

Chairman's foreword

This report describes the OFT's activities in 2002 and the first quarter of 2003. In one sense that period was the end of an era, for on 1 April 2003 the new OFT with its new Board was brought into being by the Enterprise Act. But as this report shows, it was a time of new initiatives and new results – for example

- the first concluded infringement cases under the Competition Act
- the first court order achieved using Stop Now consumer enforcement powers
- the publication of the first market studies
- the first regional roadshows.

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Our goal

The OFT has responsibilities under a wide range of legislation. Their common theme – our over-arching goal – is making markets work well for consumers.

Markets with open competition and customers well-placed to make informed choices are by far the best regulator of economic activity. More than that, they are the best stimulator of economic prosperity, as rewards go to the businesses that serve customers best. When markets work well the benefits flow not just to the general public as consumers but also to all the good businesses that are productive, innovative, fair dealing, and delivering the best value to customers.

Thus our competition responsibilities – to combat anti-competitive agreements and behaviour, to scrutinise mergers, and to promote pro-competitive reform – are at once pro-consumer and pro-good-business. So are our responsibilities under consumer law – to combat unfair trading practices, to encourage good self-regulation and to promote consumer awareness.

Our competition and consumer powers are therefore geared to the same end – making markets work well. Just as competition is a fundamental consumer issue, so consumers and fair dealing are fundamental to competition.



John Vickers
Chairman

Markets working better

The OFT's successes in making markets work better over the period reviewed in this report can be illustrated by practical examples.

Financial services

In financial services markets, as elsewhere, our focus has been on questions of competition, information and customer choice. Clearer advertising of a number of credit products has been achieved. We secured remedies to competition problems identified by the Competition Commission in the supply of banking services to SMEs. Under the Competition Act we have taken forward the MasterCard credit card case, where the key question is the transaction fee agreed between scheme members. We began studies of other payment system issues, for example in clearing systems, and of liability insurance, where many businesses have seen premiums jump. We have improved the effectiveness of the regulatory system for consumer credit – on which we welcome government proposals for reform – and we have addressed issues in the 'debt management' market in particular.

Health services

Some important Competition Act cases have concerned markets for health services. The OFT decision in 2001 that the exclusionary and excessive pricing practices of Napp Pharmaceuticals had breached competition law was upheld on appeal. This will benefit the NHS and patients. A decision

was made that Genzyme had engaged in anti-competitive pricing with respect to its treatment for Gaucher's disease, and (as with Napp) a substantial fine was imposed.

Government regulation itself came under scrutiny, and after a detailed study we recommended the removal of restrictions that block new entry into the provision of pharmacy services. We also recommended measures of deregulation in our report on private dentistry, a central theme of which was the need for better customer information about prices and choices. We helped achieve fairer and clearer terms in health club contracts, and we took action against an unsolicited first aid kit scam operated against UK consumers from overseas.

Retailing

It is important for consumers that markets work well throughout the supply chain. Nevertheless it is natural that retail markets are a major area of OFT activity. Competition Act decisions that toy prices had been fixed were taken against Hasbro, Argos and Littlewoods, and substantial fines were imposed. An OFT study of extended warranties led to a reference to the Competition Commission. A study of consumer IT goods and services resulted in recommendations to the industry and consumers designed to improve further the functioning of those markets. Safeguards for online shoppers were clarified when major internet retailers agreed to include delivery charges in refunds to customers who return goods within the cooling-off period. The OFT's merger responsibilities, which new legislation is sharpening, were illustrated by the reference to the Competition Commission of bids by other supermarket chains for Safeway.

Transport

Our work to ensure that consumer contracts are clear and free of unfair terms is illustrated by markets for transport services. We secured improvements in contract terms for holidaymakers using the major tour operators, for passengers using a number of major airlines, and for railcard holders. The Association of British Travel Agents was among the first trade associations to meet the first stage of the OFT's new codes regime, which by setting rigorous standards aims to facilitate effective self-regulation. And a Competition Act decision was made against two major bus operators for a market-sharing cartel in the Leeds area.

Media and sport

Important competition questions in media markets were addressed. The Competition Act investigation of BSkyB's pay-TV pricing practices concluded without a finding that competition law had been breached. The proposed ITV merger between Carlton and Granada was referred to the Competition Commission. A review of newspaper distribution proposed measures of liberalisation. We issued our second decision, which has been upheld on appeal, in the Aberdeen Journals predatory pricing case following the Competition Appeal Tribunal decision to remit the case back to us in 2002. Competition law applies to sport in a similar way as to other economic activities, and the rules of horseracing were a particular focus of OFT work. We also gave the government pro-competitive advice about the future of the Tote.

