

foreword

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foreword by the director general

2001 was an important year for the OFT. The first decisions were made under the Competition Act 1998. The new Stop Now consumer powers were deployed. Four major market investigations were launched. And we radically restructured our growing organisation. These and the many other developments described in this report show how the OFT and its role are being transformed – a process begun some years ago, which the enterprise legislation now before Parliament will take further. This foreword is about how and why the OFT is changing.

Making markets work well for consumers

First it is important to be clear what we are aiming to do. The OFT's powers and duties come from a range of competition and consumer laws. Though diverse, these laws have the unifying aim of making markets work well for consumers. That is what the OFT is all about. Markets work well for consumers when there is vigorous competition between firms that trade fairly. Being pro-consumer therefore goes hand-in-hand with being pro-market. It also means being pro-business for businesses that are good at delivering what consumers want.

We pursue our goal of making markets work well for consumers by:

- enforcement of competition and consumer protection laws
- investigation into how markets are working
- communication with businesses and consumers – to explain and improve awareness and understanding.

More direct results

The OFT is increasingly able to achieve results directly. Under the Competition Act, which came into force in March 2000, the OFT (along with the regulators with concurrent powers) directly enforces competition law. We decide, subject to appeal, whether or not the Act's prohibitions of anti-competitive agreements, and of abuse of dominant market positions, have been breached. We have powers to gather evidence relating to suspected breaches of the law, and powers to impose financial penalties and issue directions when breaches are found.

The first decision imposing a financial penalty concerned the supply of sustained-release morphine – a drug used, for example, by cancer patients – by Napp Pharmaceuticals. Napp was found to have abused its dominant position by a combination of exclusionary pricing (in supply to hospitals) and excessive pricing (in supply for outpatients in the community). A financial penalty of £3.2 million was imposed, and requirements that Napp alter its pricing behaviour are likely to save the NHS around £2 million annually even before competition develops.

Napp appealed but the Competition Commission Appeal Tribunals (CCAT) upheld the OFT's decision in every respect apart from the financial penalty, which it reduced. Well within two years of the Act coming into force, this case saw the infringement by Napp, the OFT investigation, representations by Napp, the OFT decision, the appeal to the CCAT, and the appeal judgment.



John Vickers
Director General of Fair Trading



Other infringement decisions have concerned Aberdeen Journals (predatory pricing of advertising space) and Arriva and FirstGroup (local bus cartel). In Aberdeen Journals, the CCAT on appeal set aside the decision and remitted to the OFT the issue of market definition. Non-infringement decisions have been issued in a number of cases, including notified agreements relating to the Link cash machine network and general insurance. In this last case, the OFT's clearance of the self-regulatory arrangements of the General Insurance Standards Council was successfully appealed against by affected third parties. The Government has since decided to bring general insurance under statutory regulation.

Other sectors within which Competition Act investigations are under way, but where decisions have yet to be reached, include credit cards, horse racing, pay TV, milk, pharmaceuticals, toys, construction materials, and football kits. And in aviation the OFT, working with the EC, was responsible for scrutiny under European competition law of the proposed (now abandoned) alliance between British Airways and American Airlines. The variety of these examples indicates the broad scope of the OFT's work.

While the Competition Act is new, one major competition result achieved by the OFT in 2001 marked the end of an era. In May our bid before the Restrictive Practices Court to end the exemption from the general ban on resale price maintenance (RPM) enjoyed by branded over-the-counter



medicines was successful. RPM stops competition between retailers, and the moment it became unlawful, major retailers cut prices sharply. This provided a vivid illustration of a general principle: competition is good for consumers.

Though not yet the subject of radical reform, UK consumer law, and the OFT's role enforcing it, has changed too. Ironically, the most important development in 2001 created no new substantive law. The Stop Now injunctive powers, which implement an EC directive, came into force on 1 June. These allow swifter action than has hitherto been available in the UK. The Enterprise Bill will extend this enforcement regime to include domestic consumer law.

The OFT is the lead UK enforcer among others, notably local trading standards authorities. We lead by providing guidance, training, coordination and – most important – action in cases with a national dimension.

Action, of a measured kind, began as soon as the Stop Now powers became available. The issuing of injunctions is a matter for the courts, not for enforcers like the OFT. We will, and do, go to court where necessary, but where possible we try to resolve problems beforehand. Stop Now powers have greatly facilitated that, and allowed the direct achievement of positive results.

An example is the advertising of APRs for credit deals that have low introductory interest rates. Many lenders had

described those introductory rates as APRs. But that is liable to confuse consumers and is against the rules – the whole point of the APR is to measure the overall, not just the introductory, cost of the credit. Stop Now approaches in 2001 allowed the timely and effective correction of the problem by agreement with the credit providers, many of them high street names. Methods previously available would have been slower if effective at all.

Wider remit

Our growing ability to get results directly does not detract from the continuing importance of advice to Government, reference of matters to the Competition Commission, the publication of reports and guidance, and participation in international initiatives. Indeed the nature of those activities is changing too.

In February 2001 the Government announced that the OFT would have an explicit role reviewing new and existing laws and regulations for possible anti-competitive effects. Such activity by the OFT is not new. For example, last year's report on *Competition in Professions* – which we are now following up – included a number of recommendations to Government.

But the OFT's remit in this area is now clearer, wider and more systematic. With the Cabinet Office, we have issued guidance to help assessment across Government of how policies might impact on competition. And we have under way a major study of the effects of entry controls into pharmacy.



