

Presented to Parliament pursuant to Schedule 3, Section 12(4) of the Enterprise Act 2002

Competition Appeal Tribunal and Competition Service Accounts 2011-12

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Competition Appeal Tribunal and Competition Service Accounts 2011-12

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Contents

| | |
|---|-----------|
| Introduction | 2 |
| President's Statement | 5 |
| Registrar's Statement | 12 |
| Membership | 16 |
| Cases | |
| Judgments | 23 |
| Activity by Case | 47 |
| Overall Case Activity | 63 |
| Accounts | |
| Competition Appeal Tribunal and Competition Service | |
| Management Commentary | 64 |
| Remuneration Report | 67 |
| Statement of the Accounting Officer's responsibilities | 71 |
| Corporate Governance Statement | 72 |
| Competition Appeal Tribunal | |
| The Certificate and Report of the Comptroller and Auditor General | 75 |
| Statement of Comprehensive Net Expenditure | 77 |
| Statement of Financial Position | 78 |
| Statement of Cash Flows | 79 |
| Statement of Changes in Taxpayers' Equity | 80 |
| Notes to the Accounts | 81 |
| Competition Service | |
| The Certificate and Report of the Comptroller and Auditor General | 85 |
| Statement of Comprehensive Net Expenditure | 87 |
| Statement of Financial Position | 88 |
| Statement of Cash Flows | 89 |
| Statement of Changes in Taxpayers' Equity | 90 |
| Notes to the Accounts | 91 |

Introduction

The Enterprise Act 2002 provided for the establishment of the Competition Appeal Tribunal (Tribunal) and the Competition Service (CS). Although created as separate entities under the Enterprise Act and treated as such for accounting purposes, the Tribunal and the CS are in practical terms, a single organisation. Through the CS, the Tribunal effectively administers itself, and a single body of staff deploy the same set of resources in multi-tasking across the casework of the Tribunal and necessary support functions.

Principal functions of the Tribunal

The principal functions of the Tribunal are to hear appeals against: decisions of the Office of Fair Trading (OFT) under Chapters I and II of the Competition Act 1998 and Articles 101 and 102 of the Treaty on the Functioning of the European Union (EU); decisions of regulators in the main utility, railway and air traffic service sectors under those provisions; certain decisions of the Office of Communications (Ofcom) regarding the telecoms and broadcasting sectors under the Communications Act 2003; and decisions of the OFT, the Competition Commission (CC) or the Secretary of State on merger cases and market investigations under the Enterprise Act 2002. The Tribunal may also hear certain actions for damages arising out of an infringement of UK or EU competition law.

Further powers have been given to the Tribunal to hear appeals from decisions of the OFT under the Payment Services Regulations 2009. Pursuant to Schedule 2 of the Energy Act 2008 the Tribunal may also hear appeals in respect of determinations made by the Gas and Electricity Markets Authority in respect of property schemes. The Tribunal may also hear appeals in respect of certain decisions taken by Ofcom pursuant to the Mobile Roaming (European Communities) Regulations 2007 and the Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010. The Postal Services Act 2011 provides for an appeal to the Tribunal in respect of certain decisions taken by Ofcom in relation to the regulation of postal services.

Under the Energy Act 2010 (and when the relevant provisions come into force) the Tribunal will be able to hear appeals in relation to decisions taken by the Gas and Electricity Markets Authority in respect of the application of a market power licence condition to particular types of exploitative behaviours in electricity markets. The Civil Aviation Bill (published in November 2011) will introduce a right of appeal to the Tribunal in respect of market power determinations made by the Civil Aviation Authority.

Each case is heard and decided by a tribunal consisting of the President or a Chairman and two other Members.

The decisions of the Tribunal may be appealed on a point of law or as to the amount of any penalty to the Court of Appeal in England and Wales, the Court of Session in Scotland or the Court of Appeal in Northern Ireland.

Membership of the Tribunal

The Tribunal comprises: the President, the Honourable Mr Justice Gerald Barling; the panel of Chairmen (comprising Judges of the Chancery Division of the High Court and three other members, namely Lord Carlile CBE, QC, Vivien Rose and Marcus Smith QC); the panel of Ordinary Members; and the Registrar, Charles Dhanowa OBE, QC.

The Tribunal membership in 2011-12 comprised:

President

The Honourable Mr Justice Barling

Panel of Chairmen

The Honourable Mr Justice Peter Smith

The Honourable Mr Justice David Richards

The Honourable Mr Justice Mann

The Honourable Mr Justice Warren

The Honourable Mr Justice Briggs

The Honourable Mr Justice Henderson

The Honourable Mr Justice Morgan
The Honourable Mr Justice Norris
The Honourable Mr Justice Floyd
The Honourable Mr Justice Sales
The Honourable Mrs Justice Proudman
The Honourable Mr Justice Arnold
The Honourable Mr Justice Roth
The Honourable Mr Justice Vos
The Honourable Mr Justice Newey
The Honourable Mr Justice Hildyard
Lord Carlile CBE, QC
Vivien Rose Marcus Smith QC

Ordinary Members

William Allan
Professor Andrew Bain OBE*
Professor John Beath
Michael Blair QC
Peter Clayton*
Timothy Cowen
Margot Daly
Michael Davey*
Dr Clive Elphick
Peter Freeman CBE, QC
Dermot Glynn
Professor Peter Grinyer*
Stephen Harrison
Sheila Hewitt JP*
Ann Kelly*
Brian Landers
The Honourable Antony Lewis*
Graham Mather*
Jonathan May
Professor Colin Mayer
Professor John Pickering*
Clare Potter
Richard Prosser OBE*
Dr Arthur Pryor CB*
Professor Gavin Reid
Dr Adam Scott OBE, TD
Dr Vindelyn Smith-Hillman
Professor Paul Stoneman*
Joanne Stuart OBE
David Summers OBE, JP
Professor Stephen Wilks

* Indicates those members who completed their term of office during the year.

Registrar

Charles Dhanowa OBE, QC

Recruitment

The President and Chairmen are appointed by the Lord Chancellor for a fixed term upon the recommendation of the Judicial Appointments Commission and by open competition as appropriate. Ordinary Members are recruited in open competition according to the guidelines of the Office of the Commissioner for Public Appointments and are appointed by the Secretary of State for Business, Innovation and Skills (BIS). The Registrar is also appointed by the Secretary of State.

The Competition Service (CS)

The CS is an executive non-departmental public body established by the Enterprise Act 2002 to provide the administrative staff, finance and accommodation required by the Tribunal to carry out its functions. Although the Tribunal and the CS are, in formal terms, separate bodies, in practice they are different aspects of one integrated organisation; a single body of staff multi-tasks across case-handling and administrative roles using a common pool of resources.

Membership and senior staff of the CS

The membership of the CS comprises: the President, Sir Gerald Barling; the Registrar, Charles Dhanowa; and a non-executive member, Janet Rubin, who is also chair of the Audit Committee. The Director, Operations is Jeremy Straker.

Register of Interests

The CS holds a Register of Interests detailing any directorships or other significant interests held by members of the CS which may conflict with their management responsibilities.

Premises

The Tribunal and the CS operate from premises in Victoria House, Bloomsbury Place, London, WC1A 2EB. Where cases involve matters pertaining to a particular part or region of the United Kingdom, the Tribunal may hear those cases at premises outside London. Past cases concerning Scottish, Welsh and Northern Irish undertakings have been heard in Edinburgh, Cardiff and Belfast respectively.

Finance and workload

The work of the Tribunal is financed entirely through grant-in-aid from BIS and administered by the CS. The Registrar is the Accounting Officer and is responsible for the proper use of these funds.

President's Statement

Introduction

This year has seen the Tribunal continue to deal with a significant number of complex and voluminous cases, a high proportion of which are intricately intertwined with each other in relation to the issues raised. Details of particular cases can be found at the end of this statement and in the sections of this Review summarizing the case activity and judgments of the Tribunal. Dealing with these cases has involved intense case management culminating in some major hearings with those in the Pay TV and Tobacco cases standing out as significant undertakings for the Tribunal. That trend is continuing into 2012 with a substantial hearing just having been concluded in *Tesco v. Office of Fair Trading*.

Hearings have not only taken place in Victoria House but, on occasion, at the Royal Courts of Justice and in the case of *2 Travel Group plc (in liquidation) v. Cardiff City Transport Services Limited*, the Tribunal sat for the first time in Wales in a 10 day hearing conducted in Cardiff.

The significant challenge presented by the cases has been met by the Tribunal in the face of budget cuts, recruitment and pay freezes and other constraints on resources, similar of course to those being faced elsewhere in the rest of the public sector but which have a particularly high impact on a small organisation where the room for manoeuvre in terms of the deployment of resources is already extremely limited. Further details on the resource issues can be found in the Registrar's statement and in the Accounts.

In addition to the cases, there have continued to be significant policy developments in the areas covered by the work of the Tribunal, including: the Government's reform of the competition regime; a recently launched consultation on enlargement of the Tribunal's jurisdiction in respect of private actions for infringements of competition law; consultations on telecoms matters; and the preparation of legislation in the airports sector. Moreover, all these exercises have required input at one stage or another from the Tribunal, work which we have had to take on at the same time as performing our statutory functions.

As always, there has been a constant stream of requests to speak at or participate in international, academic and industry seminars. In an ideal world we would wish to attend many of these, and my colleagues and I have endeavoured to assist the bodies organizing such events wherever possible. However, the Tribunal is a small organization with limited resources. Again the work involved in preparing for such events has to be carried out in conjunction with our statutory functions. Regrettably this means that we have to decline more invitations than we would wish. We accord a higher priority to those events which seek to promote understanding and co-operation between national judiciaries.

Chairmen

Once again I am grateful to the Tribunal's panel of fee-paid Chairmen, Lord Carlile QC, Vivien Rose and Marcus Smith QC for shouldering the burden of some of the largest and most complex cases coming before the Tribunal over the past year. I would also like to congratulate Lord Carlile on being awarded a CBE in the New Years Honours List and Vivien Rose on being appointed a Deputy High Court Judge, in which capacity she will sit in the Chancery Division.

Congratulations are also due to Mr Justice Hildyard upon his appointment to the High Court Bench and his appointment as a Chairman of the Tribunal in October 2011. In the past year two Chancery Judges have sat on cases in the Tribunal: Mr Justice Sales chaired the review application in *BAA Ltd v Competition Commission*; and Mr Justice Henderson is chairing the appeal in *Telefonica UK Ltd v Office of Communications*.

To take account of the fact that the workload of the Tribunal has been growing, particularly with regard to larger, more complex cases, and that it is likely that its jurisdiction will be enlarged to cover stand-alone as well as follow-on claims for damages (see later), a competition to recruit a further three fee-paid chairmen will shortly commence under the auspices of the Judicial Appointments Commission.

As I have reported previously, we lack a practical mechanism for enabling judges from Scotland and Northern Ireland to sit as Chairmen of the Tribunal, which has a UK-wide jurisdiction. This is an anomaly which needs to be remedied as soon as possible. The heads of the three national judiciaries are assisting me in seeking a workable solution, and we are now examining with the responsible government departments the best way of achieving this.

Members

Last year I mentioned that the Minister had appointed 14 new Tribunal members. This year they were joined by Peter Freeman CBE, QC, and former Chairman of the Competition Commission. Peter had taken part in the original recruitment exercise but his appointment was deferred whilst he finished his period of office. I am very pleased to welcome him to the Tribunal.

I would also like to congratulate one of last year's appointees, Joanne Stuart who received an OBE in the New Years Honours List in recognition of her work in the Northern Ireland business community.

As always I would like to thank our non-executive member, Janet Rubin for chairing the Board Meetings of the Competition Service as well as the Audit Committee. I would also like to thank her for her invaluable advice and support on administrative matters which she has provided to us over the last year.

Finally this year has seen the departure of most of the first cadre of members although a few will remain until July of this year when the cases on which they have been sitting should have all come to an end. I would like to reiterate my thanks to those members for their pioneering role in the work of the Tribunal.

Cases

New cases registered during the period covered by this review included four appeals against OFCOM's March 2011 statement in relation to wholesale mobile voice call termination, an appeal by Tesco against the OFT's July 2011 decision finding that Tesco had participated in two concerted practices in relation to the retail pricing of cheese that infringed the prohibition in Chapter I of the Competition Act 1998, and an application by BAA for review of the Competition Commission's July 2011 decision in relation to the supply of airport services by BAA. The majority of the new cases were appeals under section 192 of the Communications Act 2003.

As foreshadowed in my statement for the previous period, the number of sitting days has nearly doubled during the period under review. The increase was principally due to two particularly long hearings in relation to appeals against OFCOM's Pay TV Statement (from May to July 2011) and the OFT's Tobacco decision (from September to November 2011).

The Tribunal handed down 47 judgments or rulings in the period under review. Cases of particular interest that were heard or decided during the period are mentioned at the end of my statement.

Reform of the competition regime

Last year I mentioned the Department for Business, Innovation and Skills' (BIS) consultation on the reform of the competition regime. The main issue was the envisaged merger of the Office of Fair Trading and the Competition Commission through the creation of a new Competition and Markets Authority (CMA). Whilst this did not directly affect the Tribunal, the consultation document also contained proposals for a possible reform of the way infringement proceedings under the Competition Act 1998 might be handled in the new system. Briefly, these proposals included (amongst other options) a possible move away from an administrative decision system to one where the new competition authority would prosecute the case before the Tribunal which would then decide whether an infringement had taken place.

In the event, although the Government has confirmed the implementation of the merger to create the CMA, it has also decided to maintain the current administrative system, albeit with several procedural modifications. This means that the current role of the Tribunal as an appeal body in respect of infringement decisions under the Competition Act 1998 will continue unchanged. There is though one addition to the Tribunal's powers which concerns the hearing of applications for warrants. I discuss this further below when considering certain new functions of the Tribunal.

The Government is now taking forward these matters in the Enterprise and Regulatory Reform Bill which is presently before Parliament.

Consultation on private actions

Of more direct relevance, indeed fundamental importance, for the Tribunal, was the fact that in April 2012 BIS published a consultation document on private actions in competition law. This followed a number of meetings between interested parties, including a roundtable of competition law practitioners, industry and consumer representatives which I attended the previous November. This was convened by the Minister for Competition, Edward Davey MP, to discuss the private enforcement of competition law.

The consultation document contains several proposals for ways to provide victims of infringements of competition law with more effective mechanisms for redress.

Chief amongst the options for reform is the extension of the powers of the Tribunal so that it can hear claims for damages and other relief where an infringement has not previously been found by a competition authority – what are sometimes termed ‘stand-alone’ actions. This development enjoys the support of virtually all interested parties. It would represent a major extension to the Tribunal’s civil jurisdiction which is presently confined to ‘follow-on actions’, brought on the basis of an infringement established by the competition authority or by the Tribunal itself on an appeal from a non-infringement decision of a competition authority.

I welcome this development, having argued in favour of it for several years as a sensible way of ensuring the Tribunal’s specialist expertise can be brought to bear in all suitable cases, thereby removing the somewhat arbitrary division between follow-on and stand-alone actions. This division, together with the specific statutory restrictions on the Tribunal’s handling of follow-on actions, has proved a serious impediment to the Tribunal’s development as a forum for private enforcement of competition law.

The consultation document also proposes that the Tribunal should have the ability to hear applications for injunctions; that a ‘fast track’ procedure be established to enable smaller businesses to bring actions before the Tribunal, and that consumers and businesses should be permitted to bring a collective action in the Tribunal on an ‘opt out’ basis where this is appropriate in order to obtain effective redress. The last matter would in my view be a major innovation and open up the prospect of real redress for large numbers of consumers or small businesses who, individually, may have only suffered a small loss but where taken together the loss caused by an infringement of competition law may be very substantial. Should this proposal be enacted, it will however be important to ensure that there is appropriate judicial supervision over the use of this procedure so that it is invoked only in the right circumstances. The consultation will proceed until late June and my understanding is that the Government should announce its decision on these matters in the early Autumn.

Appeals under the Communications Act 2003

Last year I mentioned a government consultation exercise in September 2010 on implementing changes to the EU Electronic Communications Framework. This raised issues as to the nature of the right of appeal under the Communications Act 2003 and the Registrar made a formal response. In August 2011, the Department for Culture Media and Sport (DCMS) published a further consultation setting out renewed proposals to reform the appeals process under the Communications Act 2003. One of the proposals was to alter the standard of review from appeal on the merits to appeal on the basis of judicial review, ensuring that the merits of the case are duly taken into account. The Registrar also responded to this consultation on behalf of the Tribunal. In March 2012, DCMS informed respondents to the consultation that no legislation would be forthcoming. The Minister stated that he had not so far been convinced that changing the standard of review would, by itself, achieve the desired aims of faster decision-making and a reduction in the time and cost spent on appeals.

New functions

In the forthcoming year, two new functions are on the horizon for the Tribunal.

As I mentioned earlier, in May of this year, the Enterprise and Regulatory Reform Bill was introduced into Parliament. The Bill proposes, amongst other things, to amend the relevant sections of the Competition Act 1998 to enable the Tribunal to issue warrants allowing an investigation officer to enter business and certain domestic premises as part of an investigation. In due course the Tribunal's rules of procedure will need to be amended to cater for this new jurisdiction.

In January 2012 the Civil Aviation Bill was introduced into Parliament. The Bill proposes to reform the economic regulation of airports in the UK and in particular create a new licensing regime for airports that have been designated by the Civil Aviation Authority ('CAA') as having market power. Operators of 'dominant areas' located at 'dominant airports' will need to obtain a licence in order to levy charges for airport operation services. The Bill contains a right of appeal to the Tribunal against two particular types of determination by the CAA, namely: that a person is an operator of an airport area and that an airport area satisfies a market power test. The new licensing regime is expected to enter into force in early 2013.

Other activities

Once again it has been a very busy year with regard to outside speaking engagements. Among events in the period under review I chaired a Chancery Bar Seminar on competition law in Lincolns Inn, and a session of the Bar European Group/Administrative Law Bar Association Annual Conference; I also spoke at the LIDC Congress in Oxford, gave keynote addresses at the European Forum on Competition Litigation and the Conference Board's European Legal Council in London, and addressed a meeting of the Scottish Competition Law Forum in Edinburgh.

Among the activities undertaken by my colleagues at the Tribunal, in May 2011 Vivien Rose spoke on the human rights issues in the burden of proof in EU competition law at the Bar European Group/Administrative Law Bar Association annual conference.

In October 2011, Marcus Smith QC chaired an international conference at Utrecht University on 'National Judges and Competition Law Enforcement'. William Allan presented a paper at the Seventh Annual Conference of the Global Competition Law Centre (College of Europe) in Brussels on 'The Effects-Based Approach in EU Competition Law'. In November, the Registrar spoke at a meeting of national judges dealing with European telecoms law convened by DG InfoSoc at the European Commission.

Our Senior Referendaire, David Bailey, chaired the 2011 Junior Competition Practitioners Conference (held at the Tribunal's premises) on the subject of the UK Government's proposed reforms of the competition regime. In March 2012 David was chosen to be the National Rapporteur for the LIDC Congress dealing with competition law and policy and small and medium sized enterprises. He also chaired a session of a conference at Newcastle University in April on the proposed institutional reforms to the competition regime.

The Tribunal continues to act as the Secretariat for the Association of European Competition Law Judges (AECLJ) of which the Registrar is the Secretary General and I am Treasurer. In collaboration with our colleagues in the Irish Judiciary, we organised the 10th Annual Conference of the AECLJ in June 2011 in Dublin Castle, at which the President of Ireland gave an opening address. In addition the Tribunal was involved in the organisation of two meetings between national competition judges and the European Commission during the year.

Visitors to the Tribunal

I regard it as important that wherever possible the Tribunal should exchange views with competition judges and enforcement authorities from other jurisdictions. We had several distinguished visitors to the Tribunal during the year. In July, we welcomed the Minister for Competition Edward Davey MP who visited the Tribunal to gain an understanding of the Tribunal's work, to see the courtrooms and to meet members and staff. In September we received a visit from members of DG Competition to discuss the European Commission's draft guidance on quantification of damages for anti-trust infringements. In February Commissioner Cristina Massa and colleagues from the Mexican Federal Competition Commission visited us to discuss the role of a specialist judicial body in the competition enforcement system. We also discussed similar themes with the Chairman and Members of the Fair Competition Tribunal of Tanzania. Finally, we hosted the College of Law who used one of our courtrooms to stage a mock criminal trial for a group of young people from a local charity, the Kings Corner Project.

User group

The Tribunal's user group continues to meet twice a year, and provides an extremely valuable forum for the exchange of ideas and comments about the practice and procedures of the Tribunal. The minutes of the group's meetings are placed on the Tribunal's website.

Concluding remarks

I would like to congratulate the Registrar on his appointment as Queen's Counsel (*honoris causa*) in March of this year. The breadth of his legal expertise and experience, as well as his unstinting work on behalf of the Tribunal and the wider judicial network embodied in the Association of European Competition Law Judges, make the Registrar a most worthy recipient of this honour.

A special mention should also be made of our Deputy Registrar, Orla Weston, who skilfully masterminded the considerable logistical exercise needed to support the hearing of the Cardiff Bus case in Wales which I mentioned earlier.

I would like to express my appreciation to Dr Adam Scott OBE, TD for continuing to organize the training of Members and for assisting the Tribunal in many other ways.

Indeed, as in past years I must pay tribute to the great effort and enthusiasm which all our staff put into the work of the Tribunal. Whilst these contributions do not appear on the balance sheet, they are nevertheless amongst the Tribunal's most prized assets.

Sir Gerald Barling
President
Competition Appeal Tribunal
26 June 2012

The following are some of the notable cases determined by the Tribunal in the review period:

Competition Act 1998

Construction cases: Kier Group Plc v. Office of Fair Trading and related cases

As I noted in my last statement, the Tribunal's judgments in the 25 appeals against the OFT's construction decision were handed down across the start of the period under review. These cases continued to occupy the Tribunal during the period under review, and the Tribunal handed down eight separate rulings in relation to costs, as well as rulings on two requests for permission to appeal.

As an adjunct to the construction cases, In August 2011, the Tribunal handed down its judgment on an application for an extension of time in which to appeal against the OFT's construction decision (*RG Carter Limited v. Office of Fair Trading*). The Tribunal decided that the applicants had failed to establish any circumstances which could be regarded as exceptional within the meaning of Rule 8(2) of the Tribunal Rules.

Imperial Tobacco Group Plc v. Office of Fair Trading and related cases

In December 2011, the Tribunal gave its judgment in relation to issues which had arisen in the course of the hearing of six part – heard appeals against the OFT's April 2010 decision. In the decision under appeal, the OFT had found that the two main manufacturers of tobacco products in the United Kingdom, Imperial and Gallaher, had each entered into a series of bilateral agreements with 10 different retailers relating to the pricing of tobacco products in those retailers' stores.

The hearing of the appeals, which began in September 2011, was adjourned at the request of the OFT in November 2011. This followed submissions by the OFT as to the nature of the case which the OFT now wished to maintain.

Having sought written observations from the OFT and the appellants and after hearing the parties, the Tribunal concluded that the appeals should be allowed and the decision quashed in relation to the appellants. In particular, the Tribunal concluded that the restraints that the OFT now indicated they wished to prove were not part of, or within the infringing agreements condemned in the decision, and that the Tribunal did not have jurisdiction to continue to hear the appeals for the purpose of exercising its powers under paragraph 3(2) of Schedule 8 to the Competition Act 1998 on setting aside the decision.

Communications Act 2003

Pay TV: Virgin Media, Inc. v. Office of Communications and related cases

Between May and July 2011, the Tribunal heard evidence and submissions in relation to four separate appeals against OFCOM's March 2010 decision to vary the conditions of British Sky Broadcasting Limited's licences under the Broadcasting Act 1990 to require the wholesale supply by the licensee of certain premium pay television channels upon certain terms, including regulated prices (the Pay TV statement). At the same time the Tribunal heard two appeals against related decisions of OFCOM.

These cases were very substantial and involved a great deal of evidence and submissions, including 32 expert reports and 63 witness statements, with the total number of pages of documents filed with the Tribunal extending to more than 35,000. The case also saw the longest hearing in the Tribunal's history, and I would express my gratitude to all the parties and to the Tribunal's staff, for their considerable assistance in ensuring the smooth running of the hearing.

08 numbers: British Telecommunications Plc v. Office of Communications and related cases

In August 2011, the Tribunal handed down its judgment in three appeals under section 192 of the Communications Act 2003, arising out of two decisions of OFCOM resolving disputes concerning the circumstances in which BT was entitled to vary the termination charges that it demanded from other communications providers for terminating certain calls to non-geographic numbers on its network.

The Tribunal concluded that notices by which BT sought to vary the termination charges that it demanded from other communications providers were fair and reasonable, and that BT had the right to introduce them. The Tribunal therefore allowed BT's appeal and dismissed an appeal by Everything Everywhere against OFCOM's decisions.

Enterprise Act 2002

BAA Limited v. Competition Commission

In February this year, the Tribunal handed down its judgment in an application by BAA for review of a July 2011 market investigation decision by the Competition Commission confirming its original decision that BAA should divest itself of Stansted airport.

