions and toeholds application (+)
Presentation	Complete, but could have done with background statement of relevant MMC inquiries (-)	Long
Major Strengths/ Weaknesses	static (-): no consideration of implications for further coach/train links  market considered in overlapping links – not really network as a whole (-)  Centro regulation and Schedule 14 – lacking force and clarity (-)  future entry and innovations (-)	dynamic (+): precedent considered important factor (+)  identification of “football” as consumers’ interest (?) but no clear statement from Premier League (-)  Generally, unable to assess status quo due to RPC investigation (-)  Selling mechanism redesign possibilities not explored (-)

113. With regard to CT/WMT, WMT was a profitable near-monopoly. CT's additional market power was disregarded since many routes in the West Midlands area were controlled by Centro. Over time, Centro's ability to prevent rents increasing looks doubtful (where is the alternative provider?). Similarly agreements with the Rail Franchiser look difficult to enforce. The counterfactual would be if either NEG's coach business was divested or NEG was not awarded the CT (and other) rail franchise. Then competition between CT and NEL would have been assured (although the divestment option would still have left the WMT bus dominance augmented by the CT merger).
114. The key competition issue in this case was that the CT franchise was one of a number of TOC franchises being offered to coach/bus companies. To allow cross ownership would likely to be considered a "substantial lessening of competition" since for many consumers these are the only options available. A further issue is the incentive for innovation, particularly in the coach network, if the larger scale train system is heavily owned by coach operators. Also, the use of non-interavailable travelcards on the WMT/CT system seems likely to increase NEG's monopoly. Similarly the operation of the coach network by NEG heavily committed to rail suggests that coach entry will be hindered. The prospects for future entry into these markets appear thin.
115. The goal of integrated transport seemed to have no real substance within this report.

*Specific Questions: BskyB and Manchester United*

116. The market for TV rights for sports events, specifically Premier League football is very closely defined. The question of what is a reasonable substitute may have few answers from many consumers, and thus can be considered a market, but for others there are definite bounds on what people are willing to pay (BskyB do not have that large a market for its sports channels: this presumably makes it a good buyer of the rights from the perspective of the football clubs' attendance figures). Since the market for these rights is controlled and designed by the Premier League in a collective sale, the market power is mostly on the side of the seller. It is perhaps strange that in this report (1) the seller (the Premier League) does not oppose the merger, (2) the Premier League clubs giving their views do not oppose the merger. The situation was complicated by the seller's monopoly power being challenged within the Restrictive Practices Court at the time of the Inquiry.
117. Since the market was one designed by the seller, the argument that the merger would undermine the seller's ability to extract rent from the buyer is questionable. The notion that proper rents could be extracted year after year from the same buyer ignores the need to attract other potential buyers to the table. The Premier League would need to react to this by splitting the allocation so that some of the rights were available for other buyers. This would alienate the "magnet" principle, but would ensure that other bidders turned up. The Spectrum auctions around Europe are evidence of this from both sides. Hence, the auction could be designed to eliminate BskyB from screening matches involving Manchester United, permitting an upper bound on the number of matches screened by BskyB and so forth. All this would be in the Premier League's interest since all but one of the clubs would not wish to grant Manchester United any favours. Other vertical

mergers could be treated the same way. The outcome would be a much more robust market mechanism since more buyers would be involved. This argument relates to the peculiar artificial auction-room market pertaining in this situation: it would have given rise to the view that competition might have been increased rather than lessened by the merger. What was not sustainable was the sale of rights in total by the Premier League. That led to a countervailing monopoly which could share much of the available rent. Both the argument used in the Inquiry Report and the above alternative do not lay stress on market definition or market power, but rather on the underlying effects on competition. Both arguments reflect Salop's (*Antitrust Law Journal* 2000) notion of placing emphasis on first principles of competition analysis. However the arguments reflect different aspects of the underlying game, and hence indicate different outcomes.

