

TO: SECRETARY OF STATE FOR TRADE AND INDUSTRY

FROM: JOHN VICKERS
DIRECTOR GENERAL OF FAIR TRADING

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**REVIEW OF STATUTORY UNDERTAKINGS GIVEN BY OUTDOOR ADVERTISERS IN
1982: ROADSIDE ADVERTISING SERVICES**

Issue

1. The OFT has reviewed the undertakings given to the Secretary of State for Trade and Industry by suppliers of roadside advertising services in March 1982 (the Undertakings), following the *1981 Monopolies and Mergers Commission Report on the Supply in the United Kingdom of Roadside Advertising Services*¹ (the MMC Report). A copy of the Undertakings is at Annexe A.
2. The OFT is advising you under s88(4) of the Fair Trading Act 1973 (the FTA) as to whether, by reason of a change of circumstances, the Undertakings are no longer appropriate, and, if so, whether the relevant companies should be released from the Undertakings or the Undertakings need to be varied or to be superseded.
3. The Undertakings were originally intended to inform the OFT about proposals for joint selling arrangements in the supply of roadside advertising services on poster sites and to enable the OFT to assess whether such arrangements are likely to have anti-competitive effect in advance of their implementation.
4. Since the Undertakings were signed, there have been significant changes in the law and some evidence of a change in the structure of the market.
5. The new powers under the Competition Act 1998 (CA98) allow the OFT to take effective action against anti-competitive joint selling arrangements of the kind envisaged by the Monopolies and Mergers Commission, (now the Competition Commission) which render the Undertakings effectively redundant.
6. Additionally, there is evidence of structural change in the roadside advertising market which makes the application of the Undertakings inappropriate.

Recommendation

7. That the companies who are the parties to the Undertakings should be released from them.

¹ MMC - HC (1980 – 81) 365.

Timing

8. Routine.

Transparency

9. As part of the commitment the OFT shares towards greater transparency in decision-making, we shall be publishing this advice including the Annexes.

Background

The reference

10. In November 1978 the then Director General referred the supply in the United Kingdom of roadside advertising services² to the Monopolies and Mergers Commission (MMC) for investigation under section 50(1) of the FTA. The terms of reference required the MMC to consider the supply of advertising services on poster sites of a size known in the industry as '4 sheet' or larger, 40" x 60" upwards.
11. In the years leading up to the MMC Report, British Posters Limited (BPL) - a central selling agency - had been set up to enable advertisers to co-ordinate campaigns across the sites of several of the larger poster contractors. Two further sales agencies were set up. At the time of the reference, BPL members owned 77% of the space available and 79% of the services by value.

Main findings

12. The MMC concluded that a scale monopoly under section 7(1)(a) FTA existed in relation to the supply of roadside advertising services in favour of BPL and its member companies.
13. The MMC also concluded that a complex monopoly situation under section 7(1)(c) FTA existed in favour of BPL and of its member companies by virtue of the practice of collectively marketing through BPL a number of panels³ which they would otherwise have sold in competition with other member companies of BPL. The operation of BPL, whose members controlled nearly 80% of the total stock of panels, was found to have had the effect of restricting or distorting competition both between BPL and its member companies, and among the companies themselves.
14. In paragraph 10.9 of the MMC Report the MMC concluded that a complex monopoly also existed in favour of the members of the British Poster Advertising Association and the Solus Outdoor Advertising Association Limited. The MMC's findings in relation to these Associations have not been considered as part of the present review.

² For the purpose of the reference, roadside advertising services meant the undertaking and performance of engagements to display and exhibit advertisements on sites of not less than 40" wide and 60" deep, visible from a highway (including a pedestrian precinct), but excluding sites on or within any form of conveyance, i.e. transport advertising. MMC Report paragraph 2.1.

³ The term panel is used for structures on which posters are displayed, MMC Report, Appendix 1.