This was the second time that the Tribunal had considered the conclusions of the Competition Commission in connection with its investigation into the supply of airport services by BAA in the United Kingdom, having previously allowed in part BAA's application for review of the Competition Commission's earlier 2009 report on grounds of apparent bias. In October 2010 the Court of Appeal allowed the Competition Commission's appeal against that judgment of the Tribunal, and BAA's subsequent application for permission to appeal to the Supreme Court was refused in February 2011.

The July 2011 decision set out the Competition Commission's conclusion on whether there had been any material change of circumstances (pursuant to section 138(2) of the Enterprise Act 2002) since the publication of the 2009 report that was such as to justify a departure from the remedies decided on in the 2009 report. The Tribunal chaired by Mr Justice Sales, dismissed BAA's application for review of the July 2011 decision. The case is now pending before the Court of Appeal.

Ryanair Holdings Plc v. Office of Fair Trading

In July 2011, the Tribunal handed down its judgment in relation to an application by Ryanair for a review under section 120 of the Enterprise Act 2002 of the OFT's decision that it (the OFT) was not out of time to make a reference to the Competition Commission under section 22 of the Enterprise Act 2002 in respect of Ryanair's acquisition of a minority shareholding in Aer Lingus.

The Tribunal concluded that appeals by each of Ryanair and Aer Lingus to the General Court gave rise to potential conflicts with a decision which might be taken pursuant to (or with the outcome of) a reference to the Competition Commission under section 22, and those potential conflicts were such that the duty of sincere cooperation under Article 10 EC (now Article 4(3) TEU) required the UK merger control authorities to avoid the risk of them. In the case of the appeal by Aer Lingus, the potential conflicts also included a risk of infringement of article 21(3) of the Merger Regulation, which provides for the exclusive jurisdiction of the EU Commission in certain cases. The Tribunal concluded that in the circumstances a reference under section 22 could not have been made earlier than 17 September 2010 on which date the risk of such conflict was removed, and that Ryanair was thus not entitled to any of the relief sought in its notice of application. In May this year, the Court of Appeal dismissed Ryanair's appeal against the Tribunal's judgment and on 1 June the Supreme Court refused Ryanair permission to appeal.

Claims for damages*Deutsche Bahn AG & Ors v. Morgan Crucible Company Plc & Ors*

In May 2011, the Tribunal handed down its judgment in relation to an application by Morgan Crucible (the first defendant in these proceedings) to strike out the claims against it on the ground that they had not been brought within the time limit stipulated by rule 31 of the Tribunal Rules. The application turned on the meaning of 'decision' for the purposes of section 47A(8)(a) of the Competition Act 1998. According to Morgan Crucible, the 'decision' means a decision concerning a specific defendant to the section 47A claim, as opposed to all the addressees of the decision serving as the trigger for the follow on claim. The claimants made the opposite contention.

Upholding Morgan Crucible's arguments, the Tribunal held that 'decision' must mean the operative part of the decision that finds an infringement in respect of a particular defendant to the section 47A claim. The Tribunal considered the statutory construction to be clear and did not lead to an outcome that could be described as inconvenient, still less unworkable or absurd. The Tribunal also rejected the claimants' contention that Morgan Crucible's application was an abuse of process. The Tribunal therefore concluded that the claims against Morgan Crucible had not been brought within time and should be struck out.

The claims are currently stayed pending the determination by the Court of Appeal of the claimants' appeal against the Tribunal's judgment.

2 Travel Group Plc (in liquidation) v. Cardiff City Transport Services Limited

In my last statement, I noted that follow-on claims for damages had been filed by the liquidator and three individual shareholders of 2 Travel against Cardiff City Transport Services Limited (trading as Cardiff Bus). In April 2011, the Tribunal ordered that the individual shareholder claims should be stayed pending the outcome of the liquidators claim and, in October 2011, the Tribunal handed down its ruling dismissing an application by Cardiff Bus for security for costs.

The Tribunal heard evidence and submissions in relation to the liquidator's claim during a 10 day hearing March this year, sitting in the Cardiff Civil Justice Centre for this purpose. As noted above, this case marks the first occasion on which the Tribunal has sat in Wales.

Registrar's Statement

The Competition Service (CS)

In formal terms, the Tribunal is administered through the CS. In practice the CS provides the means by which the Tribunal manages itself - the CS's entire staff, premises and other resources being effectively deployed on a daily basis in the work of the Tribunal. The President and I, together with an independent member, Janet Rubin, constitute the membership of the CS and Jeremy Straker (CS Director, Operations) acts as secretary to our meetings. Together we ensure that the resources formally vested in the CS are fully and efficiently utilised in the work of the Tribunal and that the CS/Tribunal functions as a single integrated organisation.

Resources

Costs are regularly examined to see if savings can be made without jeopardising the efficient working of the organisation, but it has to be borne in mind that our working practices are dictated by the specialised judicial functions of the Tribunal and the particular demands of hearing complex competition and economic regulatory cases to often very tight timescales. It is important to appreciate that we have no control over the number and nature of cases which are received during the year and this increases the uncertainty for planning and budgeting resources.

The running costs of the CS and Tribunal for 2011-12 were £3,909,000 which was less than in 2010-11 (£4,190,000). This was due to savings in case variable costs and a number of other areas. The recovery of repair costs from Sport England, in respect of flood damage and related rebate on rates (see further below) and the reduced operating lease liability meant accommodation and utilities costs were £191,000 lower than in the previous year. These savings taken together with the abrupt reduction in workload caused by the unexpected early termination of a large case meant that the final outturn was £377,000 under budget.

In accordance with government restrictions no consultants were used in the year and no recruitment of staff was undertaken (other than to replace one key post). In addition, staff pay was frozen for the second year and the remuneration of the President and Registrar, being linked to judicial pay scales (with no bonuses), remained frozen for the third successive year. The per diem rate for ordinary members has not been increased since 2006 and the per diem rate for chairmen remains at the level originally set in 2003.

Although accommodation costs have risen considerably since the CS and the Tribunal were established in 2003 (by about 38 per cent), through careful management and reductions in staffing levels, we have kept our overall cost increases to less than 2 per cent per year.

This year has shown increased utilisation of the courtrooms as we continue our practice of making them available to other tribunals and organisations when not in use by us. Overall the average utilisation level for the main area concerned, Court 2, was at 57 per cent for the year.

Administration

Generally, over the last two years, there has been a noticeable increase in the burden of administration caused by requests from Central Government for information and various types of organisational, accounting and other analyses. Whilst we are not alone in being in this position, this development does impose significant demands on top of the performance of our statutory functions – especially as some of the requests are made at short notice and emanate simultaneously from several sources.

More particularly, we have had to invest a significant amount of time in implementing the requirements of the BIS 'Clear Line of Sight' (CLOS) project. This has required a detailed reformatting of our accounting records in order to assist BIS in producing consolidated accounts recording its position along with its agency and partner organisations. I am grateful to the single member of staff we have for finance matters, our Finance Manager, Madhuri Yagnik, for navigating us successfully through this intricate process in conjunction with the performance of her regular duties.

Premises

Last year, I reported that a water leak from Sport England's premises on the floor above the Tribunal's premises had caused significant damage to Court 2 and surrounding areas. Discussions continued with Sport England over the last year as to how the considerable cost of restoration should be met. I am pleased to report that we have now reached an agreement with Sport England for the full recovery of our costs. Further details are contained in the management commentary to the accounts.

External Relationships

We have been fortunate in enjoying an excellent relationship with our sponsoring department BIS and much of the credit for that must go to Douglas Robinson in the Consumer and Competition Policy Directorate at BIS who liaised with us on a day-to-day basis. Douglas retired during 2011/2012 and we welcome his successor Adam Richards who has been very helpful in guiding us through the thicket of administrative requests and returns that I mentioned earlier.

During the year, the Tribunal received the first formal complaint in its history. The complaint was made by a person who objected to the description in a Tribunal judgment of his oral testimony as an expert witness. The President considered the complaint in accordance with his duty pursuant to the Judicial Complaints (Tribunal) (No.2) Rules 2008 and rejected it. The complainant requested a review by the Judicial Appointments & Conduct Ombudsman of the President's investigation of the complaint. The Ombudsman found that the President's decision to reject the complaint was consistent with legislation and guidance. The Ombudsman did observe that the complainant was not informed of the existence of the Ombudsman's function within the judicial complaints process and that matter will be borne in mind in the handling by the Tribunal of any future matters dealt with under the 2008 Rules.

Staff

During 2011-12 one of our caseworkers in the Registry, Bharti Gorasia, left to take up a training contract with a law firm after successfully completing her professional law examinations. Bharti carried out her studies in her own time whilst working in the Registry and we are very pleased to see her achieve success in her career aspirations. Also one of our referendaires, Stephen Hurley, left to take up an in-house legal role in a major telecommunications firm. Both Bharti and Stephen had been with us for a number of years and they will be missed by me and the rest of the team. With Ilia Bowles, our HR and Information Manager, on maternity leave, we welcomed Ranbinder Banwait earlier this year to cover for Ilia.

The staff team that continues in place, being around 15 people (with two of them working part-time), is extremely small when compared to the demands upon us and the necessity for multi-tasking is a daily requirement. Generally, when we are particularly busy, with hearings running in both courtrooms, everyone has to lend a hand regardless of their usual responsibilities or role. It would not be possible for us to function effectively without this flexibility on the part of staff. The President, Members and I highly value the obvious commitment of the staff to the work of the Tribunal and, although it does not appear on the balance sheet, it represents our biggest asset. Once again, the staff absence rate (at about two days per person per year) is far below the average for both the private and public sectors and we gratefully take this as an indicator of the dedication shown by all staff in the performance of their duties.

We continue to monitor staff training needs closely and strive to provide suitable training where appropriate but with the severe constraints on finances now in place, only the most essential training is being sanctioned.

We are an equal opportunities employer and treat all our staff fairly irrespective of gender, ethnic origin, race, marital status, religious belief, age, sexual orientation or disability.

Information Technology

There have been no incidents involving a breach of data security in the year under review.

As recorded in previous reports, for the last two years we have been involved in detailed work to implement Cabinet Office best practice with regard to data security.

Controls continue to be in place on the use of removable media for transfer of information between premises. All staff have completed the Cabinet Office sponsored Information Assurance e-learning package made available by the National School of Government.

Regular risk assessment and data handling returns to BIS have also been completed. These returns have, to date, provided assurance that sufficient processes and systems are in place to ensure that the Tribunal and the CS are able to handle security and information assurance effectively – although this is a matter where there can be no resting on laurels.

As a final matter in this section I would record that our IT system is now beginning to age and we will need to consider some updating and further investment. In addition there is understandable pressure from some of our users to integrate IT into certain aspects of our case handling processes. These issues will need careful thought and planning over a number of years and will also need to be factored into our funding discussions with BIS.

Pensions

Present and past employees of the CS are covered under the provisions of the Principal Civil Service Pension Scheme (PCSPS). The PCSPS is non-contributory (except in respect of dependants' benefits and additional employee contributions to the classic, premium and nuvos schemes). Liability for payment of future benefits is a charge on the PCSPS. Employer contributions are charges to the CS's income and expenditure account. Further information on the terms of the schemes can be found in the remuneration report and in the notes to the CS's accounts.

The CS Audit Committee

The CS Audit Committee meets four times a year under the chairmanship of Janet Rubin, who has held various non-executive director roles in other organisations including having chaired remuneration committees and been a member of several audit committees. Peter Clayton stepped down from the Audit Committee during 2011-12 shortly before his retirement as a Tribunal member. I would like to thank Peter for his dedication to the work of the Committee and his unfailing good advice and support. He is replaced on the Committee by Stephen Harrison, a chartered accountant and former partner in PwC, who became a member of the Tribunal in 2011.

David Summers, also a Tribunal member, who has many years experience of being a board member of several public limited companies, remains a Committee member and will stand down when his membership of the Tribunal comes to an end in 2012.

Format of Accounts

The accounts for the Tribunal and for the CS have been prepared in accordance with the 2011-12 Government Financial Reporting Manual (FRM) and the separate Accounts Directions for the Tribunal and the CS given by the Secretary of State with the consent of the Treasury in accordance with Schedule 3 of the Enterprise Act 2002.

The Accounts Directions for the Tribunal states that the Statement of Accounting Officer's Responsibilities and Corporate Governance Statement are combined with those of the CS.

The Tribunal's accounts include only the direct costs specifically attributable to the Tribunal. All support costs are included in the CS accounts in accordance with its statutory purpose set out in the Introduction. Whilst it is necessary to make this division for accounting purposes, it should always be borne in mind that the Tribunal and the CS in their day to day operations act as an integrated organisation.

In accordance with government policy, the accounts have been drawn up according to International Financial Reporting Standards as generally applied to the public sector.

Auditors

The financial statements of the Tribunal and the CS are audited under Schedule 3 paragraph 12(4) of the Enterprise Act 2002 by the Comptroller and Auditor General. The cost of the external statutory audit was £6,000 for the Tribunal (2010-11: £6,000) and £18,000 for the CS (2010-11: £19,000).

In 2011-12 BIS's Internal Audit Directorate continued to provide internal audit services to the CS. The cost of providing this function was £7,650 (2010-11: £7,491).

Charitable donations

The Tribunal and the CS do not make any charitable donations.

Payment of creditors

The CS aims to pay all supplier invoices by the due date or within ten working days of receipt if no due date has been agreed. This accords with government guidelines aimed at assisting suppliers with their cashflow. Throughout the year the average payment period was 11 days (2010-11: 15 days) and 98 per cent of (undisputed) invoices were settled within 30 days (2010-11: 99 per cent).

Disclosure of relevant audit information

So far as I am aware, there is no relevant audit information of which the Tribunal's and CS's external auditors are unaware and I have, to the best of my knowledge, taken all the steps that I ought to have taken to make myself aware of any relevant audit information and to communicate this to the Tribunal's and CS's auditors.

Charles Dhanowa OBE, QC
Registrar and Accounting Officer

26 June 2012

Membership

President

The Honourable Mr Justice Barling The Honourable Mr Justice Barling is a Justice of the Chancery Division of the High Court of England and Wales. He was educated at St Mary's College, Blackburn, and New College, Oxford (where he was later a lecturer in law for several years). He was called to the Bar in 1972 and was appointed Queen's Counsel in 1991. Before his appointment to the High Court in 2007 he was a deputy High Court judge and also sat as a recorder on the Midland Circuit.

After pupillage in a commercial set of chambers in London he initially practised in Manchester, but from 1981 onwards his practice was based at Brick Court Chambers in London, where he specialised in European Union (EU) law until appointed to the High Court.

Whilst at Brick Court Chambers he appeared regularly in the courts in this country (including the Competition Appeal Tribunal) and in the European Court of Justice in Luxembourg.

His work encompassed virtually every field of European law, including competition law. He worked extensively in the fields of sectoral regulation (particularly telecommunications regulation), pharmaceutical licensing, state aids and public procurement. He was instructed over several years in the well-known Factortame litigation and appeared in many cases involving the impact of EU law on tax measures. He acted for one of the parties in the first ever appeal under the Communications Act 2003 heard by the Competition Appeal Tribunal.

He was elected a bencher of the Middle Temple in 2001.

Chairmen

The following Judges of the Chancery Division of the High Court:

The Honourable Mr Justice Peter Smith

The Honourable Mr Justice David Richards

The Honourable Mr Justice Mann

The Honourable Mr Justice Warren

The Honourable Mr Justice Briggs

The Honourable Mr Justice Henderson

The Honourable Mr Justice Morgan

The Honourable Mr Justice Norris

The Honourable Mr Justice Floyd

The Honourable Mr Justice Sales

The Honourable Mrs Justice Proudman

The Honourable Mr Justice Arnold

The Honourable Mr Justice Roth

The Honourable Mr Justice Vos

The Honourable Mr Justice Newey

The Honourable Mr Justice Hildyard

Chairmen

Lord Carlile CBE, QC

Alex Carlile was called to the Bar by Gray's Inn in 1970 and appointed Queen's Counsel in 1984. He is a bencher of Gray's Inn. He sits as a recorder of the Crown Court and as a deputy High Court Judge. He was the independent reviewer of terrorism legislation from 2001 to 2011. He is the President of the Howard League for Penal Reform. He is a fellow of King's College London and a fellow of the Industry and Parliament Trust and holds British and foreign honorary Doctorates of Law.

From 1983 to 1997 he was the Liberal then Liberal Democrat MP for Montgomeryshire in Mid Wales. During that time he served as spokesperson on a range of issues, including Home Affairs and the Law. He was leader of the Welsh Liberal Democrats from 1992 to 1997. He was appointed a Life Peer in 1999 and takes the Liberal Democrat Whip. Until 2007 he was head of chambers at 9-12 Bell Yard.

He specialises in the civil and criminal aspects of commercial fraud, and in the development of counter-terrorism legislation internationally. He is involved in numerous charities, including the Royal Medical Foundation of Epsom College and STOP (People Trafficking) UK. He has a particular interest in mental health issues and was a co-founder of the Welsh charity Rekindle. He chaired the Select Committee of both Houses of Parliament on recent mental health legislation. His major report for the Howard League on the use of restraints on children in custody was published in February 2006. He is a non-executive director of a listed agricultural merchanting company, Wynnstay Group Plc.

Vivien Rose

Vivien Rose was called to the Bar in 1984 and was a member of Monckton Chambers, London, for ten years specialising in domestic and EC competition law. In 1995 she left private practice and joined the Government Legal Service working for several years in HM Treasury advising on financial services regulation, at the Ministry of Defence advising on international humanitarian law and in the Legal Services Office of the House of Commons.

She was co-editor (with Mr Justice Roth) of the sixth edition of Bellamy & Child European Community Law of Competition (2008) and is co-editor (with David Bailey) of the seventh edition of that work. She is a judge of the First-Tier Tribunal in the Charity and Environment jurisdictions and in 2009 she was appointed to be a recorder on the South-Eastern Circuit. In 2012 she was appointed a Deputy High Court Judge of the Chancery Division.

Marcus Smith QC

Marcus Smith is a barrister specialising in commercial law. He has degrees in law from Oxford University and studied at the University of Munich. He was called to the Bar in 1991 and is a member of Fountain Court Chambers in London. He has an extensive commercial litigation and international arbitration practice. He was appointed Queen's Counsel in 2010.

His work mainly concerns cases with a strong technical element and spans a wide range of subject areas including aviation, banking, commercial contracts, conflicts of law, insurance and reinsurance, IT/telecommunications, professional negligence and sports. He is the author of the leading textbook in the area of intangible property 'The Law of Assignment: The Creation and Transfer of Choses in Action' and is one of the authors of 'Private International Law of Insurance and Reinsurance'. He is also the consultant editor for the title 'Choses in Action' in Halsbury's Laws of England and has written widely on matters of contract, trusts, insurance and private international law.

Ordinary Members

William Allan

William Allan was a partner in the law firm Linklaters for 28 years until April 2010, during which time he specialised in EU and UK competition law. He has also taught competition law as an affiliated lecturer in the Faculty of Law at Cambridge University since 2004.

Professor Andrew Bain OBE

Andrew Bain has held full professorships in economics at the universities of Glasgow, Strathclyde and Stirling, was for six years group economic adviser at Midland Bank and has also worked as an economic consultant. Previous public appointments include membership of the committee to review the functioning of financial institutions (the Wilson Committee on the City), the Monopolies and Mergers Commission, the Secretary of State for Scotland's Panel of Economic Consultants and the Board of Scottish Enterprise.

Professor John Beath

John Beath is Secretary-General of the Royal Economic Society and Emeritus Professor of Economics at the University of St Andrews. His professional training was at Queen's College Dundee, the University of London and the University of Pennsylvania and he has held academic posts at Cambridge, Bristol and St Andrews. He is an applied micro-economist with interests in the economics of industry and in public finance. Previous public appointments have included membership of the Review Body on Doctors and Dentists Pay and chairmanship of the Economic Research Institute of Northern Ireland. He is currently a member of the Economic and Social Research Council and also a member of the Prison Service Pay Review Body.

Michael Blair QC

Michael Blair is a practising barrister with chambers in 3 Verulam Buildings, Gray's Inn, specialising in financial services and financial regulation. He has been in independent practice since 2000. He is also a member of the Board of the Dubai Financial Services Authority. He was until 2009 the Chairman of SWX Europe Limited, the London exchange where the major Swiss equities were traded, and was the Treasurer of his Inn of Court, the Middle Temple, in 2008. Until 2000 he was general counsel to the Financial Services Authority. He served on the Bar Council for nine years (including as Treasurer for four years) and had earlier been employed as a civil servant in the Lord Chancellor's Department for 20 years. He is the author or editor of a number of textbooks on financial services.

Peter Clayton

Peter Clayton is a fellow of the Institute of Chartered Accountants in England and Wales. He has held senior financial management positions in FTSE 100 companies such as Group General Manager Finance of General Accident Plc and Group Financial Controller of Forte Plc. He is a director of Walking on Air Limited - a charity providing gliding training for disabled people of all ages.

Timothy Cowen

Timothy Cowen became a partner in the international antitrust/competition practice of the law firm of Sidley Austin LLP in mid January 2011. He is the founder of the Open Computing Alliance, a fellow of the think tank 'Res Publica,' a visiting professor at the City of London Law School and a board member of the International Institute of Communications, a not-for-profit training and conference organiser on communications issues. From 2001 to 2009 he served as general counsel and a board member for BT's international businesses. He was BT's chief counsel, competition law and public policy, from 1997 to 2001 and before that was BT's head of European law. He trained with city law firm Lovell White Durrant. He is a barrister, called in July 1985, and has an MA in Law from Cambridge University.

Margot Daly

Margot Daly has extensive experience in digital music, digital media and distribution, branding, intellectual property and copyright, with a heavy emphasis on disruptive technology, strategy development and business transformation. She has held CEO and COO positions in both FTSE and privately held companies. She was Non-executive chair of the European Digital Media Association and as former President of AIESEC U.S. has roots in youth leadership development. She is a qualified CEDR dispute resolution mediator, an affiliate member of the Chartered Institute of Legal Executives and a Non-executive Director of Sports Resolutions which operates the National Anti-Doping Panel and runs dispute resolution services for professional and amateur sport in the UK.

Michael Davey

Michael Davey is a former chief executive of the Law Society of Northern Ireland and a former chairman of Industrial Tribunals and of Social Security Tribunals. He has extensive experience of private commercial practice.

Dr Clive Elphic

Clive Elphick is a Board Member of the Environment Agency and of the Northern Ireland Authority for Utility Regulation. He is also a non-executive director of Perceptive Engineering Limited. His former roles include being a managing director at United Utilities Group Plc, Chairman of the CBI for the North West of England and a non-executive director of a Department of State and of a Regional Development Agency. He is a trustee of the Lancashire Wildlife Trust.

Peter Freeman CBE, QC

Peter Freeman was Chairman of the Competition Commission from 2005 to 2011. Prior to that he was head of the EC and Competition Law Group of the law firm Simmons & Simmons. He was Chairman of the Regulatory Policy Institute and is a member of the Advisory Boards of various competition law journals and academic bodies. He is a senior consultant to the law firm Cleary Gottlieb Steen & Hamilton, a member of the Lloyds Enforcement Tribunal Panel, a member of the Council of the University of Bath and a non-executive director of Charlie Goldsmith Associates Limited.

Dermot Glynn

Dermot Glynn is Principle of Europe Economics. He read PPE at Balliol and then taught economics and business studies. He was a member of the Department of Applied Economics at Cambridge, economic director of the CBI, chief economist at KPMG, and UK managing director of NERA before founding the economics consultancy Europe Economics in 1998.

Professor Peter Grinyer

Peter Grinyer is Emeritus Professor at the University of St Andrews where he was Esmee Fairbairn Professor of Economics, founded the School of Management, and was in the 1980s Vice-Principal and, in 1985, Acting Principal. Prior to St Andrews he held the FME chair in business strategy at the City University, London. He has been a visiting professor at New York University; Erskine Fellow at the University of Canterbury, New Zealand; a member of the Scottish Legal Aid Board; and a non-executive director of Ellis and Goldstein Plc, Don Brothers Buist Plc, John Brown Plc and McIlroy Coates. He has also served on the editorial boards of several journals on managerial economics and strategy.

Stephen Harrison

Stephen Harrison retired from PwC in 2010, having been a partner for 37 years. In PwC he held numerous management roles during his career and at the time of his retirement was one of seven regional chairmen. During his professional career, he was actively involved in advising a wide range of businesses. In particular, he has been involved in undertaking due diligence assignments for some of the major global acquisitions that have occurred in recent years. He has also been involved in lecturing on financial matters. He has also been actively involved in local organisations encouraging economic growth and promoting skills and employment. He is currently involved as chairman of a charity and an advisor to a number of private companies.

Sheila Hewitt JP

Sheila Hewitt is a JP and a member of the Fitness to Practise Panels of the General Medical Council and the Nursing & Midwifery Council. She is also a member of the Asylum and Immigration Tribunal. She is an associate of the Chartered Institute of Bankers and an independent assessor for the Office of the Commissioner for Public Appointments.

Ann Kelly

Ann Kelly is a lay member of the Assessment Panels of the Royal Institution of Chartered Surveyors, a former chair of the Registration and Conduct Committees of the General Social Care Council and a former lay member of the Adjudication Panel of the Law Society. She was an independent member of the Ministry of Defence Police Committee, a deputy electoral commissioner, chairman of the West Berkshire Priority Care Service NHS Trust and a member of the Police Complaints Authority. She is a fellow of the Chartered Management Institute.

