

enforcing

Our enforcement of competition and consumer law is vital to making markets work well for consumers.

Through our enforcement activity, we uproot and deter all forms of anti-competitive behaviour, including cartels and the abuse of market power. We refer to the Competition Commission (CC) all mergers that might substantially lessen competition and, where appropriate, we refer to the CC markets where competition may not be working well.

We lead other enforcers in robust application of the rules that protect consumers against unfair trading, taking court action where necessary. We also take practical steps to encourage self-regulation such as codes of practice.

We work with our international partners to ensure effective enforcement.

Like the majority of central and local government organisations with an enforcement function, we have adopted the Enforcement Concordat. Created in 1998, the concordat aims to help businesses and others meet their legal obligations without unnecessary expense while allowing for firm action against those who flout the law. It sets out a number of key principles, among them that businesses should have opportunities to resolve differences before enforcement action is taken – unless immediate action is needed.

Although our enforcement activity usually deals with problems after they have occurred, one of its prime aims is to deter lawbreaking by other businesses. We also promote compliance by publishing guidance on our approach to enforcement, for example in relation to specific statutes and market sectors.

The Enforcement Concordat is available at www.cabinet-office.gov.uk/regulation/publicsector/enforcement/Enforcement

Spending on enforcement

During the financial year 2002-03, the OFT spent £18.57m on enforcement. This money was allocated as follows:

Competition law (other than the merger regime)	£8.46m
Merger control	£1.41m
Consumer law	£5.62m
Consumer credit licensing	£2.58m
Self-regulation	£0.50m

The Enterprise Act

The Enterprise Act 2002 strengthens the OFT's ability to make markets work well for consumers.

The Act is part of the government's bid to stimulate competition, empower consumers and promote enterprise. It gives more independence to the UK competition authorities, reforms bankruptcy laws and tackles trading practices that harm consumers.



The Act will have a major impact on our enforcement activity and, during the reporting period, its deterrent effect was already encouraging compliance.

The Act adds to the OFT's powers and responsibilities by:

- updating the law on mergers and market investigations by introducing clear competition tests and largely removing ministers from the process
- criminalising serious cartel offences
- allowing for disqualification of directors for breaches of competition law
- improving rights of redress for breaches of competition law
- setting out the OFT's authority to disclose information it obtains, when exercising its powers, to competition and consumer authorities overseas to help them in their investigations
- introducing new arrangements for super-complaints under which designated consumer bodies can submit a complaint about a market to the OFT for a fast-track response
- giving the OFT, trading standards departments and designated sectoral regulators and consumer protection bodies wider scope to obtain court orders against businesses breaching consumer legislation
- making the OFT responsible for coordinating the enforcement of certain consumer laws
- introducing a new regime for self-regulatory codes of practice
- establishing the OFT as a corporate body with independent board members.

The competition and consumer provisions of the Act are mostly due to come into force on 20 June 2003. A few came into force on 1 April 2003. The Act largely replaces the Fair Trading Act 1973 and its provisions are largely complementary to those of the Competition Act 1998.

More detail on how the Enterprise Act will affect our enforcement activity is given on pages 50 and 70 along with descriptions of how we prepared for the Act to come into force.

More information about the Enterprise Act, including guidance explaining its provisions and how we will enforce them, is available on our website at www.oft.gov.uk/business/legal+powers/Enterprise+Act/

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consumer regulation enforcement

Coordinating enforcement activity

Stop Now coordination

Under the Stop Now Orders (EC Directive) Regulations 2001, in force throughout the reporting period, the OFT was the lead enforcer. Part of our role was to coordinate the enforcement activity of the other qualifying bodies with powers to apply for Stop Now orders. They had to consult us first before seeking a court order in the UK. We had to ensure the right body was acting (and take on the case where appropriate) and provide guidance where necessary.

Our partnership with Trading Standards Departments (TSDs) was particularly important in using the Stop Now Regulations.

The first ever Stop Now court action saw us acting against Craftsman Kitchens Ltd, Craftsman Kitchens Manufacturing Ltd and George Brown, Nichola Brodie, Vance Miller and Sadiya Hussein. The OFT and TSDs had received a large number of complaints from all over the country about the companies. The scale and complexity of the case meant we relied on TSDs to obtain and collate evidence and to act as the local link between the OFT and complainants. The Stop Now order was made in April 2002 against the four individuals after the companies concerned were wound up in the public interest.

We shared this early experience with Brighton and Hove, Birmingham and Rotherham TSDs, and this helped them take successful action under the Stop Now Regulations.

Acting against a mock-auctioneering firm, Brighton and Hove was the first TSD to obtain Stop Now orders. Birmingham obtained an order against a trader selling white goods to consumers on low incomes. Rotherham obtained a Stop Now order against a supplier and installer of security equipment in a case that took only seven weeks to conclude. In all instances, the OFT provided detailed procedural advice.

The OFT and TSDs worked together to target national and local retailers making potentially misleading claims about 'interest-free' credit options. The OFT tackled a number of national businesses, all of whom have agreed to amend their advertising (see page 41). Meanwhile, TSDs approached other companies locally and achieved parallel success.

During the reporting period, we ran 35 training sessions on the enforcement of the Stop Now Regulations for other enforcers with powers under this legislation. The training included a practical overview of the Regulations and guidance on civil procedures. These training sessions increased understanding of the Regulations, encouraging enforcers to consider the use of Stop Now as a means of enforcing consumer protection legislation. The sessions provided us with an opportunity to emphasise the importance of coordination of action, and to build on existing relationships resulting in an improved flow of information between enforcement partners.

Consumer Regulations Website

We took the new Consumer Regulations Website (CRW) (crw.gov.uk) from the drawing board to pre-launch testing with more than 20 enforcement partners during the reporting period.

Part-funded by the Treasury under the 'Invest to Save' scheme, the CRW aims to improve coordination between the OFT and other UK consumer bodies. It contains details of cases being pursued by the OFT and its enforcement partners and guidance on application of the law. It enables the enforcement community to share information in an efficient and secure way so that we can target persistent offenders and priority sectors, take consistent enforcement action and avoid duplication of activity.

There is an automated link between our case management system and the CRW so that our staff can update the site at the touch of a button.

A section of the CRW can be accessed by the general public. This contains information about consumer protection legislation and also allows users to check a list of businesses and traders who are subject to court orders or have given undertakings or assurances under consumer law.

During the period, we managed the development of the site, tested it with 23 enforcement bodies from Aberdeen to Cornwall and began raising awareness of the site among TSDs at conferences and regional events. We also ran training for trading standards officers to enable them to make effective use of the CRW.





Challenging unfair contracts

A wide range of businesses and industry bodies revised terms in their consumer contracts as a result of action by the OFT's Unfair Contract Terms team. In the financial year 2002-03, 1,477 terms were abandoned or amended as a result of our enforcement action (compared with 1,167 in 2001).

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 commonplace.

Much of our work on unfair contract terms was triggered by complaints from consumers. We received more than 1,000 complaints about contract terms during the financial year. The sectors attracting most complaints were financial services, tenancy contracts, package holidays and fitness clubs.

In two of these sectors, our approach to addressing the problems of unfair contract terms went beyond pursuing individual cases to include issuing sector-specific guidance to businesses and advice to consumers.

Health and fitness clubs

In response to almost 200 consumer complaints, we issued guidance to health and fitness clubs to highlight terms in their consumer contracts we considered potentially unfair. Our main concerns were terms that try to exclude a club's liability for death or personal injury or for loss or damage to members' property and terms that are unclear about the minimum membership period and the notice period for cancellation. We warned clubs that we would take action against those using unfair terms.

We also distributed a consumer leaflet called *Are they fit to join?* This gave consumers practical advice on how to spot potentially unfair terms in health and fitness club agreements (see page 80).

Private tenancies

In April 2002, we issued a leaflet for private tenants which points out some of the pitfalls they might come across when entering into a tenancy agreement. *Unfair tenancy terms – don't get caught out* includes examples of potentially unfair terms and gives consumers advice on what to do if they think their agreements are unfair and where to go to get help.

The leaflet followed the OFT's guidance to landlords and housing advisers on unfair terms in tenancy agreements which was issued in November 2001.



During the reporting period, we were working on a number of unfair contract terms cases with organisations that publish standard tenancy agreements.

