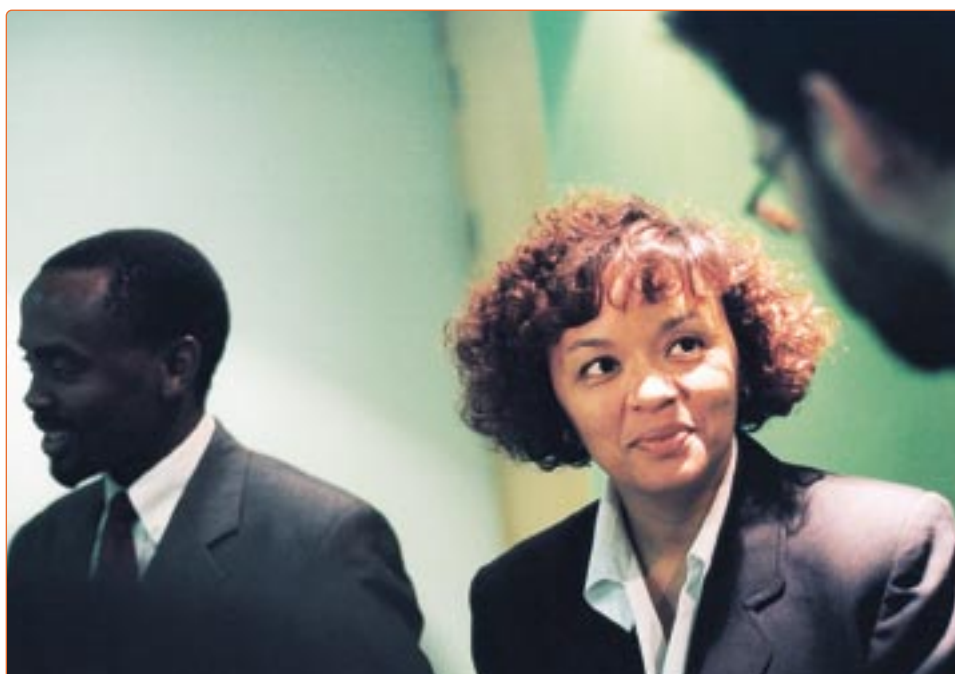




## International liaison

**The OFT assists the  
European Commission  
in the application of EC  
competition law**

## International liaison



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The OFT contributes to a wide range of international activities relating to competition and consumer law enforcement and policy.

### **VISITS AND SECONDMENTS**

Visitors to the OFT during the year included representatives not only from Europe but also from the Americas, Asia and Australasia. A senior official from the OFT went on a short secondment to the Paris-based Direction Generale de la Concurrence de la Consommation et de la Repression des Fraudes (DGCCRF).

### **CONSUMER ISSUES: WORLDWIDE**

#### **The International Marketing Supervision Network (IMSN)**

The OFT is a founding member of IMSN, an informal group of 29 countries involved in the enforcement of consumer protection legislation. During the year, IMSN members undertook work on a number of initiatives, including identification of legal constraints to effective cross-border enforcement and methods of improving data-sharing to the extent permitted by domestic law.

Casework cooperation focused to a large extent, as in 1999, on misleading prize draws, but cross-border cases also included misleading sales of first aid kits and of holiday club 'membership'. The OFT press office issued feature articles to the media on these issues in order to raise consumer awareness in the UK.

#### **CONSUMER ISSUES: EUROPE**

The OFT continued to contribute to European Commission programmes promoting implementation of an effective consumer policy in the candidate countries. This year OFT speakers travelled to Malta and Estonia to address senior civil servants from countries preparing to join the EU about the OFT's experience of enforcing consumer protection policy in the UK.

#### **IMSN Europe**

In preparation for the Injunctions Directive which aims to protect the collective interests of consumers cross-border (see p18), IMSN Europe members agreed to an OFT proposal to seek to ensure effective enforcement cooperation on cross-border cases.

