

# enforcing

One of our aims is to uproot and deter all forms of anti-competitive behaviour, including cartels and the abuse of market power

# enforcing

## **Our enforcement activity**

We lead other enforcers in robust application of the rules that protect consumers against unfair trading, taking court action where necessary. We also encourage self-regulation through codes of practice that require high standards from those participating.

We aim to uproot and deter all forms of anti-competitive behaviour, including cartels and the abuse of market power. We advise referral to the Competition Commission of all mergers that might substantially lessen competition and, where appropriate, we refer to the Competition Commission markets where competition may not be working well.

As UK consumers carry out an increasing number of cross-border transactions, the international scope of our enforcement work continues to grow.

## **Guidance**

A significant part of our role is to offer guidance to businesses about their duties under the law.

During the year, three draft guidelines on the application of the Competition Act were issued. We published a new guide for consumer credit licence holders setting out their duties, and a guide for business and consumer advisers explaining what the OFT believes to be fair and unfair terms in consumer contracts. As part of our approach to tackling



problem sectors, we issued guidelines for debt management companies outlining the minimum standards expected of them, and guidance on unfair terms in tenancy agreements to help promote clearer and fairer agreements between landlords and tenants.

## Partnerships

The OFT shares many of its powers with trading standards authorities, consumer bodies and sectoral regulators. During 2001, we continued to lead and cooperate with these partners.

For example, we ran a conference for all the Stop Now enforcement bodies and provided training for their representatives. We cooperated closely with other enforcers on 65 cases under the unfair contract terms legislation. And we began work on developing a new consumer regulation website which will make cooperation and coordination between the OFT and enforcement partners easier.

We also work closely with international partners. During 2001 we chaired the International Marketing Supervision Network Europe and participated in a global 'web sweep'.

## A turning point in consumer regulation enforcement

The introduction of the Stop Now Regulations in June 2001 represents a major advance against businesses that engage in unfair trading practices. The Stop Now powers provide an effective mechanism to enforce a wide range of consumer protection legislation against traders who are harming consumers' interests.

We always give businesses a fair chance first to halt unfair trading practices. But if they fail to do so, we now have the means to take prompt action to protect consumers.

The OFT shares many of its powers with trading standards authorities, consumer bodies and sectoral regulators. During 2001, we continued to lead and cooperate with these partners

# consumer regulation enforcement

## **Stop Now: new powers to protect consumers**

The OFT and other consumer protection bodies gained new powers to stop unlawful business conduct when the Stop Now Orders Regulations became law on 1 June.

The Regulations do not impose new obligations on businesses. They sit alongside existing legislation but provide a new enforcement mechanism. Under the Regulations, the OFT and other enforcement bodies can use an accelerated procedure to apply to the courts for Stop Now Orders against traders who breach specified consumer protection laws. Failure to comply with a Stop Now Order may result in fines or imprisonment for contempt of court.

The Stop Now powers allow action to be taken in other member states of the European Union (and in Iceland, Norway and Liechtenstein). The OFT can protect UK consumers by cooperating with local enforcement bodies or by taking court action in that country.

The Stop Now powers apply to 10 main areas of consumer law covered by European Commission Directives including unfair contract terms, consumer credit, distance selling, misleading and comparative advertising and sale of goods rights.

## **Enforcement approach**

Normally we will give businesses the opportunity to put their case to us and we will try to secure a trader's agreement to put things right – through an informal assurance. The exceptions to this will be where the history of the business concerned, the nature of the conduct and the harm to consumers requires immediate action. Where we cannot achieve resolution by consent, we will take action in the courts to seek a Stop Now Order.

## **Coordination**

In the UK, in addition to the OFT, 10 other bodies including local authority trading standards services and the utilities regulators can apply for Stop Now Orders.

We have a power to coordinate action between those with this power. They must consult us first before seeking a court order in the UK and they must also give the business concerned two weeks to agree to comply with the law. The notice requirement can be waived if urgent action is necessary to safeguard consumer interests.

In November we ran a conference for all the UK enforcement bodies to share experience and to promote a coordinated approach. We ran training events for trading standards officers as part of the Trading Standards Institute Conference in June and participated in other regional training events for trading standards officers.



## Guidance

In June, we issued draft guidance explaining how the Stop Now Orders Regulations would be enforced. This was sent to more than 100 business, consumer and government bodies who had until the end of September to respond. Final guidance was issued in April 2002.

## Early outcomes

In June, when our new powers came into effect, we wrote to 37 businesses to warn them that they appeared to be infringing the legislation covered by the Stop Now Regulations. These suspected breaches ranged from the supply of defective goods and materials to breaches of rules on credit advertising. Wherever possible, we engaged in constructive dialogue with the businesses. As a result, many cases were resolved very quickly without need for any formal action. In addition to such cases, by the end of the year we had accepted assurances from four businesses and began court proceedings against another (see below).

We raised concerns with many more businesses during the year and began to see changes within months. For example, in February this year, 28 credit card companies agreed to change the way they advertise introductory rates of interest.

### *Retailers promise to halt interest-free ads*

Four furniture retailers agreed to change advertisements for interest-free credit deals after we approached them under the Stop Now powers. Allied Carpets of Orpington, Furnitureland of Penge, Fairway Furniture of Plymouth and Gregory and Porrits of Bolton were advertising interest-free options or 0% finance

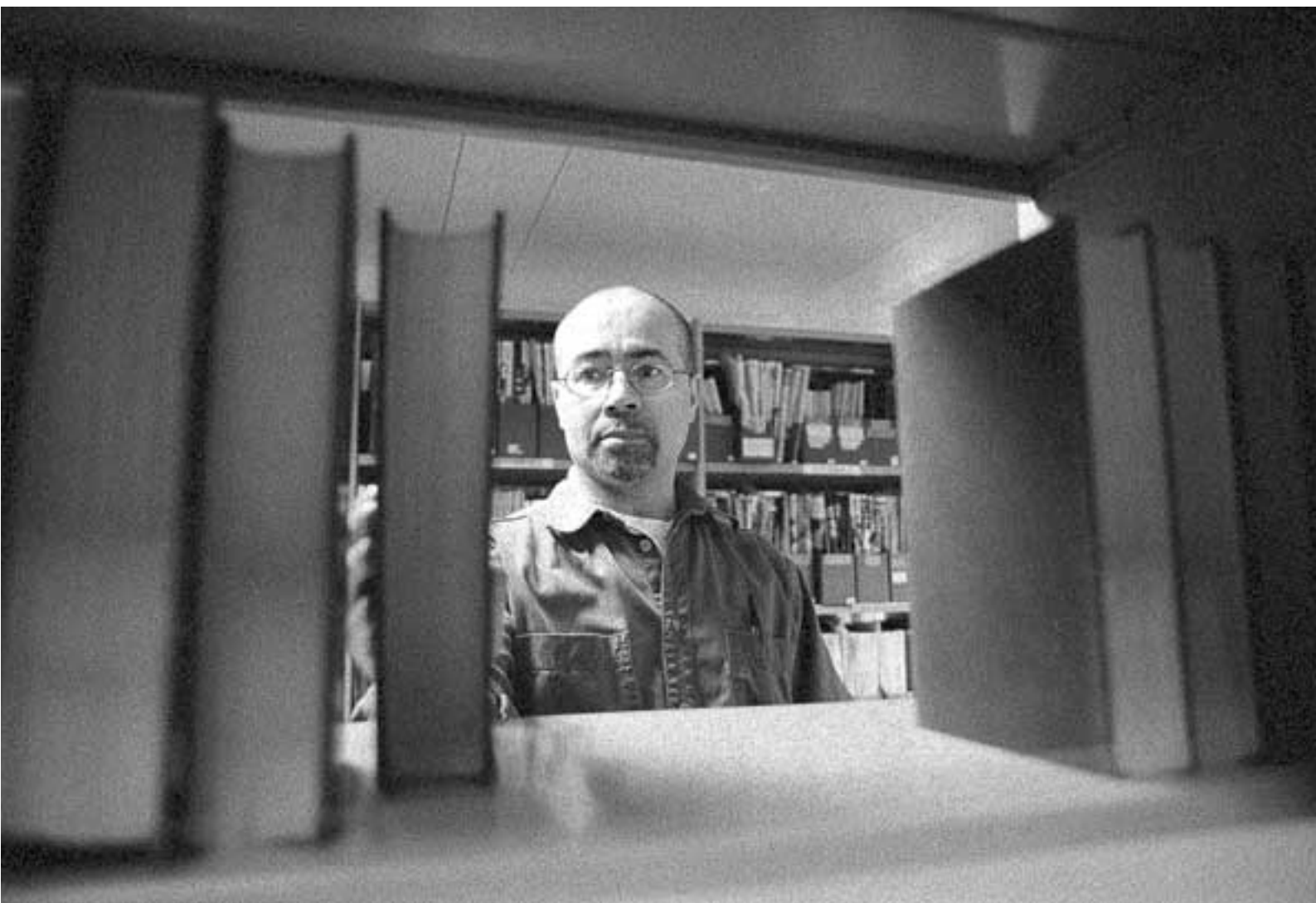
deals for their products. However, if consumers did not pay off a lump sum in full at the end of the interest-free period, interest was charged on the whole of the loan. We took the view that the advertisements broke the law by using the words 'interest free' when the agreement was not genuinely interest free. In response, the four firms gave informal assurances that they would stop this form of advertising.