Tour operators

Following an OFT investigation into the booking conditions used by the four major UK tour operators, they all agreed to change their contract terms to give passengers a fairer deal.

Thomas Cook Tour Operations, MyTravel Group plc (trading as Airtours Holidays), TUI (UK) Ltd (trading as Thomson Holidays) and First Choice Holidays plc all agreed to revise terms concerning surcharging, cancellation rights and rights to compensation. In addition, the Association of British Travel Agents agreed to revise its model contract.

We continued to negotiate with smaller tour operators and, in March 2003, Virgin Holidays agreed to revise its booking conditions.

Airlines

Six airlines agreed to make their international flight contracts fairer to passengers following action by the OFT. British Airways, British Midland, Cyprus Airways, Iberia Airways, Kenya Airways and Thai Airways all amended their terms and conditions to reflect the International Air Transport Association's (IATA) revised conditions of carriage for member airlines. This followed our negotiations in 2000 to improve IATA's model contract terms.

Fairer terms for rail passengers

The Association of Train Operating Companies (ATOC) agreed to changes in the terms and conditions of the Network Railcard following OFT action. The Network Railcard gives passengers and those accompanying them discounts on rail fares in south-east England and is administered on behalf of 17 train operators by ATOC. We were concerned about potentially unfair terms in the application form, in the conditions of issue and use of the railcard, and in specific conditions of tickets bought with the railcard.

Reports on concluded unfair contract terms cases, including details of undertakings given, are published in regular bulletins available at www.of.gov.uk/News/Publications/Leaflet+Ordering.htm (under **Reports/Unfair contract terms**)



Protecting home shoppers

The OFT is a lead enforcer of the Distance Selling Regulations which give consumers important rights when they purchase goods and services by telephone, mail order, fax or the internet. These include a right to clear information about arrangements for and costs of delivery, an unconditional right to cancel in most cases, and protection against fraudulent use of a credit or other payment card.

We opened over 200 cases in the financial year 2002-03. Two-thirds of cases were prompted by complaints we received while others came about as a result of joint working with our enforcement partners or where we identified websites that did not comply with the regulations. Complaints commonly showed that traders did not give consumers the information specified in the regulations. In the more serious breaches, traders did not notify consumers of their cancellation rights or refused to accept cancellation.

In the financial year, more than 100 traders changed their working practices or websites voluntarily after being approached by the OFT.

Major internet book sellers

Following discussions between the OFT and the online book retailing industry, Amazon.co.uk and BOL.com agreed to include delivery charges in refunds they provide to customers who return goods within the legal cooling-off period. Under the regulations, consumers have the right to a cooling-off period of seven working days after receipt on most goods. We judged that the normal postage and packing charges for the delivery (but not the return) of distance sales purchases must always be refunded in addition to the cost of the goods when orders are cancelled within the cooling-off period.

Halting misleading advertising

The OFT received more complaints about misleading advertising in 2002-03 than in any previous 12-month period. During the year, we worked on 369 cases of alleged misleading advertising and obtained 33 undertakings and 11 court orders to prevent the continued publication of misleading advertising.

Warning to consumers

The OFT believes the best way to combat misleading advertisements is to help consumers recognise them. In November, we ran a major campaign urging consumers to beware of misleading advertisements, especially those for 'miracle cure' health, beauty and slimming products.

The campaign was informed by our involvement in a worldwide 'web sweep' earlier in the year that identified more than 170 potentially misleading UK sites.

For more on our misleading advertising publicity campaign, see page 79. For more on our involvement in internet sweeps, see page 47.

Business-to-business scams

We took action against several traders who had issued misleading advertising for data protection notification services. Our concern was that many of these advertisements gave the impression they came from official bodies and that businesses receiving them were under a legal obligation to register with the sender at a cost of up to £60 more than they would have paid to register directly with the Information Commissioner.

We also took action against several traders issuing misleading advertising for business directory services. The advertisements gave the false impression that they were sent by or on behalf of a telephone company providing a directory enquiry service accessed by telephoning 192, such as BT.

In some cases, traders gave us undertakings that they would no longer issue their misleading advertisements while in other cases we obtained injunctions stopping the traders issuing the advertisements.

Policing consumer credit

Against a background of rising consumer indebtedness, the OFT continued to use its powers under the Consumer Credit Act 1974 to regulate the behaviour of consumer credit licence holders. We achieved this through our licensing action, by pursuing cases against traders we suspected to be in breach of the Act and by issuing guidance to licence holders in sectors that attract high levels of consumer complaints.

Second-hand car dealers

In a guidance leaflet, we warned second-hand car dealers against engaging in unfair or improper practices such as 'clocking' cars and supplying unroadworthy vehicles. The motor trade continues to attract a high level of consumer complaints and accounted for nearly a third of all our licensing action in 2002.

The guidance explains to car dealers the types of behaviour that will jeopardise their licences. It is aimed primarily at second-hand car dealers but also applies to new car traders.

Debt collectors

We warned debt collectors that failure to deal fairly and openly with consumers in debt would call into question their fitness to hold a consumer credit licence. The warning came in draft guidance to the sector. The guidance will enable us to take speedier action against those engaging in unfair practices.

Debt management compliance review

We carried out a review of debt management companies' (DMCs) compliance with minimum standards for the industry. DMCs offer consumers in debt the prospect of a reduction in monthly repayment commitments on payment of a fee.

The review gathered information from customers, providers of free debt advice, trade associations and debt management companies themselves. The minimum standards were first set out in OFT guidance to the sector, published in 2001. We will be acting on the results of the review later in 2003.

We plan to carry out similar reviews of licence holders' compliance with the sectoral guidance we issue.

Protection for credit card holders shopping abroad

Three credit card issuers confirmed that safeguards on credit card purchases will apply to purchases made abroad as well as in the UK after intervention from the OFT.

HSBC, Bank of Scotland and Sainsbury's Bank have assured us they will honour valid claims made under Section 75 of the Consumer Credit Act for purchases made abroad.

Section 75 sets out the concept of 'equal liability' whereby card issuers are jointly liable with suppliers if the consumer has a valid claim for misrepresentation and/or breach of contract by the supplier (but only if the cash price of an item is between £100 and £30,000 and the credit card limit is no

more than £25,000). Cardholders, therefore, may be able to make a claim against the credit card company if they discover problems with goods or services purchased with their credit card. Our view is that overseas as well as domestic transactions are covered by Section 75.

The companies were approached using the OFT's powers under the Stop Now Regulations, although agreement was reached by negotiation rather than by court action, as provided for in the Regulations.

We continue to negotiate with other credit card companies to persuade them to offer equal protection to their customers, as we believe the law requires.

Credit card companies' interest-rate claims

Twenty-eight credit card companies agreed to change the way they advertise introductory rates of interest after we expressed our concern that they were breaching consumer credit law. They include major card issuers such as high-street banks and finance houses.

The companies have agreed not to describe an introductory interest rate as an APR (annual percentage rate). Consumer credit law says that the APR should measure the overall charge for credit, including interest and other charges, over the lifetime of an agreement, calculated as an annual rate.

A temporary interest rate therefore cannot be called an APR.

The OFT approached the companies under its Stop Now powers.

Against a background of rising consumer indebtedness, the OFT continued to use its powers under the Consumer Credit Act 1974 to regulate the behaviour of consumer credit licence holders.



Retailers' interest-free claims

During the reporting period, eight retailers agreed to stop advertising in-store credit as 'interest-free' after we told them we felt such adverts broke the law and could mislead the public.

The companies in question, including Dixons Group, Courts, Comet, Powerhouse and Time Computers, were all advertising 'interest-free' credit or '0% APR' or 'interest-free option' deals for their products. In fact, interest was payable from the date of the agreement if the debt/loan was not paid off in full by the end of the interest free period.

Licensing action

We issued 16,009 consumer credit licences in the financial year 2002-03 (compared with 15,174 in 2001). We challenged around 800 licences and licence applications. This included the issue of 46 Minded to Revoke notices (2001: 33), 65 Minded to Refuse notices (2001: 55), six Minded to Refuse to Renew notices, one Minded to Grant in Different Terms notice and 282 warning letters. We revoked 25 licences (2001: 21), refused a further 37 (2001: 26) and refused to renew two existing licences.