15. The complex and scale monopolies of BPL and its members were found to operate against the public interest in that:
- (1) they led to a higher level of prices and to a more consistent approach in pricing strategy among members than would have been obtained in a more competitive market, and hence contributed to the very high level of profitability (paragraphs 10.22 to 10.27 of the MMC Report);
 - (2) the discouragement of the sale of pool panels⁴ to Independent Poster Sales (a sales consortium, paragraph 4.27 of the MMC Report) had strengthened the position of BPL and its members and restricted competition, to the detriment of other (non BPL) companies and the public interest (paragraph 10.28 of the MMC Report); and
 - (3) they had inhibited the adjustment of BPL pre-selected campaigns in composition and flexibility to meet the requirements of clients (paragraphs 10.33 to 10.36 of the MMC Report).
16. In reaching its conclusion that remedial action should be taken for the purpose of remedying or preventing these adverse effects, the MMC also noted that the geographical distribution of all poster contractor companies' holdings of panels made it impossible for any one contractor to provide campaigns with adequate national coverage out of its own stock. The MMC accepted that some joint selling arrangements were necessary to meet the needs of the industry to facilitate national campaigns, and enable smaller contractors to participate in those campaigns. Section 54(3)(b) FTA invites the MMC to include in the report recommendations as to action which should be taken to remedy the adverse effects identified. Whilst the MMC did not offer detailed suggestions on how this could be achieved with the least possible detriment to competition, it did recommend that BPL should "cease to exist and not be reformed".⁵
17. The Secretary of State accepted that recommendation. In addition, the Director General was asked to obtain undertakings further to the MMC report, to address the possibility of anti-competitive joint selling arrangements replicating the effects of BPL activities in future, by requiring those ten advertising poster contractors which had formed BPL to notify the OFT of particulars of any joint selling arrangements they entered into with another poster site contractor.
18. The member companies of BPL⁶ undertook to provide the Director General with particulars of any joint selling arrangements with another contractor to "which they are, or become, party and, at the Director General's request, with details of sales revenue and stocks of panels both in relation to sales affected through joint selling arrangements and direct sales"⁷.

⁴ A term used in the industry for the panels which BPL members have neither made available for B PL's pre-selected campaigns nor sold under long-term contracts; they are therefore available for short-term line-by-line sales, *Ibid*.

⁵ Paragraph 10.60 of the MMC Report.

⁶ British Transport Advertising Ltd, James Davey Sites Ltd, Focal Media Ltd, Samuel Miles Ltd, London and Provincial Posters Ltd, Paddington Poster Group, C P Poster Advertising Limited, More O'Ferrall plc, Arthur Maiden Ltd, Mills and Allen Ltd.

⁷ Extract from Undertakings, see Annexe A.

Change of circumstances

19. Under the FTA, the Director General has a duty to keep under review the carrying out and effectiveness of undertakings in addressing the adverse effects identified by the MMC in their published findings.
20. In its review the OFT has considered whether by reason of any change of circumstances the Undertakings are no longer appropriate and, if so, whether the parties should be released from the Undertakings or whether the Undertakings need to be varied or superseded by new Undertakings.

Legal development

21. The CA98 came into force on 1 March 2000. It prohibits the kind of anti-competitive joint selling agreements envisaged in the MMC Report. Chapter I prohibits any agreement or concerted practice which may affect trade in the UK⁸, and has as its object or effect the prevention, restriction or distortion of competition within the UK. The Undertakings offer less protection than that given by the CA98. If there are reasonable grounds to suspect that the Chapter I prohibition has been infringed, the Director General may use powers granted under CA98 ss26-28 to investigate the suspected infringement. Any undertakings found to be infringing the CA98 may be subject to a financial penalty⁹ of up to a maximum of 10 per cent of company turnover over three years¹⁰ and the relevant parts of such agreements are void.¹¹ CA98 also enables notification of agreements for guidance or a decision as to whether the Chapter I prohibition is likely to be or has been infringed¹².
22. Additionally, third parties, including customers of roadside and outdoor advertising generally may complain to OFT if they are concerned about anti-competitive conduct, agreements or practices. Third parties suffering loss due to anti-competitive agreements or conduct can also initiate private actions in UK courts. The merger provisions of the FTA also continue to provide a means of intervention against concentrations that are likely to jeopardise the competitive process.

Market developments

23. For the purposes of s88(4) FTA, the OFT does not need to determine whether the market definition used in the MMC Report has changed so as no longer to remain valid. The change of circumstances arising from the introduction of a new legal regime such as CA98 can be sufficient grounds to justify releasing the parties from the Undertakings as CA98 is now the most appropriate mechanism to deal with any anti-competitive agreements in the roadside advertising market.
24. However, as part of its review of the current circumstances, the OFT has taken account of the views of the parties, customers, other outdoor advertisers and

⁸ S2(1) CA98.