Many more examples could be given – and are in the rest of this report - but the range and diversity of the OFT's work will be immediately apparent. That is diversity not just of markets, but also of our powers and responsibilities under competition and consumer law. The examples also show the emphasis on uprooting, penalising – and hence deterring – cartel activity. At the same time they show how in some cases (e.g. unfair contract terms) practical results can be achieved by agreement. They show too how pro-market recommendations to government complement our competition and consumer law enforcement work. Not illustrated by the examples above, however, are all the potential problems prevented – for example, by keeping unfit traders out of the credit market, by avoiding unfair contract terms or anti-competitive behaviour in the first place, and by effective communication to enhance business compliance generally.

New powers, responsibilities and openness

The OFT has recently been able to do more to help markets work well because of new powers and responsibilities, notably the Competition Act, which has now been in force for three years, and more effective consumer regulation powers such as the Stop Now injunctions regime. The Enterprise Act, which has come into force since the period covered by this report, has further advanced and sharpened competition and consumer law, and the OFT's role in particular. Much has been done over the past year to prepare for the new Act – for example consultation and publication of a wide range of guidance documents to explain how the Act will work.

First among its provisions is the welcome change from a 'Director General' model to a Board structure for the OFT from 1 April 2003. This will give a stronger and broader base for strategic decision-making – for example, about plans, priorities and generally how the OFT goes about its business.

Second, there is merger policy reform. Instead of ministerial involvement in the application of a 'public interest' test, the new test in law will be whether a merger is likely substantially to lessen competition. Ministers will no longer be part of the process (except for defined 'public interest' issues like national security). The OFT will make reference decisions and the Competition Commission will be determinative over remedies, with appeal rights to the Competition Appeal Tribunal.

Third, the Enterprise Act introduces criminal penalties for individuals dishonestly involved in the worst types of cartel activity – such as collusive price fixing. Since hard-core cartels are like theft, criminalisation makes the punishment fit what is indeed a crime. The Act also makes competition law breaches possible grounds for director disqualification. Moreover, the deterrent effect of these measures ought to be considerable – all the more so in view of the increased probability of discovery that results from the leniency arrangements that the OFT offers to information providers.

Fourth, the Act enhances the enforcement of measures to combat unfair trading by extending the 'Stop Now' approach to a wider range of consumer protection laws. This should remedy past problems in obtaining timely enforcement under the Fair Trading Act – to the benefit of consumers and fair-dealing businesses alike.

The Enterprise Act is not the end of competition and consumer law reform. But a generation on from the Fair Trading Act it establishes, together with the Competition Act, a robust statutory basis for UK policy for markets, consumers and enterprise.

With the OFT's new powers and responsibilities comes greater openness. Our analysis, decisions and recommendations have, rightly, become much more open to public scrutiny. Our Competition Act decisions are subject to appeal, and many of our consumer powers are exercised through the courts. As well as doing more, we are explaining more, and listening more too. For example, our new regional roadshows are to hear the views of businesses and consumers around the UK as well as to explain what competition and consumer law means for them.

People and partnerships

How well the OFT meets its growing responsibilities depends above all on the skill, commitment and professionalism of its people. The OFT now has 630 staff – an increase over the last few years that reflects the expansion of our work. Recruitment and investment in training have been intensive, and we are all continually learning from experience.

Alongside Penny Boys (Executive Director) and myself, the new non-executive Board members – Allan Asher, Lord Blackwell, Christine Farnish, Richard Whish and Rosalind Wright – bring outside expertise and insight from a rich variety of backgrounds. In welcoming them, I wish to thank the Advisory Panel members – Michelle Childs, John Mills, Sir Geoffrey Owen and Richard Whish – for all their help, advice and support over the past two years. Among much else, the Advisory Panel helped lay the foundations for the Board.

I want to pay special tribute to Caroline Banks and Margaret Bloom, whose service to the OFT ends this summer. Caroline and Margaret have respectively led the OFT's consumer and competition enforcement work during a time of unprecedented change, and our readiness to face the challenges of the future owes much to their efforts and achievements. I welcome their successors, Christine Wade and Vincent Smith.

On behalf of all at the OFT, I would also like to thank the organisations we work with. Partnership is vital to so much of what the OFT does, as is illustrated by our work with, or complementary to, that of local trading standards services, the Trading Standards Institute, LACORS, the Competition Commission, the sector regulators, the National Consumer Council, Citizens Advice and the Consumers' Association. Internationally, in addition to our fruitful bilateral links with many overseas authorities, I would particularly mention the European Commission, the OECD, the International Consumer Protection Enforcement Network, the new European Competition Network, and the new International Competition Network, with whose work we have been much involved.

Looking ahead

The Enterprise Act builds on other recent legislation to create an OFT with new powers and responsibilities, a new Board, enhanced resources, and a clear commitment to transparency and accountability.

The task ahead is to carry out our responsibilities – old and new – as effectively as possible so that consumers and enterprise benefit from markets that work well.