Access to information

During the reporting period, we took steps to improve the effectiveness of the screening of licence applicants to ensure that only fit persons receive a licence. In 2001, we were refused routine access to criminal record information held on the Police National Computer (PNC) on the basis that this information would shortly become available from the Criminal Records Bureau (CRB). Delays in the introduction of the full range of CRB services have meant we still do not have access to this information. OFT access to these records was again taken up with the Home Office and other relevant bodies early in 2003 and these discussions have continued into the current financial year.

More information on our consumer credit licensing work in the reporting period is available on our website at www.of.gov.uk

Group licensing review

We began a review of the group consumer credit licensing regime. Under the system, professional and other bodies can apply for a group licence to cover members or representatives. Once granted, those covered by a group licence do not need to apply individually for a standard consumer credit licence for the categories covered by the group licence.

Apology for maladministration

In May 2002, we issued a public apology to Neville and Bernard Michaelson, the founders of Colorvision, for maladministration by the OFT in 1995. The Michaelsons had complained to the Parliamentary Ombudsman about the OFT's handling of a Minded to Revoke notice relating to the consumer credit licences of Colorvision. The Ombudsman found there had been serious failings in procedure and, as a result, we paid substantial compensation to the Michaelsons (see page 93).

Self-regulation

New consumer codes of practice scheme

Our new consumer codes approval scheme got under way during the reporting period. We originally proposed the new approach in 2001 after it became clear that many existing codes were not operating effectively. It was formalised in law on 1 April 2003 when the relevant provision of the Enterprise Act 2002 came into force.

Under the new scheme, a code sponsor such as a trade association submits its code to the OFT for examination. When we are satisfied that its draft code satisfies our core criteria covering issues such as standards of customer service, complaints handling, compliance and publicity, we announce that the sponsor has achieved 'stage one status'.

The sponsor then has to demonstrate its code is working effectively. We estimate a minimum of six months will be required to collect the necessary evidence. Only then will we approve and promote the code. At this stage, the sponsor and businesses that have signed up to the code will be able to use a new OFT 'approved code' logo in their marketing. The OFT will continue to monitor the effectiveness of the code and can withdraw approval from codes that are not working.

We believe the new scheme is far more robust than the previous system. It helps consumers identify trustworthy traders with confidence. It also offers considerable benefits to businesses which, in return for the costs of achieving high standards of customer service, can use their membership of an OFT-approved code to attract customers.

Priority sectors

At the outset of the scheme, we announced we would initially be considering draft codes from sponsors in certain priority sectors. These were sectors where we felt codes of practice would deliver significant benefits to consumers, for instance because complex products or services were involved, high-risk transactions were commonplace or consumers' awareness of their rights was low. The priority sectors were: used cars, car repair and servicing, credit, funerals, travel, estate agents and direct marketing. Two further sectors, domestic appliance repair and furniture, were added in December 2002.

Early achievers

Between October 2002 and the end of the reporting period, four code sponsors achieved stage one status: the Ombudsman for Estate Agents Company Ltd, the Vehicle Builders and Repairers Association, the Direct Selling Association and the Association of British Travel Agents.

At the end of the reporting period, we were considering 14 other codes submitted for stage one examination. Applications from seven sponsors in other sectors were awaiting assessment.

Promoting the new scheme

We began promoting the new scheme to businesses and the enforcement community through a series of seminars across the UK. We are currently developing a new website to raise awareness of the scheme among both businesses and consumers, and a high-profile launch of the scheme to consumers is planned for February 2004.

Further information on consumer codes of practice is available from our website at www.oft.gov.uk/business/codes

International coordination and activity

Growing numbers of consumers are buying from abroad, particularly using the internet. As a result, the OFT is doing more international consumer protection work than ever before. During the reporting period, we contributed to discussions that we believe will lead to more effective cooperation between national consumer protection authorities and we took on a wide range of cross-border cases.

Frameworks for cooperation

We contributed to the European Commission's development of a draft regulation on consumer protection cooperation, working closely with the Department of Trade and Industry. The draft regulation is expected to provide a new legal framework for mutual assistance between European Union member states' consumer protection authorities when dealing with cross-border infringements of consumer law. The proposal is designed to facilitate cooperation between national public authorities responsible for the enforcement of consumer protection legislation to enable them to deal effectively and quickly with cross-border infringements, particularly serious breaches. It also provides for wider cooperation on projects to inform and educate consumers. The specific wording of the regulation will need to be developed and refined after publication, but we support the thrust of this initiative and look forward to using the additional powers it is likely to provide.

To help address the challenges of dealing with cross-border infringements worldwide, the OFT worked with the DTI to provide input to the Organisation for Economic Cooperation and Development's draft recommendation concerning guidelines for protecting consumers from fraudulent and deceptive commercial practices across borders. This is of a similar nature to the draft European Commission regulation and agreement on this draft will be equally welcome.

ICPEN networks

We participated actively in the work of the International Consumer Protection Enforcement Network (ICPEN) and its European arm, ICPEN Europe (ICPEN was formerly known as the International Marketing Supervision Network). During the period, the memorandum of understanding that underpins the global network of consumer bodies was amended to put more emphasis on enforcement cooperation.

Working alongside other ICPEN members, we took part in two major internet 'sweeps'. In the first, more than 1,000 potentially misleading health claims on websites were uncovered after we worked with the Medicines Control Agency, 21 local TSDs and enforcement agencies in 18 other countries to surf the internet looking for potentially misleading sites. We identified 170 UK sites requiring further investigation and subsequently found that 69 of these were making potentially deceptive, misleading or false claims and therefore merited enforcement action.

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These 69 sites were pursued by the OFT, MCA or local TSDs. As a result, 10 ceased to trade entirely, and 22 immediately amended the site to comply with relevant legislation. Other sites were investigated further.

Our involvement in this web sweep informed our campaign to warn consumers of the dangers of misleading advertisements, particularly for health, beauty and slimming products (see page 79).

Later in the period, the OFT and 55 local TSDs took part in a similar international web sweep which identified more than 50 UK travel websites making potentially misleading claims. Action is now being taken, where appropriate, under the Control of Misleading Advertising Regulations and other consumer protection legislation. We will report, giving a detailed breakdown of the results of this sweep, in autumn 2003.

Bogus holiday clubs

We launched a campaign to warn consumers about the dangers of unscrupulous holiday clubs that deliberately deceive consumers. Holiday clubs are marketed as a flexible alternative to timeshare, promising a lifetime of discounted luxury holidays anywhere in the world. Some are reputable businesses that trade in good faith but others are promising far more than they deliver. Holiday clubs are not covered by timeshare law. Bogus holiday club companies exploit this by employing misleading or high-pressure sales techniques to get customers to sign a binding contract.



The campaign focused on holiday clubs following our appeal in August 2002 for victims of unfair trading practices in the timeshare market to come forward. More than 400 complaints were received in two months, doubling the number previously held on file. Ninety per cent of complaints referred to holiday clubs rather than traditional timeshare companies and 83 per cent were about companies outside the UK. We opened 36 new cases following receipt of these complaints.

For more on our holiday clubs campaign, see page 79.

First-aid kit scam

In a groundbreaking cross-border case, we used our powers under the Stop Now Regulations to halt a scam involving a supplier based outside the UK. We worked closely with lawyers from the Dutch Consumers Association (Consumentenbond) to take action against Royal Consulting, a Dutch company which had been sending unsolicited first-aid kits to UK residents accompanied by demands for payment. We acted after receiving more than 400 complaints about the company.

We obtained written undertakings from Royal Consulting BV and its parent company Royal Consulting AS that they would not make demands for payment for unsolicited first-aid kits. Any breach of the written undertakings will lead to action in the Dutch courts.

Misleading domain name advertisements

In the first case of its kind, we stopped two UK-based companies from publishing misleading advertisements for website domain names. We worked on this case with the US Federal Trade Commission, with whom we have a memorandum of understanding. Quantum Management Ltd and TLD Network Ltd, based in London, were advertising and selling domain names with suffixes such as .brit, .usa, .scot and .sex to UK and US consumers. The domain names offered by the two companies could only be accessed with a modified web browser. We took the view that the adverts gave the impression that the domain names on offer operated in the same way as top-level names such as .com and that this was misleading. The director and former company secretary of both companies gave undertakings that they would not publish these or other similar adverts for the registration of domain names.

The Enterprise Act

The Enterprise Act 2002, which commenced on 20 June 2003, makes a number of significant reforms to consumer law enforcement. Part 8 of the Act replaces Part 3 of the Fair Trading Act 1973 and the Stop Now Regulations.

