INTRODUCTION

This publication gives details of cases that were considered under the Competition Act 1998, and subsequently closed during 2005. The summaries do not necessarily set out the full reasons the OFT has for closing a case. Nor will they reflect all the kinds of cases that we handle.

These summaries were originally published on a monthly basis as a part of the OFT’s online Weekly Gazette, which is no longer published.
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INTRODUCTION

Welcome to the 18th issue of this section of the Gazette. The purpose of this section is to inform the public of a selection of cases that have been considered under the Competition Act 1998 (the Act), and subsequently closed. This issue includes cases that were closed in February 2005. The next issue of this section will be in the Gazette published in May.
CLOSED CASES

The Office of Fair Trading has the power to investigate complaints of breaches of the Chapter I and Chapter II prohibitions and Article 81 and Article 82 of the EC Treaty under the Act. The Chapter I prohibition and Article 81 cover agreements between undertakings, decisions by associations of undertakings and concerted practices which prevent, restrict or distort competition or are intended to do so, while the Chapter II prohibition and Article 82 cover the abuse of a dominant position in a market.

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If you would like to discuss the principles underlying a particular summary in more detail please contact the case officer mentioned in relation to that case. Comments should be e-mailed to the case officer in the first instance. For further information about making a complaint please see our leaflet 'Making a complaint'. You may also be interested in the Competition Act guidelines which can be downloaded from the OFT website at www.of.t.gov.uk/Business/Legal+Powers/Modernisation/publications.htm

List of closed case summaries

- Arrangements between Norwich Union and its brokers concerning bed and breakfast insurance and insurance for blocks of flats
- Rules of a Professional Body
- Supply of Reebok sports goods
Arrangements between Norwich Union and its brokers concerning bed and breakfast insurance and insurance for blocks of flats

Complaint against: Norwich Union
Case closed: 9 February 2005
Issue: Norwich Union’s arrangements with brokers and sales agents quoting for existing Norwich Union business (i.e. to offer a lower price) held by another broker for (a) buildings insurance on blocks of flats (Case CE/4268/04) and (b) bed & breakfast insurance (Case CE/4147/04).

Relevant provision: Chapter I of CA98

Outline of the case

The two separate complainants (a property company and a bed & breakfast proprietor) were given quotes by their brokers on renewal of their commercial insurance policy (i.e. a policy for carrying out this type of business, covering things such as buildings, contents, etc) with Norwich Union. Each then approached a different broker, but when it emerged that they were an existing Norwich Union customer, the second broker said they were forbidden to quote by Norwich Union under such circumstances. The complainants were given the impression that the premium from the second broker would have been lower than the renewal quote.

A reply from Norwich Union to a section 26 information request stated that some Norwich Union brokers (including the brokers who had refused to provide a quote) were ‘scheme arrangement’ brokers. Scheme arrangement brokers are typically experts in a certain niche insurance area, and in effect, sell a bespoke product, which Norwich Union by itself would not be in a position to develop and market as effectively. Scheme arrangement brokers also have greater authority to quote and underwrite insurance on behalf of Norwich Union. Norwich Union’s response to the section 26 information request also indicated that Norwich Union’s agreements with its scheme arrangement brokers limit or expressly prohibit the brokers’ authority to quote for a renewal on existing Norwich Union business held with another broker.

Norwich Union told us that their current policy was to allow scheme brokers to issue quotes on Norwich Union’s behalf in respect of existing Norwich Union business only where the scheme broker had written authority from the insured that provided evidence of the broker’s authority to act on the insured’s behalf.

OFT conclusions

Our investigation concluded that the scheme arrangement brokers were acting as Norwich Union’s agents in issuing quotations, and therefore Norwich Union and its
scheme arrangement brokers were not ‘independent undertakings’ for the purposes of the Competition Act 1998 (in relation to the transactions that were the subject of the complaint). As Chapter I of the Competition Act 1998 only applies to agreements between independent undertakings it was not necessary to carry out an investigation into whether or not there was an appreciable restriction of competition.

In addition, it was concluded that, even in the event that Norwich Union and its scheme arrangement brokers were independent undertakings for the purposes of the Competition Act 1998, any agreement between them was a vertical agreement, which is excluded from the application of Chapter I of the Competition Act 1998. Although the exclusion for vertical agreements does not extend to provisions that directly or indirectly fix prices, no such provision existed in this instance.

OFT’s action: Case closed
Case officer: Chris.Bowden@oft.gsi.gov.uk
Case Reference: CE/4268/04 & CE/4147/04

Rules of a Professional Body

Complainant: Clients of legal services
Complaint against: The Law Society of Scotland
Case closed: 11 February 2005
Issue: Whether the Law Society of Scotland ('LSS'), the professional body and regulator for Scottish solicitors, could require its members to purchase professional indemnity insurance ('PII') through the Master Policy.

Relevant provision: Chapter I of CA98 and Article 81 EC

Outline of the case

The OFT investigated whether the LSS’s rule which requires solicitors to purchase PII through the Master Policy is an arrangement that prevents restricts or distorts competition in the market for solicitors' services.