Brian Landers

Brian Landers has served on the boards of various companies in the UK and overseas including Habitat, Waterstone's and Penguin Books and was finance director of HM Prison Service. He was also chief internal auditor of Sainsbury's and deputy chairman of the Financial Ombudsman Service. He is currently an audit commissioner and treasurer of the UK section of Amnesty International and has an MBA from the London Business School.

The Honourable Antony Lewis

Antony Lewis is a barrister and chairman of the Community Foundation in Wales and the Mid Wales Food and Land Trust Limited. From 1996 to 2003 he was chairman of Powys Health Care NHS Trust and prior to that, chairman of Powys Family Health Services Authority. He has been a lecturer in law at University College, Cardiff and a JP.

Graham Mather

Graham Mather is a solicitor and President of the European Policy Forum, an independent international research institute. He has been visiting fellow of Nuffield College, Oxford, and a reporting panel member of the Monopolies and Mergers Commission. He has also been General Director of the Institute of Economic Affairs and Head of the Policy Unit of the Institute of Directors. He was MEP for Hampshire North and Oxford from 1994 to 1999. He is an advisor to Tudor Investment Corporation and Elliott Associates and a director of Greenham Common Trust.

Jonathan May

Jonathan May has been closely involved in the development of competition and regulatory policy and its practical delivery over the last 20 years, working in the Treasury, Department of Trade and Industry and, since 2001, the OFT. As a board member since 2006, he was responsible for delivery and policy on most competition and consumer issues. He retired in August 2010. He is a member of the Financial Services Consumer Panel.

Professor Colin Mayer

Colin Mayer is the Peter Moores Professor of Management Studies at the Saïd Business School at the University of Oxford. He is an Honorary Fellow of Oriel College, Oxford, and of St Anne's College, Oxford, a Professorial Fellow of Wadham College, Oxford, and an inaugural Fellow of the European Corporate Governance Institute. He was the first professor at the Saïd Business School in 1994, the Peter Moores Dean of the Business School between 2006 and 2011, and the first Director of the Oxford Financial Research Centre between 1998 and 2005. He was a Harkness Fellow at Harvard University, a Houblon-Norman Fellow at the Bank of England, the first Leo Goldschmidt Visiting Professor of Corporate Governance at the Solvay Business School, Université de Bruxelles, and he has had visiting positions at Columbia, MIT and Stanford universities. He was chairman of the economics consultancy firm Oxera Limited between 1986 and 2010, and he has consulted for firms, governments, regulators and international agencies around the world.

Professor John Pickering

John Pickering is an economic and business consultant. Former appointments have included: Dean, Vice-Principal and Professor of Industrial Economics at UMIST; Deputy Vice-Chancellor of the University of Portsmouth and Professor of Business Strategy at the University of Bath School of Management; Visiting Professor at the Universities of Durham and Southampton. He served for nine years as a member of the Monopolies and Mergers Commission. He has also held various external positions of responsibility including as church commissioner and director of several companies.

Clare Potter

Clare Potter was Chief Legal Adviser to the Competition Commission from 2004 until May 2010. Prior to joining the Commission she practised as a competition partner in City firm Simmons & Simmons where she specialised in energy and telecoms regulation. She is a public member of Network Rail.

Richard Prosser OBE

Richard Prosser has considerable experience of the small business sector. He currently holds non-executive directorships in engineering and agricultural supply businesses. He has been a member of the Monopolies and Mergers Commission and has served on a considerable number of inquiries.

Dr Arthur Pryor CB

Arthur Pryor is an independent consultant working on competition policy issues in developing countries. He is a former civil servant and was head of competition policy at the Department of Trade and Industry until his retirement in 1996. During his career in the Civil Service his senior positions included Director General of British National Space Centre and DTI Regional Director for the West Midlands.

Professor Gavin Reid

Gavin Reid is Professor of Economics in the School of Economics & Finance at the University of St Andrews and Founder/Director of the Centre for Research into Industry, Enterprise, Finance and the Firm (CRIEFF), which specialises in industrial organisation, corporate finance, intellectual property, entrepreneurship and innovation. He has held visiting professorships in the USA, Canada and France, and has acted as external examiner for the universities of Cambridge, Durham and University College Cork. The author of several books on industrial organisation, entrepreneurship and venture capital and of many academic articles, he is currently adviser to the Centre for Business Research, Judge Business School, Cambridge University.

Dr Adam Scott OBE, TD

Adam Scott has academic and professional roots in engineering, economics and law. After being called to the Bar in 1972, his specialisation in intellectual property and competition law brought him into electronic communications as a lawyer in International Telephone and Telegraph Corporation and the Post Office. He became corporate planner in the creation and privatisation of British Telecom, then headed BT's international affairs and then, until 1994, chaired its apparatus business. He is a fellow of the Institution of Engineering and Technology and, since 1994, at the University of St Andrews. His doctorate was in an area where economic regulation intersects with psychology and social science.

Dr Vindelyn Smith-Hillman

Vindelyn Smith-Hillman is the Economic Advisor at the Law Commission having previously been an academic with lectureships at the Open University and the University of Northampton and also holding a number of external examiner positions. Prior to that, she was a senior economist at the Bank of Jamaica in Kingston (Jamaica). She is a listed assistant examiner with Cambridge and London Examining Boards and an assessor with the Government Economic Service. She also sits on several editorial boards and advisory bodies.

Professor Paul Stoneman

Paul Stoneman is an economist, currently an emeritus professor at Warwick University. He has been an ESRC senior research fellow, a visiting professor at Stanford University and a visiting fellow at Nuffield College, Oxford. He has published extensively, held many external positions of responsibility, been on various editorial boards and an external examiner for several academic institutions.

Joanne Stuart OBE

After 20 years working in the IT industry, Joanne founded Attrus Limited in 2006 which supports businesses and entrepreneurs both in the private and social enterprise sectors. A former Chairman of the Institute of Directors, NI Division, Joanne chaired the independent review on University fees in NI leading to a published report in February 2011. Joanne currently chairs the Government and business steering group tasked with driving forward the NI Science, Technology, Engineering and Mathematics (STEM) strategy. Joanne is a non-executive Director of the NI Science Park and Chairman of Arts & Business NI as well as holding a number of other voluntary roles.

David Summers OBE, JP

David Summers is a publishing and media consultant. He is non-executive Chairman of Wilmington Group Plc. He also serves on The Lord Chancellor's Advisory Committee for Kent. After a lengthy career in professional publishing with Butterworths, the law publishers, and Reed Elsevier, he subsequently became a member of the Restrictive Practices Court in 1998 prior to his current appointment with the Tribunal. He has long experience of school governance in the independent sector and corporate governance in the private sector.

Professor Stephen Wilks

Stephen Wilks is Professor of Politics at the University of Exeter where he also served for four years as Deputy Vice Chancellor. From 2001 to 2005 he was a member of the Economic and Social Research Council and chaired its Research Strategy Board. He has written extensively on the politics, administration and enforcement of UK and European competition policy and has just finished writing a book about the political power of business. From 2001 to 2009 he was a member of the Competition Commission and served on 12 merger inquiries.

Competition Service: Appointed Member

Janet Rubin

Janet Rubin has a professional background in human resources. She has worked as a HR director and held senior HR corporate positions in Arcadia Group, B&Q Plc, WH Smith and the Littlewoods organisation. More recently she has held a number of private and public sector appointments as a non-executive director of Bonmarché Limited, the Strategic Rail Authority and SHL Group Plc.

Among other non-executive appointments, she has previously been: a member of the Employment Appeal Tribunal; a Civil Service and an Equal Opportunities commissioner; an independent assessor for a number of central government departments; and a member of the Civil Service Arbitration Tribunal, the Diplomatic Service Appeal Board, the Rail Passenger Council and the Senior Salaries Review Body.

A Henley trained coach, she has her own executive coaching business and carries out HR consultancy work and more recently has been appointed as a member of the NHS Pay Review Body.

Cases

Judgments handed down within the period 1 April 2011 to 31 March 2012

| | Judgment | Tribunal | Subject matter |
|---|---|---|---|
| 1 | <p>Eden Brown Limited and Others v Office of Fair Trading</p> <p>(1) CDI AndersElite Limited (2) CDI Corp v Office of Fair Trading</p> <p>(1) Hays Plc (2) Hays Specialist Recruitment Limited (3) Hays Specialist Recruitment (Holdings) Limited v Office of Fair Trading</p> <p>[2011] CAT 8</p> <p>1 Apr 2011</p> | <p>Mr Justice Roth (Chairman)</p> <p>Michael Davey</p> <p>Dr Vindelyn Smith-Hillman</p> | <p>Judgment of the Tribunal on three appeals brought by six appellants ('the Appellants') against certain aspects of the decision of the OFT entitled 'Construction Recruitment Forum' dated 29 September 2009 ('the Decision'). In the Decision the OFT imposed a total fine of £39,270,000 on six recruitment agencies for transgressing the Chapter I prohibition of the Competition Act 1998 ('the 1998 Act') by price-fixing and organising a collective boycott of another company.</p> <p>Each of the Appellants challenged three common elements of the OFT's penalty calculation. First, the Tribunal held that the measure of turnover used as the starting point for determining the appropriate level of penalty in this case was 'net fees' rather than 'gross turnover' as applied by the OFT. Secondly, the Tribunal dismissed the challenge to the figure of 9 per cent of relevant turnover, adopted by the OFT as its starting point, to reflect the seriousness of the infringement. Thirdly, the Tribunal held that the application by the OFT of a so-called 'minimum deterrence threshold' to adjust the penalties imposed on infringing undertakings in order to deter undertakings from engaging in anti-competitive behaviour was an inappropriately mechanistic and narrow approach. The assessment which, in the Tribunal's judgment, was required should take into account the various circumstances of the individual undertaking and should ensure that a penalty is determined that is proportionate.</p> <p>Applying these conclusions to the three appeals, and having determined grounds of appeal which related to the individual circumstances of each Appellant, the Tribunal varied the penalties imposed on the Appellants as follows:</p> <ul style="list-style-type: none"> ■ Eden Brown Limited: the original total penalty of £1,072,069 was varied to £477,750. ■ CDI AndersElite Limited and CDI Corp: the original total penalty of £7,602,789 was varied to £1,543,500. ■ Hays Plc, Hays Specialist Recruitment Limited and Hays Specialist Recruitment (Holdings) Limited: the original total penalty of £30,359,129 was varied to £5,880,000. |

| | Judgment | Tribunal | Subject matter |
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| 2 | <p>Barrett Estate Services Limited (2) Francis Construction Limited v Office of Fair Trading</p> <p>(1) GAJ Construction Limited (2) GAJ (Holdings) Limited v Office of Fair Trading</p> <p>(1) Renew Holdings Plc (2) Allenbuild Limited v Office of Fair Trading</p> <p>(1) Robert Woodhead (Holdings) Limited (2) Robert Woodhead Limited v Office of Fair Trading (1) J H Hallam (R&J) Limited (2) J H Hallam (Contracts) Limited v Office of Fair Trading Hobson and Porter Limited v Office of Fair Trading</p> <p>[2011] CAT 9</p> <p>15 Apr 2011</p> | <p>Lord Carlile QC (Chairman)</p> <p>Richard Prosser</p> <p>Professor Peter Grinyer</p> | <p>Judgment on six appeals against a decision of the OFT dated 21 September 2009 entitled ‘Bid rigging in the construction industry in England’ (‘the Decision’). In the Decision the OFT found that each of the Appellants had engaged in cover pricing contrary to the Chapter I prohibition contained in section 2(1) of the 1998 Act. The OFT imposed penalties totalling £129,200,000, of which £5,000,000 was imposed on the Appellants.</p> <p>The Appellants raised a wide range of challenges to the penalties imposed by the OFT in the Decision. The Tribunal upheld certain of these challenges, in particular concluding that:</p> <p>The OFT was wrong to use turnover in the financial year preceding the Decision at Step 1 of the penalty calculation and should instead have used turnover in the financial year preceding the infringement.</p> <p>The OFT’s selection of infringements in the Decision was not arbitrary and the OFT was entitled to impose a separate fine for each infringement.</p> <p>The OFT’s application of a ‘minimum deterrence threshold’ to adjust the penalties on certain of the Appellants at Step 3 of the penalty calculation was wrong in principle and inconsistent with the OFT’s published guidance.</p> <p>The OFT was correct to conclude that both tendered and non-tendered work should be included in the same relevant market. However, the OFT had failed sufficiently to take into account the particular circumstances of the industry, including the prevalent low margins on turnover and the specific circumstances of these Appellants (some of whom made claims to financial hardship) in calculating the penalties imposed in the Decision, and had failed to ensure that the ultimate penalties imposed were proportionate.</p> <p>Having addressed these and other challenges raised by the Appellants, the Tribunal reassessed the penalties imposed on the Appellants as follows:</p> <ul style="list-style-type: none"> ■ Francis Construction Limited and Barrett Estate Services Limited: the original penalty of £530,238 was varied to £169,575. ■ GAJ Construction Limited and GAJ (Holdings) Limited: the original penalty of £109,683 was varied to £42,750. ■ Allenbuild Limited and Renew Holdings Plc: the original penalty of £3,547,931 was varied to £926,250. ■ Robert Woodhead Limited and Robert Woodhead Holdings Limited: the original penalty of £411,595 was varied to £151,725. ■ J H Hallam (Contracts) Limited and J H Hallam (R&J) Limited: the original penalty of £359,588 was varied to £99,000. ■ Hobson and Porter Limited: the original penalty of £547,507 was varied to £123,750. |

| | Judgment | Tribunal | Subject matter |
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| 3 | <p>Crest Nicholson Plc v Office of Fair Trading ISG Pearce Limited v Office of Fair Trading</p> <p>[2011] CAT 10</p> <p>15 Apr 2011</p> | <p>Lord Carlile QC (Chairman)</p> <p>Ann Kelly</p> <p>Dr Arthur Pryor</p> | <p>Judgment on two appeals against the OFT Construction Bid Rigging Decision ('the Decision'). In the Decision the OFT had found that the Appellants had engaged in cover pricing contrary to the Chapter I prohibition contained in section 2(1) of the 1998 Act. The OFT had imposed penalties totalling £129,200,000, of which a penalty of £5,188,846 had been imposed on the Appellants.</p> <p>Both of the Appellants appealed the Decision as regards the penalties that had been imposed on them. ISG Pearce additionally appealed the Decision as regards its liability for Infringement 75 (as set out in the Decision), submitting that the OFT had breached the principle of equal treatment by addressing the Decision to ISG Pearce, but not to the intermediate parent companies of other infringing undertakings.</p> <p>The Tribunal dismissed ISG Pearce's appeal on liability, concluding that the OFT was correct to take account of the consequences of an agency agreement between ISG Pearce and its subsidiary, Pearce, when addressing the Decision to ISG Pearce.</p> <p>As regards the Appellants' challenge to the penalty imposed on them, the Tribunal concluded that:</p> <p>The OFT had been wrong to use turnover in the financial year preceding the Decision at Step 1 of the penalty calculation and should instead have used turnover in the financial year preceding the infringement.</p> <p>The OFT's application of a 'minimum deterrence threshold' to adjust the penalties on the Appellants at Step 3 of the penalty calculation had been wrong in principle and inconsistent with the OFT's published guidance.</p> <p>Crest Nicholson's objectively different position from other recipients of the OFT's 'fast track offer' justified a level of discount higher than that afforded to Crest Nicholson in the Decision. However, the OFT had been correct not to impute Crest Nicholson's admission of liability to ISG Pearce, and therefore a discount awarded to Crest Nicholson could not automatically inure to the benefit of ISG Pearce.</p> <p>The ultimate penalty imposed on the Appellants in the Decision had been disproportionate and excessive in all the circumstances of the infringement and in light of the Appellants' individual circumstances.</p> <p>The Tribunal accordingly concluded that the penalty imposed on the Appellants could not stand and should be reassessed. The original penalty of £5,188,846 was varied to £950,000 for which the Appellants were jointly and severally liable, save that Crest Nicholson's liability for the penalty was reduced by 20 per cent.</p> |

| | Judgment | Tribunal | Subject matter |
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| 4 | <p>(1) Quarmby Construction Company Limited (2) St James Securities Holdings Limited v Office of Fair Trading</p> <p>[2011] CAT 11</p> <p>15 Apr 2011</p> | <p>Lord Carlile QC (Chairman)</p> <p>Ann Kelly</p> <p>David Summers</p> | <p>Judgment on an appeal against the OFT Construction Bid Rigging Decision ('the Decision'). In the Decision the OFT found that the Appellants had engaged in cover pricing contrary to the Chapter I prohibition contained in section 2(1) of the 1998 Act. The OFT imposed penalties totalling £129,200,000, of which a penalty of £881,749 was imposed on the Appellants.</p> <p>The Appellants appealed the Decision both as regards liability and the amount of the penalty imposed on them. The Tribunal dismissed the Appellants' grounds of appeal on liability, concluding in particular that:</p> <ul style="list-style-type: none"> ■ The OFT had been correct to include the Appellants within the scope of its investigation when deciding which suspect tenders to pursue in the Statement of Objections. ■ Infringement 6 (as specified in the Decision) was not 'statute-barred' by the operation of Council Regulation (EC) No. 1/2003, section 60 of the 1998 Act and/or the Limitation Act 1980. Further the OFT had correctly applied the transitional provisions of the 1998 Act in relation to this infringement. ■ The evidence relied on by the OFT, viewed as a whole, demonstrated on the balance of probabilities that Quarmby had engaged in cover pricing in relation to the three infringements identified in the Decision. ■ The Appellants were wrong to suggest that Infringement 233 (as specified in the Decision) should have been excluded from the scope of the investigation because the client had not been deceived into thinking the cover price that it had received was genuine. Rather, it was clear that the client had not been aware that a cover price had been submitted. ■ As regards the Appellants' challenge to the penalties imposed on them, the Tribunal upheld certain challenges, but rejected others, concluding in particular that: ■ The OFT had been wrong to use turnover in the financial year preceding the Decision at Step 1 of the penalty calculation, and should instead have used turnover in the financial year preceding the infringement. ■ The Appellants' behaviour should have been assessed on a level of seriousness lower than the starting point percentage of 5 per cent chosen by the OFT in this case. ■ The Appellants had been wrong to submit that the OFT defined the relevant markets too broadly in the Decision. ■ The OFT had been entitled to rely on the turnover information originally provided by the Appellants in this investigation. |

| | Judgment | Tribunal | Subject matter |
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| | | | <ul style="list-style-type: none"> ■ The OFT should have had greater regard for the particular circumstances of the industry, including the prevalent low margins on turnover. ■ The Tribunal accordingly concluded that the penalty imposed on the Appellants could not stand and should be reassessed. The original penalty of £881,749 was varied to £213,750. |
| 5 | <p>(1) GMI Construction Holdings Plc (2) GMI Construction Group Plc v Office of Fair Trading</p> <p>[2011] CAT 12</p> <p>27 Apr 2011</p> | <p>The President</p> <p>Dr Adam Scott</p> <p>Marcus Smith QC</p> | <p>Judgment following an appeal against the OFT Construction Bid Rigging Decision ('the Decision'). In the Decision the OFT had found that, in the period 2000 to 2006, 103 undertakings had each committed between one and three infringements of the prohibition contained in section 2 of the 1998 Act, which applies to agreements or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom ('the Chapter I prohibition'). The OFT had imposed penalties totalling £129,200,000, of which nearly £1,800,000 had been imposed on the Appellants for two alleged incidents of cover pricing in 2000 and 2005.</p> <p>The Appellants appealed against the Decision both in respect of liability and penalty. The Appellants submitted that: (i) the OFT had not discharged the burden of proving that the Appellants had committed either of the alleged infringements; and (ii) the overall penalty had been calculated arbitrarily, was excessive, disproportionate and unjust, and should be reduced.</p> <p>Having considered all the evidence, including the evidence of witnesses called by the Appellants and cross-examined on behalf of the OFT, the Tribunal held that the OFT had not established on the balance of probabilities that the Appellants had committed either of the alleged infringements. The Tribunal therefore allowed the Appellants' appeal against the OFT's findings of liability. Those findings and the penalties imposed in respect of them were set aside.</p> |

| | Judgment | Tribunal | Subject matter |
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| 6 | <p>AH Willis & Sons Limited v Office of Fair Trading [2011] CAT 13 27 Apr 2011</p> | <p>The President Antony Lewis Marcus Smith QC</p> | <p>Judgment following an appeal against the OFT Construction Bid Rigging Decision ('the Decision'). In the Decision the OFT had found that 103 undertakings had each committed between one and three infringements of the Chapter I prohibition contained in section 2 of the 1998 Act. The OFT had imposed penalties totalling £129,200,000, of which £120,018 had been imposed on the Appellant for three alleged instances of cover pricing (referred to in the Decision as Infringements 188, 215 and 224). The Appellant appealed the Decision both as regards liability and penalty.</p> <p>As regards Infringement 224, the Appellant submitted that the cover price supplied to another construction company was not provided by the Appellant but by a third party self-employed costs estimator, who had carried out estimating work for the Appellant and a number of other companies. The Tribunal held that the question was whether, when the costs estimator provided the cover price, he did so as part of the Appellant's 'undertaking', or whether it was in fact a discrete function carried out by the estimator other than in that capacity. In the Tribunal's view, it was the latter. Accordingly, the Tribunal unanimously concluded that the provision of the cover price was not, as a matter of law, attributable to the Appellant.</p> <p>As regards Infringements 188 and 215, the Appellant submitted that the OFT had failed to meet the burden of proof, that rested upon it to show that these infringements were in fact committed by the Appellant. Having considered all the evidence, including evidence adduced by the Appellant, the Tribunal held that the OFT had not established on the balance of probabilities that the Appellant had committed either of the alleged infringements.</p> <p>Accordingly, the Tribunal allowed the appeal in respect of all three infringements, and the findings of liability and penalties in respect of the infringements were set aside.</p> |

| | Judgment | Tribunal | Subject matter |
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| 7 | <p>North Midland Construction Group Plc v Office of Fair Trading</p> <p>[2011] CAT 14</p> <p>27 Apr 2011</p> | <p>The President</p> <p>Marcus Smith QC</p> <p>Professor Paul Stoneman</p> | <p>Judgment following an appeal against the OFT Construction Bid Rigging Decision ('the Decision'). In the Decision the OFT had found that 103 undertakings had each committed between one and three infringements of the Chapter I prohibition contained in section 2 of the 1998 Act. The OFT had imposed penalties totalling £129,200,000, of which £1,543,813 had been imposed on the Appellant for two alleged instances of cover pricing (referred to in the Decision as Infringements 46 and 190). The Appellant appealed the Decision both as regards liability and penalty.</p> <p>In respect of Infringement 46, the Appellant submitted that the OFT had adduced insufficient evidence of the facts alleged by the OFT to satisfy the burden of proof. Having considered all the evidence, including evidence adduced by the Appellant, the Tribunal held that the OFT had not established on the balance of probabilities that the Appellant had committed the alleged infringement. Accordingly, the Tribunal allowed the appeal in respect of Infringement 46, and the findings of liability and penalty in respect of that infringement were set aside.</p> <p>As regards the remaining alleged instance of cover pricing, Infringement 190, the Appellant submitted that the OFT's finding in relation to that infringement was vitiated for a fundamental error of law and/or failure to demonstrate an appreciable effect on competition or trade within the United Kingdom. The Tribunal rejected that submission.</p> <p>The Appellant challenged the penalty imposed on it on a number of grounds. The Tribunal rejected several of the arguments relied upon by the Appellant but was unanimously of the view that the penalty of more than £1,500,000 imposed on the Appellant in respect of Infringement 190 was excessive and disproportionate having regard to the 'twin objectives' of punishment and deterrence. Accordingly, the Tribunal allowed the appeal against the penalty imposed in respect of Infringement 190 to the extent that the penalty was varied to £300,000.</p> |

| | Judgment | Tribunal | Subject matter |
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| 8 | <p>British Telecommunications Plc (080 calls, NCCN 1007) v Office of Communications</p> <p>British Telecommunications Plc v Office of Communications (Ethernet Extension Services)</p> <p>[2011] CAT 15</p> <p>3 May 2011</p> | <p>Vivien Rose (Chairman)</p> <p>Stephen Harrison</p> <p>Clare Potter</p> | <p>Judgment of the Tribunal unanimously dismissing two appeals by British Telecommunications Plc ('BT') against decisions by the Office of Communications ('OfCOM') to accept jurisdiction of alleged disputes referred to OfCOM under section 185 of the Communications Act 2003 ('the 2003 Act'). The first appeal involved OfCOM's decision that they had jurisdiction to determine alleged disputes between BT and certain mobile network operators in relation to the new pricing structure set by BT for termination of calls to 080 numbers ('the NCCN 1007 Appeal'). The second appeal concerned OfCOM's decision that they had jurisdiction to determine alleged disputes between BT and certain communications providers concerning an alleged overcharge for Ethernet services ('the Ethernet Appeal').</p> <p>In both the NCCN 1007 Appeal and the Ethernet Appeal the Tribunal held that, having regard to the events which had happened, there were 'disputes' within the meaning of that section capable of being referred to OfCOM for resolution in accordance with the 2003 Act. The Tribunal rejected BT's submission that the prospect of future negotiations between the parties after handing down of judgments of the Tribunal in related pending appeals prevented a 'dispute' from coming into existence.</p> <p>The Tribunal also held, in both appeals, that OfCOM was clearly entitled to come to the view that such future negotiations would not amount to satisfactory alternative means for resolving either of the sets of disputes under section 186 of the 2003 Act.</p> <p>In the NCCN 1007 Appeal the Tribunal decided that OfCOM was clearly entitled to conclude that there were no exceptional circumstances, within the meaning of section 186(5) of the 2003 Act, in the disputes in question.</p> |