Like the legislation it replaces, the Act makes provision for the enforcement of certain consumer laws by means of court orders against businesses breaching it. The Act sets a framework for enforcement action to stop 'community infringements' and 'domestic infringements'.

As under the Stop Now Regulations, community infringements are breaches of UK laws giving effect to specific European Community directives (eg on consumer credit, package holidays and unfair terms in consumer contracts) where the breach harms the collective interests of consumers. Domestic infringements are breaches of UK statutes or legal obligations of

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a type specified by the Secretary of State, which are committed in the course of business and harm the collective interests of consumers in the UK.

The procedure is based on the Stop Now Regulations. Before applying for an enforcement order, the OFT or other enforcement body must consult with the business concerned, with a view to getting the infringement stopped without the need to go to court. We may decide to accept undertakings from the business that it will stop the infringing conduct. If these are refused, or in urgent cases, we can apply to the court for an order.

The OFT and trading standards departments have powers to enforce in respect of all types of infringement. The Secretary of State may also designate other enforcers, for example sectoral regulators and consumer protection bodies. The Act gives the OFT a coordinating role to ensure that action is taken by the most appropriate body in each case.

In addition, the Act makes one of the key functions of the OFT the promotion of good practice in activities that may affect consumers' economic interests. One of the ways it allows us to do this is by giving approval to (or withdrawing approval from) consumer codes of practice.

During the reporting period, we made extensive preparations to carry out our new duties under the consumer provisions of the Act.

Guidance

We issued a series of draft guidance papers explaining how the provisions of the Enterprise Act would work in practice. Consumer bodies and representatives of business were invited to comment on the proposed guidance in order to improve its clarity.

After taking on board comments received during the consultation exercise, we issued several final guidance documents including a publication providing an overview of the competition and consumer provisions of the Act. We will be publishing more guidance documents during 2003. Our aim is to ensure businesses and consumer bodies understand the new legislation and how we will apply it.

Coordination

We made preparations to adapt for the Enterprise Act our existing system for coordinating enforcement action under the Stop Now Regulations. As part of this work, we developed and piloted the new Consumer Regulations Website (see page 37) which co-enforcers will be able to use as a channel to notify us and others in the enforcement community of cases they are pursuing under the Act. We also began work on a new concordat to underpin our relationships with co-enforcers.

Training

We developed and ran a programme of training seminars for trading standards departments and other co-enforcers to help them understand their new powers and responsibilities under the Act. This was based on a similar training programme we ran for co-enforcers on the Stop Now Regulations. We explained the practical arrangements for taking coordinated enforcement action and highlighted best practice case studies based on our experience of enforcing the Stop Now Regulations. The training seminars helped us develop our relationships with our co-enforcers.

For more on how we prepared for the Enterprise Act, see pages 25 and 70.

More information about the Enterprise Act, including guidance explaining its provisions and how we will enforce them, is available on our website at www.ofc.gov.uk/Business/legal+powers/Enterprise+Act/

We contributed to the discussions in the European Commission about a proposed framework directive that would impose a general duty not to trade unfairly on businesses across the European Union

Legislative change

European framework directive

We contributed to the discussions in the European Commission about a proposed framework directive that would impose a general duty not to trade unfairly, on businesses across the European Union. Our contribution saw us advising the DTI and taking part in expert groups and conferences. The framework directive, proposed in a European Commission Green Paper in 2001, would replace the Misleading Advertising Directive and, over time, could also replace several other current consumer protection directives.

While we believe the proposals need further work, we support the introduction of a framework directive. We believe it would help stop traders circumventing consumer protection law by finding new ways of trading unfairly not covered by the specific directives. It would also promote greater consistency in member states' consumer laws.

European consumer credit law

In September 2002, the European Commission issued a proposal for a new directive to harmonise consumer credit law across the EU.

Full harmonisation in some areas, for example in the rules governing the use of APRs (annual percentage rates), would help consumers and businesses benefit from the single market. We are working with the DTI to move towards harmonisation without endangering important established protection for UK consumers.



Review of the Consumer Credit Act

We continued to provide input to the government's proposals for reform of the Consumer Credit Act. Announced in 2001, the proposals aim to make it easier for the OFT to tackle loan sharks and other rogue traders through, for example, changes to the licensing regime; more effective provisions against extortionate credit; bringing more credit agreements within the scope of the Act and reducing the burdens on legitimate businesses.

The OFT has welcomed the opportunity to modernise this law and we contributed our views in response to a series of consultation papers on different aspects of the proposals. We have urged the DTI to give us better investigation powers so that we can compel licence holders to provide information. We also want greater flexibility in the enforcement action we can take. We believe taking away a credit licence can, in some cases, be too harsh a sanction to apply because it can effectively ban a trader from the marketplace altogether. In such cases, we believe we would be able to act more quickly and effectively if we could take proportionate action such as seeking undertakings or imposing fines.

Performance and spending

Under our service delivery agreement (SDA) with the Treasury, we had two high-level objectives for consumer regulation enforcement for the financial year 2002-03. These were underpinned by performance targets.

During the financial year, the OFT spent £8.20m on achieving this SDA objective. This money was allocated as follows:

Staff costs	£6.67m
Consumer Regulations Website (including HMT Invest to Save funding)	£0.91m
Litigation	£0.08m
Research	£0.13m
Other operating costs	£0.41m

Enforcement

Objective

To enforce robustly the consumer protection legislation the OFT administers, working with co-enforcers and targeting resources to actions that produce greatest benefit to consumers; to root out and tackle unfair business practices affecting UK consumers in global, European and UK markets; and to seek to maximise the deterrent effect of enforcement activity

Target

Take decisive enforcement action when there is malpractice in the marketplace, making the best use of all available enforcement tools, as demonstrated by at least 700 successful enforcement outcomes.

Set guidelines for business to ensure it is aware of its responsibilities under consumer protection legislation and the standards of behaviour required (in at least three areas per year). By 31 March 2003, guidance will be issued for business and enforcers on the application of the consumer reforms envisaged by the Enterprise Act.

Work with enforcement partners both nationally and internationally to ensure regulatory action is effectively coordinated, and targeted on the market sectors where consumer detriment is highest. Negotiate new concordats with enforcement partners covering shared Stop Now and Unfair Terms in Consumer Contracts Regulations (UTCCRs) powers. We will hold seminars at national and local level to share thinking on priorities and lessons from enforcement experience.

Performance

- We achieved 695 successful enforcement outcomes.

- We issued guidelines to four sectors (debt collectors, second-hand car dealers, health and fitness clubs, private tenancies)
- We issued guidance on the consumer provisions of the Enterprise Act.

- We worked alongside enforcement partners to ensure effectively coordinated regulatory action
- We negotiated concordats on the enforcement of the Stop Now Regulations and the UTCCRs
- We held local and national seminars for co-enforcers to provide guidance and share information and best practice on enforcement of consumer law.

Self-regulation

Objective

To take practical steps to secure improved standards of trading by businesses

Target

Performance

Publicise regulatory action taken in problem market sectors.

- We publicised action taken in several sectors including: health, beauty and slimming products; business directories (misleading advertisements); airlines; holiday operators (unfair contract terms); retailers and credit card companies (consumer credit).

Target enforcement action by market sector. Each year we will target three specific market sectors identified in the relevant annual plans.

- We targeted three key market sectors: second-hand car dealers, health and fitness clubs, and private tenancies.

Develop and implement a scheme for OFT approval of effective business to consumer codes of practice, including empowerment of consumers through independent and well-functioning redress mechanisms. In 2002-03 we expect at least four codes to have satisfied us that they meet our core criteria in principle. We will formally launch our proposals to business.

- We implemented a new, more robust regime for codes of practice (four codes met our core criteria in principle and achieved 'stage one status')
- We promoted the new codes scheme to business and launched the new OFT 'approved code' logo.

During the financial year, the OFT spent £0.50m on achieving this SDA objective. This money was allocated to staff costs.

Legal costs

During the financial year 2002-03, in our consumer regulation enforcement work, our total expenditure for litigation and handling appeals plus our liability for meeting others' costs and our exposure to others' costs was £85,012.

competition enforcement

We use our competition powers to investigate and take action against anti-competitive activity in the UK and to refer to the Competition Commission mergers that might substantially lessen competition. We also provide guidance to business on compliance with the law and our approach to enforcement.

