

WEB ANNEXE C

UK MERGERS 2002 TO 2003

This annexe gives statistics for the OFT's mergers work during the period January 2002 to March 2003.

The statistics shown in the tables which follow broadly relate only to those mergers that the OFT examined in the context of the Director General's responsibilities under the Fair Trading Act 1973. They do not represent an estimate of total merger activity in the UK. The following points should be borne in mind:

- the figures do not include mergers handled by the European Commission under the European Community Merger Regulation
- the figures cover merger proposals as well as completed mergers and, where there is more than one proposal for a given target, each is counted separately
- the figures do not include proposals considered for investigation under the newspaper merger provisions of the Fair Trading Act (which are considered separately by the Department of Trade and Industry)
- the figures include requests for confidential guidance as well as publicly announced mergers - although confidential guidance cases that subsequently become public are not included twice
- because some time may elapse between the opening of a file on a case and a decision by the Secretary of State on whether to make a reference to the Competition Commission (CC), the mergers that are referred in any particular year may not necessarily correlate to the cases first recorded in that year.

A better indicator of overall merger activity in the UK is provided by statistics collected by the Office for National Statistics (ONS) and published in *First Release: Acquisitions and Mergers involving UK companies*. These figures are shown in Table C.1. For more details go to the ONS website – <http://www.statistics.gov.uk>

To qualify for reference to the CC under the terms of the Act, a merger must either involve the acquisition of gross (fixed and current) assets of more than £70 million, or lead to the creation or augmentation of a share of supply of 25 per cent or more in a particular market.

Merger activity considered during the period January 2002 to March 2003

In 2002, the OFT considered 355 mergers and merger proposals under the terms of the Act, representing a decrease of one over the previous year. There was also a decrease of three per cent in the number of cases considered that qualified for reference to the CC - from 200 in 2001 to 194 in 2002. Fifty-two of these cases (compared with 40 in 2001) were prenotified. The number of qualifying confidential guidance cases increased from 27 in 2001 to 30 in 2002.

The Secretary of State made 14 references to the CC, including the reference of Vivendi/First Aqua under the Water Industry Act 1991. The Director General's advice to the Secretary of State in the remaining 13 cases was published on the OFT's website, as was that in 27 other cases in which clearance was recommended.

In the first quarter of 2003:

- the OFT considered a further 59 mergers and merger proposals under the terms of the Act
- 10 of these cases were prenotified
- there were five qualifying confidential guidance cases
- the Secretary of State made seven references to the CC
- the Director General's advice to the Secretary of State in these seven cases was published on the OFT's website, as was that in eight other cases in which clearance was recommended.

TABLE C.1 - MERGER ACTIVITY 2000 TO MARCH 2003

| Year | Proposals qualifying under the Fair Trading Act 1973: all cases | First Release ¹ Numbers of cases | Fair Trading Act cases as percentage of First Release cases |
|-------------------|---|---|--|
| 2000 | 192 | 765 | 25 |
| 2001 | 200 | 554 | 36 |
| 2002 | 194 | 502 | 39 |
| Jan 02/ Mar 03 | 234 | 644 | 36 |
| Apr 02/ Mar 03 | 190 | 531 | 36 |

Source: Office of Fair Trading

¹ Number of acquisitions of UK companies published in a *First Release* by the Office for National Statistics

TABLE C.2 - SUPPLEMENTARY DATA ON NUMBER OF MERGERS EXAMINED AND REFERENCES TO THE CC 2000 TO MARCH 2003

| Year | Total number of cases examined | Found not to qualify, proposals abandoned, and informal guidance cases | Qualifying cases | | Confidential guidance cases | Prenotified cases | Qualifying cases less confidential guidance cases | Total references | Total references as % of: | |
|-------------------|--------------------------------|--|------------------|----------|-----------------------------|-------------------|---|------------------|---------------------------|---|
| | | | Nos | % change | | | | | Qualifying cases | Qualifying cases less confidential guidance cases |
| 2000 | 315 | 123 | 192 | - 24.0 | 21 | 60 | 171 | 14 | 7.3 | 8.2 |
| 2001 | 356 | 156 | 200 | + 4.2 | 27 | 40 | 173 | 10 | 5.0 | 5.8 |
| 2002 | 355 | 161 | 194 | - 3.0 | 30 | 52 | 164 | 14* | 7.2 | 8.5 |
| Jan 02/ Mar 03 | 318 | 128 | 190 | N.A. | 28 | 51 | 162 | 13* | 6.8 | 8.0 |
| Apr 02/ Mar 03 | 414 | 180 | 234 | N.A. | 35 | 62 | 199 | 21* | 9.0 | 10.6 |

*Note: The Vivendi Water/First Aqua case was a mandatory reference to the Competition Commission under the Water Industry Act 1991 and has been included in these figures

Source: Office of Fair Trading

TABLE C.3A - REFERENCES TO THE CC UNDER THE FAIR TRADING ACT 1973
APRIL 2002 TO MARCH 2003

| Qualification criteria under the Fair Trading Act 1973 | | | | |
|--|---------------------------------|---------------------------------|-----------------------|--------|
| Findings of the CC | Share of supply of at least 25% | Assets in excess of £70 million | Meeting both criteria | Totals |
| Not against the public interest | 1 | 1 | 1 | 3 |
| Against the public interest | 0 | 1* | 0 | 1 |
| Proposal abandoned | 1 | 0 | 1 | 2 |
| Decision awaited | 1 | 4 | 2 | 7 |
| Totals | 3 | 6 | 4 | 13 |
| as percentage of all qualifying mergers in this category | 1.6 | 3.2 | 2.1 | 6.8 |

*Note: The Vivendi Water/First Aqua case was a mandatory reference to the Competition Commission under the Water Industry Act 1991 in which it met the assets criteria

Source: Office of Fair Trading

TABLE C.3B - REFERENCES TO THE CC UNDER THE FAIR TRADING ACT 1973
JANUARY 2002 TO MARCH 2003

| Qualification criteria under the Fair Trading Act 1973 | | | | |
|--|---------------------------------|---------------------------------|-----------------------|--------|
| Findings of the CC | Share of supply of at least 25% | Assets in excess of £70 million | Meeting both criteria | Totals |
| Not against the public interest | 3 | 1 | 3 | 7 |
| Against the public interest | 2 | 1* | 0 | 3 |
| Proposal abandoned | 3 | 0 | 1 | 4 |
| Decision awaited | 1 | 4 | 2 | 7 |
| Totals | 9 | 6 | 6 | 21 |
| as percentage of all qualifying mergers in this category | 3.8 | 2.6 | 2.6 | 9.0 |

*Note: The Vivendi Water/First Aqua case was a mandatory reference to the Competition Commission under the Water Industry Act 1991 in which it met the assets criteria

Source: Office of Fair Trading