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| 9 | <p>Deutsche Bahn AG and Others v Morgan Crucible Company Plc and Others</p> <p>[2011] CAT 16</p> <p>25 May 2011</p> | <p>Marcus Smith QC (Chairman)</p> <p>Margot Daly</p> <p>Dermot Glynn</p> | <p>Judgment of the Tribunal on an application by Morgan Crucible Company Plc ('the First Defendant') to strike out the claims against it on the ground that they had not been brought within the time limit stipulated by Rule 31 of the Competition Appeal Tribunal Rules 2003 ('the Tribunal Rules').</p> <p>It was common ground between the parties that a claim for damages must be made within a period of two years beginning with the 'relevant date' which, in these claims, was the end of the period specified in section 47A(7) or (8) of the Competition Act 1998 in relation to the European Commission ('the Commission') decision of 3 December 2003 on the basis of which these claims had been made.</p> <p>The crucial difference between the parties turned on the meaning of 'decision'. According to the First Defendant, the 'decision' referred to in section 47A(8)(a) means a decision concerning a specific defendant to the section 47A claim, as opposed to all the addressees of the decision serving as the trigger for the follow on claim. The Claimants' contention was the precise reverse: 'decision' referred to a decision concerning all addressees of the decision.</p> <p>The Tribunal held that 'decision' must mean the operative part of the decision that finds an infringement in respect of a particular defendant to the section 47A claim. The Tribunal considered the statutory construction to be clear and did not lead to an outcome that could be described as inconvenient, still less unworkable or absurd. The Tribunal also rejected the Claimants' contention that the First Defendant's application was an abuse of process.</p> <p>The Tribunal unanimously concluded that the First Defendant was entitled to make its application; that the claims against the First Defendant had not been brought within the time limit laid down by Rule 31 of the Tribunal Rules; and that the claims against the First Defendant be struck out.</p> |
| 10 | <p>(1) Durkan Holdings Limited (2) Durkan Limited (3) Concentra Limited (formerly known as Durkan Pudelek Limited) v Office of Fair Trading</p> <p>[2011] CAT 17</p> <p>3 Jun 2011</p> | <p>Vivien Rose (Chairman)</p> <p>Professor John Pickering</p> <p>Michael Blair</p> | <p>Ruling of the Tribunal on a costs application by the Appellants.</p> <p>The Tribunal did not consider that whenever the final result of an appeal is that the penalty is reduced or even substantially reduced, costs must necessarily be awarded against the other side. Where, as in this case, there were a number of entirely discrete challenges to different parts of the decision, the Tribunal may also have regard to the respective successes and failures of the parties and the time and resources devoted to each challenge. Having regard to its decision of 22 March 2011 on the grounds of appeal in this case, the Tribunal concluded that there should be no order as to costs.</p> |

| | Judgment | Tribunal | Subject matter |
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| 11 | Albion Water Limited v Dŵr Cymru Cyfyngedig [2011] CAT 18 9 Jun 2011 | Vivien Rose (Chairman) Sheila Hewitt Graham Mather | Ruling of the Tribunal on an application by the Claimant to amend the particulars of claim and an application by the Defendant to strike out those parts of the claim which related to compensatory damages. The Tribunal noted that the application to amend was made at a very early stage of the proceedings, before the defence had been served and that there was no prejudice suggested to the Defendant arising from amendments to the particulars of claim at that stage. The Tribunal granted the Claimant permission to make the majority of amendments sought. However it did not allow certain amendments, which the Tribunal decided were either doomed to fail or impermissible under section 47A of the Competition Act 1998. The Tribunal dismissed the Defendant's strike out application. |
| 12 | Emerson Electric Co and Others v Morgan Crucible Company Plc [2011] CAT 19 8 Jun 2011 | The President Dr Adam Scott Dr Vindelyn Smith-Hillman | Ruling of the Tribunal refusing the Claimants permission to appeal the Tribunal's judgment of 21 March 2011 ([2011] CAT 4). |
| 13 | British Telecommunications Plc v Office of Communications (Partial Private Circuits) [2011] CAT 20 13 Jun 2011 | Marcus Smith QC (Chairman) Professor Peter Grinyer Richard Prosser | Ruling of the Tribunal refusing the Appellant permission to appeal the Tribunal's Judgment of 22 March 2011 ([2011] CAT 5). |
| 14 | (1) Interclass Holdings Limited (2) Interclass Plc v Office of Fair Trading [2011] CAT 21 5 Jul 2011 | Vivien Rose (Chairman) Sheila Hewitt Graham Mather | Ruling of the Tribunal refusing the Appellants permission to appeal the Tribunal's Judgment of 24 March 2011 ([2011] CAT 7). |
| 15 | Deutsche Bahn AG and Others v Morgan Crucible Company Plc and Others [2011] CAT 22 11 Jul 2011 | Marcus Smith QC (Chairman) Margot Daly Dermot Glynn | Ruling of the Tribunal granting the Claimants permission to appeal the Tribunal's judgment of 25 May 2011 ([2011] CAT 16), and granting the First Defendant's application for costs. |

| | Judgment | Tribunal | Subject matter |
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| 16 | <p>Ryanair Holdings Plc v Office of Fair Trading</p> <p>[2011] CAT 23</p> <p>28 Jul 2011</p> | <p>The President</p> <p>Michael Blair</p> <p>Graham Mather</p> | <p>Judgment of the Tribunal on an application by Ryanair Holdings Plc ('Ryanair') for a review under section 120 of the Enterprise Act ('the 2002 Act') of the decision of the OFT that it was not out of time to consider making a reference to the Competition Commission ('the CC') under section 22 of the 2002 Act in respect of Ryanair's acquisition of a minority shareholding in one of its competitors, Aer Lingus Group Plc ('Aer Lingus').</p> <p>In October 2006 Ryanair launched a public bid for the entire share capital of Aer Lingus. Shortly before and after the announcement of the bid, Ryanair separately acquired a stake in Aer Lingus of 25.2 per cent. In June 2007 the European Commission ('the Commission') decided to block the merger as it would significantly impede effective competition on a number of air routes to and from Dublin airport. Later that year the Commission rejected Aer Lingus's request to require Ryanair to divest its minority stake on the basis that it did not have the power to restore the position that existed prior to the acquisition. Ryanair appealed to the General Court against the Commission's decision prohibiting the merger ('Ryanair Appeal') and Aer Lingus appealed against the Commission's decision not to require Ryanair to divest its minority stake ('Aer Lingus Appeal'). Both appeals were rejected by the General Court in July 2010. The time for appealing the General Court's judgments expired on 17 September 2010.</p> <p>In October 2010 the OFT announced that it had begun a merger investigation under the 2002 Act into the acquisition of Ryanair's minority shareholding. The OFT subsequently agreed to Ryanair's request to consider as a preliminary issue whether the OFT's investigation was out of time. In January 2011 the OFT wrote to Ryanair setting out its view that its investigation was not time-barred under the 2002 Act. The OFT considered that it had been unable to investigate until the applications contained in Ryanair's appeal to the General Court for annulment had been finally determined because of the risk of inconsistent outcomes between any actions taken under the 2002 Act and any action that the EU courts may have required the Commission to take following the Ryanair Appeal and the Aer Lingus Appeal.</p> |

| | Judgment | Tribunal | Subject matter |
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| | | | <p>The Tribunal concluded that the Ryanair Appeal and the Aer Lingus Appeal each gave rise to potential conflicts with a decision taken pursuant to (or with the outcome of) a reference to the CC under section 22 of the 2002 Act, and those potential conflicts were such that the duty of sincere cooperation under Article 10 EC (now Article 4(3) TEU) required the UK merger control authorities to avoid them. In the case of the Aer Lingus Appeal, the potential conflicts also included a risk of infringement of article 21(3) of the Merger Regulation. The Tribunal further held that subsection 122(4) of the 2002 Act is the means provided by Parliament for enabling the OFT to comply with the duty of sincere cooperation and avoid the risk of impermissible conflicts with article 21(3) of the Merger Regulation and/or between decisions taken (or to be taken) under the EU merger control system (including, where relevant, judgments of the EU courts) and decisions of the UK competition authorities, whilst preserving the possibility of a reference under section 22 pending the final resolution of the EU process. For the purposes of subsection 122(4), a reference under section 22 could not have been made earlier than 17 September 2010, and Ryanair was not entitled to any of the relief sought in its Notice of Application.</p> |

| | Judgment | Tribunal | Subject matter |
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| 17 | <p>British Telecommunications Plc (Termination Charges: 080 calls) v Office of Communications Everything Everywhere Limited v Office of Communications (Termination charges: 0845 and 0870 numbers)</p> <p>British Telecommunications Plc v Office of Communications (Termination charges: 0845 and 0870 numbers)</p> <p>[2011] CAT 24</p> <p>1 Aug 2011</p> | <p>Marcus Smith QC (Chairman)</p> <p>Peter Clayton</p> <p>Professor Paul Stoneman</p> | <p>Judgment of the Tribunal in relation to three appeals under section 192 of the 2003 Act, two of which were brought by British Telecommunications ('BT') and one by Everything Everywhere Limited ('EE').</p> <p>The appeals arose out of two decisions of OFCOM in which OFCOM resolved disputes concerning the circumstances in which BT was entitled to vary the termination charges that it required from other communications providers for terminating certain calls to non-geographic numbers on its network ('the Determinations'). In all cases, a number of mobile network operators objected to the termination charges that BT introduced. In each of the Determinations, OFCOM articulated criteria according to which the 'fairness and reasonableness' of BT's new tariffs were to be judged and found that BT's new tariffs could not be shown to have satisfied the criteria. OFCOM therefore concluded that BT was not entitled to introduce the new tariffs that it was seeking to impose.</p> <p>BT contended that OFCOM had misapplied the criteria which it had used in determining whether BT's charges were fair and reasonable. In contrast, EE, while it did not challenge the outcome of the Determinations, contended that OFCOM's criteria had disregarded a basic principle (namely, that BT's prices should have been orientated to its costs or have been 'cost reflective'), and so were unlawful.</p> <p>The Tribunal unanimously held that the notices by which BT sought to vary the termination charges that it required of communications providers ('the NCCNs') were fair and reasonable, and that BT had the right to introduce them. The Tribunal therefore allowed BT's appeal and dismissed EE's appeal against the Determinations.</p> <p>The Tribunal directed that OFCOM should allow the NCCNs to stand, pursuant to section 195(3) of the 2003 Act, and that it should require that the MNOs pay to BT in accordance with section 190(2)(d) of the 2003 Act such amounts as were due under the NCCNs to be calculated in accordance with the terms of the Judgment.</p> |

| | Judgment | Tribunal | Subject matter |
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| 18 | <p>(1) RG Carter Limited (2) RG Carter Building Limited (3) RG Carter Construction Limited (4) RG Holdings Limited v Office of Fair Trading</p> <p>[2011] CAT 25</p> <p>1 Aug 2011</p> | <p>Marcus Smith QC (Chairman)</p> | <p>Judgment on an application for an extension of time under Rule 8(2) of the Tribunal Rules by RG Carter Limited and RG Carter Building Limited ('the Applicants'). By their application, the Applicants sought permission to appeal against an OFT decision concerning bid rigging in the construction industry in England ('the Decision').</p> <p>The Chairman decided that the Applicants had failed to establish any circumstances which could be regarded as exceptional within the meaning of Rule 8(2) of the Tribunal Rules. The exceptional circumstances relied upon by the Applicants amounted to nothing more than the normal decision process that any addressee of a decision goes through when deciding whether or not to appeal. In this case, with the benefit of hindsight, the Applicants wished to change their decision not to appeal the Decision in November 2009 when the time for any appeal had expired. Accordingly, the application was dismissed.</p> |
| 19 | <p>British Telecommunications Plc (Termination Charges: 080 calls) v Office of Communications Everything Everywhere Limited v Office of Communications (Termination charges: 0845 and 0870 numbers) British Telecommunications Plc v Office of Communications (Termination charges: 0845 and 0870 numbers) [2011] CAT 26</p> <p>12 Aug 2011</p> | <p>Marcus Smith QC (Chairman)</p> | <p>Ruling of the Chairman regarding relief consequential to the judgment of the Tribunal dated 1 August 2011 ([2011] CAT 24).</p> |
| 20 | <p>Ryanair Holdings Plc v Office of Fair Trading</p> <p>[2011] CAT 27</p> <p>13 Sep 2011</p> | <p>The President Michael Blair Graham Mather</p> | <p>Ruling of the Tribunal refusing the Applicant permission to appeal the Tribunal's judgment of 28 July 2011 ([2011] CAT 23).</p> |

| | Judgment | Tribunal | Subject matter |
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| 21 | British Telecommunications Plc (Termination Charges: 080 calls) v Office of Communications Everything Everywhere Limited v Office of Communications (Termination charges: 0845 and 0870 numbers) British Telecommunications Plc v Office of Communications (Termination charges: 0845 and 0870 numbers) [2011] CAT 28 3 Oct 2011 | Marcus Smith QC (Chairman) Peter Clayton Professor Paul Stoneman | Ruling of the Tribunal dismissing Telefónica O2 UK Limited's application for a partial stay of the Tribunal's Order of 12 August 2011. |
| 22 | Eden Brown Limited v Office of Fair Trading (1) Hays Plc (2) Hays Specialist Recruitment Limited (3) Hays Specialist Recruitment (Holdings) Limited v Office of Fair Trading [2011] CAT 29 14 Oct 2011 | Mr Justice Roth (Chairman) Michael Davey Dr Vindelyn Smith-Hillman | Judgment of the Tribunal in connection with applications by Hays Plc and Eden Brown Limited for an order that the majority of their costs be paid by the OFT. In respect of Hays' application for costs, the Tribunal concluded that, following a deduction of the costs associated with the instruction of a second leading counsel and an expert accountant, Hays should recover 65 per cent of its remaining costs, such costs to be subject to detailed assessment if not agreed. In respect of Eden Brown's application for costs, the Tribunal concluded that Eden Brown should recover 80 per cent of its costs, such costs to be subject to detailed assessment if not agreed. |
| 23 | 2 Travel Group Plc (in liquidation) v Cardiff City Transport Services Limited [2011] CAT 30 14 Oct 2011 | Lord Carlile , QC (Chairman) | Ruling of the Chairman dismissing an application for security for costs made by the Defendant against the Claimant. |

| | Judgment | Tribunal | Subject matter |
|----|---|---|--|
| 24 | <p>British Telecommunications Plc v Office of Communications (Mobile Call Termination) Everything Everywhere Limited v Office of Communications (Mobile Call Termination) Hutchison 3G (UK) Limited v Office of Communications (Mobile Call Termination) Vodafone Limited v Office of Communications (Mobile Call Termination) [2011] CAT 31</p> <p>17 Oct 2011</p> | <p>Marcus Smith QC (Chairman)</p> | <p>Ruling of the Chairman on an application by Vodafone Limited ('Vodafone') to admit certain of the evidence relied upon by Vodafone before the Competition Commission in its inquiry into matters referred to it by the Tribunal.</p> |
| 25 | <p>(1) G F Tomlinson Building Limited (2) G F Tomlinson Group Limited v Office of Fair Trading (1) G&J Seddon Limited (2) Seddon Group Limited v Office of Fair Trading (1) Interclass Holdings Limited (2) Interclass Plc v Office of Fair Trading Apollo Property Services Group Limited v Office of Fair Trading Galliford Try Plc v Office of Fair Trading</p> <p>[2011] CAT 32 21 Oct 2011</p> | <p>Vivien Rose (Chairman)</p> <p>Sheila Hewitt</p> <p>Graham Mather</p> | <p>Ruling of the Tribunal in connection with applications for costs made by GF Tomlinson Building Limited and GF Tomlinson Group Limited; G&J Seddon Limited and Seddon Group Limited; Interclass Holdings Limited and Interclass Plc; Apollo Property Services Group Limited and Galliford Try Plc.</p> |

| | Judgment | Tribunal | Subject matter |
|----|--|--|--|
| 26 | (1) Kier Group Plc (2) Kier Regional Limited v Office of Fair Trading Ballast Nedam N.V. v Office of Fair Trading (1) Bowmer and Kirkland Limited (2) B&K Property Services Limited v Office of Fair Trading Corringway Conclusions Plc (in liquidation) v Office of Fair Trading (1) Thomas Vale Holdings Limited (2) Thomas Vale Construction Plc v Office of Fair Trading (1) John Sisk & Son Limited (2) Sicon Limited v Office of Fair Trading [2011] CAT 33 21 Oct 2011 | The President Professor Andrew Bain Peter Clayton | Judgment of the Tribunal on applications for costs made by Kier Group Plc and Kier Regional Limited; Ballast Nedam N.V.; Bowmer and Kirkland Limited and B&K Property Services Limited; Corringway Conclusions Plc (in liquidation); Thomas Vale Holdings Limited and Thomas Vale Construction Plc; and John Sisk & Son Limited and Sicon Limited. |
| 27 | (1) Quarmby Construction Company Limited (2) St James Securities Holdings Limited v Office of Fair Trading [2011] CAT 34 21 Oct 2011 | Lord Carlile QC (Chairman) Ann Kelly David Summers | Ruling of the Tribunal on applications for costs made by Quarmby Construction Company Limited and St James Securities Holdings Limited. |
| 28 | British Telecommunications Plc v Office of Communications (Partial Private Circuits) [2011] CAT 35 28 Oct 2011 | Marcus Smith QC (Chairman) Professor Peter Grinyer Richard Prosser | Ruling of the Tribunal in connection with OFCOM's application for its external legal costs. |
| 29 | GMI Construction Holdings Plc and GMI Construction Group Plc v Office of Fair Trading [2011] CAT 36 1 Nov 2011 | The President Dr Adam Scott Marcus Smith QC | Ruling of the Tribunal granting the Appellants' application for costs, such costs to be subject to a detailed assessment on the standard basis by a costs judge of the Senior Courts. |
| 30 | North Midland Construction Plc v Office of Fair Trading [2011] CAT 37 3 Nov 2011 | The President Marcus Smith QC Professor Paul Stoneman | Judgment of the Tribunal in connection with an application by the Appellant for an order that the OFT pay its costs. The Tribunal concluded that the Appellant should recover 75 per cent of its costs and ordered that the OFT pay to the Appellant a lump sum by way of costs. |

| | Judgment | Tribunal | Subject matter |
|----|--|---|---|
| 31 | <p>(1) Barrett Estate Services Limited (2) Francis Construction Limited v Office of Fair Trading (1) Renew Holdings Plc (2) Allenbuild Limited v Office of Fair Trading (1) Robert Woodhead (Holdings) Limited (2) Robert Woodhead Limited v Office of Fair Trading (1) J H Hallam (R&J) Limited (2) J H Hallam (Contracts) Limited v Office of Fair Trading Hobson and Porter Limited v Office of Fair Trading [2011] CAT 38</p> <p>17 Nov 2011</p> | <p>Lord Carlile QC (Chairman)</p> <p>Professor Peter Grinyer</p> <p>Richard Prosser</p> | <p>Ruling of the Tribunal in connection with applications for costs made by Barrett Estate Services Limited and Francis Construction Limited; Renew Holdings Plc and Allenbuild Limited; Robert Woodhead (Holdings) Limited and Robert Woodhead Limited; JH Hallam (R&J) Limited and JH Hallam (Contracts) Limited; and Hobson and Porter Limited.</p> |
| 32 | <p>British Telecommunications Plc (Termination Charges: 080 calls) v Office of Communications Everything Everywhere Limited v Office of Communications (Termination charges: 0845 and 0870 numbers) British Telecommunications Plc v Office of Communications (Termination charges: 0845 and 0870 numbers) [2011] CAT 39</p> <p>18 Nov 2011</p> | <p>Marcus Smith QC (Chairman)</p> <p>Peter Clayton</p> <p>Professor Paul Stoneman</p> | <p>Ruling of the Tribunal in connection with applications by Telefónica O2 UK Limited ('O2) and, jointly, Everything Everywhere Limited ('EE'), Hutchison 3G UK Limited ('H3G') and Vodafone Limited ('Vodafone') for permission to appeal the Tribunal's judgment of 1 August 2011 ('the Judgment') ([2011] CAT 24).</p> <p>For the reasons set out in the Ruling, the Tribunal granted O2, EE, H3G and Vodafone permission to appeal the Judgment on the sole issue of the approach taken by the Tribunal in weighing the factors that it found to be relevant so as to conclude that the notices by which BT sought to vary the termination charges that it required of communications providers were fair and reasonable (the issue considered in Section M of the Judgment). On all other points, the applications were refused by the Tribunal.</p> |
| 33 | <p>Crest Nicholson Plc v Office of Fair Trading ISG Pearce Limited v Office of Fair Trading [2011] CAT 40</p> <p>1 Dec 2011</p> | <p>Lord Carlile QC (Chairman)</p> <p>Ann Kelly</p> <p>Dr Arthur Pryor</p> | <p>Ruling of the Tribunal in connection with applications for costs made by Crest Nicholson Plc and ISG Pearce Limited.</p> |

| | Judgment | Tribunal | Subject matter |
|----|---|---|---|
| 34 | <p>(1) Imperial Tobacco Group Plc (2) Imperial Tobacco Limited v Office of Fair Trading Co-operative Group Limited v Office of Fair Trading Wm Morrison Supermarkets Plc v Office of Fair Trading (1) Safeway Stores Limited (2) Safeway Limited v Office of Fair Trading (1) Asda Stores Limited (2) Asda Group Limited (3) Wal-Mart Stores (UK) Limited (4) Broadstreet Great Wilson Europe Limited v Office of Fair Trading (1) Shell U.K. Limited (2) Shell U.K. Oil Products Limited (3) Shell Holdings (U.K.) Limited v Office of Fair Trading [2011] CAT 41</p> <p>12 Dec 2011</p> | <p>Vivien Rose (Chairman)</p> <p>Dr Adam Scott</p> <p>David Summers</p> | <p>Judgment of the Tribunal in connection with the issue of whether the appeals against the OFT's decision of 15 April 2010 (the Decision) should be brought to an end, following the adjournment of the main hearing on 3 November 2011.</p> <p>During the hearing of the appeals, the OFT had provided a written statement, in which it stated that it now intended to contest the appeals in relation to each of the 15 infringing agreements identified in the Decision that were the subject of the appeals (the Infringing Agreements) on the basis of a refined case. The OFT said that the restraints set out in its refined case reflected part but not the whole of the Decision and the appeals could and should proceed on that basis. The OFT also argued that if the Tribunal disagreed with that submission, the appeals could nonetheless proceed by reference to the Tribunal's powers under paragraph 3 of Schedule 8 to the 1998 Act. The OFT did not consider that any additional factual evidence was required in order to decide the case but accepted that the refined case would need to be put to economists due to be called as expert witnesses.</p> <p>A hearing was held on 17 and 18 November 2011 at which the Tribunal heard submissions on whether the proceedings should be allowed to continue.</p> <p>In its judgment the Tribunal concluded that:</p> <ul style="list-style-type: none"> ■ the restraints that the OFT was now wishing to prove were not part of, or within the Infringing Agreements condemned in the Decision; ■ the Tribunal did not, therefore, have jurisdiction to continue to hear the appeals for the purpose of exercising its powers under paragraph 3(2) of Schedule 8 to the 1998 Act on setting aside the Decision; ■ and if the Tribunal did have such jurisdiction, it would exercise its discretion against continuing these appeals. <p>The Tribunal therefore allowed the appeals and quashed the Decision in relation to the Appellants.</p> |

| | Judgment | Tribunal | Subject matter |
|----|---|---|---|
| 35 | Albion Water Limited v Dŵr Cymru Cyfyngedig [2011] CAT 42 16 Dec 2011 | Vivien Rose (Chairman) | Ruling of the Chairman on the Defendant's application for a direction that no disclosure was required in respect of the allegations made in certain passages of the amended particulars of claim. The Chairman concluded that the just and expeditious conduct of the claim would best be achieved if the Defendant were to disclose any documents created before 7 November 2008 in which there was discussion about the formulation of the First Access Price or regarding the possible revision of the access price to be offered to the Claimant. Disclosure was not required (other than of documents already disclosed in the Defendant's disclosure statement) in relation to matters alleged in certain paragraphs of the amended particulars of claim. In addition to making directions to give effect to the Ruling, the Chairman reset the timetable for the future conduct of the claim. |
| 36 | (1) Quarmby Construction Company Limited (2) St James Securities Holdings Limited v Office of Fair Trading [2011] CAT 43 19 Dec 2011 | Lord Carlile QC (Chairman) Ann Kelly David Summers | Ruling of the Tribunal dismissing the Appellants' application for permission to appeal the Tribunal's ruling on costs. |
| 37 | 2 Travel Group Plc (in liquidation) v Cardiff City Transport Services Limited [2011] CAT 44 20 Dec 2011 | Lord Carlile QC (Chairman) Peter Freeman Marcus Smith QC | Ruling of the Tribunal concerning the admissibility of certain witness evidence. |
| 38 | Everything Everywhere Limited v Office of Communications (Termination charges: 0845 and 0870 numbers) [2011] CAT 45 21 Dec 2011 | Marcus Smith QC (Chairman) Peter Clayton Professor Paul Stoneman | Ruling of the Tribunal in connection with an application by OFCOM for payment of its external legal costs of the proceedings. |