We concluded that, notwithstanding the operation in other jurisdictions of more liberal arrangements for solicitors' indemnity insurance, there is insufficient evidence to show that Master Policy arrangements appreciably restrict competition between individual solicitors' firms either by denying them the freedom to seek insurance outside of the Master Policy or by encouraging solicitors to refuse to act for clients who wish to take action against a fellow solicitor.
However, we remain concerned that the current arrangements for handling complaints against solicitors in Scotland appear not to have the confidence of the public. The recently published Clementi\(^1\) report makes recommendations about the arrangements for complaints handling and redress in relation to the legal profession in England and Wales. OFT intends to make representations to the Scottish Executive about the implications of the Clementi report for users of legal services in Scotland.

OFT’s action: Case closed  
Case officer: Carissa.Roberts@oft.gsi.gov.uk  
Case reference: CE/3773-03

**Supply of Reebok sports goods**  
**Parties:** Reebok International Limited and a sports retailer  
**Case closed:** 22 February 2005  
**Issue:** Whether the parties entered into certain arrangements which infringed CA98 in 2000 and 2001  
**Relevant provision:** Chapter I of CA98

**Outline of the case**

Since mid 2002 the OFT has been investigating Reebok’s activities in 2000 and 2001 in relation to arrangements it then had with a sports retailer concerning the supply of sportswear. The OFT has now decided to close the case in view of the nature and robustness of the evidence collected and the OFT’s competition law enforcement priorities.

OFT’s action: Case closed  
Case officer: Dave.Troy@oft.gsi.gov.uk  
Case Reference: CE/1745/02

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\(^1\) Review of the Regulatory Framework for Legal Services in England and Wales: Final Report; published 15 December 2004
INTRODUCTION

Welcome to the 19th issue of this section of the Gazette. The purpose of this section is to inform the public of a selection of cases that have been considered under the Competition Act 1998 (the Act), and subsequently closed. This issue includes cases that were closed in May 2005. We aim to publish case closure summaries in the first week of each month.
CLOSED CASES

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List of closed case summaries

- SSL International plc: suspected excessive pricing in the supply of contraceptive sheaths
SSL International plc: suspected excessive pricing in the supply of contraceptive sheaths

**Parties:** SSL International plc

**Case closed:** 11 May 2005

**Issue:** Investigation into suspected excessive pricing of contraceptive sheaths by SSL International plc in the over-the-counter (OTC) retail market in the UK

**Relevant provision:** Chapter II of CA98

**Outline of the case**

The own-initiative investigation which began in October 2002 looked at whether the prices for male condoms in the UK over-the-counter sector were excessive. Whilst there is evidence to suggest that prices are high we have been unable to reach a definitive view on the issue of abuse. In order to take the case forward, we would need to develop an estimate of the value of SSL’s ‘Durex’ brand. Establishing a robust valuation would require substantial additional time and expense.

With evidence of emerging competition, any potential remedies such as a price cap could stifle such entry and hinder rather than help the competitive process. In light of this, the OFT has concluded that its resources are not best employed pursuing this case and have decided to close the file.

**OFT’s action:** Case closed

**Case Officer:** Lisa.Hughes@oft.gsi.gov.uk
INTRODUCTION

Welcome to the 20th issue of this section of the Gazette. The purpose of this section is to inform the public of a selection of cases that have been considered under the Competition Act 1998 (the Act), and subsequently closed. This issue includes cases that were closed in April and July 2005. We aim to publish case closure summaries in the first week of each month.
CLOSED CASES

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List of closed case summaries

- Alleged price-fixing and market sharing of waste disposal services.
- Application for leniency by BSM in relation to a clause in its franchise agreements with driving instructors that amounted to vertical price fixing.

Alleged price-fixing and market sharing of waste disposal services

Complainant: UK manufacturer of paper board and cardboard
Complaint against: Viridor Waste Management Limited
Severnside Waste Paper Limited
Devon Contract Waste Limited
Perrys Recycling
Martock Waste Paper Co Limited

Case closed: 18 April 2005

Issue: Alleged agreement between the above undertakings to fix the price of and/or share the market in respect of certain waste disposal contracts/arrangements.

Relevant provision: Chapter I Competition Act 1998

Outline of the case

On 1 October 2003 the OFT received a complaint from a manufacturer of paper/cardboard products alleging that certain undertakings, included in the list above, had entered into anti-competitive agreements in the supply of waste disposal services.

The OFT carried out an investigation which ultimately included all those undertakings listed above. The OFT does not consider that it has sufficient evidence to proceed to an infringement decision and has decided to close its file. However, the investigation may be re-opened if further evidence indicating the existence of an infringement is received.

OFT’s action: Case closed
Case Officer: Eddie.Lennon@oft.gsi.gov.uk; Rob.Ackred@oft.gsi.gov.uk
Case Reference: CE/3522-03

The British School of Motoring (BSM)

Case closed: 29 July 2005

Issue: Application for leniency by BSM in relation to a clause in its franchise agreements with driving instructors that amounted to vertical price fixing.