⁹ S36 CA98.

¹⁰ CA98 (Determination of Turnover for Penalties) Order 2000, SI 2000/309.

¹¹ S2(4) CA98.

¹² Ss 13 and 14 CA98.

developments in the market. The OFT's observations on the roadside advertising market are found at Annexe B and a summary of consultation at Annexe D.

25. In summary, the OFT has seen some evidence of structural change in the roadside advertising market, most importantly, consolidation. Of the ten parties that signed the Undertakings, only three remain in the market¹³: -
- (1) *Clear Channel Communications Incorporated (CCCI)*, active in the out-of-home advertising industry with radio and television stations and outdoor displays in 40 countries around the world, now owns More Group plc¹⁴. CCCI also owns Clear Channel International Ltd in the UK, which operates in the roadside advertising market in the 4, 6, 48 and 96 sheet sectors and Clear Channel UK Limited, the street furniture advertising company that competes with JC Decaux SA (JC Decaux).
 - (2) *Maiden Outdoor Advertising Limited (Maiden)* owns poster sites for 4 sheet, 6 sheet, 48 sheet and 96 sheet panels across the roadside and point of sale sectors including shopping malls. It is a subsidiary of Maiden Group plc. Maiden has panel sites throughout the UK.
 - (3) *JC Decaux SA* had business interests in the 6 sheet and street furniture advertising market before it purchased Mills and Allen Ltd in 1999. As a subsidiary, Mills and Allen Ltd now operates 48 and 96 sheet roadside sites.
26. Some market participants reported that consolidation appears to have improved transparency in the roadside advertising market with the effect that any agreements entered into between these parties would not go unnoticed. Consolidation has also improved the ability of each of the parties listed in paragraph 25 to compete nationally, whether alone or with the assistance of smaller players in the advertising market. The entry by foreign companies to the outdoor advertising market also appears to have sparked innovation and investment and customers now have a prolific range of advertising media available, depending on their campaign requirements. Although the OFT has not undertaken a review of the substitutability of each the various advertising products available on the market, for the reason outlined at paragraph 23, there is some evidence that the demands of advertising campaigns can be serviced by companies active in either the roadside advertising market or the outdoor advertising market generally. This suggests that retaining the Undertakings against the parties listed at paragraph 25 and not other advertising suppliers is both inconsistent and inappropriate.

¹³ See Annexe C for a merger chronology.

¹⁴ The More Group plc owned More O' Ferrall plc, one of the original members of BPL, see footnote 6.

Conclusion

27. The OFT concludes and recommends that the parties should be released from the Undertakings. The CA98 is the most appropriate mechanism to deal with competition issues in the roadside advertising market in the future.

John Vickers
Director General of Fair Trading

ANNEXE A : THE UNDERTAKINGS

The Monopolies and Mergers Commission Report of 1981 on the *Supply in the UK of Roadside Advertising Services* found that certain practices of British Posters Limited operated against the public interest. In 1982, undertakings were given to the Secretary of State by the member companies¹⁵ of British Posters Limited that they would:

“...provide the Director General of Fair Trading with particulars of any joint selling arrangements with another contractor to which they are, or become, party and, at the Director General’s request, with details of sales revenue and stocks of panels both in relation to sales affected through joint selling arrangements and direct sales.”

¹⁵ Listed at footnote 6.

ANNEXE B: THE ROADSIDE ADVERTISING MARKET

How the roadside advertising market operates

There are several parties involved in the buying and selling of poster advertising services. Typically an advertiser uses an advertising agency to research, create and design the campaign. When posters are to be used the advertising agency, acting on the advertiser's behalf, generally uses an outdoor specialist to plan and book the campaign with poster contractors. Poster contractors own the panels on which the posters are displayed and have rights to use the sites on which they are placed. The contractor does not generally own the site, and the site owner receives rent from the contractor.

Entry

There has been entry into the outdoor advertising market generally since 1981, by JC Decaux SA, which has a very strong presence in the French market. Its interest was originally confined to street furniture advertising, but has diversified into roadside advertising and the wider outdoor advertising market by acquisition. Most recently, there has been entry by TDI Advertising Ltd (TDI). TDI and its sister European operations were re-branded as Viacom Outdoor **[insert full name for Viacom Outdoor]** on 1 July 2001. TDI, previously part of the Infinity Broadcasting Group, became part of the media and entertainment group Viacom in 2000. Viacom Outdoor is part of the largest outdoor contractor in the world. In Europe it sells a wide range of media assets in roadside advertising and rail, bus, tram and street furniture advertising.