Competition Act

In the financial year, we opened 1,141 complaint cases (including 31 cartel cases) under the Competition Act 1998. We launched an investigation where we had reasonable grounds to suspect that an infringement had taken place in 54 cases. For the 15-month reporting period, these figures were 1,382 (55) and 70 respectively.

We made 14 formal decisions, including one under Article 81 of the EC Treaty, in the financial year and 17 in the reporting period.

The Competition Act allows us 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. During the financial year, we imposed total penalties of £35.8m.

We received applications for leniency in four cases in the financial year and 13 in the reporting period. Of the 14 raids

In the financial year, we opened 1,141 complaint cases (including 31 cartel cases) under the Competition Act 1998.

we conducted in 2002-03, nine were under section 27 of the Act (where we have the power to enter premises without a warrant and require the production of documents); three were under section 28 of the Act (where we have the power to enter and search premises with a warrant) and two were under both sections.

Our enforcement work covered a wide range of unlawful activities. However, a particular concern was the apparent extent of resale price maintenance, where a supplier seeks to fix the retail price of its product. This practice harms consumers by stopping price competition between retailers, generally leading to higher prices.

In imposing heavy financial penalties in the case of Hasbro (see page 57), we made clear that price-fixing would be viewed as one of the most serious infringements of the Chapter I prohibition of the Act relating to anti-competitive agreements.



Hasbro

One of the UK's leading toy and games suppliers, Hasbro UK, was fined £4.95 million in November 2002 for anti-competitive price-fixing.

We found that Hasbro and 10 distributors broke competition laws by entering into price-fixing agreements between early 2001 and July 2001. These agreements prevented the distributors from selling Hasbro toys and games below Hasbro's list price without permission. Such agreements infringe Chapter I of the Competition Act, which came into force in March 2000.

OFT officials carried out on-site investigations at Hasbro's premises in Uxbridge and the Oxfordshire premises of one of its distributors. We also issued notices under section 26 of the Act requiring Hasbro, the 10 distributors and a number of retailers to provide relevant information.

Hasbro's penalty was reduced under our leniency programme in return for its early and full cooperation with the investigation. Without this reduction, the fine would have been £9 million.

We imposed no fines on the distributors who, in our view, had no choice but to accept Hasbro's price initiative.



Hasbro/Argos/Littlewoods

In a separate investigation, we imposed heavy fines on two catalogue retailers, Argos and Littlewoods, in February 2003 for entering into unlawful agreements with Hasbro to fix the retail price of its toys and games.

We concluded that the retailers had entered into agreements and concerted practices with Hasbro and each other to follow the recommended retail price (RRP) for a number of Hasbro products, including Action Man and core games. The involvement of Argos and Littlewoods in price-fixing sent a signal to the rest of the industry that RRP's were being followed. The object of this was to maintain prices at higher levels than might otherwise have been the case.

The agreements began in 1999 and infringed the Chapter I prohibition from 1 March 2000, when the Act came into force. They came to an end between May and September 2001.

Given the serious nature of the infringement, we set a financial penalty of £17.28 million for Argos – the highest fine imposed under the Competition Act – and £5.37 million for Littlewoods.

Hasbro came forward with evidence of the infringing agreements before this investigation commenced (unlike in the distributors' case, which had already begun when it came forward) and cooperated fully with the investigation. For this reason, it was granted 100 per cent leniency under our leniency programme, reducing its financial penalty to zero.



BSkyB

Following an investigation, we concluded that British Sky Broadcasting (BSkyB) had a dominant market position but had not breached competition law.

The investigation covered BSkyB's conduct between the commencement of the Competition Act in March 2000 and the end of 2001.

The OFT found that BSkyB was dominant in the markets for wholesale supply of certain premium sports and film pay-TV channels.

The key question was whether the company had exerted an anti-competitive 'margin squeeze' on its pay-TV rivals by setting wholesale prices at a level that would make other, equally efficient distributors run at a loss.

The OFT's tests showed that, for the period examined, BSkyB made a temporary and small loss followed by a return to profit. This borderline finding did not provide sufficient grounds to conclude that competition law had been broken.

A similar finding was made in relation to an allegation that BSkyB had bundled together premium channels so as to hinder competitors.

In relation to a third allegation that BSkyB had applied discounts in an anti-competitive manner, we decided that there had been no infringement of the Act.



Genzyme

The pharmaceutical company, Genzyme Ltd, was fined £6.8 million by the OFT in March 2003 for exclusionary pricing behaviour in breach of the Chapter II prohibition of the Competition Act.

Genzyme supplies a drug called Cerezyme which, until recently, was the only treatment for a rare inherited disorder called Gaucher disease.

We found that the company abused its dominant position in the market for the supply of drugs for the treatment of Gaucher disease by charging the NHS a price for Cerezyme which includes the price of home delivery of Cerezyme and the provision of homecare services. This ensured that only Genzyme, or an undertaking acting under contract for Genzyme, could provide such services for patients being treated with Cerezyme.

The company also prevented viable competition by charging independent third-party homecare service providers a price for Cerezyme that allows them no possible margin.

This behaviour deprives the NHS and patients of a choice of delivery and homecare service providers, raises barriers to entry in the market for the supply of drugs for the treatment of Gaucher disease and prevents existing competitors in the home delivery of Cerezyme and provision of homecare services from operating viably. Genzyme's behaviour also ensures that no new competitors can begin to offer such services on a viable basis.

In addition to the fine, we ordered Genzyme to bring the infringement to an end, to refrain from adopting measures having a similar effect, and to supply Cerezyme to the NHS at a stand-alone price for the drug only, excluding home delivery and homecare services. We also directed that the price at which the company supplies third parties with Cerezyme should be no higher than the stand-alone price.

John Bruce/Fleet Parts/ Truck and Trailer Components

Three firms were fined a total of £33,737 in May 2002 for price fixing in the supply of automatic slack adjusters – a brake safety device used by buses, trailers and trucks.

The OFT uncovered agreements involving John Bruce (UK) Ltd, which imports the MEI brand of automatic slack adjusters manufactured in India, and its distributors Fleet Parts Ltd and Truck and Trailer Components.

We found that John Bruce and Fleet Parts had agreed to fix the selling price of the MEI product to their customers and that John Bruce and Truck and Trailer Components had entered into an agreement to maintain fixed prices. Both of these agreements were in breach of the Chapter I prohibition of the Competition Act.

The OFT fined John Bruce three per cent of its relevant turnover, Fleet Parts 5.6 per cent of its relevant turnover, and EW (Holdings) Ltd, which trades as Truck and Trailer Components, 24 per cent of its relevant turnover.



Lladró Commercial SA

The luxury porcelain and stoneware figurine producer Lladró Commercial was required by the OFT in March 2003 to stop fixing UK retail prices anti-competitively.

We found that Lladró had entered into written agreements with 155 UK retailers which had the aim of preventing them from selling figurines produced by the company at a discount. These agreements infringed Chapter I of the Competition Act.

Lladró and the retailers concerned have been required to remove the offending clauses from their agreements and to refrain from any conduct having the same aim or effect.



Northern Ireland Livestock and Auctioneers' Association

We found in February 2003 that the Northern Ireland Livestock and Auctioneers' Association (NILAA) infringed the Competition Act by recommending that its members introduce a uniform commission to be paid by buyers of livestock in Northern Ireland cattle marts.

The decision followed a complaint to the OFT from the Ulster Farmers' Union alleging that the recommendation – publicised in an NILAA press release in January 2001 – for the introduction of a £2 commission charge per animal was anti-competitive. In 2001, a number of NILAA members charged a buyer's commission as a result of the recommendation.

We concluded that the NILAA's recommendation constituted a decision of an association of undertakings and was in breach of the Chapter I prohibition.

Due to the exceptional circumstances in this case – in particular the financial impact of BSE and Foot and Mouth Disease on the Northern Ireland cattle industry and the fact that the NILAA had publicised its recommendation – no financial penalty was imposed.



Compact discs

In September 2002, we gave record companies a clear warning that they would face strong action if they breached competition law in future. An OFT investigation into the CD market had found some evidence of past anti-competitive agreements, although these were excluded from the Competition Act.

Among the record company practices we identified were:

- agreements with some retailers not to import cheaper CDs from mainland Europe
- favourable terms being offered to retailers who did not import
- threats to retailers who did import that they would lose their discounts and marketing and promotional support.