| | Judgment | Tribunal | Subject matter |
|----|--|--|---|
| 39 | <p>TalkTalk Telecom Group Plc (Wholesale Broadband Access Charge Control) v Office of Communications [2012] CAT 1</p> <p>10 Jan 2012</p> | <p>Marcus Smith QC (Chairman)</p> <p>Dr Clive Elphick Jonathan May</p> | <p>Judgment of the Tribunal dismissing TalkTalk Telecom Group Plc's ('the Appellant') appeal against a determination made by OFCOM contained in a document dated 20 July 2011 and entitled 'WBA Charge Control – Charge Control framework for WBA Market 1 Services Statement' ('the WBA Charge Control Decision').</p> <p>The main issues addressed in the judgment were the Appellant's contentions that OFCOM had erred procedurally in failing to take proper steps to satisfy itself that there had been a material change within the meaning of section 86(1)(b) of the 2003 Act (Ground A), and that OFCOM's decision that there had been no material change within the meaning of section 86(1)(b) was, in substance, wrong (Ground B).</p> <p>The Tribunal held that OFCOM had reached the correct decision when it concluded, in the WBA Charge Control Decision, that there had been no material change within the meaning of section 86(1)(b) of the 2003 Act between the date of the earlier WBA Market Power Determination and the WBA Charge Control Decision. The Tribunal therefore rejected the Appellant's Ground B.</p> <p>The Tribunal also held that where, as in this case, there is a full rehearing by the Tribunal of an issue initially determined by OFCOM and the Appellant's case has received 'overall, full and fair consideration' that will, in general, dispose of a challenge based upon deficiencies or alleged deficiencies in OFCOM's procedure. In the Tribunal's view this was the short answer to the Appellant's Ground A.</p> |
| 40 | <p>Telefónica UK Limited v Office of Communications [2012] CAT 2</p> <p>25 Jan 2012</p> | <p>Mr Justice Henderson (Chairman)</p> | <p>Reasoned Order of the Chairman in relation to the form of confidentiality undertakings to be given by in-house lawyers.</p> |

| | Judgment | Tribunal | Subject matter |
|----|--|--|--|
| 41 | <p>BAA Limited v Competition Commission</p> <p>[2012] CAT 3</p> <p>1 Feb 2012</p> | <p>Mr Justice Sales (Chairman)</p> <p>William Allan</p> <p>Joanne Stuart</p> | <p>Judgment of the Tribunal in connection with an application by BAA Limited ('BAA') for review of a decision by the Competition Commission ('CC') dated 19 July 2011 ('the 2011 report'). The 2011 report had been issued by the CC following its consultation on whether there had been any material change of circumstances ('MCC') that, pursuant to section 138(2) of the Enterprise Act 2002, was such as to justify a departure from the remedies that had been decided on by the CC in its report of 19 March 2009 on the supply of airport services by BAA in the United Kingdom ('the 2009 report').</p> <p>Having considered the legal framework, and each of the 2009 report and the 2011 report, the Tribunal dismissed BAA's application, concluding in particular that:</p> <ul style="list-style-type: none"> ■ In relation to BAA's first ground of challenge (improper assessment), the CC had been entitled to conclude, on the basis of the analysis in the 2009 report and the 2011 report, that an adverse effect on competition ('AEC') with very substantial impact arose from the common ownership by BAA of Heathrow, Gatwick and Stansted (as at 2009) and from the common ownership of Heathrow and Stansted (as at 2011). Further, the CC had been entitled to form the view that the constrained capacity benefits (that is, the benefits arising even if there were no expansion or expectation of expansion in runway capacity in the south east) identified in the 2011 report were real and significant, and significantly outweighed the costs to BAA of divestment, such that a requirement of divestiture was a proportionate remedy. The Tribunal concluded that there was no failure of proper investigation by the CC in respect of any of these matters. ■ In relation to BAA's second ground of challenge (failure to examine the reasons for the increase in Stansted's spare capacity in 2011), the Tribunal concluded that the increase in capacity at Stansted since 2009 had been an additional point noted by the CC in the 2011 report, but it had not relied upon it when making its assessment that the constrained capacity benefits outweighed the costs to BAA. ■ In relation to BAA's third ground of challenge (defective comparison of airport profitability), the CC had been entitled to conclude that the fall in profitability at Stansted did not constitute an MCC, and the CC's assessment in that regard had fallen well within its margin of appreciation or evaluative discretion. |

| | Judgment | Tribunal | Subject matter |
|----|--|--|--|
| | | | <ul style="list-style-type: none"> ■ In relation to BAA's fourth ground of challenge (improper assessment of the costs of divestment), the Tribunal concluded that it was not open to BAA to seek to introduce (on this review) submission and evidence regarding a new head of alleged loss, having failed to present the CC with any contentions or evidence regarding this alleged head of loss at the relevant time. Further, where the CC concludes after a market investigation that a company must divest itself of a business in order to remedy an AEC, there is no further complaint that can properly be made that the action of the CC is disproportionate. ■ In relation to BAA's fifth ground of challenge (alleged failure by the CC to understand representations made by the Civil Aviation Authority), the Tribunal concluded that the CC was entitled to read these representations as referring to capacity constrained benefits, and to accept and rely on them in the way that it did. |
| 42 | 2 Travel Group Plc (in liquidation) v Cardiff City Transport Services Limited [2012] CAT 4 1 Mar 2012 | Lord Carlile QC (Chairman) Peter Freeman Marcus Smith QC | Ruling of the Tribunal granting the Claimant's application to amend its Claim Form and the Defendant's application for specific disclosure. |
| 43 | BAA Limited v Competition Commission [2012] CAT 5 12 Mar 2012 | Mr Justice Sales (Chairman) William Allan Joanne Stuart | Order of the Tribunal refusing BAA Limited's application for permission to appeal the Tribunal's judgment of 1 February 2012 ([2012] CAT 3). |
| 44 | (1) Tesco Stores Limited (2) Tesco Holdings Limited (3) Tesco Plc v Office of Fair Trading [2012] CAT 6 20 Mar 2012 | Lord Carlile QC (Chairman) | <p>Judgment of the Tribunal on an application by the OFT for disclosure of documents and information relating to Tesco's contacts with potential witnesses during the administrative procedure. The documents sought included all records and/or notes of and in relation to all contacts between Tesco and certain employees of the dairy processors, Dairy Crest and Lactalis McLelland.</p> <p>The Tribunal held that disclosure should not be ordered since the documents sought were neither necessary nor proportionate to the issues before the Tribunal in this appeal. The Tribunal further held that the documents in question were subject to litigation privilege and that privilege had not been waived.</p> |
| 45 | 2 Travel Group Plc (in liquidation) v Cardiff City Transport Services Limited [2012] CAT 7 16 Mar 2012 | Lord Carlile QC (Chairman) Peter Freeman Marcus Smith QC | Ex tempore ruling delivered by the Tribunal on day 5 of the hearing, following an application by the Claimant. |

| | Judgment | Tribunal | Subject matter |
|----|---|--|--|
| 46 | TalkTalk Telecom Group Plc (Wholesale Broadband Access Charge Control) v Office of Communications [2012] CAT 8 21 Mar 2012 | Marcus Smith QC (Chairman) Dr Clive Elphick Jonathan May | Ruling of the Tribunal dismissing TalkTalk's application for permission to appeal the Tribunal's Judgment of 10 January 2012 ([2012] CAT 1). |
| 47 | (1) Tesco Stores Limited (2) Tesco Holdings Limited (3) Tesco Plc v Office of Fair Trading [2012] CAT 9 23 Mar 2012 | Lord Carlile QC (Chairman) | Order of the Chairman on the sequence of opening submissions and allocation of time for cross-examination at the main hearing. |

Activity by Case within the period 1 April 2011 to 31 March 2012

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|---|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|---|
| Emerson Electric Co and Others v Morgan Crucible Company Plc Case: 1077/5/7/07 9 Feb 2007 | 06-07 | | | | | | | | This case was stayed from April to December 2009 pending judgment of the European Court of Justice. An appeal in respect of the Tribunal's judgment ([2011] CAT 4) is pending before the Court of Appeal. |
| | 07-08 | | 1 | 3 | 4 | 2 | | | |
| | 08-09 | | | | | 2 | | | |
| | 09-10 | | | | | | | | |
| | 10-11 | | | 1 | 1 | 1 | | | |
| | 11-12 | | | | | 1 | 1 | Ongoing | |

| Comments | Status at 31 March 2012 | Requests for permission to appeal | Date of judgment(s) on the main issues (and months from registration to judgment) | Judgments (including interlocutory rulings and final judgments) | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Case management conferences | Applications to intervene | Year (1 April to 31 March) | Case name, number and date registered |
|----------|-------------------------|-----------------------------------|--|---|--|-----------------------------|---------------------------|----------------------------|---|
| | | | | 1 | | 1 | | 09-10 | (1) Kier Group Plc (2) Kier Regional Limited v Office of Fair Trading Case: 1114/1/1/09 10 Nov 2009 |
| | | | 11 Mar 2011 | 1 | 0.5 | 1 | | 10-11 | |
| | Closed | | | | 1 | | | 11-12 | |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|--|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|--|
| Crest Nicholson Plc v Office of Fair Trading Case: 1115/1/1/09 18 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) The two judgments noted in this case also relate to ISG Pearce Limited (Case: 1126/1/1/09). |
| | 10-11 | | | 1 | 0.5 | | | | |
| | 11-12 | | | | | 2 | 15 Apr 2011 | Closed | |
| (1) G F Tomlinson Building Limited (2) G F Tomlinson Group Limited v Office of Fair Trading Case: 1117/1/1/09 18 Nov 2009 | 09-10 | | | | | | | | (1) See note to (1) Kier Group Plc (Case: 1114/1/1/09). (2) The judgment of 24 March 2011 also relates to five other cases listed below: Sol Construction Limited (Case: 1123/1/1/09); G&J Seddon Limited (Case: 1134/1/1/09); Interclass Holdings Limited (Case: 1135/1/1/09); Apollo Property Services Group Limited (Case: 1138/1/1/09); Galliford Try Plc (Case: 1139/1/1/09). (3) The judgment noted in 2011-12 related to costs in this case and in: G&J Seddon Limited (Case: 1134/1/1/09); Interclass Holdings Limited (Case: 1135/1/1/09); Apollo Property Services Group Limited (Case: 1138/1/1/09); and Galliford Try Plc (Case: 1139/1/1/09). |
| | 10-11 | | | 1 | 0.5 | 1 | 24 Mar 2011 | | |
| | 11-12 | | | | | 1 | | Closed | |
| (1) GMI Construction Holdings Plc (2) GMI Construction Group Plc v Office of Fair Trading Case: 1118/1/1/09 20 Nov 2009 | 09-10 | | | | | | | | See note (1) to Kier Group Plc (Case: 1114/1/1/09). |
| | 10-11 | | | 1 | 2 | | | | |
| | 11-12 | | | | | 2 | 27 Apr 2011 | Closed | |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|---|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|--|
| Ballast Nedam N.V. v Office of Fair Trading Case: 1119/1/1/09 20 Nov 2009 | 09-10 | | | | | | | | See notes (1), (2) and (3) to Kier Group Plc (Case: 1114/1/1/09). |
| | 10-11 | | 1 | 0.5 | | | | | |
| | 11-12 | | | | | | Closed | | |
| (1) Quarmby Construction Company Limited (2) St James Securities Holdings Limited v Office of Fair Trading Case: 1120/1/1/09 20 Nov 2009 | 09-10 | | | | | | | | See note (1) to Kier Group Plc (Case: 1114/1/1/09). On 9 March 2012 the Court of Appeal granted the Appellants permission to appeal the Tribunal's ruling on costs ([2011] CAT 34). |
| | 10-11 | | 1 | 2 | | | | | |
| | 11-12 | | 1 | 1 | 3 | 15 Apr 2011 | 1 | Closed | |
| (1) Durkan Holdings Limited (2) Durkan Limited (3) Concentra Limited (formerly known as Durkan Pudelek Limited) v Office of Fair Trading Case: 1121/1/1/09 20 Nov 2009 | 09-10 | | | | | | | | See note (1) to Kier Group Plc (Case: 1114/1/1/09). |
| | 10-11 | | 2 | 6 | 3 | 22 Mar 2011 | | | |
| | 11-12 | | | | 1 | | | Closed | |
| AH Willis & Sons Limited v Office of Fair Trading Case: 1122/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | See note (1) to Kier Group Plc (Case: 1114/1/1/09). |
| | 10-11 | | 1 | 0.5 | | | | | |
| | 11-12 | | | | 1 | 27 Apr 2011 | | Closed | |
| (1) Sol Construction Limited (2) Barkbury Limited v Office of Fair Trading Case: 1123/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See note (2) to G F Tomlinson Building Limited (Case: 1117/1/1/09). |
| | 10-11 | | 1 | 0.5 | | | | | |
| | 11-12 | | | | | | | Closed | |
| North Midland Construction Plc v Office of Fair Trading Case: 1124/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | See note (1) to Kier Group Plc (Case: 1114/1/1/09). |
| | 10-11 | | 1 | 0.5 | | | | | |
| | 11-12 | | | | 2 | 27 Apr 2011 | | Closed | |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|---|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|--|
| (1) Barrett Estate Services Limited (2) Francis Construction Limited v Office of Fair Trading Case: 1125/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) The judgment of 15 April 2011 also relates to: GAJ Construction Limited (Case:1128/1/1/09); Renew Holdings Plc (Case: 1130/1/1/09); Robert Woodhead (Holdings) Limited (Case: 1131/1/1/09); J H Hallam (R&J) Limited (Case: 1136/1/1/09); Hobson and Porter Limited (Case: 1137/1/1/09). (3) The other judgment noted here related to costs in this case and in Renew Holdings Plc (Case: 1130/1/1/09); Robert Woodhead (Holdings) Limited (Case: 1131/1/1/09); J H Hallam (R&J) Limited (Case: 1136/1/1/09); and Hobson and Porter Limited (Case: 1137/1/1/09). |
| | 10-11 | | 1 | 0.5 | | | | | |
| | 11-12 | | | | 2 | 15 Apr 2011 | | Closed | |
| ISG Pearce Limited v Office of Fair Trading Case: 1126/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See note (2) to Crest Nicholson Plc (Case: 1115/1/1/09). |
| | 10-11 | 1 | | 1 | 1.5 | | | | |
| | 11-12 | | | | | | | Closed | |
| (1) Bowmer and Kirkland Limited (2) B&K Property Services Limited v Office of Fair Trading Case: 1127/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | See notes (1), (2) and (3) to Kier Group Plc (Case: 1114/1/1/09). |
| | 10-11 | | | 1 | 0.5 | | | | |
| | 11-12 | | | | | | | Closed | |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|---|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|---|
| (1) GAJ Construction Limited (2) GAJ (Holdings) Limited v Office of Fair Trading Case: 1128/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See note (2) to Barrett Estate Services Limited (Case: 1125/1/1/09). |
| | 10-11 | | 1 | 0.5 | | | | | |
| | 11-12 | | | | | | Closed | | |
| Corringway Conclusions Plc (in liquidation) v Office of Fair Trading Case: 1129/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | See notes (1), (2) and (3) to Kier Group Plc (Case: 1114/1/1/09). |
| | 10-11 | | 1 | 0.5 | | | | | |
| | 11-12 | | | | | | Closed | | |
| (1) Renew Holdings Plc (2) Allenbuild Limited v Office of Fair Trading Case: 1130/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See notes (2) and (3) to Barrett Estate Services Limited (Case: 1125/1/1/09). |
| | 10-11 | | 1 | 0.5 | | | | | |
| | 11-12 | | | | | | Closed | | |
| (1) Robert Woodhead (Holdings) Limited (2) Robert Woodhead Limited v Office of Fair Trading Case: 1131/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See notes (2) and (3) to Barrett Estate Services Limited (Case: 1125/1/1/09). |
| | 10-11 | | 1 | 0.5 | | | | | |
| | 11-12 | | | | | | Closed | | |
| (1) Thomas Vale Holdings Limited (2) Thomas Vale Construction Plc v Office of Fair Trading Case: 1132/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | See notes (1), (2) and (3) to Kier Group Plc (Case: 1114/1/1/09). |
| | 10-11 | | 1 | 0.5 | | | | | |
| | 11-12 | | | | | | Closed | | |
| (1) John Sisk & Son Limited (2) Sicon Limited v Office of Fair Trading Case: 1133/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | See notes (1), (2) and (3) to Kier Group Plc (Case: 1114/1/1/09). |
| | 10-11 | | 1 | 0.5 | | | | | |
| | 11-12 | | | | | | Closed | | |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|--|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|--|
| (1) G&J Seddon Limited (2) Seddon Group Limited v Office of Fair Trading Case: 1134/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See notes (2) and (3) to G F Tomlinson (Building) Limited (Case: 1117/1/1/09). |
| | 10-11 | | | 1 | 0.5 | | | | |
| | 11-12 | | | | | | | Closed | |
| (1) Interclass Holdings Limited (2) Interclass Plc v Office of Fair Trading Case: 1135/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See notes (2) and (3) to G F Tomlinson (Building) Limited (Case: 1117/1/1/09). On 25 January 2012 the Court of Appeal granted the Appellants permission to appeal the Tribunal's judgment ([2011] CAT 7). |
| | 10-11 | | | 1 | 0.5 | | | | |
| | 11-12 | | | | | 1 | 1 | Closed | |
| (1) J H Hallam (R&J) Limited (2) J H Hallam (Contracts) Limited v Office of Fair Trading Case: 1136/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See notes (2) and (3) to Barrett Estate Services Limited (Case: 1125/1/1/09). |
| | 10-11 | | | 1 | 0.5 | | | | |
| | 11-12 | | | | | | | Closed | |
| Hobson and Porter Limited v Office of Fair Trading Case: 1137/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See notes (2) and (3) to Barrett Estate Services Limited (Case: 1125/1/1/09). |
| | 10-11 | | | 1 | 0.5 | | | | |
| | 11-12 | | | | | | | Closed | |
| Apollo Property Services Group Limited v Office of Fair Trading Case: 1138/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See notes (2) and (3) to G F Tomlinson (Building) Limited (Case: 1117/1/1/09). |
| | 10-11 | | | 1 | 0.5 | | | | |
| | 11-12 | | | | | | | Ongoing | |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|---|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|--|
| Galliford Try Plc v Office of Fair Trading Case: 1139/1/1/09 23 Nov 2009 | 09-10 | | | | | | | | (1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See notes (2) and (3) to G F Tomlinson (Building) Limited (Case: 1117/1/1/09). |
| | 10-11 | | 1 | 0.5 | | | | | |
| | 11-12 | | | | | | | Ongoing | |
| Eden Brown Limited v Office of Fair Trading Case: 1140/1/1/09 30 Nov 2009 | 09-10 | | 1 | | | | | | This case was heard concurrently with CDI AndersElite Limited (Case: 1141/1/1/09) and Hays Plc (Case: 1142/1/1/09) and the judgment of 1 April 2011 related to all three cases. |
| | 10-11 | | | 1 | 4 | | | | |
| | 11-12 | | | | | 2 | 1 Apr 2011 | Closed | |
| (1) CDI AndersElite Limited (2) CDI Corp v Office of Fair Trading Case: 1141/1/1/09 30 Nov 2009 | 09-10 | | | | | | | | See note (1) to Eden Brown Limited (Case: 1140/1/1/09). |
| | 10-11 | | | | | | | | |
| | 11-12 | | | | | | | Closed | |
| (1) Hays Plc (2) Hays Specialist Recruitment Limited (3) Hays Specialist Recruitment (Holdings) Limited v Office of Fair Trading Case: 1142/1/1/09 30 Nov 2009 | 09-10 | | | | | | | | (1) This case was heard concurrently with Eden Brown Limited (Case: 1140/1/1/09) and CDI AndersElite Limited (Case: 1141/1/1/09). See note (1) to Eden Brown Limited. (2) The hearing noted in 2011-12 related to costs. |
| | 10-11 | | | | | | | | |
| | 11-12 | | | 1 | 1 | | | Closed | |
| British Telecommunications Plc v Office of Communications (Partial Private Circuits) Case: 1146/3/3/09 14 Dec 2009 | 09-10 | 5 | 1 | | | | | | |
| | 10-11 | | | 2 | 8 | 3 | 22 Mar 2011 | | |
| | 11-12 | | | | | 2 | | 1 Closed | |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|--|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|----------|
| Moy Park Limited (2) Facedna Group Limited (3) GW Padley Poultry Limited (4) O'Kane Poultry Limited v (1) Evonik Degussa GmbH (2) Degussa Limited Case: 1147/5/7/09 22 Dec 2009 | 09-10 | | | | | | | | |
| | 10-11 | | | 1 | 0.5 | | | | |
| | 11-12 | | | | | | | Closed | |
| British Telecommunications Plc (Termination Charges: 080 calls) v Office of Communications Case: 1151/3/3/10 6 Apr 2010 | 10-11 | 5 | 2 | 1 | 2 | 3 | | 2 | |
| | 11-12 | | | 1 | 11 | 5 | 1 Aug 2011 | 2 | Closed |
| British Sky Broadcasting Limited v Office of Communications (Interim relief) Case: 1152/8/3/10 (IR) 16 Apr 2010 | 10-11 | | | 2 | 5.5 | 1 | | | |
| | 11-12 | | | | | | | | Ongoing |
| Marshall Food Group Limited and Others v (1) Evonik Degussa GmbH (2) Degussa Limited Case: 1153/5/7/10 21 May 2010 | 10-11 | | 1 | | | | | | |
| | 11-12 | | | | | | | | Closed |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|--|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|--|
| Top Up TV Europe Limited v Office of Communications Case: 1155/3/3/10 27 May 2010 | 10-11 | 3 | | | | | | | |
| | 11-12 | | | | | | Stayed | | |
| Virgin Media, Inc. v Office of Communications Case: 1156/8/3/10 28 May 2010 | 10-11 | 12 | 2 | 1 | 1 | 1 | | | This case is being heard concurrently with: The Football Association Premier League Limited (Case: 1157/8/3/10); British Sky Broadcasting Limited (Case: 1158/8/3/10); British Telecommunications Plc (Case: 1159/8/3/10); British Sky Broadcasting Limited (Linear-only Set Top Boxes) (Case: 1170/8/3/10); and British Sky Broadcasting Limited (Conditional Access Modules) (Case: 1179/8/3/11). Figures for case management conferences, hearings and judgments have been recorded against this case only. |
| | 11-12 | | | 1 | 37 | | | Ongoing | |
| The Football Association Premier League Limited v Office of Communications Case: 1157/8/3/10 1 Jun 2010 | 10-11 | 12 | | | | | | | See the note to Virgin Media, Inc. (Case: 1156/8/3/10). |
| | 11-12 | | | | | | Ongoing | | |
| British Sky Broadcasting Limited v Office of Communications Case: 1158/8/3/10 1 Jun 2010 | 10-11 | 12 | | | | | | | See the note to Virgin Media, Inc. (Case: 1156/8/3/10). |
| | 11-12 | | | | | | Ongoing | | |
| British Telecommunications Plc v Office of Communications Case: 1159/8/3/10 1 Jun 2010 | 10-11 | 12 | | | | | | | See the note to Virgin Media, Inc. (Case: 1156/8/3/10). |
| | 11-12 | | | | | | Ongoing | | |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|--|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|---|
| (1) Imperial Tobacco Group Plc (2) Imperial Tobacco Limited v Office of Fair Trading Case: 1160/1/1/10 15 Jun 2010 | 10-11 | 1 | 1 | | 2 | | | | This case was heard together with: Co-operative Group Limited (Case: 1161/1/1/10); Wm Morrison Supermarkets Plc (Case: 1162/1/1/10); Safeway Stores Limited (Case: 1163/1/1/10); Asda Stores Limited (Case: 1164/1/1/10); and Shell U.K. Limited (Case: 1165/1/1/10). These cases are ongoing with regard to costs. |
| | 11-12 | | 2 | 1 | 29 | 1 | 12 Dec 2011 | Ongoing | |
| Co-operative Group Limited v Office of Fair Trading Case: 1161/1/1/10 16 Jun 2010 | 10-11 | | | | | | | | See the note to Imperial Tobacco Group Plc (Case: 1160/1/1/10). |
| | 11-12 | | | | | | | Ongoing | |
| Wm Morrison Supermarkets Plc v Office of Fair Trading Case: 1162/1/1/10 16 Jun 2010 | 10-11 | | | | 1 | | | | (1) See the note to Imperial Tobacco Group Plc (Case: 1160/1/1/10). (2) The judgment recorded here concerned disclosure of documents and also relates to Safeway Stores Limited (Case: 1163/1/1/10). |
| | 11-12 | | | | | | | Ongoing | |
| (1) Safeway Stores Limited (2) Safeway Limited v Office of Fair Trading Case: 1163/1/1/10 16 Jun 2010 | 10-11 | | | | | | | | (1) See the note to Imperial Tobacco Group Plc (Case: 1160/1/1/10). (2) See note (2) to Wm Morrison Supermarkets Plc (Case: 1162/1/1/10). |
| | 11-12 | | | | | | | Ongoing | |
| (1) Asda Stores Limited (2) Asda Group Limited (3) Wal-Mart Stores (UK) Limited (4) Broadstreet Great Wilson Europe Limited v Office of Fair Trading Case: 1164/1/1/10 16 Jun 2010 | 10-11 | | | | 1 | | | | See the note to Imperial Tobacco Group Plc (Case: 1160/1/1/10). |
| | 11-12 | | | | | | | Ongoing | |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|---|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|--|
| (1) Shell U.K. Limited (2) Shell U.K. Oil Products Limited (3) Shell Holdings (U.K.) Limited v Office of Fair Trading Case: 1165/1/1/10 16 Jun 2010 | 10-11 | | | | | | | | See the note to Imperial Tobacco Group Plc (Case: 1160/1/1/10). |
| | 11-12 | | | | | | Ongoing | | |
| Albion Water Limited v Dŵr Cymru Cyfyngedig Case: 1166/5/7/10 18 Jun 2010 | 10-11 | | 1 | 1 | 2 | | | | |
| | 11-12 | 1 | | | 2 | | | Ongoing | |
| Everything Everywhere Limited v Office of Communications (Termination rates: Stour Marine) Case: 1167/3/3/10 11 Aug 2010 | 10-11 | 1 | | | | | | | |
| | 11-12 | | | | | | | Withdrawn | |
| Everything Everywhere Limited v Office of Communications (Termination charges: 0845 and 0870 numbers) Case: 1168/3/3/10 11 Oct 2010 | 10-11 | 5 | | | | | | | This case was heard and decided concurrently with British Telecommunications Plc (Termination Charges: 080 calls) (Case: 1151/3/3/10) and British Telecommunications Plc (Termination charges: 0845 and 0870 numbers) (Case: 1169/3/3/10). |
| | 11-12 | | | | | | | Closed | |
| British Telecommunications Plc v Office of Communications (Termination charges: 0845 and 0870 numbers) Case: 1169/3/3/10 11 Oct 2010 | 10-11 | 5 | | | | | | | This case was heard and decided concurrently with British Telecommunications Plc (Termination Charges: 080 calls) (Case: 1151/3/3/10) and Everything Everywhere Limited (Termination charges: 0845 and 0870 numbers) (Case: 1168/3/3/10). |
| | 11-12 | | | | | | | Closed | |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|---|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|---|
| British Sky Broadcasting Limited v Office of Communications (Linear-only Set Top Boxes) Case: 1170/8/3/10 11 Oct 2010 | 10-11 | 4 | | | | | | | This case is being heard concurrently with Virgin Media, Inc. (Case: 1156/8/3/10) and associated cases. |
| | 11-12 | | | | | | | Ongoing | |
| British Telecommunications Plc (Termination charges: 080 calls, NCCN 1007) v Office of Communications Case: 1171/3/3/10 11 Nov 2010 | 10-11 | 5 | | 1 | 2 | | | | This case was heard concurrently with British Telecommunications Plc (Ethernet Extension Services) (Case: 1172/3/3/10). |
| | 11-12 | | | | | 1 | 3 May 2011 | Closed | |
| British Telecommunications Plc v Office of Communications (Ethernet Extension Services) Case: 1172/3/3/10 15 Nov 2010 | 10-11 | 5 | | | | | | | This case was heard concurrently with British Telecommunications Plc (Termination charges: 080 calls, NCCN 1007) (Case: 1171/3/3/10). |
| | 11-12 | | | | | | | Closed | |
| Deutsche Bahn AG and Others v Morgan Crucible Company Plc and Others Case: 1173/5/7/10 15 Dec 2010 | 10-11 | | | | | | | | This case is stayed pending the determination by the Court of Appeal of the Claimant's appeal against the Tribunal's judgment of 25 May 2011 ([2011] CAT 16). |
| | 11-12 | | | 1 | 1 | 2 | 1 | Stayed | |
| Ryanair Holdings Plc v Office of Fair Trading Case: 1174/4/1/11 7 Jan 2011 | 10-11 | | | 1 | 2 | | | | |
| | 11-12 | | | | | 2 | 28 Jul 2011 | 1 Closed | |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments |
|--|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|--|
| D H Francis v Cardiff City Transport Services Limited Case: 1175/5/7/11 14 Jan 2011 | 10-11 | | | | | | | | This case is stayed pending the Tribunal's determination in 2 Travel Group Plc (in liquidation) v Cardiff City Transport Services Limited (Case: 1178/5/7/11). |
| | 11-12 | | | | | | Stayed | | |
| D B Fowles v Cardiff City Transport Services Limited Case: 1176/5/7/11 14 Jan 2011 | 10-11 | | | | | | | | This case is stayed pending the Tribunal's determination in 2 Travel Group Plc (in liquidation) v Cardiff City Transport Services Limited (Case: 1178/5/7/11). |
| | 11-12 | | | | | | Stayed | | |
| N V Short v Cardiff City Transport Services Limited Case: 1177/5/7/11 14 Jan 2011 | 10-11 | | | | | | | | This case is stayed pending the Tribunal's determination in 2 Travel Group Plc (in liquidation) v Cardiff City Transport Services Limited (Case: 1178/5/7/11). |
| | 11-12 | | | | | | Stayed | | |
| 2 Travel Group Plc (in liquidation) v Cardiff City Transport Services Limited Case: 1178/5/7/11 18 Jan 2011 | 10-11 | | | | | | | | The main hearing in this case took place in Cardiff between 12-23 March 2012. |
| | 11-12 | 3 | 1 | 9 | 4 | | Ongoing | | |
| British Sky Broadcasting Limited v Office of Communications (Conditional Access Modules) Case: 1179/8/3/11 14 Feb 2011 | 10-11 | 4 | | | | | | | See the note at Virgin Media, Inc. (Case: 1156/8/3/10). |
| | 11-12 | | | | | | Ongoing | | |