Countervailing buyer power

The 1991 MMC report on the acquisition by Avenir Havas Media SA of Brunton Curtis Outdoor Advertising Limited¹⁶ (the 1991 Report) considered to what extent the customers (the outdoor specialist buyers, the advertising agencies or the advertisers themselves) could be expected to exert countervailing buyer power against the poster contractors. They concluded that advertisers and advertising agents generally rely on the outdoor specialist buyers to organise poster campaigns, so buyer power would be likely to come from the outdoor specialist agencies. However, advertisers and their agents are indirectly able to exert some buyer power as a result of the large advertising budgets they control. There has been also some consolidation among outdoor specialist buyers since the 1991 Report, which has increased the level of countervailing buyer power. In summary, we can conclude that some degree (although not high) of buyer power exists in the hands of the advertising agencies and the outdoor specialist buyers to constrain the behaviour of the poster contractors /outdoor advertising.

The current picture

The outdoor industry has developed into a professional and respected sector of the advertising industry in the second half of the 1990's and its growth has outperformed other sectors of the advertising industry in recent years.¹⁷ In particular growth has

¹⁶ Cmd 1737

¹⁷ Marketing magazine, 1998

come from buses, six sheet and ambient media. The outdoor industry has become increasingly innovative with increased investment in quality of sites and plant, for example illuminated sites and sound panels. The arrival of foreign companies such as JC Decaux and Viacom Outdoor being cited by industry sources as the spark for innovation and investment.¹⁸

Such innovation and development of sites has increased choice for customers and indicates the competitive pressures in the advertising market: competition based on invention of new products (which may be substitutes for existing products) and investment driving research and development. The presence of these factors would not normally indicate that the competitive process is ineffective, and demonstrates that price is not the only competitive driver. Such market characteristics would not usually be considered hospitable to collusion.

ANNEXE C : UK MERGER ACTIVITY *

1991

Avenir Havas Media /Brunton Curtis Outdoor Advertising referred to MMC

1994

More O'Ferrall/London Transport Advertising referred to MMC. Laid aside

1995

Buspak (UK)/Metrobus Advertising

Mills and Allen/assets of National Solus Site

Maiden Outdoor/British Transport Advertising

Maiden Outdoor/Brunton Curtis Outdoor Advertising

More O'Ferrall/Allied Outdoor Advertising

1996

TDI Advertising/bus poster business of British Transport Advertising

1997

TDI Advertising/Buspak (UK)

1998

Maiden Outdoor/Admotion

Maiden Outdoor/Adlight

More Group/Tracemotion

JC Decaux/More Group referred to MMC. Laid aside

Clear Channel Communications/More Group

1999

JC Decaux/Mills and Allen

Scottish Media Group/Primesight

Scottish Media Group/Baillie Advertising

Maiden Outdoor/Metro Outdoor Advertising (Scotland)

Maiden Outdoor/assets of ACS

Maiden Outdoor/assets of Metro Advertising (Scotland)

Maiden Outdoor/assets of Billboard Advertising

Scottish Radio Holdings/Trainer

Scottish Radio Holdings/Parkin Advertising

Scottish Radio Holdings/Vision Posters

Scottish Radio Holdings/Signways

Scottish Radio Holdings/Grosvenor Advertising

2000

Maiden Outdoor/GMG Metro UK

Maiden Outdoor/Tower Advertising

Maiden Outdoor/Vasey Poster Advertising

Maiden Outdoor/CP Poster Advertising

Scottish Radio Holdings/Maurice Stam

2001

Mills and Allen/Colchester Poster Advertising Services

Maiden Outdoor/JR Freeman

* this list is not exhaustive and includes a number of mergers which did not qualify under the merger provisions of the FTA

ANNEXE D – SUMMARY OF CONSULTATION

The OFT consulted the parties to the Undertakings, their customers and competitors in January 2001 about the changes in the market since the MMC report and competition in the relevant market.