#### **European Extra-Judicial Network**

The aim of the European Extra-Judicial Network (EEJ-Net) is for consumers to have access to a one-stop clearing house in their own country rather than face the complexity and prohibitive costs of taking an individual consumer case through the courts abroad. The OFT participated in the launch of EEJ-Net, supporting the EC in its attempt to coordinate and link existing out-of-court Alternative Dispute Resolution processes across all member states. EEJ-Net was developed in parallel with and to support the Injunctions Directive (see p18).

### **COMPETITION ISSUES: WORLDWIDE**

#### **Organisation for Economic Co-operation and Development (OECD)**

OFT representatives participate in the OECD Committee on Competition Law and Policy and its working parties. During 2000 the Committee's agenda included international hard-core cartels, sanctions and leniency programmes, and the reviewing of other member countries' competition regimes and other aspects of competition and regulation under the OECD's regulatory reform project. Margaret Bloom, the OFT's Director of Competition Policy, is a Vice-Chair of the Committee.

#### **United Nations Conference on Trade and Development (UNCTAD)**

The Fourth United Nations Conference to review UNCTAD's Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices ('the Set') was held in September. The UK delegation was headed by a representative of the OFT. The Set was not amended but the conference expanded the related Model Law on Competition to cover mergers. Countries exchanged experiences and views on a number of competition issues and agreed the broad work programme on competition for UNCTAD for

the next five years, including continued technical assistance to developing countries on the control of anti-competitive practices.

#### **World Trade Organisation (WTO)**

The WTO working group on trade and competition policy – of which the OFT is part – continued to meet during 2000 to discuss a possible multilateral framework for competition rules. The OFT liaised throughout the year with the Department of Trade and Industry on issues arising from the WTO working group's meetings, and attended a regional WTO meeting of the European Union member states and the European Commission.

## **COMPETITION ISSUES: EUROPE**

As the competent authority in the UK responsible for casework, the Director General assists the European Commission in the application of EC competition law – in particular, Articles 81 and 82 (formerly 85 and 86) and the European Community Merger Regulation.

### **Competition rules of the EC Treaty:**

#### **Articles 81 and 82**

#### **OFT powers**

*Central to the competition regime of the European Community (EC) are Articles 81 and 82 of the EC Treaty and various implementing regulations. Article 81 prohibits agreements and concerted practices*

*which prevent, restrict or distort competition, in so far as they may affect trade between member states.*

*Article 82 prohibits abuse of a dominant position in so far as it may affect trade between member states.*

*The Director General assists the European*

*Commission in applying the rules as a competent*

*authority for the UK. Acting on his behalf in this role,*

*OFT officials represent the UK at meetings of the*

*EC's competition advisory committees and on the*

*working group of government competition experts.*

*They also attend hearings in Brussels where*

*companies can comment orally on the Commission's*

*objections alleging infringement of the EC's*

*competition rules. The OFT also assists Commission*

*officials on their unannounced on-site investigations of*

*companies in the UK.*



## International liaison *(continued)*

The European Commission adopted 10 decisions under Articles 81 and 82 of the EC Treaty.

The cases are listed below:

Date of decision	Case	Date published in <i>Official Journal</i>
24 January	CECED	26 July in L187/47
10 May	Eurovision	24 June in L151/18
16 May	Fettcsa	20 October in L268
7 June	Archer Daniels Midland and Ajinomoto etc	Awaiting publication
29 June	Inntrepreneur etc	1 August in L195/49
5 July	Editions Nathan	Awaiting publication
20 September	Opel	Awaiting publication
13 December	ICI	Awaiting publication
21 December	JCB	Awaiting publication
29 December	Unisource	Awaiting publication

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Details of European Commission cases are published on the EC website at [www.europa.eu.int](http://www.europa.eu.int)