We had no reason to suspect that these agreements or practices were continuing. A reduction in wholesale prices in the past two years, combined with a fall in the value of the pound against the euro, has brought retail prices for CDs more into line with those in other European countries. However, we are keeping a close watch on developments and will take action if anti-competitive agreements are found in the future.

Rule 14 notices

Where we reach a preliminary finding that an infringement of the Act has taken place, a Rule 14 written notice is issued. This sets out our evidence and gives the parties in question the chance to make oral and written representations ahead of a possible infringement decision. During the financial year we issued Rule 14 notices in 10 cases and supplementary notices in two cases.

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Rule 14 notices were issued in two prominent cases in 2002-03:

MasterCard UK Members' Forum

In February 2003, we issued a supplementary Rule 14 notice expressing a preliminary conclusion that an agreement between MasterCard's UK members on a common fee charged for credit and charge card transactions in the UK infringes the Competition Act.

When a consumer purchases goods or services using a credit or charge card, a fee is paid to the card-issuing bank in order to cover the costs involved in obtaining payment from the customer. This is commonly referred to as an interchange fee. The fee is paid by the retailer's bank, but is recovered from the retailer and, ultimately, is paid for by consumers. The case in question concerns an agreement between members of the MasterCard scheme on the level of the fallback interchange fee, also known as the Multilateral Interchange Fee (MIF), which applies to nearly all transactions in the UK using UK-issued cards.

MasterCard has a further opportunity either to show that its existing agreement on the level of the MIF complies with the Competition Act or to come forward with changes to the agreement so that it meets the conditions for exemption.

Replica kits

We issued Rule 14 notices in May 2002 to 11 companies involved in the supply of Umbro replica football kits.

The companies in question were: Umbro Holdings Limited, JJB Sports plc, John David Sports plc, Sports Soccer Limited, Allsports Limited, Blacks Leisure Group plc, Manchester United Football Club plc, Debenhams plc, Florence Clothiers (Scotland) Limited (trading as Sportsconnection), Sportsetail Limited and The Football Association Limited.

We proposed to find that these companies had entered into a number of agreements to fix the price of football kits manufactured and supplied by Umbro, infringing the Chapter I prohibition of the Competition Act.

Following representations, action was dropped against one of the companies, Debenhams plc, in November 2002 and the case against Manchester United Football Club plc was re-addressed to Manchester United plc. The remaining 10 companies were issued with a supplementary Rule 14 notice, which included additional evidence in support of the proposed findings.

We will consider the response to these supplementary notices before making a final decision.

Appeals to the Competition Commission Appeal Tribunal

The Competition Commission Appeal Tribunal (CCAT) was set up under the Competition Act to hear appeals against the OFT's decisions. It has a very wide jurisdiction to hear appeals on issues of fact, law or the exercise of the OFT's discretion (for example, whether the OFT was correct to impose penalties for price fixing or an abuse of dominant position). On 1 April 2003 the CCAT was replaced by the Competition Appeal Tribunal.

The Tribunal's rulings can also include matters such as the extent of the Act's jurisdiction and the level of scrutiny that applies to the OFT's decisions. Two such themes emerged from appeals in the later part of the reporting period.

Appealable decisions

In the cases of Bettercare (see page 64) and Claymore/ Express Dairies, the Tribunal ruled that the OFT had made an appealable decision under the Competition Act in rejecting a complaint and terminating an investigation respectively.

The rulings mean that:

- where the OFT reaches any finding as to whether there has been an infringement of the Act this will be seen as an appealable decision
- where the OFT has carried out detailed investigation work, the outcome of this – including a decision to go no further – may also be appealable.

Definition of an undertaking

The issue of whether a public body can infringe competition law was tested in a second appeal involving Bettercare.

The Tribunal ruled that a public body involved in the purchase and supply of health care services is taking part in economic activity and should be regarded as an undertaking within the meaning of the Competition Act.

In deciding not to appeal the judgment, we accepted the view that, with more public services being provided by the market, competition law may at times be applicable.

The Bettercare judgment did not state that all purchasing activity by public bodies is covered by the Act. Future complaints will therefore be considered on their particular facts.

The OFT is also obliged to take account of a more recent ruling by the European Courts (*FENIN v the European Commission*) which clarified the extent to which public bodies are engaged in economic activities.

Aberdeen Journals Ltd

In July 2001, the OFT decided that Aberdeen Journals had abused a dominant market position in the supply of advertising space in local newspapers in the Aberdeen area by selling advertising space in its free newspaper, the Herald & Post, at below cost price with the express intention of removing its only rival, the Aberdeen Independent, from the market. This decision was set aside by the CCAT on procedural grounds in March 2002.

While stressing that it had reached no conclusion on Aberdeen Journals' market position or conduct, the CCAT ruled that the market definition adopted in the decision was insufficiently reasoned. The issue of market definition was therefore remitted to the OFT for further consideration.

In September 2002, we restated and confirmed our earlier decision on the basis of an expanded treatment of the market definition, and re-imposed the original fine of £1,328,040. As in the first decision, we concluded that the relevant product market was advertising space in local newspapers, whether free or paid-for, in the Aberdeen area.

An appeal by Aberdeen Journals against this new decision was heard by the CCAT in January 2003. In June the Competition Appeal Tribunal upheld the OFT ruling.

Mergers

A merger qualified for investigation under the Fair Trading Act if the gross (fixed and current) worldwide assets being acquired exceed £70 million, or if the merger would create or enhance a share of supply of 25 per cent or more of a particular product or service in the UK, or a substantial part of the UK.

The OFT examined 414 mergers and merger proposals in the reporting period. Of these, 234 qualified for consideration under the Fair Trading Act.

The following mergers were referred to the Competition Commission:

Date of reference	Parties	Status	Conclusion
4 January 2002	Linpac/McKechnie Paxton	Report published	Not against public interest
10 January 2002	Neopost/Ascom	Report published	Not against public interest
14 January 2002	Lallemand/LHS (Finings)	Laid aside	
14 January 2002	Coloplast/SSL International	Report published	Against public interest
29 January 2002	P&O Princess Cruises/ Royal Caribbean Cruises	Report published	Not against public interest
13 February 2002	H+H Celcon/Marley Building Materials	Report published	Against public interest
19 February 2002	Cargill/Cerestar	Report published	Not against public interest
26 March 2002	Compass/Rail Gourmet	Report published	Not against public interest
9 May 2002	Group 4 Falck/Wackenhut	Report published	Not against public interest
23 May 2002	Vivendi Water/First Aqua	Report published	Against public interest
27 June 2002	Bidvest/Brake Bros	Laid aside	
15 July 2002	Orbital Marketing/Surridge Dawson	Laid aside	
23 October 2002	VNU Entertainment Media UK/Book Data	Report published	Not against public interest
8 November 2002	Securicor/ Royal Mail cash handling business	Laid aside	
13 January 2003	Vibe Radio Services/Galaxy Radio	CC inquiry in progress	
25 February 2003	Centrica/Dynegy Storage	CC inquiry in progress	
11 March 2003	Carlton Communications/Granada	CC inquiry in progress	
19 March 2003	J Sainsbury/Safeway	CC inquiry in progress	
19 March 2003	Tesco/Safeway	CC inquiry in progress	
19 March 2003	Asda/Safeway	CC inquiry in progress	
19 March 2003	WM Morrison/Safeway	CC inquiry in progress	



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

Date of reference	Parties
17 April 2002	Alenia Marconi Systems/BAe Systems (Combat & Radar Systems)
17 April 2002	BAe Systems/EADS/Finmeccanica
23 September 2002	Enterprise Inns/Laurel Pub Group
28 November 2002	Finmeccanica/Marconi
11 February 2003	MBDA/SNPE

Significant cases

P&O Princess Cruises/Royal Caribbean Cruises Ltd

The Secretary of State announced in June 2002 that the proposed merger of P&O Princess Cruises (POPC) and Royal Caribbean Cruises Ltd (RCCL) would not be against the public interest. The merger had been referred to the Competition Commission in January 2002 on the advice of the OFT.

The CC found that POPC, which is the holding company for the cruise lines formerly owned by P&O, accounted for 23 per cent of cruises taken by UK customers. RCCL, based in Miami, was the world's second largest cruise operator.