### *First Stop Now court order sought*

In December, the OFT began court action under the Stop Now powers against a business supplying kitchens. The proceedings were instigated in Manchester Crown Court against Craftsman Kitchens Ltd, Craftsman Kitchens Manufacturing Ltd and George Brown, Nichola Brodie, Vance Miller and Sadiya Hussein. The OFT and trading standards services had received a large number of complaints from all over the country about these companies. We gave them a full opportunity to put things right by undertaking that they would comply with the law, but they did not respond. It was the first time we had taken action in court under the Stop Now powers. The Stop Now order was made on Friday 19 April, 2002 against the four individuals. In a separate action by the Department of Trade and Industry, Craftsman Kitchens Ltd and Craftsman Kitchens Manufacturing Ltd were wound up in the High Court on 27 March 2002.

Proposals to extend **Stop Now** powers are included in the **Enterprise Bill**. For more, see page 68.

Find out more about Stop Now powers and our use of them at [www.of.gov.uk/Business/Legal+Powers/Stop+Now+Regulations.htm](http://www.of.gov.uk/Business/Legal+Powers/Stop+Now+Regulations.htm)



## Challenging unfair terms

A wide range of traders and industry bodies revised terms in their consumer contracts as a result of action by the OFT's Unfair Contract Terms Unit. We also advised and coordinated the efforts of others who share enforcement powers in this area.

Much of our work on unfair contract terms was triggered by complaints from consumers – we received 1,167 complaints about contract terms during the year. The four areas attracting the most complaints were financial services, tenancy contracts, package holidays, and health and fitness clubs.

By the end of the year, 664 terms had been abandoned or amended as a result of enforcement action (compared with 758 in 2000). The most commonly used unfair terms were those excluding or limiting liability for shortcomings in the quality of goods or services. Unfair price variation clauses, financial penalties, cancellation charges and clauses lacking in clarity or intelligibility were also common.

## Guidance

Early in the year, we issued comprehensive guidance for business and consumer advisors explaining how we interpret fairness in consumer contracts. The guidance includes examples of how terms have been amended.

In October, we published guidance on unfair terms in assured and assured shorthold tenancy agreements to help promote clearer and fairer agreements between landlords and tenants. The guidance sets out what we consider to be unfair terms in these agreements. Aimed at landlords, letting agents, housing advisers and organisations that publish standard tenancy agreements, the guidance seeks to address problems right across the private rental market.

## Tour operators

We continued to examine contracts in the package holiday sector.

In March, we warned the UK's four biggest tour operators that we were prepared to start legal action against them to obtain information about their cancellation charges. Thomson Holidays, Airtours, JMC Holidays and First Choice had refused to supply information for our investigation into the cancellation charges applied to their package holidays. The firms subsequently agreed to supply the information required.

The OFT also participated in a working group set up by the European Commission to examine unfair terms in package travel contracts across Europe. The working group brought together representatives from European consumer bodies and the international travel trade.

### **Protection for consumers paying in advance**

After a threat of court action from the OFT, a major home-improvement company agreed to implement a scheme to protect consumers who make full payment in advance for fitted kitchens and bathrooms.

HomeForm Group Ltd (formerly Limelight Group plc) owns three of the best-known home improvement brands in the country: Moben Kitchens, Kitchens Direct and Dolphin Bathrooms.

We accepted an undertaking from the group to resolve a complaint within four weeks or pay 20 per cent of the contract sum to an industry body which holds the money while it attempts conciliation and, if necessary, adjudicates on the complaint.

The scheme is similar to ones put in place by MFI and B&Q in 2000 after OFT intervention.

### **First National Bank decision overturned**

In October, we lost a legal action against Abbey National subsidiary First National Bank (FNB) over its treatment of borrowers in arrears. The House of Lords overturned a 2000 Court of Appeal ruling that a term in FNB's consumer credit agreement was unfair to the extent that it allowed the bank to charge debtors contractual interest on top of instalments that they had been ordered to pay by a court, without the court having first considered whether to also make a special order under the Consumer Credit Act reducing or stopping such interest running.

Although the judgment did not find the term unfair, it confirmed that there was a problem causing detriment to consumers. In other respects, the judgment accepted the OFT's interpretation and application of the Regulations.

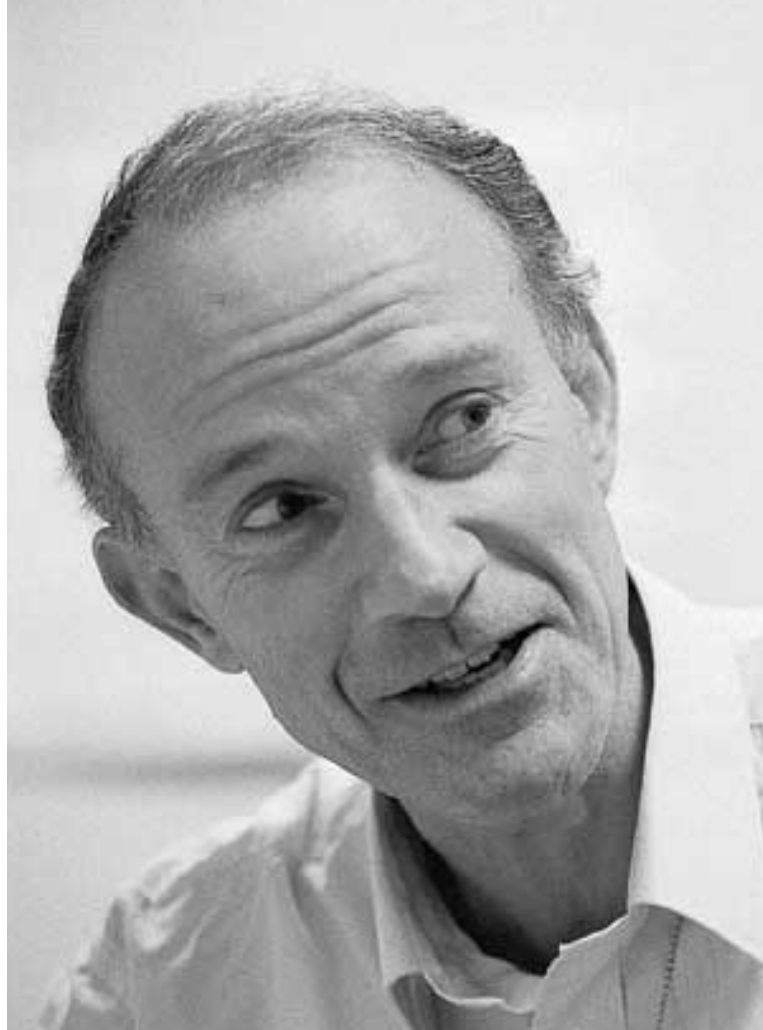
This was the first time the OFT had taken court action on an unfair contract term.

