

Chairman's foreword

Introduction

The past few years have seen fundamental reforms of UK competition and consumer law and policy, and a corresponding transformation of the OFT itself, which is still under way. Now is a good point to take stock of what has been achieved so far, and what we need to do better.

Our job is to make competition and consumer law – old and new – operate effectively so that markets work well for consumers. That means markets where customers have truly informed choice between the offerings of competing suppliers – the best and least regulatory form of consumer protection. Then markets not only serve the interests of the general public as consumers, but also bring prosperity to all the firms that are good at delivering what consumers want, and enhance the productivity and competitiveness of the economy as a whole.

Making the law work effectively requires a much broader perspective than the core activity of enforcing the law against those who breach it. We must also explain clearly to businesses and consumers what responsibilities and rights the law gives them, so that anti-competitive practices and unfair trading are deterred from happening in the first place.

Cartels are one example. The new criminal cartel offence, combined with the leniency policy for information-providers, has added powerfully to the Competition Act prohibition of cartels in deterring collusive price-fixing. In another sphere, consumer problems resulting from the activities of some debt management companies have diminished following clear OFT policy guidance backed up, of course, by action against unfair trading.

Just as communication without law enforcement would be ineffective, enforcement without policy guidance would have a fraction of the needed effect. So our strategy, which has been published this year within our Annual Plan, combines enforcement and communication, all of which must be underpinned by sound market analysis and understanding.

The past year: some themes

The Enterprise Act came fully into force in June 2003. It strengthened the law relating to mergers, market investigations, cartels, consumer protection, codes of practice, consumer education and more. It has enhanced not only the potential effectiveness, but also the independence, transparency, accountability and governance of the OFT, and the past year was the first year under the seven-member board. There were about 700 staff in post during the year and the OFT spent £49 million. Having grown rapidly, we expect now to remain at around those levels. This annual report details what was achieved over the year, and here I will mention just a few key themes.

The first is the achievement of some important practical results in a timely and proportionate manner without formal enforcement action. Examples include the halting of misleading adverts for a major Barclays credit card offering, and securing a sharp reduction in fees charged by the London Stock Exchange.

The second is the readiness to go to court where necessary. Examples range from the action that led to a jail sentence for rogue trader Vance Miller, to the pending case to clarify whether consumer protection on credit cards extends to overseas purchases.



John Vickers
Chairman

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The third is the growth of appeals, which are to be expected especially where law is new. During the year the Competition Appeal Tribunal (CAT) upheld the OFT's decisions that Aberdeen Journals had abused a dominant position by predatory pricing and that Genzyme had done so by an anti-competitive margin squeeze, but the CAT reduced the fines. The replica football kit price-fixing decision made last summer has been appealed to the CAT by some of the parties. The CAT ruled against the OFT's clearance of the iSoft/Torex merger, but we appealed on points of law to the Court of Appeal and were pleased at the resulting clarification of the new merger law. We also argued successfully before the Court of Appeal that the regulations on unfair contract terms cover landlord/tenant agreements.

The fourth is increasing attention to restrictions on competition that stem from laws and regulations. The government has not, for now, accepted our recommendation that entry restrictions into pharmacy should be lifted. The case for deregulation nonetheless remains clear – new ways of getting medicines to the public should not be blocked. We also published market studies recommending the removal of restrictions on taxi numbers and on aspects of dentistry business. Regulations often suit vested interests, who may clamour for their retention, but we are for the general public as consumers.

Learning and investing for the future

While the size and shape of the OFT is more settled now than for some years, we need to improve aspects of how we work. Our own assessment of areas to develop is helped by, and largely accords with, external constructive criticism and peer review.

First, we need to improve how priorities are set – in terms of choosing which matters to pursue and the identification of key issues in cases and studies that are pursued. This is especially important given the range and number of voices calling upon the OFT for action in their cause. While £49 million is a lot of taxpayers' money, the OFT is much smaller than some regulators, despite the wide reach of our responsibilities. Choices have to be made, and they will be made in the interest of the consumer.

Second, some cases and studies are taking too long. Sometimes the length of time is an inevitable consequence of the relevant procedures. (It would be wrong, for example, to expect criminal cartel prosecutions in the near future.) Sometimes matters can be resolved more quickly if parties are willing to explore a negotiated solution. But sometimes we ourselves should be able to progress matters to a

conclusion more quickly without compromising the robustness of the analysis. Thus, for example, we have been reviewing and changing aspects of project management, case working and legal service provision.

Third, although clarity of OFT policy – by publishing reasoned decisions (including decisions *not* to intervene), guidelines and speeches – has been stepped up, there is more to be done, especially in consumer policy, where there is less accumulated jurisprudence than in competition law. Consumer law reform initiatives include the major review of UK consumer credit law that is in train, and the prospective EC directive on unfair commercial practices.

Fourth, we need fully to absorb the lessons from growing experience. When much of the law and many OFT staff are relatively new, there is much to learn from the OFT's own, and international, experience. This we are strongly committed to do.

Finally, we need to improve further how we work with our partners – locally, nationally and internationally. Much has been done to secure better coordination with trading standards departments – for example through training, IT (such as the consumer regulation website) and case working – but the return on this joint investment can be enhanced further. Likewise, the OFT is now part of the new European Competition Network with the responsibility, since 1 May, directly to apply EC as well as domestic competition law. And we soon take on the leadership of the International Consumer Protection Enforcement Network. These are good opportunities to advance productive joint working, without which important consumer problems will not be solved, and we must seize them.

The OFT is well set for the future. The board has brought new strengths, and I am very grateful to my colleagues Allan Asher, Norman Blackwell, Penny Boys, Christine Farnish, Richard Whish and Ros Wright for a fine first year. I want also to express my thanks to everyone in the OFT for a tremendous team effort. I particularly wish to pay tribute to Caroline Banks, Margaret Bloom and Pat Edwards, who have recently retired from the OFT after leading the consumer, competition and legal teams through what have been, to put it mildly, interesting times.

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