

## WEB ANNEXE C

---

### UK MERGERS APRIL 2003 TO MARCH 2004

---

This annexe gives statistics for the OFT's mergers work from 1 April 2003 to 31 March 2004.

The statistics shown in the tables which follow broadly relate only to those mergers that the OFT examined in the context of the OFT's responsibilities under the Fair Trading Act 1973 and more recently the Enterprise Act 2002. They do not represent an estimate of total merger activity in the UK. The following points should be borne in mind:

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

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

To qualify for reference to the CC under the terms of the Fair Trading Act, a merger must either involve the acquisition of gross (fixed and current) assets of more than £70

million, or lead to the creation or augmentation of a share of supply of 25 per cent or more in a particular market. Under the Enterprise Act the jurisdiction test based on the acquisition of gross assets has been replaced by a test based on the UK turnover associated with the enterprise being acquired exceeding £70 million ('the turnover test').

### **Merger activity considered April 2003 to March 2004**

In 2003-04, the OFT considered 270 mergers and merger proposals under the Fair Trading Act and Enterprise Act. The number of cases considered that qualified for reference to the CC was 117. Twenty-nine of these cases were prenotified. The number of qualifying confidential guidance cases was 13.

The Secretary of State made 3 references to the CC under the Fair Trading Act, all of them in accordance with the advice given by the OFT. The OFT made 9 references under the Enterprise Act. The OFT's advice to the Secretary of State in the 3 FTA cases and the OFT decisions in the 9 EAO2 cases were published on the OFT's website, as was that in the other 67 cases in which the OFT either recommended clearance or decided that the merger should not be referred.

TABLE C.1 - MERGER ACTIVITY APRIL 2002 TO MARCH 2004

<i>Year</i>	<i>Proposals qualifying: all cases</i>	<i>First Release<sup>1</sup> Numbers of cases</i>	<i>All cases as percentage of First Release cases</i>
Apr 02/ Mar 03	190	531	36
Apr 03/ Mar 04	117	642	18

*Source: Office of Fair Trading*

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

TABLE C.2 - SUPPLEMENTARY DATA ON MERGERS EXAMINED AND REFERENCES TO THE CC APRIL 2002 TO MARCH 2004

Year	Total numbers of cases examined	Found not to qualify, proposals abandoned, and informal guidance cases	Qualifying cases		Confidential guidance cases	Pre-notified cases	Qualifying cases less confidential guidance cases	Total references as % of:			Total references as % of:		
			Nos	% change				Total Refs	Qualifying Cases	Qualifying Cases less Confidential Guidance	Total references	Qualifying cases	Qualifying cases less confidential guidance cases
Apr 02/ Mar 03	318	128	190	61.5	28	51	162	13	6.8	8.0			
Apr 03/ Mar 04	270	153	117	50	13	29**	104	12***	10.3	11.5			

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

\*\* Two abandoned

\*\*\* Four cancelled/one laid aside

**Source: Office of Fair Trading**

TABLE C.3A - REFERENCES TO THE CC UNDER THE FAIR TRADING ACT 1973  
MARCH 2003 TO APRIL 2004

<i>Qualification criteria under the Fair Trading Act 1973</i>				
<i>Findings of the CC</i>	<i>Share of supply of at least 25%</i>	<i>Assets in excess of £70 million</i>	<i>Meeting both criteria</i>	<i>Totals</i>
Not against the public interest		1		
Against the public interest				
Proposal abandoned		1		
Decision awaited			1	
<b>Totals</b>	0	2	1	0
as percentage of all qualifying mergers in this category	0	1.92	0.96	0

*Source: Office of Fair Trading*

TABLE C.3A - REFERENCES TO THE CC UNDER THE ENTERPRISE ACT 2002  
MARCH 2003 TO APRIL 2004

<i>Qualification criteria under the Enterprise Act 2002</i>				
<i>Findings of the CC</i>	<i>Share of supply of at least 25%</i>	<i>Assets in excess of £70 million</i>	<i>Meeting both criteria</i>	<i>Totals</i>
Not against the public interest			1	
Against the public interest				
Proposal abandoned	3	1	1	
Decision awaited	2	1		
<b>Totals</b>	<b>5</b>	<b>2</b>	<b>2</b>	<b>0</b>
as percentage of all qualifying mergers in this category	4.8	1.92	1.92	0

*Source: Office of Fair Trading*