**Unfair contract terms guidance** and **guidance on unfair contract terms in tenancy agreements** are available at

[www.oft.gov.uk/Business/Legal+Powers/unfair+guidance.htm](http://www.oft.gov.uk/Business/Legal+Powers/unfair+guidance.htm)

Reports on all concluded unfair contract terms cases, including details of undertakings given, are published in regular bulletins available at [www.oft.gov.uk/news/Publications/](http://www.oft.gov.uk/news/Publications/)

[Leaflets+Ordering.htm](http://www.oft.gov.uk/news/Publications/Leaflets+Ordering.htm) (under reports/unfair contract terms)



## **Policing the consumer credit market**

### **Guidance for business**

In February we issued guidelines to explain to consumer credit licence holders and applicants for licences what kind of behaviour would call into question their right to hold a licence. The guidelines make clear that the range of matters that can be taken into account is very wide – for example offences do not have to be linked with credit, and unfair business practices (whether unlawful or not) can be taken into account. Examples of such practices are oppressive sales techniques and a failure to offer consumers redress.

The guidelines are designed to make absolutely clear to licensees and applicants what is expected of them. This should deter behaviour which harms consumers. It will also enable speedier action to remove licences where behaviour breaches the guidance.

We send the guidelines to all those applying for or renewing a licence. They have also been issued to trading standards officers and trade bodies for distribution to their members.

### **Guidance for debt management companies**

In December, the OFT published specific guidance for businesses in the fast-growing debt management sector.

Debt management companies offer overindebted consumers the prospect of a reduction in monthly repayment commitments on payment of a fee. The debt

management industry was identified as a priority following representations to the OFT from consumers, the credit industry, consumer bodies and other organisations.

The guidelines make clear the minimum standards we expect of debt management companies. They followed a wide-ranging consultation with the credit industry, consumer groups, the debt management industry and other organisations.

We warned debt management companies that breaches of the guidelines could lead to the loss of their consumer credit licence.

The debt management industry was identified as a priority following representations to the OFT from consumers, the credit industry, consumer bodies and other organisations.

We will be issuing more guidance for licence holders in other sectors that attract high levels of consumer complaint, including debt collecting, credit broking, and the used car and home improvement sectors.



## New forms

The OFT introduced new consumer credit licence application forms which demand more information from applicants, including their private address. This helps trading standards officers trace problem traders.

## Licensing action

We issued 15,174 consumer credit licences in 2001 (compared with 16,716 in 2000). We issued 33 Minded to Revoke notices (46 in 2000) and 55 Minded to Refuse notices (65 in 2000). We revoked 21 licenses (31 in 2000) and refused a further 26 (35 in 2000).

More information on our consumer credit licensing work in 2001 is available on our website at

**[www.of.gov.uk/News/Annual+report/default.htm](http://www.of.gov.uk/News/Annual+report/default.htm)**

The general guidance for consumer credit licence holders and applicants and the guidelines for debt management companies are available at **[www.of.gov.uk/Business/Legal+Powers/CCA+guidance.htm](http://www.of.gov.uk/Business/Legal+Powers/CCA+guidance.htm)**

## Protecting home shoppers

### Warning to energy companies

We told gas and electricity companies to put right their telephone sales methods or face OFT action under the Distance Selling Regulations.

Our warning came after we received numerous reports of salespeople failing to disclose who they represented and pressurising consumers into entering contracts and of suppliers giving consumers very little time to read contracts.

We wrote to all gas and electricity companies in England, Scotland and Wales to underline that failure to comply with the Regulations could lead to the OFT or trading standards departments applying for a court order to ensure future compliance.

### Sweeping the web

During the year, the OFT carried out or participated in frequent 'web sweeps' in the UK. We visited hundreds of internet sites to investigate whether they complied with the Distance Selling Regulations. We also took part in a global sweep (for more, see page 46).

If UK-based sites appeared to be in breach of the Regulations, for example through failure to give easily accessible information on refund or exchange policies, we warned the companies concerned to put the problems right. During the year, we warned 58 businesses.

## Education campaign

We launched a campaign to alert consumers to their rights under the Regulations. We produced a leaflet, *Shopping from home: the facts at your fingertips*, and created a new internet site.

## Undertakings given

We have been given undertakings by the following companies that they will change their practices to comply with the Regulations.

<b>Date of undertaking</b>	<b>Name of company</b>	<b>Source</b>
11 June	Dial-a-phone Ltd	Consumer complaint
18 April	Bikenet plc	Consumer complaint
18 April	Mesh Computers plc	Consumer complaint
18 April	RD Trading	Referral from UCTU
13 September	Peak Performance International Ltd	Consumer complaint
17 September	Tiny Computers Ltd	Referral from UCTU
26 November	GE Fabbri Ltd	Consumer complaint

## Halting misleading advertising

### New focus

In 2000 we set up a dedicated team to enforce the Control of Misleading Advertisements Regulations, and have been pursuing many more cases as a result. In 2001, we worked on 159 cases of alleged misleading advertising (compared with 87 cases in 2000).

### Right to Buy scam stopped

We forced a Glasgow mortgage broker to stop making misleading claims that the Government's Right to Buy housing scheme was about to end. Dermot McCaffery, trading as Metropolitan Tenants' House Purchase Advisory Bureau of Glasgow, was the fifth trader targeted by the OFT for misleading Right to Buy advertising.

### Warning to websites offering cheap cigarettes

We warned websites incorrectly offering cigarettes exempt from UK duty that we would seek court injunctions to stop them using misleading advertising.

The new **Stop Now** powers provide a more effective enforcement mechanism for the OFT and other enforcement bodies to act against traders who breach the Control of Misleading Advertisement Regulations. For more, see page 34.



### **New codes of practice regime**

We launched a new and more rigorous approach to consumer codes of practice.

We have always had a duty to promote voluntary codes of practice to encourage traders to provide high standards of customer service and to deal with complaints quickly and fairly. A large number of codes of practice had been endorsed by the OFT over the years. However, it was clear that many of them were not delivering what they promised. We therefore withdrew all OFT endorsements of codes of practice.

We issued a consultation paper in February 2001 seeking the views of a wide range of organisations on a new approach. This consists of two stages. At stage one, code sponsors (for example trade associations) promise that their codes meet strict new criteria, for example on complaints handling, monitoring, compliance and publicity. Those which meet this test progress to stage two where they have to demonstrate that their codes deliver on that promise. Only then will the OFT approve the code and promote it to consumers.