This study of pharmacy is one of the first market investigations being carried out by the OFT's new Markets and Policy Initiatives division. Two other studies, announced in October, concern extended warranties on electrical goods, and consumer IT services. A further inquiry, into private dentistry, is also under way following a 'super-complaint' from the Consumers' Association.

The aim of all these studies is to gain the best possible understanding of how the market in question is working. They are all in important areas where there are clear consumer concerns that justify a serious inquiry, but no one is in the dock.

It is quite possible that a market investigation may conclude that no action is called for. The OFT regularly reaches such conclusions. But that is no reason not to inquire – well-informed non-intervention is better than ignorant non-intervention (let alone ignorant intervention). Businesses, for good reason, devote substantial resources to understand how markets work, and the OFT is now better placed to do likewise, albeit selectively.

A market investigation might, on the other hand, give grounds for consideration of enforcement action under competition or consumer legislation. Or it might lead to recommendations to Government. Or it could very well indicate that investment in a consumer awareness campaign was called for. Or it could be a combination of these.

We play a full part in international initiatives, working with a number of other national authorities and international bodies active in competition and consumer protection issues, and we have cooperated on action on cross-border cases wherever possible. For example, we have been involved in discussions with the European Commission on the modernisation of EC competition law and the reform of EC consumer law. And we play a leading role in the International Marketing Supervision Network, in OECD work, and in the new International Competition Network. As markets become more global, so must our perspectives and working practices.

More transparency and accountability

With the OFT's growing responsibility to achieve direct results goes greater accountability for what we do. Key to this is greater transparency – clear explanation of what we are doing, and how and why – which is desirable anyway.

The starting point for accountability and transparency is our Statement of Purpose. The OFT issued such a statement for the first time in July, and it appears on page 84 of this report. The statement sets out how – through enforcement, investigation and communication – we aim to make markets work well for consumers.

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The reasons for OFT decisions and advice are now much more open to public scrutiny than they used to be. For example, in 2001 we published eight Competition Act decisions, and in 27 cases our advice to the Secretary of State on merger reference was published. I have sought views on whether the OFT could take transparency further – for example during major competition investigations – but concerns relating to commercial confidentiality limit what is possible here.

Transparency is as much about how decisions will be taken as it is about how they have been taken. This can greatly assist compliance with competition and consumer law so that ‘self-enforcement’ reduces the need for public enforcement. For example, during 2001 we issued guidance on the OFT’s fresh approach to self-regulatory codes of practice, on the application of consumer credit law – generally and particularly for debt management – and on unfair contract terms – especially for landlord/tenant contracts. Good guidance helps stop problems arising.

Accountability takes several forms. The OFT is accountable to Government and Parliament for how public money is spent, and for the results achieved. We are accountable in our casework to the courts. Injunctions – for example in the Stop Now framework – can be sought by the OFT (among others), but the decision to grant them lies with the courts. Search powers under the Competition Act cannot be used without court approval. And of course OFT decisions under that Act, as well as under the Consumer Credit Act and the Estate Agents Act, are subject to full appeal. More generally,

the OFT is accountable to the public, on whose behalf we act. Better communication by the OFT – a two-way process – is necessary to make this wider accountability more effective.

New structure, new people

Results depend on people, not organisational forms, but structural reform can sharpen sense of purpose. We therefore created a new OFT division – for markets and policy initiatives – in October. The prime task of this division is to lead the major market investigations mentioned above. The division also leads the assessment of the competitive impact of new laws and regulations, the preparation for government policy initiatives such as the proposed regulation by OFT of payment systems, and public liaison.

With the creation of this new division, the former divisions for competition policy and consumer affairs are now focused on enforcement – of competition law and consumer regulation, including the promotion, subject to rigorous standards, of self-regulation.

The other key development in the OFT’s structure last year was the establishment of our Advisory Panel. The Panel adds independent external perspectives on the OFT’s work and helps inform strategy. The Panel members are Michelle Childs (Consumers’ Association), John Mills (Chief Executive of Jersey), Sir Geoffrey Owen (LSE, former editor of the *Financial Times*) and Professor Richard Whish (School of Law, King’s College, London). I am very grateful for the valuable contribution that they are making.



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In 2001 almost a hundred people joined the OFT, and the staff now exceeds 550. This number reflects, in part, the OFT's growth to meet new responsibilities. The OFT budget has increased significantly and now stands at around £50 million. Recruitment has been from a wide range of backgrounds – so the mix of experience has been enriched – and open competition is now the norm for senior positions; it is also used to fill many less senior positions.

Among those to join the OFT in 2001 were Jonathan May (Director of the Markets and Policy Initiatives division), David Fisher (Director of Resources and Services), Amelia Fletcher (Chief Economist) and Mike Ricketts (Director of Communications).

The Enterprise Bill

The OFT's task is to meet the responsibilities that we have under current legislation. Future legislation is of course a matter for Government and Parliament. In conclusion, I should however mention the Enterprise Bill, which was introduced into Parliament in March 2002. The proposals in the Bill take further several of the themes discussed above, and have major implications for the OFT.

Among the key proposals in the Bill are:

- establishing the OFT as a corporate authority with a board
- enhancing the independent role of the competition authorities
- criminalising hard-core cartel activity by individuals
- basing the merger regime on clear competition grounds
- introducing a wider, more proactive role in investigating markets
- extending the Stop Now regime to cover most domestic consumer law
- providing statutory underpinning for the super-complaints process
- establishing a new legislative framework for self-regulatory codes of practice.

The OFT is ready for the new responsibilities that the Enterprise Bill entails, and we welcome the further clarification and strengthening of competition and consumer law.