The OFT had estimated that the merged entity would have 40 per cent of the UK market in terms of passenger cruise days and possibly a higher share of the premium cruise market. The potential for the new company to act as a price leader, and the considerable investment required by new entrants to the market, raised sufficient concerns for us to recommend a CC reference.

In its report, the CC noted that the cruise market was growing in size, variety and new entry. Between 1999 and 2000, the number of UK passengers more than tripled, and around a third of berths provided in 2000 were from operators who did not enter the business until 1995 or later. Furthermore, between a third and a quarter of UK passengers chose ships that were aimed predominantly at



North American or mainland European customers. Given this diversity and choice, and the widespread view among industry commentators that cruising capacity would continue to grow, the CC concluded that the proposed merger was unlikely to have a significant impact on competition and should therefore be cleared.

Vivendi Water/First Aqua

The proposed acquisition by Vivendi Water UK, which owns three water enterprises in the UK, of First Aqua (JVCo), the holding company for Southern Water Services (SWS), was the subject of a CC reference in May 2002.

The CC concluded that the merger might be expected to operate against the public interest by prejudicing the Director General of Water Services' (DGWS) ability to make comparisons between different water enterprises. However, it did not reach a unanimous decision on the best remedy.

While accepting the CC's overall conclusion, the Competition Minister rejected its majority view on the appropriate remedy and asked the OFT and the DGWS to advise further.

Following the Competition Minister's request, Vivendi Water decided that, due to changes to market conditions and for financial reasons, it no longer wished to acquire the whole of First Aqua as originally envisaged.

A remedy package was accepted by the Competition Minister in April 2003. It involved:

- a sell-down by Vivendi Water to a minority stake in First Aqua
- the introduction of corporate governance arrangements that limited Vivendi Water's voting shares to not more than 25 per cent, limited its board representation, and prevented it entering into any contracts with Southern Water Investments or SWS prior to completion or making entry into such contracts a condition precedent of the transaction
- Southern Water Capital (a wholly owned subsidiary of Royal Bank of Scotland) appointing and maintaining at least one director on the board of Southern Water Investments and SWS with substantial experience at a senior level within the water industry
- modifications to SWS's licence.

The European Commission had cleared the original merger proposal, which came within the scope of the EC Merger Regulation, in August 2002. However, in 1995 in the *Lyonnaise des Eaux/Northumbrian* case, the European Commission had recognised in a decision the legitimate interest of the UK in examining a merger's implications for the regulatory regime under the Water Industry Act 1991. The European Commission confirmed this decision was of general application, and applied to the Vivendi Water/First Aqua case.



Safeway plc/various proposed acquirers

Four of the five proposed acquisitions of Safeway plc, the UK's fourth largest supermarket chain, were referred to the CC in March 2003. The proposed acquisition by Trackdean Investments Limited was not referred as it raised no competition concerns.

The Secretary of State accepted the OFT's advice that a takeover by any of Tesco plc, Asda Stores Ltd, J Sainsbury plc or WM Morrison Supermarkets plc may be expected to result in a substantial lessening of competition in the market for one-stop grocery shopping.

The OFT advised that, at a local level, the potential loss of competition between Safeway plc and any of the four referred supermarket groups would potentially be substantial in a large number of local areas. In addition, an acquisition by Tesco plc, J Sainsbury plc or Asda Stores Ltd would lead to a significant increase in concentration at a national level, with the three supermarket groups together supplying over 85 per cent of all one-stop grocery shopping. Given the difficulties in identifying and quantifying the scale of the competition concerns, the Secretary of State concluded that undertakings in lieu of a reference would be inappropriate.

The CC was due to report by 12 August 2003.

Carlton Communications/Granada

On the OFT's advice, the Secretary of State referred the proposed merger of Carlton Communications and Granada to the Competition Commission in March 2003.

The OFT concluded that the proposed merger raised competition concerns, particularly in the sale of TV advertising. If allowed to proceed, the merger would greatly increase concentration in this market, with one firm earning more than half the national TV revenue. The merger also had implications for other activities related to TV broadcasting, namely potential competition in ITV licences and the supply of studio facilities in Northern England.

The CC was due to report by 25 June 2003.

Future of the Mergers Panel

In a consultation exercise, we sought views on the future of the Mergers Panel.

Made up of officials from the OFT, government departments and sector regulators, the Panel meets to consider cases that raise significant competition issues. Its role is not to decide whether a merger should be referred, but to gather information, explore issues and test views before the OFT gives advice to the Secretary of State. The Panel is generally chaired by the OFT's Director of Competition Enforcement.

The consultation document set out four options:

- retaining the status quo
- creating a new Panel incorporating some non-OFT members
- having an internal discussion forum for OFT officials only
- having no Panel.

EC Merger Regulation

Review of ECMR

The European Community Merger Regulation (ECMR) gives the European Commission exclusive jurisdiction over mergers that exceed certain turnover thresholds. In January 2003, the Commission published proposals to amend the Regulation which are currently being discussed in a Council Working Group.

Among the proposed legislative changes are:

- modification of the substantive test for assessing mergers and the introduction of accompanying guidelines
- adjustments to the referral mechanisms (Articles 9 and 22) for the movement of cases between the European Commission and national competition authorities, including the introduction of a pre-notification case allocation system
- amendment of the Commission's information-seeking and enforcement powers, to bring them into line with anti-trust provisions
- allowing more time for the consideration of complex cases and remedies.

The European Commission is also considering a number of non-legislative changes to address concerns about due process. These include the appointment of a Chief Economist and the creation of internal scrutiny panels.

The OFT has actively participated in this debate through conference speeches, published papers and contributions to European Commission Advisory Committees and Council Working Groups examining the proposed amendments. In particular, we are pressing for the adoption in the ECMR of a test based on the concept of 'substantial lessening of competition', which has proved effective in a number of jurisdictions.

We believe that this test is best able to address the competition issues arising from mergers, as it is a concept rooted in economics. We see real disadvantages in adopting alternative tests, which may distort the language of the ECMR and undermine legal certainty.

EC casework

As the competent authority in the UK, we receive details of all mergers notified under the ECMR. We examined significant cases and provided the UK's view to the European Commission. We also represented the UK at hearings and attended Advisory Committee meetings at which the European Commission's draft decisions were considered by member states.

European Competition Authorities

During the reporting period, we contributed to work by the European Competition Authorities (ECA) network in relation to mergers and the aviation sector. The network consists of the competition authorities in the European Economic Area.

We helped to produce two sets of guidelines for businesses and the legal community on how ECA members will cooperate when a merger is notified in several European jurisdictions:

- The Exchange of Information between Members on Multi-jurisdictional Mergers – explaining procedures for exchanging non-confidential information on mergers being considered under domestic law.
- Principles on the application, by National Competition Authorities within the ECA Network, of Article 22 of the EC Merger Regulation – outlining the criteria and procedures ECA members will follow when deciding whether or not to refer a domestically notified merger to the European Commission for appraisal.

The Enterprise Act

The Enterprise Act 2002 makes a number of significant reforms to competition enforcement.

The Act builds on the progress made by the Competition Act, which will remain in force with some minor amendments, and largely replaces the Fair Trading Act 1973. Its competition provisions were due to come into force in June 2003.

Criminalisation of cartels

The Act makes it a criminal offence for individuals dishonestly to agree with others that undertakings will engage in certain cartel activities, namely price-fixing, market-sharing, limiting supply or production or bid-rigging. This new cartel offence will be tried either in a magistrates' court (Sheriffs' Court in Scotland) or before a jury in the Crown Court. It applies to agreements between undertakings at the same level of the supply chain (so-called horizontal agreements) and carries a maximum penalty of five years' imprisonment and/or an unlimited fine.

The OFT will be responsible for investigating the offence. Prosecutions will generally be undertaken by the Serious Fraud Office (SFO) in England, Wales and Northern Ireland, and by the Lord Advocate in Scotland.



To support this new role, the OFT has been given a number of powers under the Act, including:

- the power to compel people to answer questions or provide relevant information
- the power to enter premises under warrant to take possession of documents
- powers of surveillance in accordance with the Regulation of Investigatory Powers Act 2000.

The City of London Fraud Squad is training OFT staff in the use of these powers, with the help of the Serious Fraud Office, the Home Office and specialist providers.

We published draft guidance on how we will exercise these new powers in March 2003.