The new approach received support from the Better Regulation Taskforce.

In the summer, we published the response to the consultation and issued draft guidance on the core criteria and set out the priority sectors for the new approach.

By the end of the year, the first revised codes had been submitted for examination.

Proposals to implement the OFT's proposed new approach to codes of practice are included in the Enterprise Bill. For more, see page 68.

## **International activities**

As more consumers buy from abroad, the OFT's consumer regulation enforcement work is taking on an increasingly international dimension. We are working closely with colleagues in other countries and international organisations to ensure there is a consistency of approach and greater coordination of enforcement where necessary.

### **Cross-border cooperation**

From February 2002, a wide range of consumer protection bodies across the EU are able to apply for injunctions to stop breaches of consumer protection law by businesses in other EU member states.

During 2001, work began on a number of cross-border cases in anticipation of these new processes. We expect to initiate action in other countries in the first quarter of 2002.

### **International Marketing Supervision Network (IMSN)**

IMSN is an informal group of consumer protection enforcement bodies from 30 countries across the globe. We participated actively in its work and chaired the European subgroup of the network, IMSN Europe, from September 2001.

### **Concordat with the USA: Federal Trade Commission (FTC)**

We continued to cooperate with the FTC under our memorandum of understanding. This involved sharing information and evidence on 16 cases involving over 200 companies.

## An eye on e-commerce

In March, we took part in a major international web sweep. We joined forces with 28 trading standards authorities and consumer organisations from five continents to assess the quality of websites against international and domestic information requirements. More than half the 600-plus UK sites examined failed to give easily accessible information on refund or exchange policies as required by the Distance Selling Regulations. We followed up the sweep by working with trading standards authorities to contact these companies and get them to change their sites to comply with the law.

We also contributed to the development and launch of [econsumer.gov](http://econsumer.gov). This new website has an external public site, and a secure intranet for enforcement bodies. It enables consumers across the world to record the details of an unresolved dispute about a cross-border e-commerce or related transaction, check the law in third countries, and contact directly the authorities in the country where the trader is based. Participating enforcement authorities such as the OFT can use the site to identify businesses attracting large numbers of complaints. This covers both overseas businesses adversely affecting UK consumers, and UK businesses which have not resolved problems with overseas consumers.

**Proposals to allow the OFT to disclose details of investigations and cases to consumer enforcement bodies overseas are included in the Enterprise Bill. For more on the Enterprise Bill, see page 68.**

For more on the **Stop Now** Regulations, see page 34.

For more on the EC Green Paper on European Union consumer protection, see page 70.

[www.econsumer.gov](http://www.econsumer.gov)

## Improving coordination: the new consumer regulation website

To improve cooperation and coordination between the OFT and other consumer bodies, we began developing a new consumer regulation website. The site will contain details of investigations being undertaken by the OFT and its enforcement partners under certain consumer protection legislation, as well as general information about the application and enforcement of the legislation. The website will contain public areas and information restricted to enforcers.

Funded by the Treasury under the 'Invest to Save' scheme, the website will enable the enforcement community to share information in an efficient and secure way. It will help us target our action on priority sectors, lead to more consistent enforcement and enable us to avoid duplication when approaching individual businesses.

To start with, when it is fully launched in autumn 2002, the site will aid coordination between those with joint enforcement powers under the unfair contract terms legislation. We plan to extend it to other areas including distance selling and the Stop Now Regulations.



### **Promoting excellence in trading standards**

The 2001 OFT Award for Excellence in Trading Standards was won by Warwickshire County Council. Dorset County Council was highly commended and Sandwell Metropolitan Borough Council was commended for significant improvement.

The competition was inaugurated in 1997 to raise the profile of trading standards services, to encourage the spread of best practice, to reward those who excel, and to bring recognition to the trading standards service for their frontline role in consumer protection.

In the light of the Government's launch of national standards for local authority trading standards services, we are reviewing the future of the award scheme.

### **Local authority prosecutions**

The OFT gathers statistics on local authority prosecutions. For the figures for the year 2001 see our website at [www.of.gov.uk/News/Annual+report/default.htm](http://www.of.gov.uk/News/Annual+report/default.htm)

### **OFT consumer regulation casework**

For more detailed statistics on this for the year 2001 see our website at [www.of.gov.uk/News/Annual+report/default.htm](http://www.of.gov.uk/News/Annual+report/default.htm)

# competition enforcement

## **Anti-competitive agreements and abuses of market power**

There must be vigorous and open competition for markets to work well for consumers. Anti-competitive agreements and abuses of dominant market position not only increase prices and harm consumer choice, they undermine the performance of the economy as a whole. It is this kind of behaviour that the Competition Act 1998 prohibits.

The Act, which came into force in March 2000, gives the OFT wide-ranging powers to investigate and take action against anti-competitive activity in the UK, including the ability to impose financial penalties of up to 10 per cent of UK turnover for every year of infringement up to a maximum of three years.

These powers are matched by a strong commitment to promoting compliance and raising the profile of competition policy. During the year we continued our efforts to explain what the Act means, how we will apply it, and the benefits that competitive markets bring to both fair dealing businesses and consumers. We also sought to ensure that the decisions we took under the Act were open to public scrutiny.

## **Complaint investigations**

The Act gives businesses the opportunity to come forward if they are harmed by anti-competitive behaviour by a competitor, supplier or customer. The OFT welcomed these complaints as a valuable source of information.

In 2001, our competition enforcement division opened 1,298 complaint cases. Of these, 63 gave us reasonable grounds to suspect an infringement of the Act had taken place, leading to a formal section 25 investigation. At the end of the year, 44 such cases were under active consideration (including one case under the Fair Trading Act's monopoly provisions). We estimate that around a quarter of these will result in formal decisions.

Complaints came from a variety of markets and covered a wide range of practices and behaviour, from refusal to supply to alleged cartels. There were a surprisingly large number of complaints relating to resale price maintenance.

Of the complaints received from businesses, by far the largest proportion came from small and medium-sized enterprises (SMEs) – a group specifically targeted in our business education programme.

During 2001 we published eight formal decisions. Two of these were infringement decisions, two were individual exemptions (of which one was conditional) and four were non-infringement decisions. One complaint rejection made during the year was later found to be a non-infringement decision by the Competition Commission Appeal Tribunals.

Our policy of informing businesses about the Act's provisions – rather than inviting notifications – was highly successful, and we received only two requests for decisions and one request for guidance during the year. This allowed



us to focus our resources on more serious cases of actual or suspected infringements. However, we were also prepared to deal with requests for informal advice.

The value of the OFT's leniency programme, which encourages cartel members to blow the whistle on their fellow colluders, was again demonstrated. The OFT can reduce financial penalties for companies which provide evidence of a cartel's activities – and give total immunity to the first cartel member to come forward. We received 13 applications for leniency in 2001 and agreed to leniency in six cases. Investigations are continuing in the outstanding cases.

A number of requests for interim measures directions were made during the year. Of these, two gave reasonable grounds for further investigation and were considered. As a result of these investigations three section 35 notices proposing directions were issued. Although none resulted in a formal direction, informal assurances were given in one case. Another was resolved between the parties.

### Use of investigatory powers

Effective powers of investigation are vital to uncovering and deterring anti-competitive behaviour. Under the Competition Act, where there are reasonable grounds to

suspect an infringement, the OFT may:

- require the production of specified documents or specified information (section 26)
- enter premises without a warrant and require the production of documents (section 27)
- enter and search premises with a warrant (section 28).