### *Remaining Points*

118. The use of regulators and “schedules” in the CT case and the possible (but rejected) use of restrictions in involvement of rights allocation in the BskyB case are obvious compromises, but their enforcement always seems delegated to other agencies (Centro, Rail Franchiser, DGFT, etc). The information necessary to enforce price or quality levels, or indeed bidding propriety, is unlikely to be present. In fact it is an admission of lack of competition that requires such information and regulation. Clearly, referrals to the MMC/CC will always be ones where the outcome is not clear (else the outcome will be predicted and either the merger won't take place or no referral will be made). It is an important compromise to be able to set side conditions for the merger to proceed. When these conditions imply observable actions (eg divestments) then this makes good sense and can on balance avoid a lessening of competition. However, it should be considered whether those undertakings given by merger parties, which are not fully observable, can be investigated by reference to a common complaint/inquiry protocol, involving the CC.
119. In order to assess whether there has been a lessening of competition it is important for consumers to be able to make at least the same references to competing prices. In the CT case, this was not so since rail travel could no longer be considered as an independent alternative to coach or bus. One could not say that “train fares are good value since they are not that much dearer than coach/bus” since both absolute levels might have increased due to the common monopoly.
120. I was also asked to consider the summary reports of Littlewoods and Freeman (November 1997) and CHC Helicopters and Helicopter Services Group (January 2000). The former seems a very conventional case where the special uses of the market (eg for old and poor people) was recognized, and where the need for comparison prices of other mail-order companies was noted. The former reversed a previous decision largely on the grounds of reduced scale of operations, physical (airport facilities) capacity to permit new entry, and the economic power of the customer base (oil firms). The first two factors seem largely contradictory: would a firm enter a declining market just because the current incumbents are charging high prices? The third factor does not seem to prevent a SSNIP, and the possibility of permanently higher prices. Should we not protect oil companies because they are powerful? Is this consistent with the market analysis of the Premier League?

## **Report by Professor Michael Waterson**

121. I was asked to comment on two reports, Littlewoods and Freemans and National Express and Central Trains, under a number of headings. My approach below is to take each of the reports separately and comment on each using the suggested headings, then to make some more general comments towards the end of my report.

### **Littlewoods and Freemans**

#### *Procedures in defining the market:*

122. The definition of the market is key to the analysis and the outcome in this case, so that it is important that the method be robust. The merging parties of course argue for a broad definition, whilst the Commission argues for a narrower definition. There is a strange element in which Lexecon, who specialise in market definitional questions, make a purely hypothetical argument about price changes and their resultant effects (para. 2.100). Yet it would seem that the appropriate test in this market is the SSNIP test and that the information to perform this test is probably available to a reasonable degree of confidence. Paragraphs 2.96 to 2.98 of the report are germane here, also para 6.83 on the individual firm's demand curve. Clearly, this information was considered in the course of determining the market definition, but the test was not (explicitly) performed, or at least reported. Other information, relating to actual pricing by one of the firms (para. 6.39), might also have been adduced at this point but was not.

#### *Importance of market definition:*

123. Market definition was very important to the conclusion reached and market shares were important also. On the other hand, profitability (particularly very recent figures) was not considered of much importance. Essentially, an argument is made (para. 2.116) about the increased likelihood of tacit collusion between the two major players (GUS and Littlewoods/ Freemans) resulting from the merger, although it is couched in somewhat vague terms. The argument is not particularly developed. I cannot see obvious alternative lines of argument that do not involve some examination of price movements over time, something that is probably ruled out by the timing of the inquiry. However, see also "Key competition issues" below.

#### *Alternative methods regarding equilibria:*

124. Presumably, the alternative method of analysing what would happen in the post-merger equilibrium would be to look at what has happened in the past under previous consolidations. The obvious suggestion arising from this approach is that Littlewoods would produce a clone catalogue labelled Freemans, which would reduce costs but also revenues. Under either this scenario, or the one in which the Freemans catalogue retains a separate identity attracting relatively younger consumers (the one the parties propose), the promises regarding employment seem surprising and remain unchallenged explicitly in the report. The promised 1000

extra jobs (para 2.125) add an additional 6.5% to the workforce as a result of a cost reduction of 1.8% of sales revenue (para 6.13).

125. The counterfactual equilibrium is fairly obvious- Freemans is sold to N Brown. Could N Brown be relied upon to explain fully to the Competition Commission what it would intend to do with the business, should it indeed acquire Freemans, so as to make a comparison between equilibria in which Littlewoods or alternatively N Brown take on Freemans feasible?
126. In terms of substantiating the outcome(s) and their likelihood, I would have thought the views of the various parties represented in chapters 5 and 6 on both the proposed merger and the counterfactual, taken together, would materially assist. The parties (the merging firms, the obvious alternative bidder, the other players in the market) could be asked about their views on the various possible outcomes and a consistent story woven from their responses, I assume. The views of other interested parties could be used to corroborate/ calibrate these findings.

*Key Competition issues:*

127. The key issue is what would happen to oligopoly competition in the Agency mail order market as a result of the merger between the parties. Would prices rise significantly? Would the outcome be welfare-inferior to the alternative of a sale of Freemans to a new operator? This is quite a straightforward issue and there is a (general) literature that bears fairly directly upon it. This is the literature following Salant, Switzer, Reynolds (QJE, 1983) and Farrell, Shapiro (AER, 1990). In particular, Farrell, Shapiro consider the welfare effects of horizontal mergers in a manner that should be fairly directly applicable to the case under consideration. For example, their proposition 5 would seem in principle applicable to test whether the merger raises welfare. More generally, the report shies away from developing a framework within which to model the likely outcome of the merger.