| Comments | Status at 31 March 2012 | Requests for permission to appeal | Date of judgment(s) on the main issues (and months from registration to judgment) | Judgments (including interlocutory rulings and final judgments) | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Case management conferences | Applications to intervene | Year (1 April to 31 March) | Case name, number and date registered |
|-----------------|--------------------------------|--|--|--|---|------------------------------------|----------------------------------|-----------------------------------|---|
| | Ongoing | | | 1 | | 3 | 5 | 11-12 | British Telecommunications Plc (Mobile Call Termination) v Office of Communications Case: 1180/3/3/11 16 May 2011 |
| | Ongoing | | | | | | | 11-12 | Everything Everywhere Limited v Office of Communications (Mobile Call Termination) Case: 1181/3/3/11 16 May 2011 |
| | Ongoing | | | | | | | 11-12 | Hutchison 3G (UK) Limited v Office of Communications (Mobile Call Termination) Case: 1182/3/3/11 16 May 2011 |
| | Ongoing | | | | | | | 11-12 | Vodafone Limited v Office of Communications (Mobile Call Termination) Case: 1183/3/3/11 16 May 2011 |
| | | | | | | | | | |

| Case name, number and date registered | Year (1 April to 31 March) | Applications to intervene | Case management conferences | Hearings (and sitting days - excluding days limited to formal handing down of judgments) | Judgments (including interlocutory rulings and final judgments) | Date of judgment(s) on the main issues (and months from registration to judgment) | Requests for permission to appeal | Status at 31 March 2012 | Comments | |
|---|----------------------------|---------------------------|-----------------------------|--|---|---|-----------------------------------|-------------------------|----------|---|
| (1) RG Carter Limited (2) RG Carter Building Limited (3) RG Carter Construction Limited (4) RG Holdings Limited v Office of Fair Trading Case: 1184/1/1/11 23 June 2011 | 11-12 | | | | 1 | 1 Aug 2011 | | Closed | | |
| BAA Limited v Competition Commission Case: 1185/6/8/11 16 Sep 2011 | 11-12 | 1 | 1 | 1 | 3 | 2 | 1 Feb 2012 | 1 | Closed | |
| TalkTalk Telecom Group Plc (Wholesale Broadband Access Charge Control) v Office of Communications Case: 1186/3/3/11 19 Sep 2011 | 11-12 | 2 | 1 | 1 | 2 | 2 | 10 Jan 2012 | | Closed | |
| British Telecommunications Plc (Wholesale Broadband Access Charge Control) v Office of Communications Case: 1187/3/3/11 19 Sep 2011 | 11-12 | 2 | | | | | | | Ongoing | This case involved price control matters and was referred to the Competition Commission on 2 November 2011. |
| (1) Tesco Stores Limited (2) Tesco Holdings Limited (3) Tesco Plc v Office of Fair Trading Case: 1188/1/1/11 10 Oct 2011 | 11-12 | | 1 | 1 | 1 | 2 | | 1 | Ongoing | The main hearing in this matter was listed for 26 April 2012 with a time estimate of 3 weeks. |
| Telefónica UK Limited v Office of Communications Case: 1189/3/3/11 14 Nov 2011 | 11-12 | 2 | | | | 1 | | | Ongoing | The main hearing in this case took place on 25 and 26 April 2012. |
| Total | 11-12 | 12 | 12 | 10 | 95 | 47 | | 10 | | |

Overall Case Activity within the period 1 April 2011 to 31 March 2012

| | 2011-12 | 2010-11 | 2009-10 |
|---|---------|---------|---------|
| Appeals, applications and claims received of which | 10 | 29 | 41 |
| Section 46 Competition Act 1998 ¹ | 2 | 6 | 29 |
| Section 47 Competition Act 1998 ² | - | - | - |
| Section 47A Competition Act 1998 ³ | - | 7 | 1 |
| Section 47B Competition Act 1998 ⁴ | - | - | - |
| Section 120 Enterprise Act 2002 ⁵ | - | 1 | 3 |
| Section 179 Enterprise Act 2002 ⁶ | 1 | - | 2 |
| Section 192 Communications Act 2003 ⁷ | 7 | 8 | 5 |
| Section 317 Communications Act 2003 ⁸ | - | 6 | - |
| Applications for interim relief | - | 1 | 1 |
| Applications to intervene | 12 | 89 | 20 |
| Case management conferences held | 12 | 7 | 10 |
| Hearings held (sitting days) | 10 (95) | 39 (51) | 14 (27) |
| Judgments handed down of which | 47 | 26 | 38 |
| Judgments disposing of main issue or issues | 14 | 9 | 4 |
| Judgments on procedural and interlocutory matters | 13 | 13 | 14 |
| Judgments on ancillary matters (e.g. Costs) | 20 | 4 | 20 |
| Orders made | 118 | 133 | 123 |

- 1 An appeal by a party to an agreement or conduct in respect of which the Office of Fair Trading (or one of the other regulators with concurrent powers to apply the Competition Act 1998 ('the Competition Act')) has made an 'appealable decision'. During the period to 31 March 2012 appealable decisions included a decision as to whether the Chapter I prohibition or Chapter II prohibition of the Competition Act had been infringed, as to whether Articles 101 or 102 of the Treaty on the functioning of the European Union (formerly Articles 81 and 82 of the EC Treaty) had been infringed and the imposition of a penalty for infringement of those provisions or as to the amount of such penalty.
- 2 An appeal against an 'appealable decision' made by the Office of Fair Trading or other regulator with concurrent powers to apply the Competition Act and made by a third party with a sufficient interest in the decision not otherwise entitled to appeal the decision pursuant to section 46 of the Competition Act.
- 3 A claim for damages or other claim for a sum of money by a person who has suffered loss or damage as a result of the infringement of the Competition Act or of European competition law.
- 4 A claim for damages or other claim for a sum of money brought by 'a specified body' on behalf of two or more consumers.
- 5 An application by 'any person aggrieved' by a decision of the Office of Fair Trading, the Competition Commission or the Secretary of State in connection with a reference or possible reference in relation to a relevant merger situation or special merger situation under the Enterprise Act 2002.
- 6 An application by 'any person aggrieved' by a decision of the Office of Fair Trading, the Competition Commission or the Secretary of State in connection with a market investigation reference or possible market investigation reference.
- 7 An appeal by 'a person affected' by a decision of the Office of Communications or of the Secretary of State in relation to certain specified communication matters set out in that section.
- 8 An appeal by 'a person affected' by a decision of the Office of Communications to exercise its Broadcasting Act power for a competition purpose (pursuant to Section 317 of the Communications Act 2003).

Accounts

Management Commentary in respect of the Tribunal and the CS for the year ended 31 March 2012

The key activities of the Competition Appeal Tribunal (Tribunal) and the Competition Service (CS) are explained in the introduction to this report. Similarly, the performance of the Tribunal and the CS in carrying out their respective functions during the period covered by this report is mentioned in the statements of the President and Registrar.

The Tribunal and the CS aim to ensure that proceedings are conducted efficiently and economically whilst meeting the requirements of justice. The objective of the CS is to support the Tribunal in carrying out its statutory function.

Accounts direction

As required by statute, separate accounts have been prepared for the Tribunal and the CS in accordance with the accounts directions issued by the Secretary of State for Business, Innovation and Skills (BIS) under the Enterprise Act 2002, Section 12 and Schedule 2.

The accounts are prepared so as to give a true and fair view of the state of affairs of the Tribunal and the CS at the year end and provide disclosures and notes to the accounts in compliance with the accounting principles and disclosure requirements of the edition of the Government Financial Reporting Manual (FRm) issued by HM Treasury in force for the current financial year 2011-12.

Financial performance

The programme and administration funding allocation from BIS for 2011-12 was £3,965,000 for resource expenditure (net of any income from other sources) which was later revised to £4,058,000 including £50,000 for capital expenditure. The capital expenditure allocation was for the CS only.

Actual resource expenditure for the year was £3,914,000 and capital expenditure was £15,000.

The actual expenditure for the Tribunal was £724,000 in 2010-11 and £714,000 in 2011-12. During the year 10 new cases were received.

The expenditure of the CS reduced from £3,473,000 in 2010-11, to £3,200,000 in 2011-12 due largely to the reduction in accommodation costs, arising as a result of the following one off items that arose in the respective years:

| | Increase/(reduction) in costs | |
|---|-------------------------------|------------------|
| | 2011-12 £'000 | 2010-11 £'000 |
| Recovery of flood damage costs in 2011-12 (incurred in 2010-11) | (66) | 66 |
| Rates rebate | (20) | 0 |
| Increase in operating lease liability, due to increase in VAT rate to 20% | 0 | 141 |
| Total impact | (86) | 207 |
| Year on year reduction | 293 | |

A staff absence rate of 0.8 per cent was again achieved for 2011-12 against the target rate of 3 per cent.

Financing of activities

As a non-departmental public body, the CS records grant-in-aid as financing received from BIS. Therefore any imbalance between grant-in-aid received and expenditure during the year will result in a movement in the CS's reserves on the balance sheet.

Statement of financial position

The Tribunal's statement of financial position shows only those liabilities at 31 March 2012 which relate to the activities of the Tribunal. The CS will meet those liabilities. The liabilities in the CS's statement of financial position therefore include those liabilities that relate to the activities of the Tribunal.

The book value of the CS's non current assets reduced from £84,000 to £59,000, as the level of capital expenditure in the year is below the depreciation charge for the year. The majority of the assets are of a low value, with a short life of between three and five years.

Capital expenditure during the year amounted to £15,000 which was £1,000 more than in the previous year. The CS purchased two new laptops, a printer and a server. Six court benches which suffered water damage in Court 2 were replaced and a similar number of book cases were purchased.

Total assets of the CS increased to £511,000 from £438,000. Closing cash balances were £320,000 (2010-11: £274,000).

The CS's general fund (which represents the total assets less liabilities of the CS to the extent that the total is not represented by other reserves and financing items) remains the same.

Pension liabilities

The pension arrangements and liabilities for the President and the Registrar are mentioned separately in the remuneration report. Note 1(h) in the CS's accounts contains further detail on the pension provisions relating to the CS staff, including the Registrar. The appointments of Tribunal Chairmen and Ordinary Members are non-pensionable. Social, economic and environmental issues

Social, economic and environmental issues

The CS operates a green policy and recycles materials such as paper, cardboard, toner cartridges and plastic, and, where possible, attempts to reduce energy consumption.

Risks and uncertainties

The CS maintains a risk register which is monitored and updated regularly following staff discussions. On a quarterly basis the risk register is considered by the Audit Committee. The risk register is intended to identify strategic, operational and financial risks together with the controls and arrangements to manage those risks.

The following are the main identified risks together with the arrangements in place to manage those risks:

- Budget cuts imposed by government could compromise the ability of the Tribunal to function effectively. The CS reports on a monthly basis to BIS who will fund additional expenditure if the caseload rises beyond the predicted level. The CS meets BIS at quarterly intervals to discuss funding and workload.
- Staff may not be able to travel to the Tribunal during the Olympics. The likely effect of the Olympics on public transport will be reviewed in July 2012. Key users have been provided with remote access laptops. Only urgent hearings will be scheduled between 27 July 2012 and 12 August 2012, and between 29 August 2012 and 9 September 2012. In any event there tend to be few hearings during this period.
- If the Registrar or the Finance Manager were to be away for a prolonged period of time it would disrupt the finance function and result in failure to pay staff and members and obtain funding from BIS. The risk has been mitigated by the delegation of financial authority principally to the Director, Operations who has delegated authority to make salary and other payments.
- If access to London were to be restricted or not possible in the event of flooding, transport difficulties, bomb alerts etc then the Tribunal would be unable to function. There is a business continuity plan in place which addresses this risk.

Future developments

The Resource Departmental Expenditure Limit (RDEL) approved by BIS for 2012-13 is £3,882,000 and £50,000 for capital expenditure. Nearly 87 per cent of the resource costs for the Tribunal and the CS are fixed costs. Accommodation costs (specialised courtrooms and associated facilities) are more than 50 per cent of the RDEL.

Resource costs for the CS are budgeted to rise by £254,000 when compared with the 2011-12 outturn due to a 23 per cent increase in rates.

Resource costs for the Tribunal have been reduced by £174,000 in 2012-13 compared to the 2011-12 outturn to stay within currently applicable (RDEL) limits.

Remuneration Report for the Tribunal and the CS for the year ended 31 March 2012

Remuneration policy

The remuneration of the President and the Registrar is determined by the Secretary of State under Schedule 2 of the Enterprise Act 2002. The remuneration of the non-executive member of the CS is determined by the Secretary of State under Schedule 3 of the Enterprise Act 2002.

The President is a High Court Judge and his salary is set at the applicable level in the judicial salaries list. This was the second year of the two year government pay freeze and the President's salary therefore remained unchanged. The President's salary is subject to the recommendations of the Senior Salaries Review Body (which makes recommendations about the pay of the senior civil service, senior military personnel and the judiciary). The President's salary is paid by the Ministry of Justice and invoiced to the CS.

The salary of the Registrar is linked to judicial salaries as determined by the Secretary of State. For 2011-12, the salary of the Registrar remained unchanged in accordance with the government pay freeze mentioned above.

The salary costs of the President are charged to the Tribunal's operating cost statement. The salary costs of the Registrar are charged to the CS's operating cost statement.

The chairmen are remunerated at the rate of £600 per diem, a rate which was set at the inception of the Tribunal in 2003.

The ordinary members are remunerated at the rate of £350 per diem, which has remained unchanged since 2006.

The non-executive member of the CS is remunerated on a per diem basis, at a rate of £350, as determined by the Secretary of State. This rate has remained unchanged since 2003. The remuneration costs of the non-executive member are charged to the CS's operating cost statement.

CS contract, salary and pension entitlements

The following sections provide details of the contracts, remuneration and pension interests of the President, Registrar and non-executive member of the CS.

CS contracts

The President is appointed by the Lord Chancellor under Schedule 2 of the Enterprise Act 2002. The Registrar is appointed by the Secretary of State pursuant to section 12(3) of the Enterprise Act 2002.

The President was appointed on 5 November 2007 and also became a Justice of the High Court on the same day.

The Registrar's appointment must satisfy the requirements of Rule 4 of the Competition Appeal Tribunal Rules 2003 (SI. 2003 No 1372).

The non-executive member of the CS is appointed by the Secretary of State under Schedule 3 of the Enterprise Act 2002. The term of appointment, which was due to expire in September 2011, was, with the approval of the Secretary of State, extended for a further two years and now expires in September 2013. The appointment carries no right of pension, gratuity or allowance on its termination.

Remuneration

The following part of the Remuneration Report has been audited.

| | 2011-12 Salary band £'000 | 2010-11 Salary band £'000 |
|-----------|--|------------------------------------|
| President | 170-175 | 170-175 |

The President is a High Court Judge and his services are invoiced to the CS.

Reporting bodies are required to disclose the relationship between the remuneration of the highest-paid officer in their organisation and the median remuneration of the organisation's workforce.

The chairmen and the members are paid only when working on cases. The median payment cannot be compared to a full time equivalent.

| | 2011-12 Salary | 2010-11 Salary |
|---|---------------------------|-------------------|
| Registrar (Highest Paid Officer's) Total Remuneration (£'000) | 95-100 | 95-100 |
| Median Total Remuneration (£) | 37,038 | 39,595 |
| Ratio* | 2.63 | 2.46 |

* The banded remuneration of the highest paid officer is 2.63 times the median total remuneration of the workforce in 2011-12 (2.46: 2010-11)

For 2010-11, as there was an even number of employees, the median total remuneration was calculated as the average of the middle two employees' total remunerations. It is not appropriate to include the non-executive member who is paid on an ad hoc basis.

Total remuneration includes salary, non-consolidated performance-related pay, benefits-in-kind as well as severance payments. It does not include employer pension contributions and cash equivalent transfer value of pensions.

The remuneration for the President and Registrar consists of gross salary only. There are no additional allowances, bonuses or benefits in kind paid.

The non-executive member of the CS is remunerated at a rate of £350 per day (2010-11: £350 per day). Total remuneration payable in 2011-12 was £3,325 (2010-11: £4,725).

Benefits in kind

The CS does not provide any allowances, bonuses or benefits in kind to the President, Registrar and non-executive member of the CS.

Untaken leave

The work of the Tribunal involves the conduct within demanding timescales of urgent, complex and novel cases of great importance to the parties concerned and the public interest. As the staff team is very small, this can result from time to time in the unavoidable accumulation of untaken leave.

The Registrar's untaken leave liability accrual reduced by £2,000 to £20,000 in 2011-12 and becomes payable by the CS when he leaves. The movement in this liability is reflected in the Net Expenditure Account and affects the Reserves.

Pensions applicable to the Tribunal and the CS

Judicial pensions

The majority of the terms of the pension arrangements are set out in (or in some cases are analogous to), the provisions of two Acts of Parliament: the Judicial Pensions Act 1981 and the Judicial Pensions and Retirement Act 1993.

The Judicial Pensions Scheme (JPS) is an unfunded public service scheme, providing pensions and related benefits for members of the judiciary. Participating judicial appointing or administering bodies make contributions known as Accruing Superannuation Liability Charges (ASLCs), to cover the expected cost of benefits under the JPS. ASLCs are assessed regularly by the Scheme's Actuary – The Government Actuary's Department.

The contribution rate required from the judicial appointing or administering bodies to meet the cost of benefits accruing in the year 2011-12 has been assessed at 32.15 per cent of the relevant judicial salary. This includes an element of 0.25 per cent as a contribution towards the administration costs of the scheme.

Details of the Resource Accounts of the Ministry of Justice: Judicial Pensions Scheme can be found on the Ministry of Justice website www.justice.gov.uk.

Civil Service pensions

Pension benefits are provided through the Civil Service pension arrangements. From 30 July 2007, civil servants may be in one of four defined benefit schemes: either a final salary scheme (classic, premium or classic plus); or a whole career scheme (nuvos). These statutory arrangements are unfunded with the cost of benefits met by monies voted by Parliament each year. Pensions payable under classic, premium, classic plus and nuvos are increased annually in line with Pensions Increase legislation. Members joining from 1 October 2002 may opt for either the appropriate defined benefit arrangement or a 'money purchase' stakeholder pension with an employer contribution (partnership pension account).

Employee contributions are set at the rate of 1.5 per cent of pensionable earnings for classic and 3.5 per cent for premium, classic plus and nuvos. Increases to employee contributions will apply from 1 April 2012. Benefits in classic accrue at the rate of 1/80th of final pensionable earnings for each year of service. In addition, a lump sum equivalent to three years initial pension is payable on retirement. For premium, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike classic, there is no automatic lump sum. Classic plus is essentially a hybrid with benefits for service before 1 October 2002 calculated broadly as per classic and benefits for service from October 2002 worked out as in premium. In nuvos a member builds up a pension based on pensionable earnings during the period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3 per cent of their pensionable earnings in that scheme year and the accrued pension is up-rated in line with Pensions Increase legislation. In all cases members may opt to give up (commute) pension for a lump sum up to the limits set by the Finance Act 2004.

The partnership pension account is a stakeholder pension arrangement. The employer makes a basic contribution of between 3 per cent and 12.5 per cent (depending on the age of the member) into a stakeholder pension product chosen by the employee from a panel of three providers. The employee does not have to contribute, but where they do make contributions, the employer will match these up to a limit of 3 per cent of pensionable salary (in addition to the employer's basic contribution). Employers also contribute a further 0.8 per cent of pensionable salary to cover the cost of centrally-provided risk benefit cover (death in service and ill health retirement).