To assist our investigations, 1,040 section 26 notices were issued in 2001.

We conducted 15 'raids', some covering multiple sites. These involved the use of both section 27 and section 28 powers.

As part of these raids, section 28 search warrants were obtained for 37 premises. We also carried out 18 site visits with notice and nine without notice under our section 27 powers.

### Guidelines

Information is one of the chief weapons in competition enforcement, and a powerful deterrent to potential transgressors.

As part of our business education programme, a comprehensive range of guidelines has been published explaining how the OFT and the sector regulators intend to enforce the Act and deal with specific industry issues.

The OFT also has a duty to consult about the application and enforcement of the powers in the Act. Details of these consultations are contained in draft guidelines.

The following draft guidelines were issued in 2001:

- **Public Transport Ticketing Schemes Block Exemption**  
Certain types of public transport ticketing schemes benefit from a block exemption order – the first to be made under the Competition Act. This draft guideline explains how the block exemption works and the conditions that need to be satisfied.
- **Services of General Economic Interest Exclusion**  
This guideline provides advice and information on how the exclusion for ‘services of general economic interest’ and ‘revenue-producing monopolies’ will be interpreted and applied.
- **Intellectual property rights (IPR)**  
This guideline explains how the Director General expects the Act to operate in respect of IPR agreements and conduct.

## Concurrency and the Competition Act

In a number of industries, the Competition Act is applied and enforced by the OFT concurrently with sector regulators.

The OFT and each regulator are represented on the Concurrency Working Party (CWP). Meetings of the CWP, which are chaired by the OFT, are held once a month to discuss matters relating to the Act. The aim is to:

- coordinate the use of concurrent powers and ensure consistency of approach in casework
- consider the practical working arrangements for conducting investigations
- coordinate the provision of advice and information on the Act to the public.

The concurrency arrangements worked well in 2001, both within the CWP and in the bilateral relations arising from individual investigations. Agreement on which authority was best placed to handle a complaint or investigation was reached speedily and efficiently in all cases involving concurrency. There was no need to resort to the dispute resolution mechanism provided for in the Concurrency Regulations.

The CWP also proved a useful forum for discussing policy and procedural issues, case law and forthcoming changes to EC and national legislation. To improve this liaison further, a CWP website is under development which will allow regulators to exchange information on a more regular basis. This is planned to go live in April 2002.

## Significant cases

### *Napp Pharmaceutical Holdings Ltd*

The first financial penalty under the Competition Act was imposed in March when Cambridge-based drugs company Napp Pharmaceutical Holdings Ltd was fined £3.21 million for abusing a dominant market position.

The company was found to have supplied its sustained-release morphine product MST to patients in the community at excessively high prices, while supplying hospitals at a discount that blocked competition.

This conduct was judged to infringe Chapter II of the Competition Act, which prohibits abuse of a dominant position in a market if it may affect trade in the UK.



Our investigation showed that Napp's policy of reducing prices to hospitals impeded competition in the market for MST, which is used as a pain relief for cancer sufferers. The company offered discounts of well over 90 per cent in tendering for hospital contracts where it faced competition. This tactic enabled Napp to retain a market share in hospitals of more than 90 per cent.

Because GPs' prescriptions are strongly influenced by the brands used in hospitals, Napp was able to secure a similarly high share of the much larger business of supplying patients in the community. The company's prices here were more than ten times higher than those charged to hospitals in some cases and up to six times the export price of MST.

In addition to a financial penalty, we directed Napp to cease the infringements by reducing the price of MST tablets to the community and limiting the degree to which community

prices exceed hospital prices – a move which would save the NHS about £2 million a year.

An appeal against the OFT's decision was heard by the Competition Commission Appeal Tribunals (CCAT) in September.

The Tribunal upheld the substance of the OFT's decision and our direction on the company's pricing policy. However, it considered that there were mitigating factors, most notably the existence of a voluntary price regulation scheme within the industry and the fact that this was the first case of excess pricing under the Act. Taking these into account, the Tribunal reduced the financial penalty from £3.21 million to £2.2 million.

Napp has sought leave to appeal against the CCAT's ruling.

### ***Aberdeen Journals***

An attempt by a regional newspaper publisher to drive a competitor out of business resulted in a fine of over £1.3 million being imposed in July.

The OFT found that Aberdeen Journals, a company owned by Northcliffe Newspapers, part of the Daily Mail and General Trust group, was the dominant supplier of advertising space in paid-for and free local newspapers in the Aberdeen area.

The OFT considered that Aberdeen Journals has abused that dominant position in breach of the Chapter II prohibition, by continuing to sell advertising space in its free newspaper, the *Herald & Post*, at below cost price in March 2000. This behaviour had begun with the launch of the *Aberdeen & District Independent* in 1996 with the express intention of removing it from the market. A fine of £1,328,040 was imposed.

An appeal by Aberdeen Journals against this decision was upheld on procedural grounds in March 2002. While stressing that no conclusion had been reached on whether Aberdeen Journals was a dominant supplier or had abused its position, the CCAT ruled that there was insufficient evidence to support the OFT's definition of the market.

The OFT has been given two months to reconsider which newspapers constituted the relevant product market in this case.

### ***Arriva plc and FirstGroup plc***

The first cartel to be penalised under the Act involved two national bus companies, Arriva and FirstGroup, whose Leeds and Wakefield subsidiaries entered into an unlawful agreement to share routes between themselves.

The OFT set penalties for Arriva of £318,175 and for FirstGroup of £529,852. Both penalties were reduced under the OFT's leniency programme, where businesses blow the whistle on cartel activities or cooperate from an early stage.

FirstGroup approached us first and was granted 100 per cent leniency, subject to its full cooperation. As a result, it will not have to pay any of the financial penalty imposed.

Arriva also benefited from the leniency programme, but only to the extent of a 36 per cent reduction, making a total financial penalty of £203,632.

This decision, issued in February 2002, was the first involving an infringement of the Chapter I prohibition of the Competition Act, which covers anti-competitive agreements.

Staff from subsidiaries of Arriva and FirstGroup in Yorkshire met in a hotel room and agreed that Arriva would withdraw its five buses from two routes, leaving FirstGroup with no competition. In return FirstGroup withdrew from two routes that Arriva took on. Both businesses accepted that their staff had attended meetings and had agreed who would run certain routes.

While the scope of the agreement was not large, we imposed over £500,000 in extra penalties between the two companies as a deterrent to others.

### *Link Interchange Network Ltd*

The OFT decided in October that the benefit of rules governing interchange fees for the Link network of automated teller machines (ATMs) outweigh their possible anti-competitive effects.

Link, which is owned by the major banks and building societies, had asked the OFT to decide whether its rules infringed the Chapter I prohibition of the Competition Act and, if they did, to grant an exemption.

The OFT found that one element of Link's rules – the multilateral interchange fee – did infringe the Act. This is the fee paid by the card issuer to other members of the network when a cardholder uses an ATM of another card issuer. While Link members are free to negotiate their own charges to other members for using their ATMs, in practice only a few actually do. Link's rules do not cover charges by individual members to consumers for the use of ATMs.

However, we concluded that this fee arrangement brought benefits that would not otherwise be achieved and outweighed its anti-competitive effects. The benefits include a widening of the ATM network. An individual exemption could therefore be granted.