Relevant provision: Chapter I of the Competition Act 1998

Outline of the case

BSM applied for leniency in respect of a clause in its Franchise Agreements with its driving instructors that amounted to vertical price fixing. BSM has removed the clause from its Franchise Agreement and has informed franchisees that it will not enforce the provision as contained in the existing agreements and has implemented other changes to its processes and documentation to reflect these changes. In addition, BSM confirmed that it had never enforced the offending clause or taken any steps to coerce any undertaking to take part in the infringement.

On the basis of the information supplied by BSM, the OFT is satisfied that BSM has not taken steps to coerce another undertaking to comply with the offending clause. On that basis, under the current leniency policy (which is under review) BSM would qualify for immunity from financial penalties, as regards any possible finding of infringement resulting
from the offending clause in its Franchise Agreement, subject to the proviso that the conditions in paragraph 3.9 of the Penalties Guidance had been fulfilled.¹

BSM voluntarily approached the OFT and co-operated fully with the OFT. No complaint had been made to either BSM or the OFT concerning the offending clause.

On this basis, the OFT has decided that its resources would not be best employed in proceeding with an investigation and has decided to close the file.

OFT’s action: Case closed
Case Officer: darren.eade@oft.gsi.gov.uk
Case Reference: CE/5782105

¹ OFT’s guidance as to the appropriate amount of penalty, OFT 423, December 2004
INTRODUCTION

Welcome to the 21st issue of this section of the Gazette. The purpose of this section is to inform the public of a selection of cases that have been considered under the Competition Act 1998 (the Act), and subsequently closed. This issue includes cases that were closed in October 2005. We aim to publish case closure summaries in the first week of each month.
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List of closed case summaries

- Alleged price-fixing in the supply of polyurethane foam
Alleged price-fixing in the supply of polyurethane foam

Complainants: Buyers of polyurethane foam
Complaint against: British Vita plc/Vitafoam Limited/Kay-Metzeler Ltd
                Carpenter Ltd
                Recticel Ltd
Case closed: 21 October 2005
Issue: Alleged agreement or concerted practice between the
        above undertakings to fix the price and/or exchange
        confidential commercial information in respect of the
        supply of polyurethane foam in the United Kingdom.
Relevant provision: Chapter I Competition Act 1998

Outline of the case

In 2002 the OFT received complaints from buyers of polyurethane foam alleging that
 certain undertakings, included in the list above, had entered into anti-competitive
 agreements and/or concerted practices in the supply of polyurethane foam.

Following an investigation, the OFT found no evidence substantiating the allegations
 and has, accordingly, closed its file.

OFT's action: Case closed
Case officer: Kevin McDonald
Case reference: CE/1779/02
INTRODUCTION

Welcome to the 22nd issue of this section of the Gazette. The purpose of this section is to inform the public of a selection of cases that have been considered under the Competition Act 1998 (the Act), and subsequently closed. This issue includes cases that were closed in November 2005. We aim to publish case closure summaries in the first week of each month.
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List of closed case summaries

- Rules of a professional body
- Alleged predation by Arriva in the Luton and Dunstable area
Rules of a Professional Body

Parties: The Law Society of Northern Ireland
Case closed: 18 November 2005
Issue: Whether certain professional rules of the Law Society of Northern Ireland (‘LSNI’), the professional body and regulator for Northern Ireland solicitors, have an appreciable effect on competition.

Relevant provision: Chapter I of CA98 and Article 81 EC

Outline of the case

In June 2004, the OFT opened a formal investigation into practice regulations of the LSNI which prohibit fee advertising and comparative fee advertising, soliciting (which includes all direct and unsolicited approaches to clients or potential clients), the charging of ‘uneconomic’ fees by solicitors and the payment by solicitors of referral fees to non-lawyers.

The LSNI has now amended its practice regulations with the effect that the prohibitions on fee advertising, comparative fee advertising and on charging ‘uneconomic’ fees have been revoked and the restrictions on soliciting have been relaxed, subject to safeguards. The amended practice regulations come into force on 1 January 2006. The issue of the prohibition on the payment of referral fees, which appears to have its origin in a statutory prohibition, has been raised directly with the relevant Northern Ireland Government Department.

OFT’s action: Case closed
Case Officer: Maria.Rican@oft.gsi.gov.uk
Case reference: CE/4650/04

Alleged predation by Arriva in the Luton and Dunstable area

Parties: Arriva The Shires Ltd and a bus operator
Case closed: 25 November 2005
Issue: Whether Arriva engaged in predatory pricing in relation to certain bus services in the Luton and Dunstable area.

Relevant provision: The Chapter II prohibition of the Competition Act 1998

Outline of the case
The OFT has been investigating Arriva's conduct in the provision of bus services in the Luton and Dunstable area following an allegation of predation. The OFT has now decided to close the case in view of the nature and strength of the evidence collected and the OFT's competition law enforcement priorities.

OFT's action: Case closed
Case Officer: Sejual.Shah@oft.gov.uk
Case reference: CE/2674-03