*Other suggestions:*

128. The obvious suggestion is that a broad model of the outcome of the merger be developed using the views of the parties as a guide.
129. Issues that remain somewhat inconclusive include the long discussion on APRs and credit, the extent of price differences and in particular the degree of collinearity between different companies in terms of particular price movements over time. The latter is not explored. The Littlewoods explanation that it has a number of essentially identical catalogues “largely for historic reasons” (para 3.65) remains unchallenged.

**National Express and Central Trains.**

*Procedures in defining the market:*

130. There is a strange element to this report in that the market seems to be defined in the reference (Appendix 1.1) as the West Midlands (WM) but then considerations beyond the WM are expressed at length in the report. To my mind, the definition of WM as a distinct travel market is quite robust and too much

consideration outside it is misdirected effort that could have been better spent on an examination of WM market. It could be argued that the WM is too broad, and that for example, Coventry might be excluded as being in a separate market. However, even if this were done, the conclusions that would then be drawn would be unlikely to be materially affected.

*Market definition:*

131. Market definition is relatively unimportant to the conclusions reached in this report, in my view (in contrast to the other report). Market share would have been very high regardless of the precise definition. In making the estimates of market share, the only real issue is the treatment of Centro revenue (para 2.6), which is collected by the merging parties but is not subject to appreciable revenue risk by them. Profitability is an important consideration here, but not particularly in reference to the merger. It seems that WMT buses (a subsidiary of National Express) is a very profitable business by the standards of such operations (para. 3.50) but that Central Trains is loss making (Table 3.5, but note that the relevant data has in large part been excised). Rather than being defined in the reference, the market could have been defined through the Competition Commission study itself. This would have required data on price responses (elasticities) as discussed below.

*Alternative methods regarding equilibria:*

132. What happens post-merger? Essentially, this question is addressed in para 2.69. In this sense, it might be said that there is a behavioural remedy (Schedule 14) already in place that obviates the problems of the merger under the present analysis.
133. Presumably, the counterfactual would be that another established operator would take over the running of Central Trains. Let us assume this would be an operator not currently engaged in major flows along the main rail corridor (i.e. not Virgin). Then so far as there is competition between rail and bus (and rail and tram) in the West Midlands, this would lead to more competitive pressure on the bus operation than would the current merger and a reduced requirement for a behavioural remedy. It is notable that the train operators who commented on the merger expressed no disquiet, but there was substantial concern from the other bus operators (paras 6.2 to 6.18). Clearly, they see the Company's domination of the bus market as problematic and worthy of investigation and in that sense the report might have dwelt more upon them. However, this is not necessarily much affected by the merger.

*Key competition issues:*

134. The key question is raised in para 2.54. "whether there is an element of substitutability between bus and rail...which might in principle give NEG opportunities to raise fares or reduce...service levels..." It is not clear to me that the report addresses this question directly. Essentially, what is required is information, from studies of modal splits for example, on elasticities of demand for the various modes of transport and cross elasticities between them. Evidence on coach/ rail elasticities is adduced (Table 4.9), but not urban bus/rail. Clearly, it would be difficult to set up and evaluate such a study within the timescale of the

present report. However, in a matter of a few seconds a search on the internet using the phrase “cross elasticities of demand between transport modes” revealed for example the site

[http://www.bized.ac.uk/virtual/vla/transport/resource\\_pack/notes\\_mets.htm](http://www.bized.ac.uk/virtual/vla/transport/resource_pack/notes_mets.htm)

135. which does contain some relevant information.
136. An important question that is not really addressed is the comparison of fare levels between the West Midlands and other equivalent metropolitan areas. If WM fares are relatively high then this would lead to an adverse view being taken of the merger since it consolidates a poorly performing (in some sense) operator. It also seems (para 2.39) that WMT may act as a focal point for price leadership/collusion on fares.
137. Leading on from this, a third key issue is the extent of interavailability of fares and discounts.

*Other suggestions:*

138. Again, the report lacks even a broad modelling framework of what NEG sees itself as accomplishing by this (and other) mergers (para 2.22). Does it see, for example, the possibility of substituting more buses for rail transport in the future within the West Midlands, so reducing costs overall? In other words, currently it is subject to a variety of behavioural constraints (notably Schedule 14, reprinted in Appendix 3.7) that obviate the need for specific behavioural remedies related to this merger. However, is it taking a view to the longer term that such constraints will be relaxed? It is NEG’s *ultimate aim* that remains obscure and is not challenged in this report.