There must be  
vigorous and open  
competition for  
markets to work  
well for consumers.  
Anti-competitive  
agreements and  
abuses of dominant  
market position  
increase prices and  
harm consumer  
choice

### ***The Institute of Independent Insurance Brokers (IIIB) and the Association of British Travel Agents Ltd (ABTA)***

The OFT decided in January that the rules of the General Insurance Standards Council (GISC) – a trade body which sets standards for general insurance activities in the UK – did not infringe the Chapter I prohibition of the Act. This decision was challenged in two separate appeals to the CCAT.

One of the GISC rules, F42, prohibited members from conducting business directly with any UK general insurance broker outside the GISC regime. Following an investigation, the OFT concluded that this did not appreciably restrict or distort competition.

This decision was successfully challenged by the IIIB and ABTA before the CCAT and it was set aside. Following the CCAT's ruling, the Government announced that it will be introducing statutory regulation for the selling of general insurance.

### ***BetterCare Group Ltd***

The Belfast-based company BetterCare, a provider of nursing home and residential care services, submitted a complaint to the OFT in November 2000 alleging abuse of dominant market position by the North & West Belfast Health and Social Services Trust in the purchase of care services and accommodation for the elderly.

The OFT took the preliminary view that North & West was not acting as an 'undertaking' within the meaning of the Competition Act and was therefore not subject to its provisions.

BetterCare submitted further information in June to support its case. However, the OFT stood by its original conclusion and rejected the complaint without a formal investigation.

In November, BetterCare appealed to the CCAT, which ordered that the question of admissibility – that is, whether the OFT had made a decision capable of appeal in rejecting the complaint – be tried as a preliminary issue.

This preliminary hearing was held in Belfast in February 2002 and a judgment on admissibility was expected in March.

**Competition Act** guidelines and other documents relating to the Act can be ordered or downloaded from the Business Information section of the OFT website [www.oft.gov.uk](http://www.oft.gov.uk)  
Details of appeals to the **Competition Commission Appeal Tribunals** can be found on the Competition Commission website [www.competition-commission.org.uk](http://www.competition-commission.org.uk)



## Medicaments

A five-year campaign to end price controls on branded over-the-counter (OTC) medicaments ended successfully in May when pharmaceutical suppliers dropped their opposition to an OFT court action.

The Restrictive Practices Court overturned an exemption, granted in 1970, which had allowed manufacturers to set minimum prices for OTC products such as painkillers, cough remedies and vitamins – a market worth about £1.6 billion a year.

Within hours of the court's decision, some supermarkets announced price cuts on leading brands of between 25 and 50 per cent. Each percentage point off average prices is estimated to save consumers £16 million a year.

Medicaments were the last products to enjoy this particular exemption. Resale price maintenance on books was struck down by the Court in 1997, again following an application by the OFT.

Suppliers had argued that the abolition of RPM would lead to the mass closure of community pharmacists, who would be unable to compete with supermarket prices. The OFT disputed this claim, observing that a very large proportion of a pharmacist's turnover and gross profit came from dispensing NHS prescriptions. There had also been a rise in own-label OTC medicines – not covered by RPM – which were available at much cheaper prices than their branded equivalents.

## European competition work

### Liaison with DG COMP

The OFT continued to work closely with the European Commission's Competition Directorate, DG COMP, on applying EC competition law and shaping policy on competition issues.

As the competent authority responsible for casework in the UK, the OFT assists the EC in investigating alleged infringements of Articles 81 and 82 of the Treaty of Rome – which are mirrored by the Chapter I and Chapter II prohibitions of the Competition Act. A total of 24 decisions were adopted by the EC on Article 81 and 82 cases in 2001, including heavy fines against global cartels in vitamins, citric acid and sodium gluconate.

The OFT represented the UK at Advisory Committee meetings and hearings on cases, and OFT officers were involved in visits to company premises in the UK as part of EC investigations. We also took part in Advisory Committee meetings reviewing the motor vehicle block exemption (1475/95) and EC leniency policy in cartel cases.

### EC Modernisation

Changes to the way Articles 81 and 82 are implemented by the EC and European Union member states were actively discussed during the year.

Among the proposals contained in an EC draft regulation are:

- a change from the current notification system to a directly applicable legal exception system. This would mean that agreements meeting the exemption criteria in Article 81(3) would automatically be deemed lawful.
- decentralised enforcement of Articles 81 and 82 by National Competition Authorities (NCAs) and national courts, with closer cooperation between NCAs and the EC. Details of how this arrangement might work – including the rules on allocating cases – will be set out in a joint document between the EC and member states.

At present, agreements or practices that may affect trade between member states are potentially subject to both national law and Articles 81 and 82, although Community law has 'primacy'. Member states are under no duty to apply Community law: however, the draft regulation requires that where national competition authorities apply national law to such agreements or practices, they must also apply Community law. For agreements, national law may not be stricter than Article 81.

The OFT welcomed the modernisation proposals – and the prospect of greater consistency in competition enforcement across Europe.

## British Airways/American Airlines

A proposed alliance between British Airways and American Airlines was notified in August and considered in detail by the OFT. The alliance involved in-depth cooperation between the airlines, including joint price setting, schedule coordination and, on some routes, profit sharing.

Under new regulations made in 2001, the OFT is responsible, along with the European Commission, for scrutinising agreements involving air transport services between the UK and non-EC countries under EC competition law.

The two airlines sought an OFT decision on whether the alliance was anti-competitive and, if so, whether an exemption under Article 81 (3) of the EC Treaty should be granted.

Working closely with EC officials, the OFT considered whether the agreement was likely to have a detrimental effect on competition and, if so, whether that detriment would be outweighed by benefits to consumers. The alliance was also the subject of a separate investigation by the US Department of Transportation.

The OFT investigation ended in February 2002 when the two airlines informed us that they had terminated the agreement.

## Mergers

Company mergers and acquisitions can have a significant impact on the way markets work. Under the Fair Trading Act 1973, the OFT has a duty to assess all mergers above a certain size and make recommendations to the Secretary of State on whether they should be permitted, modified or referred to the Competition Commission.

Some important changes to the merger regime were outlined in the Government's White Paper, *Productivity and Enterprise: A World Class Regime*, and in the subsequent Enterprise Bill.

Under the proposed reforms, which are described on page 69, direct responsibility for nearly all merger cases will be given to the OFT and the Competition Commission. Ministers will only be involved where there are exceptional public interest issues, such as national security.

The Enterprise Bill also proposes a new framework for merger assessment, replacing the current public interest test with a competition-based test.

Greater independence calls for increased accountability. The OFT remains committed to openness in its merger considerations. Information on a number of merger cases was published on our website and in *The OFT Weekly Gazette* in 2001. This included an explanation of why the merger was investigated, an analysis of its likely effects, and our view on whether it should be referred to the Competition Commission.

### Merger activity

A merger qualifies for investigation, under the Fair Trading Act 1973 (FTA), if the gross (fixed and current) worldwide assets being acquired exceed £70 million, or if the merged company would be supplying or acquiring 25 per cent or more of a particular product or service in the UK, or a substantial part of the UK markets.

The OFT examined details of 356 mergers in 2001, compared with 315 in the previous year. Of these, 200 qualified for consideration under the FTA, eight more than in 2000.

Cases which raise significant competition issues are examined by the Mergers Panel, which is generally chaired by the OFT's Director of Competition Enforcement. In 2001 there were 37 of these cases.

There was a drop in the number of mergers recommended for reference to the Competition Commission, from 14 in 2000 to 10 in 2001. The Secretary of State accepted the OFT's advice in all these cases.