## **European Community Merger Regulation (ECMR)**

### **OFT powers**

*Under the ECMR, the European Commission has the power to control mergers that exceed certain turnover thresholds. As a competent authority in the UK, the OFT receives details of all mergers notified in Brussels. It examines each case, consults with the Department of Trade and Industry and other government departments as necessary, and provides the UK's view to the Commission's Merger Task Force where appropriate. The OFT also represents the UK at hearings convened by the Merger Task Force. Such hearings allow parties to a merger – and third parties – the opportunity to discuss the Commission's objections to the transaction. The OFT also attends Advisory Committee meetings at which the Commission's draft decision (whether or not to prohibit a merger or to clear it subject to some other remedy through commitments) is considered by member states.*

*Amendments to the ECMR were adopted on 30 June 1997 (OFT annual report 1997, p53) and came into force on 1 March 1998. The new Article 1(3) introduced an additional but lower set of turnover thresholds for cross-border mergers.*

*By introducing secondary turnover thresholds, more mergers which would otherwise be subject to multiple filings in a number of member states were brought within the scope of the ECMR.*

The year 2000 saw a continued increase in the number of cases notified under the ECMR, and cases cleared with remedies in Phase 1 and Phase 2. The statutory deadline for Phase 1 is one month, or six weeks where the parties offered commitments. For merger cases investigated under Phase 2 (Article 6.1(c) of the ECMR), the Commission is allowed a further four months to investigate merger proposals which 'raise serious doubts' as to their compatibility with the common market.

## International liaison *(continued)*

	Total	Increase on 1999
Merger notifications	345	18%
Withdrawn by relevant parties	17	
Phase 1 decisions reached within statutory deadline	328	
– clearances	293	
– clearances with commitments	28	47%
– merger not covered by the Regulation	1	
– partial referral back to a member state under Article 9(3)	4	
– full referral back to a member state under Article 9(3)	2	
Phase 2 decisions to investigate	19	
Phase 2 full decisions reached under Article 8(2)	17	70%
– cleared with commitments	12	50%
– prohibited	2	50%
– declared compatible with the common market	3	

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Cases of particular interest which were completed in 2000 under the ECMR are listed below. Further details can be found on the EC website at [www.europa.eu.int](http://www.europa.eu.int)

MCI/Worldcom/Sprint

Telia/Telenor

VodafoneAirtouch/Mannesmann

Microsoft/Telewest

EMI/Time Warner

AOL/Time Warner

Vodafone/Vivendi/Canal+

Vivendi/Canal+/Seagram

MMS/DASA/Astrium

Agusta/GKN Westland

Thomson-CSF/Racal

Pirelli/BICC

VEBA AG/VIAG AG

EdF/Cottam Power Station

Framatome/Siemens

Volvo/Scania

Mitsubishi Heavy Industries

Alcoa/Reynolds

Dow Chemical/Union Carbide

Air Liquide/BOC

Total Fina/Elf Acquitaine

AstraZeneca/Novartis

Glaxo Wellcome/SmithKline Beecham



### **Article 9 cases under the ECMR**

#### ***OFT powers under Article 9 of the ECMR***

*Under Article 9 of the ECMR, a member state may request that a merger notified under the ECMR is instead examined by the national competition authority on one of two possible grounds:*

- it threatens to create or strengthen a dominant position as a result of which effective competition will be significantly impeded in a market within that member state which presents all the characteristics of a distinct market*
- it affects competition in a market within that member state, which presents all the characteristics of a distinct market and which does not constitute a substantial part of the common market.*

## International liaison *(continued)*



The UK made three Article 9 requests in 2000, all of which were granted by the EC.

- Hanson/Pioneer (see p47)
- Interbrew/Bass (see p52)
- C3D/Rhone/Go-Ahead - *this proposed acquisition concerning buses in South London was abandoned after the EC granted the UK's request.*

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Anglo American/Tarmac was repatriated to the UK at the beginning of 2000 in response to a request at the end of 1999, and led to a reference to the Competition Commission (see p46).