The accrued pension quoted is the pension the member is entitled to receive when they reach pension age, or immediately on ceasing to be an active member of the scheme if they are already at or over pension age. Pension age is 60 for members of classic, premium and classic plus and 65 for members of nuvos.

Further details about the Civil Service pension arrangements can be found at the website <http://www.civilservice.gov.uk/my-civil-service/pensions/index.aspx>.

Further information regarding the Principle Civil Service Pension Scheme (PCSPS) is included in note 5 of the CS's accounts.

Cash Equivalent Transfer Values

A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which disclosure applies.

The figures include the value of any pension benefit in another scheme or arrangement which the member has transferred to the Civil Service pension arrangements. They also include any additional pension benefit accrued to the member as a result of their buying additional pension benefits at their own cost. CETVs are worked out in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

Real increase in CETV

This reflects the increase in CETV that is funded by the employer. It does not include the increase in accrued pension due to inflation, contributions paid by the employee (including the value of any benefits transferred from another pension scheme or arrangement) and uses common market valuation factors for the start and end of the period.

a President's pension benefits

The President is a member of the JPS. For 2011-12, employer contributions of £56,000 were payable to the JPS at a rate of 32.15 per cent of pensionable pay.

| | Accrued pension as at 31/03/12 and related lump sum £'000 | Real increase in pension and related lump sum as at 31/03/12 £'000 | CETV at 31/03/12 £'000 | CETV at 31/03/11 £'000 | Employee contributions and transfers £'000 | Real increase in CETV £'000 |
|-----------|--|---|---------------------------|---------------------------|---|--------------------------------|
| President | 15 – 20 40 – 45 | 2.5 – 5 7.5 – 10 | 372 | 279* | 2 | 67 |

* The actuarial factors used to calculate CETVs were changed in 2011-12. The CETVs at 31/03/11 and 31/03/12 have both been calculated using the new factors, for consistency. The CETV at 31/03/11 therefore differs from the corresponding figure in last year's report which was calculated using the previous factors.

b Registrar's pension benefits

The Registrar's pension benefits are provided through the Civil Service Pension arrangements. For 2011-12, employer contributions of £24,000 (2010-11: £24,000) were payable to the PCSPS at a rate of 24.3 per cent (2010-11: 24.3 per cent) of pensionable pay.

| | Accrued pension at age 60 as at 31/03/12 and related lump sum £'000 | Real increase in pension and related lump sum at age 60 £'000 | CETV at 31/03/12 £'000 | CETV at 31/03/11 £'000 | Employee contributions and transfers £'000 | Real increase in CETV £'000 |
|-----------|--|--|---------------------------|---------------------------|---|--------------------------------|
| Registrar | 25 – 30 75 – 80 | 0 – 2.5 0 – 2.5 | 459 | 413* | 15 | 0 |

* The actuarial factors used to calculate CETVs were changed in 2011-12. The CETVs at 31/03/11 and 31/03/12 have both been calculated using the new factors, for consistency. The CETV at 31/03/11 therefore differs from the corresponding figure in last year's report which was calculated using the previous factors.

Charles Dhanowa OBE, QC
Registrar and Accounting Officer

26 June 2012

Statement of the Accounting Officer's responsibilities in respect of the Tribunal and the CS

Under Paragraph 12 of Schedule 3 of the Enterprise Act 2002, the CS is required to prepare a statement of accounts for the Tribunal and the CS for each financial year in the form and on the basis determined by the Secretary of State, with the consent of the Treasury. Each set of accounts is prepared on an accruals basis and must give a true and fair view of the state of affairs of the Tribunal and the CS at the year end and of operating costs, total recognised gains and losses and cash flows for the financial year.

In preparing the accounts for the Tribunal and for the CS, the CS is required to:

- observe the accounts directions issued by the Secretary of State, including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis;
- make judgements and estimates on a reasonable basis;
- state whether applicable accounting standards have been followed, and disclose and explain any material departures in the financial statements; and
- prepare the financial statements on a going concern basis, unless it is inappropriate to assume that the Tribunal and the CS will continue in operation.

The Accounting Officer for BIS has designated the Registrar of the Tribunal as Accounting Officer for both the Tribunal and the CS. His relevant responsibilities as Accounting Officer, including his responsibility for the propriety and regularity of the public finances and for the keeping of proper records, are set out in the Accounting Officer's Memorandum issued by the Treasury and published in *Managing Public Money*.

Corporate Governance Statement

The purpose of the Governance Statement

The statement is intended to provide a clear picture of the structure of the controls within the organisation with regard to the management of risk. The statement identifies and prioritises the risks to the fulfillment of the organisation's statutory functions, evaluates the likelihood of those risks materialising and their likely effect; and indicates how they should be managed efficiently, effectively and economically. The statement assists the Accounting Officer in making informed decisions about progress against the business plan.

Scope of responsibility

As Accounting Officer, I have maintained a sound system of governance and internal controls that supports the performance of the CS's and the Tribunal's statutory functions, whilst safeguarding the public funds and departmental assets for which I am responsible, (in accordance with the responsibilities assigned to me in the HM Treasury publication, Managing Public Money). I am assisted in this by the CS's Board and Audit Committee to both of which reports are regularly made. In addition, our internal auditors (BIS Internal Audit Directorate) provide advice and guidance on risk management, governance and accountability issues. They work in conjunction with our external Auditors (NAO) to ensure that the CS uses its financial resources economically, efficiently and effectively and that they are properly accounted for. Further advice and guidance is available from our sponsors in the Department for Business, Innovation and Skills (BIS). In my role as Accounting Officer I am directly responsible to the Accounting Officer of BIS and ultimately to Parliament.

The CS's Governance Structure

The President of the Tribunal, a non-executive member (currently Janet Rubin) and I constitute the CS Board, which meets four times a year to consider the strategic direction of the organisation. Attendance at Board meetings was 100 per cent for all members in 2011-12. Reports on workload, on financial and administrative matters and from the Audit Committee are standing agenda items for Board meetings. The Director, Operations acts as secretary to the Board.

The non-executive member of the Board chairs the Audit Committee, which also comprises two members of the Tribunal with considerable financial and business experience. Meetings of the Audit Committee are attended by representatives of both the CS's internal and external auditors and often by a representative of our sponsoring department. The Audit Committee reviews the financial performance of the organisation and examines the Annual Report prior to publication. The CS's risk register is a standing agenda item for Audit Committee meetings. At each meeting, the auditors and the committee members are offered the opportunity of a private meeting without CS personnel being present so that management performance can be discussed. The Director, Operations is also secretary to the Audit Committee.

| Audit Committee Attendance 2011-12 | |
|------------------------------------|-------------------|
| Audit Committee Members | Attendance |
| Janet Rubin | 3 of 4 meetings |
| Peter Clayton | 2 of 2 meetings |
| David Summers | 4 of 4 meetings |
| Stephen Harrison | 2 of 2 meetings |

Stephen Harrison replaced Peter Clayton half way through the year.

Audit work during the year included the usual finance and accounting audit.

As part of BIS's group corporate governance assessment process, the CS completes an annual governance return based on an evaluation of its risk management processes. The CS's Internal Audit team reviews this return, as part of their internal audit work.

The CS also completes an annual return to the Cabinet Office assessing the effectiveness of protective security and Information Assurance risk management within the organisation. This return is reviewed by the CS's Internal Audit team and is independently validated by the CS Audit Committee.

The Risk and Internal Control Framework

The CS's Finance Manager compiles a risk register, and discusses each risk with the relevant risk owner. Risks are rated according to impact and likelihood. The register is kept under informal review by me, the Director, Operations and the Finance Manager and formally reviewed four times a year by the Audit Committee, which frequently offers detailed comments and suggestions.

The CS endeavours to promote a strong understanding of risk throughout the organisation and for the Tribunal members and CS staff to have a full awareness of risk considerations in the performance of their duties.

The CS uses BIS Internal Audit Directorate as its internal auditors. They make recommendations to the senior management, who undertake to respond within agreed timescales.

In the financial year ended 31 March 2012, Internal Audit reviewed the CS's financial systems. Findings were reported to me and the Audit Committee. Internal Audit has reported that it is fully satisfied with the quality of the systems of governance, management and risk assessment and control. A recommendation made by Internal Audit, which will be implemented forthwith, relates to the frequency with which the Director, Operations, reviews the details of new suppliers. Instead of an annual review this will now be carried out twice yearly.

Monthly management accounts are circulated to senior management of the CS, the Accounting Officer, the Audit Committee and BIS. Quarterly grant-in-aid requests also provide BIS with information on the CS's financial position.

In addition, senior management of the CS have regular meetings with their counterparts in BIS to share management and financial information.

Each year a Business Plan is produced, which identifies the objectives for the year and gives an assessment of whether objectives from the previous year have been met. The plan is approved by the CS Board and copied to BIS for their agreement.

Checks are made from time to time on key contractors or suppliers with whom the CS transacts business to ensure that they have appropriate risk management policies in place.

The CS is also participating in the Treasury's Managing Risk of Financial Loss project and has completed the Financial Processes Assessment and the Roles and Accountability Assessment.

Information security

All staff are required to complete the online information awareness training made available by the National School of Government once every year.

A Departmental Security Officer and an Information Technology Security Officer have been appointed and they ensure that the CS complies with Cabinet Office and National Infrastructure Security Coordination Centre Standards (BS7799) on security procedures. Removable information storage devices are subject to encryption.

In accordance with Cabinet Office information handling requirements aimed at improving the framework within which government departments and their agencies manage their information, the CS has appointed a Senior Information Risk Owner (SIRO) and an Information Asset Owner (IAO).

An information risk policy is in place setting out how the CS is to implement the minimum mandatory measures for its own activities and those of its key delivery partners. Processes have been agreed to ensure that appropriate information handling is conducted across the CS's activities. Managing information risk is integrated into the CS's HR processes and all members of staff are aware of the requirements. PROTECT personal information is identified, clearly marked and subject to controlled disposal.

In addition, the CS has drafted policies on incident management and forensic readiness.

Risk assessments are periodically carried out to look at forthcoming changes in services, technology and threats, risks to confidentiality, integrity and availability of information. Proportionate responses are planned and implemented to address any identified threats.

There have been no incidents involving a breach of security in the year.

Review of effectiveness

As Accounting Officer, I have responsibility for reviewing the effectiveness of the system of the CS's governance, risk management and internal control. My review is informed by the managers within the CS, who have responsibility for the development and maintenance of the internal control framework, advice from the Audit Committee and comments made by the external auditors in their reports.

My overall conclusion is that the CS's overall governance and internal control structures are good at this point in time but of course will remain subject to continuous review.

Charles Dhanowa OBE, QC
Accounting Officer

26 June 2012

Competition Appeal Tribunal

The Certificate and Report of the Comptroller and Auditor General to the Houses of Parliament

I certify that I have audited the financial statements of the Competition Appeal Tribunal for the year ended 31 March 2012 under the Enterprise Act 2002. The financial statements comprise: the Statements of Comprehensive Net Expenditure, Financial Position, Cash Flows, Changes in Taxpayers' Equity; and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration Report that is described in that report as having been audited.

Respective responsibilities of the Accounting Officer and Auditor

As explained more fully in the Statement of Accounting Officer's Responsibilities, the Accounting Officer is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view. My responsibility is to audit, certify and report on the financial statements in accordance with the Enterprise Act 2002. I conducted my audit in accordance with International Standards on Auditing (UK and Ireland). Those standards require me and my staff to comply with the Auditing Practices Board's Ethical Standards for Auditors.

Scope of the audit of the financial statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the Competition Appeal Tribunal's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by Competition Appeal Tribunal; and the overall presentation of the financial statements. In addition I read all the financial and non-financial information in the Annual Report to identify material inconsistencies with the audited financial statements. If I become aware of any apparent material misstatements or inconsistencies I consider the implications for my certificate.

I am required to obtain evidence sufficient to give reasonable assurance that the expenditure and income recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

Opinion on regularity

In my opinion, in all material respects the expenditure and income recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

Opinion on financial statements

In my opinion:

- the financial statements give a true and fair view of the state of the Competition Appeal Tribunal's affairs as at 31 March 2012 and of the net expenditure for the year then ended; and the financial statements have been properly prepared in accordance with the Enterprise Act 2002 and Secretary of State directions issued thereunder.

Opinion on other matters

In my opinion:

- the part of the Remuneration Report to be audited has been properly prepared in accordance with Secretary of State directions made under the Enterprise Act 2002; and
- the information given in Introduction, Registrar's Statement and Management Commentary for the financial year for which the financial statements are prepared is consistent with the financial statements.

Matters on which I report by exception

I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- adequate accounting records have not been kept or returns adequate for my audit have not been received from branches not visited by my staff; or
- the financial statements and the part of the Remuneration Report to be audited are not in agreement with the accounting records and returns; or
- I have not received all of the information and explanations I require for my audit; or
- the Governance Statement does not reflect compliance with HM Treasury's guidance.

Report

I have no observations to make on these financial statements.

Amyas C E Morse
Comptroller and Auditor General

27 June 2012

National Audit Office
157-197 Buckingham Palace Road
Victoria
London SW1W 9SP

Competition Appeal Tribunal: Statement of Comprehensive Net Expenditure for the year ended 31 March 2011

| | Note | 2011-12 £'000 | 2010-11 £'000 |
|---|------|------------------|------------------|
| Expenditure: | | | |
| Members' remuneration costs | 3d | (624) | (661) |
| Other operating charges | 4a | (90) | (63) |
| Total Expenditure | | (714) | (724) |
| Income | | - | - |
| Net Expenditure for the financial year | | (714) | (724) |

There is no other comprehensive expenditure. Net expenditure for the financial year is also the total comprehensive expenditure for the year.

The notes on pages 81 to 84 form part of these accounts.

Competition Appeal Tribunal: Statement of Financial Position as at 31 March 2012

| | Note | 31 March 2012 £'000 | 31 March 2011 £'000 |
|---|------|---------------------------|---------------------------|
| Current assets: | | | |
| Trade receivables and other receivables | 5a | 139 | 133 |
| Cash and cash equivalents | | 0 | 0 |
| Total current assets | | <u>139</u> | <u>133</u> |
| Current liabilities: | | | |
| Trade payables and other payables | 6a | (109) | (115) |
| Total current liabilities | | <u>(109)</u> | <u>(115)</u> |
| Net current assets | | <u>30</u> | <u>18</u> |
| Non current liabilities: | | | |
| Other financial liabilities | | - | - |
| Provisions | 7 | (30) | (18) |
| Total non current liabilities | | <u>(30)</u> | <u>(18)</u> |
| Assets less liabilities | | - | - |
| Taxpayers' equity: | | | |
| General fund | | - | - |
| Total taxpayers' equity | | <u>-</u> | <u>-</u> |

The notes on pages 81 to 84 form part of these accounts.

Charles Dhanowa OBE, QC
Registrar and Accounting Officer

26 June 2012

Competition Appeal Tribunal: Statement of Cash Flows for the year ended 31 March 2012

| | Note | 2011-12 £'000 | 2010-11 £'000 |
|--|------|------------------|------------------|
| Cash flows from operating activities: | | | |
| Net operating cost | | (714) | (724) |
| Decrease/(Increase) in receivables | | (6) | (32) |
| (Decrease)/Increase in payables | | (6) | 26 |
| Use of provisions | | - | - |
| Increase in provisions | | 12 | 6 |
| Net cash (outflow) from operating activities | | <u>(714)</u> | <u>(724)</u> |
| Cash flows from financing activities: | | | |
| Grant-in-aid from the CS | 2 | <u>714</u> | <u>724</u> |
| Increase/(decrease) in cash in the period | | <u>-</u> | <u>-</u> |

The Tribunal does not have a bank account and therefore does not hold any cash. Cash required to fund the activities of the Tribunal is paid into the CS's bank account.

The notes on pages 81 to 84 form part of these accounts.

Competition Appeal Tribunal: Statement of Changes in Taxpayers' Equity for the year ended 31 March 2012

The Tribunal does not have reserves. The Tribunal's activities are funded by the CS.

Competition Appeal Tribunal: Notes to the accounts

1 Basis of preparation and statement of accounting policies

These financial statements have been prepared in accordance with the 2011-12 Government Financial Reporting Manual (FRoM). The accounting policies contained in the FRoM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector. The accounting policies contained in the FRoM follow International Accounting Standards to the extent that it is meaningful to do so and appropriate to the public sector.

The Tribunal does not enter into any accounting transactions in its own right, as the CS has the responsibility, under the Enterprise Act 2002, to meet all the expenses of operating the Tribunal. Accordingly, the Tribunal has no assets, liabilities, reserves and has no cash flows.

Under an accounts directive from HM Treasury (the 2011-12 Government Financial Reporting Manual), the Tribunal is to prepare accounts on the basis that it had directly incurred the expenses, relating to its activities. Accordingly, the accounts of the Tribunal are prepared on this basis, which includes those assets, liabilities and cash flows of the CS, which relate to the Tribunal's activities.

Where the FRoM permits a choice of accounting policy, the accounting policy which has been judged to be the most appropriate to the particular circumstances of the Tribunal for the purpose of giving a true and fair view has been selected. The Tribunal's accounting policies have been applied consistently in dealing with items considered material in relation to the accounts.

a Accounting convention

The financial statements have been prepared under the historic cost convention.

b Basis of preparation of accounts

The FRoM requires non-departmental public bodies to account for grant-in-aid received for revenue purposes as financing. The CS draws down grant-in-aid on behalf of the Tribunal to fund the Tribunal's activities. There is a debtor balance of an equal amount representing the amount that the CS shall transfer to meet those liabilities.

c Pensions

The pension arrangements for the President are discussed separately in the remuneration report. The appointment of Tribunal Chairmen and Ordinary Members is non-pensionable.

d Going concern

The accounts have been prepared on a going concern basis.

In accordance with accounts directions issued by the Secretary of State, with the approval of the Treasury, the Tribunal and the CS have prepared a joint Statement of Accounting Officer's Responsibilities and Corporate Governance Statement.

2 Grant-in-aid

| | 2011-12 £'000 | 2010-11 £'000 |
|---------------------|--------------------------------|------------------|
| Allocated by the CS | 714 | 724 |
| Total grant-in-aid | 714 | 724 |

3 Members' remuneration

a *Members of the Tribunal during the year are listed in the Introduction. The President and the Chairmen are appointed by the Lord Chancellor upon the recommendation of the Judicial Appointments Commission. Ordinary Members are appointed by the Secretary of State. Members and Chairmen are appointed for a fixed term of up to eight years.*

b *Remuneration costs for members of the panel of Chairmen are shown in the table below.*

| | 2011-12 | 2010-11 |
|-----------------|----------------|---------|
| | £ | £ |
| Marcus Smith QC | 72,043 | 46,757 |
| Lord Carlile QC | 27,593 | 28,907 |
| Vivien Rose | 53,270 | 58,693 |

Marcus Smith QC, Lord Carlile QC and Vivien Rose were remunerated on a per diem basis at a rate of £600 per day (2010-11: £600 per day) or pro rata. Their remuneration costs are included in note 3d.

The salary costs of the judges of the Chancery Division of the High Court when sitting as Tribunal Chairmen are paid by the Ministry of Justice.

c *The Ordinary Members are remunerated at a rate of £350 per day (2010-11: £350 per day). The total remuneration payable to Ordinary Members of £185,126 (2010-11: £231,786) is included in note 3d.*

d *The total cost of Members' remuneration is shown in the table below.*

| | 2011-12 | 2010-11 |
|--|----------------|---------|
| | £'000 | £'000 |
| Members' remuneration (including the President, Chairmen and Ordinary Members) | 511 | 547 |
| Social security costs | 57 | 58 |
| Pension contributions for the President | 56 | 56 |
| Total members' remuneration | 624 | 661 |

4 Other operating charges

a *Other operating charges are shown in the table below.*

| | 2011-12 | 2010-11 |
|---|----------------|---------|
| | £'000 | £'000 |
| Members' travel and subsistence | 45 | 31 |
| Members' PAYE and National Insurance on travel and subsistence expenses | 24 | 16 |
| Members' training | 3 | 4 |
| Long service award | 12 | 6 |
| Audit fees* | 6 | 6 |
| Total other operating charges | 90 | 63 |

* Audit fees related only to statutory audit work.

b *The long service award relates to a provision of £12,000 for the President in his capacity as a judge of the High Court. The value of the award was calculated by the Government Actuary's Department (GAD) and reflects the President's length of service and judicial grade. The level of the Long Service Award is dependent on the tax paid by the member on his retirement lump sum. For this year's disclosures the GAD have assumed tax is paid on his lump sum at 45 per cent, reflecting the new top income rate announced in last month's Budget. However if the member pays tax on the lump sum at a different rate then the Long Service Award would differ.*

5 Trade receivables and other receivables

a Analysis by type

| | 31 March 2012 £'000 | 31 March 2011 £'000 |
|--|------------------------------------|---------------------------|
| Amounts falling due within one year: | | |
| Trade receivables and other receivables with the CS | 109 | 115 |
| Amounts falling due after more than one year: | | |
| Trade receivables and other receivables with the CS | 30 | 18 |
| Total trade receivables and other receivables | <u>139</u> | <u>133</u> |

b Intra-government balances

| | Amounts falling due within one year | | Amounts falling due after more than one year | |
|---|--|---------------------------|---|---------------------------|
| | 31 March 2012 £'000 | 31 March 2011 £'000 | 31 March 2012 £'000 | 31 March 2011 £'000 |
| Balances with other central government bodies | 109 | 115 | 30 | 18 |
| Total trade receivables and other receivables | <u>109</u> | <u>115</u> | <u>30</u> | <u>18</u> |

6 Trade payables and other payables

a Analysis by type

| | 31 March 2012 £'000 | 31 March 2011 £'000 |
|--|------------------------------------|---------------------------|
| Amounts falling due within one year: | | |
| Taxation and social security | 34 | 26 |
| Trade payables | 5 | 1 |
| Accruals | 70 | 88 |
| Total trade payables and other payables | <u>109</u> | <u>115</u> |

The payables balance represents the total liabilities outstanding at the balance sheet date that directly relate to the activities of the Tribunal. The CS meets all expenses relating to the Tribunal's activities.

b Intra-government balances

| | Amounts falling due within one year | |
|---|--|---------------------------|
| | 31 March 2012 £'000 | 31 March 2011 £'000 |
| Balances with other central government bodies | 59 | 51 |
| Balances with bodies external to government | 50 | 64 |
| Total trade payable and other payables | <u>109</u> | <u>115</u> |

There are no intra-government balances that fall due after one year.

7 Provisions for liabilities and charges

| | Long service award costs £'000 |
|---------------------------------|---|
| Balance at 31 March 2011 | 18 |
| Provided in the year | <u>12</u> |
| Balance at 31 March 2012 | <u>30</u> |

The provision made in the year relates to the expected cost of the President's long service award which becomes payable on retirement and will be met by the CS. The liability was calculated by the Government Actuary's Department (GAD) and is based on his judicial grade and length of service. The level of the Long Service Award is dependent on the tax paid by the member on his retirement lump sum. For this year's disclosures the GAD have assumed tax is paid on his lump sum at 45 per cent, reflecting the new top income rate announced in last month's Budget. However if the member pays tax on the lump sum at a different rate then the Long Service Award would differ. For previous years the tax was assumed to be 40 per cent.

8 Related party transactions

The President, Chairmen and Ordinary Members did not undertake any material transactions with the CS during the year.

9 Events after the reporting period

There were no events after the reporting period to report.

The Accounting Officer authorised these financial statements for issue on the date of certification.

Competition Service

The Certificate and Report of the Comptroller and Auditor General to the Houses of Parliament

I certify that I have audited the financial statements of the Competition Service for the year ended 31 March 2012 under the Enterprise Act 2002. The financial statements comprise: the Statements of Comprehensive Net Expenditure, Financial Position, Cash Flows, Changes in Taxpayers' Equity; and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration Report that is described in that report as having been audited.

Respective responsibilities of the Accounting Officer and Auditor

As explained more fully in the Statement of Accounting Officer's Responsibilities, the Accounting Officer is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view. My responsibility is to audit, certify and report on the financial statements in accordance with the Enterprise Act 2002. I conducted my audit in accordance with International Standards on Auditing (UK and Ireland). Those standards require me and my staff to comply with the Auditing Practices Board's Ethical Standards for Auditors.

Scope of the audit of the financial statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the Competition Service's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by Competition Service; and the overall presentation of the financial statements. In addition I read all the financial and non-financial information in the Annual Report to identify material inconsistencies with the audited financial statements. If I become aware of any apparent material misstatements or inconsistencies I consider the implications for my certificate.

I am required to obtain evidence sufficient to give reasonable assurance that the expenditure and income recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

Opinion on regularity

In my opinion, in all material respects the expenditure and income recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

Opinion on financial statements

In my opinion:

- the financial statements give a true and fair view of the state of Competition Service's affairs as at 31 March 2012 and of the net expenditure for the year then ended; and
- the financial statements have been properly prepared in accordance with the Enterprise Act 2002 and Secretary of State directions issued thereunder.