Mergers referred to the Competition Commission in 2001 were:

<b>SCR Sibelco / Fife Silica Sands</b>		
9 January	Report published	Against public interest
<b>Reed Elsevier / Harcourt</b>		
21 February	Report published	Not against public interest
<b>Lloyds TSB / Abbey National</b>		
23 February	Report published	Against public interest
<b>General Healthcare / Community Hospitals Group</b>		
20 March	Laid aside	
<b>Octagon / British Racing Drivers Club</b>		
17 April	Report published	Not against public interest
<b>Blockbuster / Apollo</b>		
2 May	Laid aside	
<b>Duralay / Gates</b>		
28 June	Report published	Not against public interest
<b>HCA / London Heart Hospital</b>		
20 July	Laid aside	
<b>Kodak / Colourcare</b>		
16 August	Report published	Not against public interest
<b>Hilton / BSkyB</b>		
10 October	Laid aside	

Undertakings in lieu of a Competition Commission reference were given in the following cases:

<b>National Express / Prism</b>	17 January
<b>Nimbus / National Air Traffic Services</b>	5 March
<b>BSkyB / BiB</b>	8 May
<b>Insys / Hunting</b>	15 November
<b>Dynegy / BG Storage</b>	23 November
<b>EADS / Nortel</b>	30 November



## Examples of cases

### *Interbrew/Bass Brewers*

In September, the Secretary of State for Trade and Industry ordered Interbrew to dispose of either Bass Brewers or Carling Brewers – following advice from the OFT.

It was the Government's second action to remedy the adverse effects of Interbrew's acquisition of Bass Brewers, the UK brewing interests of Bass plc, which were first identified in a Competition Commission report published in January 2001. A decision by the previous Secretary of State that Interbrew should divest itself of Bass Brewers was quashed by the courts on procedural grounds in May.

The acquisition had originally been referred to the UK competition authorities by the EC in August 2000 under Article 9 of the European Community Merger Regulation (ECMR), following a request from the UK.

In its report, the Competition Commission found that the merger would operate against the public interest by creating a duopoly in the industry between the two largest brewers/distributors, Interbrew and Scottish and Newcastle. It recommended that the UK business of Bass Brewers be disposed of to a buyer approved by the OFT – a remedy accepted by the then Secretary of State, Stephen Byers.

This decision (and the relevant paragraphs of the Competition Commission's report) were set aside in judicial review proceedings, which, while rejecting the main

substance of Interbrew's case, found that the Competition Commission had acted unfairly in not allowing the company to comment on the grounds for rejecting an alternative possible remedy. The question of the appropriate remedy was referred back to the OFT by the Secretary of State for further advice.

Following consultations with Interbrew and third parties, the OFT confirmed that the Bass Brewers disposal favoured by the Competition Commission would address the adverse effects of the merger, but also identified a second remedy – allowing Interbrew to retain parts of Bass Brewers but requiring it to sell the Carling brand and other beer brands and related assets (the so-called Carling Brewers remedy).

The present Secretary of State accepted that either of the two remedies would address the adverse effects of the merger and asked the OFT to obtain appropriate undertakings from Interbrew to achieve one or other of the disposals. The Secretary of State accepted undertakings given by Interbrew in January 2002.

### *Abbey National/Lloyds TSB*

The Secretary of State accepted the Competition Commission's conclusion – endorsed by the OFT – that the proposed takeover of Abbey National by one of the Big Four UK clearing banks would have resulted in higher prices and a loss of innovation in the personal banking sector.



The OFT had warned that the acquisition of Abbey National by Lloyds TSB would lead to the elimination of one of the most significant branch-based competitors to the big four. It would also strengthen the position of what was already the largest provider of personal current accounts – the core product in personal banking.

Allowing the takeover would have increased the share of personal current accounts held by the big four – Barclays, HSBC, Lloyds TSB and RBS/NatWest – from 72 per cent to 77 per cent, with Lloyds TSB's own share rising from 22 per cent to 27 per cent.

The Competition Commission considered a range of remedies but concluded that blocking the merger was the only action likely to address the adverse effects.

### ***Bank of Scotland/Halifax plc***

Following a recommendation from the OFT, the proposed merger of the Bank of Scotland and Halifax plc was cleared by the Secretary of State in July without reference to the Competition Commission.

The OFT had noted that the market share of the merged entity would be much lower than those of the four main clearing banks. The branch networks of the two companies were largely complementary and there was little geographic overlap.

Unlike the Lloyds TSB/Abbey National merger, the proposal did not involve one of the Big Four and the OFT concluded that it would not have a detrimental effect on competition.

### ***Sibelco/Fife Silica Sands***

The UK's largest supplier of sand for glass manufacture was required to divest itself of a former competitor following a Competition Commission report.

SCR Sibelco SA had completed its acquisition of Fife Silica Sands Ltd and Fife Resources Ltd in September 2000. This merger saw Sibelco's market share for sales of silica sand in the UK rise to almost 90 per cent.

In his advice to the Secretary of State, the Director General said that he was not convinced by the parties' claim that Fife was no longer a viable business. He argued that the company's mineral and land assets – in particular a quarry it owned in Scotland – appeared to have significant and lasting value.

The acquisition was referred to the Competition Commission, which decided that it would have adverse effects on competition and on glass sand prices.

This finding was accepted by the Secretary of State, who ordered Sibelco to sell the Fife companies to a purchaser approved by the OFT.

### **European Community Merger Regulation (ECMR)**

The European Community Merger Regulation (ECMR) gives the European Commission power to control mergers that exceed certain turnover thresholds.

As the competent authority in the UK, the OFT received details of all mergers notified in Brussels in 2001. We examined significant cases, consulted with the DTI and provided the UK's view to the EC's Merger Task Force.

The OFT represented the UK at hearings convened by the Merger Task Force, which allow the merger participants and interested third parties to discuss the EC's objections to the transaction. The OFT also attended Advisory Committee meetings at which the EC's draft decisions were considered by Member States.

In 2001, a total of 335 cases were notified under ECMR.

### Article 9 cases under the ECMR

Under Article 9 of the ECMR, a member state may request that a merger notified under the ECMR be examined instead by the national competition authority on one of two possible grounds:

- it threatens to create or strengthen a dominant position as a result of which effective competition will be significantly impeded in a market within that member state which presents all the characteristics of a distinct market
- it affects competition in a market within that member state, which presents all the characteristics of a distinct market and which does not constitute a substantial part of the common market.

The UK made two Article 9 requests in 2001, both of which were granted by the EC.

The mergers in question were Govia/Connex (COMP M/2446) and Cargill/Cerestar (COMP M/2505). The first of these was subsequently cleared on the advice of the OFT. The Secretary of State referred the second to the Competition Commission, on the advice of the Director General, in February 2002.

### Article 22 referral

Under Article 22 of the ECMR, cases that do not meet the ECMR turnover threshold may nevertheless be considered by the Commission at the request of one or more member states. The proposed merger of textile equipment manufacturers Promatech and Sulzer, which had been notified in a number of member states, including the UK, will now be subject to a single investigation and decision by the EC. This was the first joint request by several member states (including the OFT) under Article 22. We made the request to streamline regulatory action to the benefit of consumers and the companies concerned.

Information on the OFT's merger decisions can be found on our website [www.oft.gov.uk](http://www.oft.gov.uk)

On our website you can also find statistical information on UK Mergers for the year 2001.

See [www.oft.gov.uk/News/Annual+report/default.htm](http://www.oft.gov.uk/News/Annual+report/default.htm)

Details of ECMR cases and Articles 81/82 are provided on the EC website [www.europa.eu.int](http://www.europa.eu.int)

## Monopolies

The complex monopoly provisions of the Fair Trading Act 1973 complement the powers contained in the Competition Act, generally allowing the formal investigation by the Competition Commission of markets which do not appear to be working well but where there is no evidence which infringes the Competition Act of anti-competitive agreements or abuse of a dominant market position.