Criminal leniency programme

Under the Act, immunity from prosecution can be granted to individuals who come forward with all information available to them regarding the existence and activities of a cartel and cooperate fully with an OFT investigation.

This immunity will take the form of a 'no action' letter from the OFT confirming that no prosecution will be brought in England, Wales or Northern Ireland. Guarantees of immunity cannot be given in relation to Scotland, but the Lord Advocate will take account of an individual's cooperation in deciding whether or not to prosecute.

Guidance on the issue of 'no action' letters was published in April 2003.

Disqualification of directors

The Act allows the OFT and certain sector regulators to apply for a court order disqualifying the directors of companies which have breached national or European competition law. These Competition Disqualification Orders (CDOs) prevent individuals from acting as company directors or taking on certain other management roles for up to 15 years. An order may be granted if the court decides an individual's conduct makes him or her unfit to be involved in the management of a company and, in doing so, the court will consider whether the individual contributed to the breach or failed to take steps to prevent it.

Guidance on CDOs was published on 1 May 2003.

Mergers

Under Part 3 of the Enterprise Act, the majority of UK merger decisions will be taken by the OFT and the Competition Commission (CC) as specialist, independent competition authorities. Ministers will only become involved in mergers where there are defined public interest issues and in newspaper mergers. Decisions will be based on whether a merger has resulted or may be expected to result in a substantial lessening of competition within a UK market. This replaces the public interest test set out in the Fair Trading Act.

In the majority of cases, the initial decision on a merger will be taken by the OFT. If we conclude that the merger has resulted or may be expected to result in a substantial lessening of competition, we must refer it to the CC for detailed investigation unless:

- we can fix the competition problem through agreeing binding undertakings with the merging parties
- we believe that the affected markets are not of 'significant importance'
- we believe that relevant consumer benefits resulting from the merger outweigh the competition problem
- we believe that the merger proposals are 'insufficiently advanced'.

In preparation for this new role, we published a consultation paper last Autumn on the substantive assessment of mergers under the Act and on the future of the Mergers Panel (see page 69).

We reviewed our internal procedures and our staff are being trained in the Act's provisions. We plan to hold special briefings on the Act for external competition lawyers.

The final version of our substantive guidance and guidance on our new merger procedures was published in May 2003.

For more on how our Markets and Policy Initiatives and Consumer Regulation Enforcement divisions prepared for the Enterprise Act, see pages 25 and 50.

More information about the Enterprise Act, including guidance explaining its provisions and how we will enforce them, is available on our website at www.of.gov.uk/Business/Legal+powers/Enterprise+Act/

EC modernisation

In November 2002, the European Council of Ministers approved the draft text of a new Regulation that will radically overhaul the enforcement of European competition law. This has become known as 'modernisation' and will take effect from 1 May 2004.

Modernisation is strongly supported by the OFT as a significant step in creating a simpler and more effective enforcement regime across Europe. It will do this by:

- **Ending the European Community notification regime:**

As well as removing a bureaucratic burden from businesses, this will benefit consumers, as competition authorities will be free to devote more of their enforcement resources to ending cartels.

- **Creating a level playing field for enforcement**

throughout Europe: agreements which are legal under EC law will no longer be vulnerable to attack under national competition laws. This will be fairer on businesses throughout the European Union.

- **Devolving EC competition law enforcement to the**

national competition authorities: after modernisation, the OFT will take the lead in dealing with infringements of Articles 81 and 82 in the UK, bringing investigations and enforcement closer to home. A network of EU competition authorities will be established to coordinate enforcement.

The Department of Trade and Industry issued a consultation document in early April 2003 on the legislative changes needed to implement modernisation and align the UK and EC regimes. The OFT will consult on, and publish, updated guidelines for business and consumers on the effects of modernisation.



Performance and spending

Under our service delivery agreement (SDA) with the Treasury, we had two high-level objectives for competition enforcement for the financial year 2002-03. These were underpinned by performance targets.

Competition Act enforcement

Objective

To uproot, deter and take effective action against all forms of anti-competitive behaviour, including cartels and abuses of market power using the full range of powers under the Competition Act 1998

<i>Target</i>	<i>Performance</i>
By 31 March 2003, we will have achieved outcomes following investigation in respect of at least 12 competition cases, including 10 prohibition cases (including cartels) and at least two references to the Competition Commission (CC) and to have handled all Competition Act 1998 appeals and notifications expeditiously.	<ul style="list-style-type: none"> • We have achieved outcomes in 39 competition cases during the year covering: 13 CA98 Public Register decisions; one Article 81 decision, one formal guidance; four CA98 appeals; informal resolutions in eight CA98 potential infringement cases and 12 outcomes under the Fair Trading Act or special competition regimes • Seven of the decisions were infringements (with total penalties of £36m imposed) • No cases warranted reference to the CC this year • All appeals to the CCAT have been handled within the timeframe set out by the Tribunal. S.47 applications and Notifications have been processed within a reasonable timeframe, given the need to handle them with care and attention. • Informal guidance was given in at least 60 cases.
We will inform complainants (within 30 days of receipt of complaint in 90 per cent of cases) whether their complaint about alleged anti-competitive behaviour raises issues which justify further work.	<ul style="list-style-type: none"> • 64 per cent of complaints have been handled within the 30-day timeframe.
Where practicable, we will evaluate and publish the impact of our enforcement action in competition cases.	<ul style="list-style-type: none"> • We have published 31 out of the 39 outcomes in our competition cases. This includes publication of six of the informally resolved cases.

continued opposite

Competition Act enforcement continued

<i>Target</i>	<i>Performance</i>
<p>By 31 March 2003, we will have published guidance on the following issues arising from the Enterprise Act:</p> <ul style="list-style-type: none"> • Company director disqualification orders • Market investigation references to the Competition Commission • Criminal cartel powers: powers of investigation and 'no action' letters. <p>We will also have published guidance by this date on information disclosure to overseas authorities.</p>	<ul style="list-style-type: none"> • Final guidance on the Competition Disqualification Order provisions of the Company Directors Disqualification Act 1986 was published on 1 May • Guidance on market investigation references to the CC was published in March • Guidance on the leniency arrangements for cartels (entitled 'The cartel offence: Guidance on the issue of no-action letters for Individuals') was published in April • The consultation document on guidance on criminal powers of investigation was published in April • Guidance on informal disclosure to overseas authorities was published in April.
<p>We will be considered a 'World Class Competition Regime' by external assessors. We will maintain our position in Global Competition Review's top four jurisdictions.</p>	<ul style="list-style-type: none"> • The UK competition regime (consisting of the OFT and the CC) was judged in 2002 to be equal third in the relevant standings of jurisdictions. The OFT was judged to be "among the best in Europe".

During the financial year, the OFT spent £8.46m excluding fixed assets (software) on achieving this SDA objective.

Mergers

Objective

To provide timely advice on mergers and acquisitions that might substantially lessen competition and, where appropriate, to take effective remedial action

<i>Targets</i>	<i>Performance</i>
We will advise reference to the Competition Commission or recommend undertakings in lieu in all merger or acquisition cases where this is justified. We expect that this may amount to at least 10 cases by 31 March 2003.	<ul style="list-style-type: none"> • We advised reference in 13 cases and recommended undertakings in lieu in five cases.
We will provide advice to the Secretary of State on pre-notified cases under the FTA within 29 days of receipt of the notification in 90 per cent of cases.	<ul style="list-style-type: none"> • Advice was provided in these circumstances in 100 per cent of the cases.
By 31 March 2003, we will have published guidance on the OFT's handling of mergers under the UK merger control regime arising from provisions in the Enterprise Act.	<ul style="list-style-type: none"> • Publication of the <i>Mergers Substantive</i> guidelines was expected in May following consultation on a draft. We also consulted on the future of the Mergers Panel.
We will be considered a 'World Class Competition Regime' by external assessors. We will maintain our position in Global Competition Review's top four jurisdictions.	<ul style="list-style-type: none"> • The UK competition regime (consisting of the OFT and the CC) was judged in 2002 to be equal third in the relevant standings of jurisdictions. The OFT was judged to be "among the best in Europe".

During the financial year, the OFT spent £1.41m on achieving this SDA objective.

Legal costs

During the financial year, in our competition enforcement work, our total expenditure for litigation and handling appeals, plus our liability for meeting others' costs and our exposure to others' costs, was £190,555.