Views of the parties to the Undertakings

The parties thought that the outdoor advertising sector, including transport advertising, was the narrowest relevant market definition possible. At the time of the MMC Report the outdoor advertising market mainly comprised roadside billboards. The OFT was told that today the largest sheet billboards (48 and 96 sheet) account for only 35% of outdoor sales. New media for outdoor advertising have emerged, including roadside street furniture, bus and rail transport, point of sale and shopping malls and ambient media which may be substitutes for roadside advertising.

The parties view TDI, the supplier of transport advertising space, as being a direct competitor to fixed panel space in the outdoor advertising market. This is because of the national requirements of many major advertising campaigns. Some consultees suggest there may be a niche fixed panel market within the outdoor advertising market, but that the Undertakings binding the major firms are unlikely to have an effect on this sector.

Industry views

The industry confirmed that since the 1981 MMC Report the outdoor advertising industry has consolidated into four major firms, JC Decaux SA (now owns More and Allen Ltd), Clear Channel International Limited (previously More O’Ferrall plc), Maiden Outdoor Advertising Limited and Viacom Outdoor (previously TDI Advertising Limited). The view was expressed that industry has become more oligopolistic in nature and there is no clear market leader. The parties stated that the market had become more transparent due to the consolidation, so that it would not be possible for any two of the major companies to enter into any anti-competitive agreement without it being noticed.

The Outdoor Advertisers’ Association¹⁹ (OAA) commented that outdoor advertising contractors need to offer a wide range of audiences to advertisers and that in recent years they have invested in sophisticated audience market research. Contractors have improved their codes of practice and terms and conditions. The OAA consider that the structure of the industry has changed very significantly since the 1981 MMC Report and that the market for outdoor advertising is competitive.

Customers told the OFT that increasingly broad and national campaigns mounted by advertisers, which involve the selling of large packages of panels, enhance competition by enabling small contractors efficiencies and the ability to compete with major contractors. These different approaches and agreements allow small firms to enter the market although this strengthens the market power of the major companies.

¹⁹ A trade association.

Effectiveness of the Undertakings

The intention of the Undertakings was to ensure the OFT was aware of joint selling arrangements between the ten member companies of BPL so as to allow us to take ex-ante measures where competition was likely to be adversely affected by any such arrangement. The OFT is not aware of any specific agreements between the three largest firms still subject to the Undertakings.

One party said that joint selling agreements are becoming less prevalent as larger contractors acquire smaller ones²⁰. Where they still exist, they are typically created by a larger contractor selling the panels on behalf of a smaller contractor who continues to develop and own the sites but wants to enjoy a level of sales representation that would not be affordable otherwise.

Another party²¹ said the joint selling agreements fall into two categories:

- ad hoc arrangements for a few panels to make up gaps in cover for individual or regional campaigns with a duration of one to three years; and
- larger scale arrangements which allow small firms to participate in large campaigns and take advantage of the cost efficiencies available from marketing by the major firms. These may be for five or six years and are often continued on an informal basis thereafter.

Some of the other outdoor advertisers told the OFT that, because of the concentration of the market into the hands of the three major companies still subject to the Undertakings, the Undertakings have been ineffective in preserving competition in the market and should be strengthened. They consider any agreements that any of those three enter into, either with each other or third parties, should be monitored.

Customers made one reference to an agreement between Maiden and CP Poster Advertising Limited, (now taken over by Maiden), but otherwise there has been no suggestion that the Undertakings have been breached. The general view is that some agreements occur between the three major firms still subject to the Undertakings and small independents. We have not received any complaints nor have we received evidence of any anti-competitive behaviour in the industry during the review.

One party considered that restrictions should be placed on the amount of inventory packaged by each contractor and that a greater number of sites available on a line-by-line basis would improve competitiveness. However, any reduction in the cost of small panel contracts might be outweighed by the necessity to negotiate numerous small packages as opposed to the whole deal being done as one package.

Other outdoor advertisers told the OFT that the industry is now better resourced, has greater market awareness and is sufficiently sophisticated to justify releasing the parties to the Undertakings. Agencies, specialist agencies and advertisers are best placed to ensure that any future joint selling arrangements would not operate against

²⁰ Poster Publicity.

²¹ JC Decaux SA.

clients' interests. One commented that joint selling arrangements with the parties to the Undertakings may be the only way in which smaller operators could compete with the major companies and it would not be averse to such ventures, provided that any joint selling arrangements did not control more than 40% of the outdoor advertising market. A competitor not subject to the Undertakings saw no justification for their continuation.