Complex monopoly situations can be referred to the Competition Commission for investigation under the Act if, amongst other matters:

- two or more companies in a market collectively have a share of supply of 25 per cent or more; and
- the companies, whether voluntarily or not, and whether by agreement or not, so conduct their affairs as in any way to prevent, restrict or distort competition.

In its White Paper, *Productivity and Enterprise: A World Class Regime*, the Government announced plans to replace these provisions with a new power to investigate markets. As a result, decisions will normally be taken by the Competition Commission against a competition-based test, rather than a public interest test. Ministers will only be involved exceptionally.

## Supermarket code

In December, the Secretary of State for Trade and Industry accepted undertakings from the UK's top four supermarkets to abide by a code of practice drawn up by the OFT.

This followed a Competition Commission report on the industry, published in October 2000. While the Competition Commission was satisfied that the industry was broadly competitive, it reached adverse findings on the supermarkets' pricing practices and their dealings with suppliers.

Under the code, which is legally binding, the four supermarket chains – Tesco, Sainsbury, Asda and Safeway – will comply with a number of standards designed to make their relations with suppliers clearer and more predictable. These include a commitment to pay invoices within a specified time, to give reasonable notice of changes to prices or order volumes and not to seek lump sum payments or better terms as a condition of stocking a supplier's products.

The code also sets out a procedure for resolving disputes between parties, including independent mediation and, as a final resort, a referral to the OFT.



## Veterinary medicines

The £200 million-a-year market for prescription-only veterinary medicines was referred to the Competition Commission in October when evidence emerged that UK prices appeared to be substantially higher than those in other European countries. Under section 58 of the Medicines Act 1968, these products can only be sold by veterinary surgeons or practitioners or by pharmacists acting on a written prescription.

Our preliminary investigation, launched in response to complaints from farmers' groups and individual consumers, found that competition in the market was not working well.

As well as voicing concern about the cost to consumers, we noted a lack of transparency in prices, with medicines dispensed by vets in the course of treatment often not being itemised on the final bill. We also found evidence of a reluctance by manufacturers to supply veterinary pharmacies, which may be restricting price competition.

## Newspaper distribution

The OFT began a review of the industry code of practice for the supply of newspapers. This code was introduced in October 1994 following a report by the then Monopolies and Mergers Commission (now the Competition Commission). It sets out the criteria by which retailers are granted access to supplies of newspapers from a wholesaler.

We expect to publish the findings of the review in summer 2002.

## Car supply and EU block exemption

An OFT investigation into the discounts offered by car suppliers to dealers concluded that anti-discrimination rules had not been broken.

The investigation related to alleged breaches of the Supply of New Cars Order 2000, which was put in place following an inquiry by the Competition Commission. This prohibits manufacturers from unjustifiably discriminating between discounts for fleet customers and dealers for the supply of similar volumes of cars.

We found that, overall, the value of terms and conditions offered to dealers were broadly similar to those offered to fleet purchasers. There was no evidence that car suppliers had colluded in setting discounts for dealers.

On a wider front, we remain concerned that unexplained EU price differentials persist. New car prices in the UK have come down by around 10 per cent since March 1999, but even allowing for exchange rate movements, the price gap between the UK and other parts of the EU has not narrowed appreciably.

The OFT has called for a number of reforms to the EU block exemption on car supply, which is currently under review by the European Commission.

# looking to the future

## **Planned legislative changes**

There are several important changes in prospect that will have a significant impact on our future enforcement activity.

### **Enterprise Bill**

The Government's Enterprise Bill, published in spring 2002, will strengthen the OFT's ability to make markets work well for consumers. The Bill is designed to stimulate competition, empower consumers and promote enterprise, and includes wide-ranging proposals for reform of competition and consumer law.



### ***Mergers***

Under the proposed reforms, direct responsibility for virtually all merger cases will be given to the OFT and the Competition Commission. The OFT will continue to conduct the preliminary investigation and decide whether to refer a merger proposal to the Competition Commission. Ministers will only be involved when a merger case potentially raises public interest issues such as national security.

The Bill also changes the test against which OFT will assess mergers. Once the Bill becomes law, mergers will be assessed on whether or not they would result in a 'substantial lessening of competition', rather than whether they adversely affect the public interest.

### ***Market investigations***

The Bill changes the test against which OFT will refer markets to the Competition Commission for formal investigations. Instead of a monopoly situation test, the OFT will consider whether there are factors which are adversely affecting competition. As with mergers, decisions will normally be left to the OFT and the Competition Commission.

### ***Cartels***

The Bill will enable criminal charges to be brought against individuals who engage in cartel agreements to fix prices, share markets, limit supply or production or rig bids. It will also enable the OFT to seek court orders disqualifying directors whose companies have breached competition law.

### ***Super-complaints***

The Bill will enshrine in law the new arrangements for 'super-complaints' under which designated consumer organisations which believe a market is not working well can submit a super-complaint to the OFT for a fast-track response.

### ***Stop Now***

The Stop Now Regulations will be entirely replaced by the Enterprise Bill when it comes into force. It will continue to cover European Community infringements and will continue to permit cross-border enforcement to stop them. But, for the first time, Stop Now Orders will be available for a wide range of other infringements known as 'domestic infringements'. It is expected that almost all, if not all, legal provisions providing protection for consumers will be enforceable under the Act where conduct harms the collective interests of consumers.

### ***Codes of practice***

The Bill will give the OFT enhanced powers in respect of self-regulatory codes of practice that safeguard and promote the interests of consumers.

### ***International disclosure***

Subject to certain safeguards, the Bill will permit public authorities including the OFT to disclose information to competition and consumer enforcement bodies overseas, facilitating international cooperation in enforcement.



### ***Consumer education***

The Bill will give the OFT for the first time a statutory power to carry out educational activities, for example, to educate consumers.

### **Review of the Consumer Credit Act**

The Government has set out proposals for modernising the Consumer Credit Act to make it easier for the OFT to tackle loan sharks and other rogue traders. The proposals include:

- changes to the licensing regime
- more effective provisions against extortionate credit
- bringing more credit agreements within the scope of the Act
- reducing the burden on legitimate businesses
- amendments to the early settlement regulations to give consumers a fairer deal.

These are important reforms. The OFT is working with DTI to ensure their effective implementation as soon as legislative time permits.

### **EC Green Paper**

The European Commission Green Paper on consumer protection in the European Union has proposed reforms in two key areas.

First, the Green Paper recognises that EC legislation lags behind new market developments, and that there are discrepancies in member states' domestic fair trading laws as well as how member states transpose directives into national law. It therefore proposes to replace many of the current series of specific consumer protection directives with a framework directive that would impose a general duty to trade fairly on businesses in all sectors, supported by general tests of fairness and specific rules to eliminate differences in national rules on commercial practices. This could be supplemented by other directives where necessary. The alternative discussed in the paper would be to continue to adopt further specific directives.

Second, the Green Paper proposes the introduction of a new legal framework for cooperation between consumer protection authorities across the EU. This proposal recognises the effectiveness of existing informal cooperation arrangements such as the International Marketing Supervision Network Europe.

These proposals need to be developed in detail but we have given our broad support to both main proposals.

### **EC modernisation**

As part of its modernisation programme, the European Commission has proposed a number of major changes to its competition regime. The draft reforms are to procedural rules, and to the way competition law is enforced. For more on this, see page 57.