### **Some General Points**

- Both reports, being the version available to the public, contain very substantial excisions. In places these are so extensive as to make the report virtually meaningless. It is my impression that excisions are a growing menace of CC reports. Is there any way of discouraging them?
- The reports are quite different in character, but this is probably appropriate given the rather different questions. There can be no complete pro forma for these reports.
- Having said that, there is no attempt in either report to adduce anything approaching an economic framework within which to evaluate the phenomenon under study. In the case of Freemans Littlewoods merger, this would seem particularly straightforward, but it could also be done fairly easily in the other case. Whilst such a framework might be viewed (by non-economists?) as something of a straight-jacket, it would certainly provide a mechanism for focusing thoughts and placing into context the views of the various parties.
- Leading on from this, a large proportion of the pages of the report is taken up with the views of the parties. But rather little is done with this extensive material, for example by way of drawing common threads out of the views

of similarly placed parties, or drawing attention to dissonance between parties who might be expected to hold similar views.

- Two areas in which the views of the parties are likely to be of some assistance are (a) in establishing that an outcome is at least 50% likely (i.e. through parties agreeing what the outcome is likely to be), and (b) in testing whether there is likely to be a “substantial lessening of competition”. Of course, this will require some direction in the questioning of the parties in order that their responses are useful.
- Leading on in a different direction, neither report contains anything by way of a survey of existing relevant economic literature (apart from relevant CC reports). As I have pointed out, there is usually an existing economic literature on which a report can draw and modern methods of search (through libraries and otherwise) mean that a great deal of relevant material can be assessed from one’s desk. (I am assuming an electronic library is available to the Commission.) Half a day spent by a relatively junior economist at an early stage of an enquiry is likely to pay dividends here in identifying relevant material.

## **Appendix: Original Specification**

Dear X,

Thank you for agreeing to participate in an evaluation of the analysis contained in CC reports. As we discussed on the phone our main interest is in obtaining feedback from the academic community on ways in which the analysis contained in CC reports could be improved. This is a pilot scheme and if it proves a useful exercise it may become a regular part of our routine of self-evaluation.

A contract will be coming under separate cover which you need to sign and return to the CC.

We would like to you to produce a written commentary (approx. 5 pages, though can be longer if you wish) on practical ways in which the analysis could be improved within the time and legal constraints facing the CC. This should draw largely on the two reports:

**X**

**Y**

which are enclosed, though you may also draw on other CC reports if you think that would be useful. Recent reports are available online at

[www.competition-commission.gov.uk](http://www.competition-commission.gov.uk)

or we can send you a hard copy of any other CC reports you would like to see.

We would like to receive your report by 29 March 2002, please let me know if you will have any difficulty in meeting that deadline and we can rearrange it.

We will then ask all four academic consultants to attend a half day meeting at the CC to discuss the comments with CC staff and members.

There are three other academic consultants participating in this evaluation. We have asked each of you to consider the analysis contained in two CC reports as indicated in the table below. We also enclose the other two CC reports for your information.

	<b>Littlewoods and Freemans</b>	<b>BskyB and Manchester United</b>	<b>National Express and Central Trains<sup>a</sup></b>	<b>CHC and Helicopter Services Group<sup>b</sup></b>
Stephen Davies	X			X
Paul Grout		X		X
Norman Ireland		X	X	
Michael Waterson	X		X	

<sup>a</sup> background reading: **Bond and British International**

<sup>b</sup> background reading: **National Express and ScotRail**

The following list of questions gives some guidance as to the issues the CC is interested in exploring. Where possible we would like feedback to be as specific as possible.

- Are there any procedures and/or test that could have been used in defining the market that might have lead to a different market definition, or that would have made the definition more robust? What key information would have been needed? How would that information have been obtained?
- How important was market definition to the conclusions reached? How important were estimates of market shares? What about profitability? What alternative methods could have been used?
- Could alternative methods have been used in reaching an expectation about the post-merger equilibrium? What about the counterfactual equilibrium in the absence of the merger? What key information would have been needed? How could an expectation that this outcome was at least 50% likely have been formed and substantiated?
- What do you see as having been the key competition issues in the case? Was there an accessible literature on these issues or precedents that could have been used as reference material? Are there well developed tests or a framework for analysis that could have been used?
- Are there any other suggestions you can make as to how the methods and analysis used by the CC could be improved, either immediately or in the longer run?
- The new criteria used in merger cases is going to be whether there is a “substantial lessening of competition”. Do you have any suggestions for tests or a framework which could have been used to assess this?

These questions are only meant to be indicative and should not limit the scope of you comments. Again, let me that you for your participation and I look forward to discussion this matter with you further in due course. If you have any questions please do not hesitate to get in touch.