Opinion on other matters

In my opinion:

- the part of the Remuneration Report to be audited has been properly prepared in accordance with Secretary of State directions made under the Enterprise Act 2002; and
- the information given in Introduction, Registrar's Statement and Management Commentary for the financial year for which the financial statements are prepared is consistent with the financial statements.

Matters on which I report by exception

I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- adequate accounting records have not been kept or returns adequate for my audit have not been received from branches not visited by my staff; or
- the financial statements and the part of the Remuneration Report to be audited are not in agreement with the accounting records and returns; or
- I have not received all of the information and explanations I require for my audit; or
- the Governance Statement does not reflect compliance with HM Treasury's guidance.

Report

I have no observations to make on these financial statements.

Amyas C E Morse
Comptroller and Auditor General

27 June 2012

National Audit Office
157-197 Buckingham Palace Road
Victoria
London SW1W 9SP

Competition Service: Statement of Comprehensive Net Expenditure for the year ended 31 March 2012

| | Note | 2011-12 £'000 | 2010-11 £'000 |
|--|------|------------------|------------------|
| Expenditure: | | | |
| Funding the activities of the Tribunal | | (714) | (724) |
| CS and Audit Committee Members' remuneration | 3a | (9) | (12) |
| Staff Costs | 4a | (845) | (839) |
| Other expenditure | 6 | (2,306) | (2,531) |
| Depreciation | 6 | (40) | (91) |
| Total expenditure | | (3,914) | (4,197) |
| Income: | | | |
| Other income | 7 | 5 | 7 |
| Net expenditure | | (3,909) | (4,190) |
| Interest received | 7 | 1 | 0 |
| Net expenditure after interest | | (3,908) | (4,190) |

All activities were continuing during the year.

There is no other comprehensive expenditure. Net expenditure for the financial year is also the total comprehensive expenditure for the year.

The notes on pages 91 to 100 form part of these accounts.

Competition Service: Statement of Financial Position as at 31 March 2012

| | Note | 31 March 2012 £'000 | 31 March 2011 £'000 |
|---|------|---------------------------|---------------------------|
| Non current assets: | | | |
| Property, plant & equipment | 9 | 44 | 55 |
| Intangible assets | 10 | 15 | 29 |
| Total non current assets | | <u>59</u> | <u>84</u> |
| Current assets: | | | |
| Trade receivables and other receivables | 11a | 132 | 80 |
| Cash and cash equivalents | 12 | 320 | 274 |
| Total current assets | | <u>452</u> | <u>354</u> |
| Total assets | | <u>511</u> | <u>438</u> |
| Current liabilities: | | | |
| Trade payables and other payables | 13a | (255) | (243) |
| Total current liabilities | | <u>(255)</u> | <u>(243)</u> |
| Non current assets plus net current assets | | <u>256</u> | <u>195</u> |
| Non current liabilities: | | | |
| Financial liabilities | 13a | (1,791) | (1,736) |
| Provisions | 14 | (30) | (18) |
| Total non current liabilities | | <u>(1,821)</u> | <u>(1,754)</u> |
| Assets less liabilities | | <u>(1,565)</u> | <u>(1,559)</u> |
| Taxpayers' equity: | | | |
| General fund | | (1,565) | (1,560) |
| Revaluation reserve | | 0 | 1 |
| Total taxpayers' equity | | <u>(1,565)</u> | <u>(1,559)</u> |

The notes on pages 91 to 100 form part of these accounts.

Charles Dhanowa OBE, QC
Accounting Officer

26 June 2012

Competition Service: Statement of Cash Flows for the year ending 31 March 2012

| | Note | 2011-12 £'000 | 2010-11 £'000 |
|---|------|-----------------------|------------------|
| Cash flows from operating activities: | | | |
| Net deficit/surplus after interest | | (3,908) | (4,190) |
| Adjustments for non-cash transactions | 6 | 40 | 91 |
| (Increase) in receivables | | (52) | (5) |
| Increase in payables | | 67 | 8 |
| Investment income | 7 | (1) | – |
| Use of provisions | 14 | – | – |
| Increase in provisions | 14 | 12 | 6 |
| Net cash (outflow) from operating activities | | <u>(3,842)</u> | <u>(4,090)</u> |
| Cash flows from investing activities: | | | |
| Interest received | 7 | 1 | – |
| Taxation | 8 | – | – |
| Property, plant and equipment purchases | 9 | (14) | (13) |
| Intangible asset purchases | 10 | (1) | (1) |
| Proceeds of disposal of non current assets | | – | – |
| Net cash generated from/(used in) investing activities | | <u>(14)</u> | <u>(14)</u> |
| Cash flows from financing activities: | | | |
| Grant-in-aid from BIS | 2 | 3,902 | 3,805 |
| Net cash generated from/(used in) financing activities | | <u>3,902</u> | <u>3,805</u> |
| Net (Decrease)/Increase in cash and cash equivalents in the period | 12 | <u>46</u> | <u>(299)</u> |
| Cash and cash equivalents at the beginning of the period | 12 | <u>274</u> | <u>573</u> |
| Cash and cash equivalents at the end of the period | 12 | <u>320</u> | <u>274</u> |

The purchase of assets represents the cash paid in the year.

The payables amount is net of non-operating expenses relating to corporation tax accrued at 31 March 2012.

The notes on pages 91 to 100 form part of these accounts.

Competition Service: Statement of Changes in Taxpayers' Equity for the year ending 31 March 2012

| | General Revaluation Fund £'000 | Reserve £'000 | Total £'000 |
|---|---|--------------------------|------------------------|
| Balance at 31 March 2010 | (1,178) | 4 | (1,174) |
| Net operating cost for 2010-11 | (4,190) | – | (4,190) |
| Transferred to general fund in respect of realised element of revaluation reserve | 3 | (3) | – |
| Net financing from BIS for 2010-11 | 3,805 | – | 3,805 |
| Balance at 31 March 2011 | (1,560) | 1 | (1,559) |
| Net operating cost for 2011-12 | (3,908) | – | (3,908) |
| Transferred to general fund in respect of realised element of revaluation reserve | 1 | (1) | – |
| Net financing from BIS for 2011-12 | 3,902 | – | 3,902 |
| Balance at 31 March 2012 | (1,565) | – | (1,565) |

The notes on pages 91 to 100 form part of these accounts.

Competition Service: Notes to the accounts

1 Statement of accounting policies

These financial statements have been prepared in accordance with the 2011-12 Government Financial Reporting Manual (FReM). The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector. The accounting policies contained in the FReM follow International Accounting Standards to the extent that it is meaningful to do so and appropriate to the public sector.

Where the FReM permits a choice of accounting policy, the accounting policy which has been judged to be the most appropriate to the particular circumstances of the CS for the purpose of giving a true and fair view has been selected. The CS's accounting policies have been applied consistently in dealing with items considered material in relation to the accounts.

a Going concern

There is no reason to believe that future sponsorship from BIS will not be forthcoming within the capital and resource budgets set by Spending Review settlements and fluctuations in the level of workload as confirmed by them at CS Audit Committee meetings. Every effort will be made to make costs savings so that expenditure does not exceed the BIS expenditure allocation.

Although the CS is mentioned in the Public Bodies Act 2011, it is understood by the CS that Ministers have accepted that there shall be no change in its status. Accordingly it is appropriate to adopt a going concern basis for the preparation of these financial statements.

The statement of financial position indicates a negative balance because of timing differences between consumption and payment. The CS draws grant-in-aid to cover its cash requirements and not to represent income. The operating lease liability includes the full cost of annual rent increments from September 2008 of 2.5 per cent calculated every five years and compounded to 13 per cent spread on a straight line basis over the 20 year of the lease. So although the operating lease liability is recognised, the increase will be paid from future grant-in-aid receipts.

b Accounting convention

The financial statements have been prepared under the historic cost convention. Depreciated historical cost is used as a proxy for fair value as this realistically reflects consumption of the assets. Revaluation would not cause a material difference.

c Basis of preparation of accounts

The statutory purpose of the CS is to fund and provide support services to the Tribunal and all relevant costs are included in the CS's accounts. Direct costs specifically attributable to the Tribunal are incurred initially by the CS but are shown in the Tribunal's accounts.

Schedule 3 of the Enterprise Act 2002 requires the CS to prepare separate statements of accounts in respect of each financial year for itself and for the Tribunal.

In accordance with accounts directions issued by the Secretary of State for Business Innovation and Skills with the approval of the Treasury, the Tribunal and the CS have prepared a joint Statement of Accounting Officer's Responsibilities and Statement on Internal Control.

d Grant-in-aid

The CS is funded by grant-in-aid from BIS. In drawing down grant-in-aid the CS draws down sums considered appropriate for the purpose of enabling the Tribunal to perform its functions.

The FReM requires non-departmental public bodies to account for grant-in-aid received for revenue purposes as financing and is credited to the general reserve as it is regarded as contributions from a sponsor body.

e Non current assets

All assets are held by the CS in order to provide support services to the Tribunal. Items with a value of £500 or over, in a single purchase or grouped purchases where the total group purchase is £500 or more are capitalised.

f Depreciation

Depreciation is provided on all non current assets, using the straight line method, at rates calculated to write off, in equal instalments, the cost at the beginning of the year over the expected useful life. Non current assets are depreciated from the month following acquisition.

i Property, plant and equipment assets:

Information Technology:

| | |
|---|---------|
| Desktop and laptop computers and printers | 3 years |
| Servers and audio visual equipment | 5 years |
| Office equipment | 5 years |
| Furniture | 7 years |

ii Intangible non current assets:

Information Technology:

| | |
|-------------------|--------------|
| Software licences | 1 to 3 years |
|-------------------|--------------|

g Taxation

- i* The CS is liable for corporation tax on interest earned on bank deposits.
- ii* The CS is not registered for VAT and therefore cannot recover any VAT. Expenditure in the income and expenditure account is shown inclusive of VAT, and VAT on the purchase of non current assets is capitalised.

h Pension costs

Present and past employees are covered under the provisions of the Principal Civil Service Pension Scheme (PCSPS). The PCSPS is non-contributory (except in respect of dependants' benefits and additional employee contributions to the classic and premium schemes). The CS recognises the expected costs of these elements on a systematic and rational basis over the period during which it benefits from employees' services by payment to the PCSPS of amounts calculated on an accruing basis. Liability for payment of future benefits is a charge on the PCSPS. In respect of the defined contribution element of the schemes, the CS recognises contributions payable in the year.

No recognition of the PCSPS scheme occurs in the CS's accounts as the liability to pay future benefits does not lie with the CS. The PCSPS is an unfunded, multi-employer defined benefit scheme and the CS is unable to identify its share of the underlying assets and liabilities.

i Income

The main source of income is from the rental of courtrooms and website service income (see note 7). The income is recognised when the service is provided.

j Operating leases

Rentals payable under operating leases are charged to the income and expenditure account on a straight line basis over the 20 year term of the lease which CS pays for its and the Tribunal's accommodation in Victoria House. Operating lease estimates are based on VAT remaining at 20 per cent for the remaining term of the lease.

k Financial instruments

Financial instruments are initially measured at fair value plus transaction costs unless they are carried at fair value through profit and loss in which case transaction costs are charged to operating costs.

- i Financial assets The CS holds financial assets which comprise cash at bank and in hand and receivables, classified as loans and receivables. These are non derivative financial assets with fixed or determinable payments that are not traded in an active market.

Since these balances are expected to be realised within 12 months of the reporting date there is no material difference between fair value, amortised cost and historical cost.

- ii Financial liabilities The CS holds financial liabilities which comprise payables. Since these balances are expected to be settled within 12 months of the reporting date there is no material difference between fair value, amortised cost and historical cost.

l Reserves

The General Fund represents the total assets less liabilities of the CS, to the extent that the total is not represented by other reserves and financing items.

The Revaluation Reserve balance is due to the previous indexation of assets and is being unwound over the course of the asset lives with the current depreciation cost being used as a proxy for fair value.

m Provisions

The CS provides for legal or constructive obligations which are of uncertain timing or amount at the balance sheet date on the basis of the best estimate of the expenditure required to settle the obligation.

Specific assumptions are given in note 15.

2 Government grant-in-aid

| | 2011-12 £'000 | 2010-11 £'000 |
|-------------------------|------------------|------------------|
| Allocated by BIS | 4,058 | 3,964 |
| Drawn down: | | |
| Resource | 3,887 | 3,791 |
| Capital | 15 | 14 |
| Total drawn down | <u>3,902</u> | <u>3,805</u> |

3 The CS and Audit Committee Members' remuneration

a The total cost of CS and Audit Committee Members' remuneration is shown in the table below.

| | 2011-12 £'000 | 2010-11 £'000 |
|---|------------------|------------------|
| CS and Audit Committee Members' remuneration | 9 | 11 |
| Social security costs | 0 | 1 |
| Total CS and Audit Committee Members' remuneration | <u>9</u> | <u>12</u> |

b *The President's salary costs are included in note 3d of the Tribunal's accounts. The Registrar's salary costs are included in note 4a below.*

Mrs Janet Rubin is a non-executive member of the CS. Mrs Rubin is also Chairman of the CS's Audit Committee. Mrs Rubin's appointment runs until September 2013. Her appointment is not pensionable. Mrs Rubin is remunerated at a rate of £350 per day. Her remuneration of £3,325 in the year (2010-11: £4,725) is included in note 3a above.

4 Staff related costs and numbers

a *Staff costs are shown in the table below.*

| | Total | Permanently employed staff | Others | Total |
|-----------------------------|----------------|---|----------------|----------------|
| | 2011-12 | 2011-12 | 2011-12 | 2010-11 |
| | £'000 | £'000 | £'000 | £'000 |
| Wages and salaries | 653 | 643 | 10 | 649 |
| Social security costs | 61 | 61 | – | 57 |
| Other pension costs | 131 | 131 | – | 133 |
| Total employee costs | 845 | 835 | 10 | 839 |

The staff costs include the annual adjustment in untaken leave accrual, giving rise to a credit of £2,000 in 2011-12 and a credit of £10,000 in 2010-11.

b *The average number of whole-time persons employed during the year is shown in the table below.*

| | Total | Permanently employed staff | Others | Total |
|------------------|----------------|---------------------------------------|----------------|----------------|
| | 2011-12 | 2011-12 | 2011-12 | 2010-11 |
| Whole-time staff | 16 | 15 | 1 | 15 |

5 Pension costs

The PCSPS is an unfunded multi-employer defined benefit scheme but the CS is unable to identify its share of the underlying assets and liabilities. Further information can be found in the resource accounts of the Cabinet Office: Civil Superannuation (www.civilservice-pensions.gov.uk).

For 2011-12, employer contributions of £131,000 (2010-11: £133,000) were payable to the PCSPS at one of four rates in the range 16.7 to 24.3 per cent (2010-11: 16.7 to 24.3 per cent) of pensionable pay, based on salary bands. The Scheme's Actuary reviews employer contributions every four years following a full scheme valuation. The salary bands were revised for 2011-12. The contribution rates reflect benefits as they are accrued, not when the costs are actually incurred, and reflect past experience of the scheme.

6 Other expenditure

| | 2011-12 £'000 | 2010-11 £'000 |
|--|------------------|------------------|
| Hire of plant and machinery | 22 | 21 |
| Other operating leases | 1,243 | 1,360 |
| Non case related expenditure including internal audit fees | 9 | 1 |
| IT service fees | 106 | 107 |
| Accommodation and utilities | 623 | 697 |
| Travel, subsistence and hospitality | 25 | 19 |
| Other administration including case related expenditure | 260 | 307 |
| Audit fees | 18 | 19 |
| Non cash items: | | |
| Depreciation | 40 | 91 |
| Total other expenditure | 2,346 | 2,622 |

Other operating lease costs relate to the rental of office space at Victoria House, where the CS is a tenant of the Competition Commission (CC) under a Memorandum of Terms of Occupation (MOTO) arrangement. The MOTO lasts for the duration of the CC's 20-year lease with the Victoria House landlord, which commenced in September 2003.

Consideration has been given to the merger of the CC and the OFT, but there is no evidence to suggest that the Tribunal and the CS will not continue to occupy the office space at Victoria House for the remainder of the 20-year lease.

There is a policy in place of not charging the Tribunal Service and other government bodies for use of CS's office space.

Audit fees related only to statutory audit work.

7 Income

| | 2011-12 £'000 | 2010-11 £'000 |
|-------------------------|------------------|------------------|
| Gross interest received | 1 | 0 |
| Courtroom rental income | 0 | 3 |
| Website service income | 5 | 4 |
| Total income | 6 | 7 |

Interest was received on funds deposited in the CS's bank accounts.

The website service income relates to a contract with Bloomberg, a US publisher, for non-exclusive use of information published on the website.

8 Taxation

| | 2011-12 £'000 | 2010-11 £'000 |
|-------------------------|------------------|------------------|
| Corporation tax payable | - | - |

Corporation tax payable is based on 21 per cent of gross interest receivable (2010-11: 21 per cent).

9 Property, plant and equipment

| | Information Technology £'000 | Furniture and Fittings £'000 | Office Machinery £'000 | Total £'000 |
|--|------------------------------------|------------------------------------|------------------------------|-------------------|
| Cost or valuation: | | | | |
| At 31 March 2011 | 358 | 325 | 14 | 697 |
| Reclassification of assets from IT to Intangible | (4) | – | – | (4) |
| Additions | 5 | 9 | 0 | 14 |
| Disposals | (50) | – | – | (50) |
| At 31 March 2012 | <u>309</u> | <u>334</u> | <u>14</u> | <u>657</u> |
| Depreciation: | | | | |
| At 31 March 2011 | <u>329</u> | <u>304</u> | <u>9</u> | <u>642</u> |
| Reclassification of assets from IT to Intangible | (4) | – | – | (4) |
| Charged in year | 14 | 8 | 1 | 23 |
| Disposals | (49) | – | – | (49) |
| At 31 March 2012 | <u>290</u> | <u>313</u> | <u>10</u> | <u>613</u> |
| Net book value at 31 March 2011 | 29 | 21 | 5 | 55 |
| Asset financing: | | | | |
| Owned | 29 | 21 | 5 | 55 |
| Net book value at 31 March 2012 | <u>19</u> | <u>21</u> | <u>4</u> | <u>44</u> |
| Asset financing: | | | | |
| Owned | <u>19</u> | <u>21</u> | <u>4</u> | <u>44</u> |

Included in the cost of fixed assets, are assets with an original cost of £318,231, which have been fully depreciated, but are still in use.

10 Intangible assets

| | Purchased software licences £'000 |
|--|---|
| Cost or valuation: | |
| At 31 March 2011 | 214 |
| Reclassification of assets from IT to Intangible | 4 |
| Additions | 1 |
| At 31 March 2012 | 219 |
| Amortisation: | |
| At 31 March 2011 | 185 |
| Reclassification of assets from IT to Intangible | 4 |
| Charged in the year | 15 |
| At 31 March 2012 | 204 |
| Net book value at 31 March 2011 | <u>29</u> |
| Net book value at 31 March 2012 | <u>15</u> |

11 Trade and other receivables

a Analysis by type

| | 31 March 2012 £'000 | 31 March 2011 £'000 |
|--|------------------------------------|---------------------------|
| Amounts falling due within one year: | | |
| Deposits and advances | 7 | 8 |
| Other receivables | 66 | – |
| Prepayments and accrued income | 59 | 72 |
| Total trade receivables and other receivables | 132 | 80 |

b Intra-government balances

| | Amounts falling due within one year | |
|---|--|---------------------------|
| | 31 March 2012 £'000 | 31 March 2011 £'000 |
| Balances with other central government bodies | 73 | 8 |
| Balances with bodies external to government | 59 | 72 |
| Total trade and other receivables | 132 | 80 |

There are no intra-government balances that fall due after one year.

12 Cash and cash equivalents

| | 2011-12 £'000 | 2010-11 £'000 |
|---|--------------------------|------------------|
| Balance at 1 April | 274 | 573 |
| Net change in cash balances | 46 | (299) |
| Balance at 31 March | 320 | 274 |
| The following balances were held at 31 March: | | |
| Commercial banks and cash in hand | 320 | 274 |
| Balance at 31 March | 320 | 274 |

13 Trade payables and other current/non-current liabilities

a Analysis by type

| | 31 March 2012 £'000 | 31 March 2011 £'000 |
|--|------------------------------------|---------------------------|
| Amounts falling due within one year: | | |
| Payables representing activities of the Tribunal at 31 March | 109 | 115 |
| Taxation and social security | 19 | 17 |
| Trade payables | 5 | 6 |
| Accruals | 61 | 42 |
| Untaken leave accrual | 38 | 40 |
| Deferred income rent free | 23 | 23 |
| Total amounts falling due within one year | <u>255</u> | <u>243</u> |
| Amounts falling due after more than one year: | | |
| Deferred income rent free | 239 | 261 |
| Operating lease liability | 1,552 | 1,475 |
| Total amounts falling due after more than one year | <u>1,791</u> | <u>1,736</u> |

b Intra-government balances

| | Amounts falling due within one year | | Amounts falling due after more than one year | |
|--|--|---------------------------|---|---------------------------|
| | 31 March 2012 £'000 | 31 March 2011 £'000 | 31 March 2012 £'000 | 31 March 2011 £'000 |
| Balances with other central government bodies | 131 | 114 | 1,791 | 1,736 |
| Balances with bodies external to government | 124 | 129 | – | – |
| Total trade and other payables | <u>255</u> | <u>243</u> | <u>1,791</u> | <u>1,736</u> |

c Deferred income and operating lease liability

The deferred income in note 13a represents the value of the rent-free period for Victoria House.

In accordance with the principles of IAS 17 (Leases) and the supplementary guidance specified in SIC 15 (Operating leases incentives) the CS has spread the value of the initial nine month rent-free period for Victoria House over the expected full 20-year length of the tenancy agreement.

The operating lease liability in note 13a represents obligations under operating leases which include an increase of 2.5 per cent compounded over every five years equating to 13 per cent applied from September 2008 for land and buildings. The full cost of the operating lease has been spread on a straight line basis over the 20 year term of the lease.

The footnote to note 6 gives further details of the lease arrangements in respect of land and buildings.

14 Provisions for liabilities and charges

| | Tribunal's long service award costs £'000 |
|---------------------------------|--|
| Balance at 31 March 2011 | 18 |
| Provided in the year | 12 |
| Balance at 31 March 2012 | 30 |

The provision made in the year relates to the Tribunal's expected cost of the President's long service award which becomes payable on retirement. The CS will provide the finances to settle the Tribunal's liability. The liability was calculated by the Government Actuary's Department (GAD) and is based on the President's judicial grade and length of service. For this year's disclosures the GAD have assumed tax is paid on his lump sum at 45 per cent, reflecting the new top income rate announced in last month's Budget. However if the member pays tax on the lump sum at a different rate then the Long Service Award would differ. For previous years the tax was assumed to be 40 per cent.

15 Commitments under operating leases

Commitments under operating leases to pay rentals during the year following the year of these accounts are given in the table below, inclusive of VAT analysed according to the period in which the lease expires.

| | 31 March 2012 £'000 | 31 March 2011 £'000 |
|---|------------------------------------|---------------------------|
| Obligations under operating leases comprise: | | |
| Buildings | | |
| Not later than one year | 1,188 | 1,188 |
| Later than one year and not later than five years | 5,297 | 5,141 |
| Later than five years | 9,611 | 10,955 |
| Other: | | |
| Not later than one year | 21 | 22 |
| Later than one year and not later than five years | 15 | 37 |
| Later than five years | 0 | 0 |
| Total obligations under operating leases | 16,132 | 17,343 |

The obligations under operating leases include an increase of 2.5 per cent compounded over every five years equating to 13 per cent applied from September 2008 for land and buildings. Note 6 gives further details of the lease arrangements in respect of land and buildings.

16 Financial instruments

IAS 32 Financial Instruments Presentation, requires disclosure of the role which financial instruments have had during the period in creating or changing the risks an entity faces in undertaking its activities. The CS has limited exposure to risk in relation to its activities. As permitted by IAS 32, trade receivables and payables, which mature or become payable within 12 months from the balance sheet date, have been omitted from this disclosure note.

The CS has no borrowings and relies on grant in aid from BIS for its cash requirements, and is therefore not exposed to liquidity, credit and market risks. The CS has no material deposits other than cash balances held in current accounts at a commercial bank, and all material assets and liabilities are denominated in sterling, so it is not exposed to interest rate risk or currency risk.

Set out below is a comparison by category of book values and fair values of the CS's financial assets as at 31 March 2012.

| | Book value | Fair value |
|-------------------------|-------------------|------------|
| | £'000 | £'000 |
| Cash at the bank | 320 | 320 |

17 Related party transactions

During the year the CS had various material transactions with the Competition Commission relating to the provision of IT support to the CS and the occupancy of Victoria House.

The CS's sponsor department is BIS from which it receives grant-in-aid. During the year the CS also had various other material transactions with BIS including internal audit services.

In addition, the CS had material transactions with the Ministry of Justice and the Cabinet Office to which accruing superannuation liability charges and employee contributions were paid over for the President and permanent staff respectively. Salary and national insurance for the President are paid to the Ministry of Justice.

Sport England has signed a deed of settlement with CS to repay the repair costs for the Court 2 flood water damage caused by their contractors whilst doing work at Sport England's premises on 22 August 2010.

No CS member, key manager or other related party has undertaken any material transactions with the CS during the year.

18 Contingent liability

Investigations indicated that design defects in the air conditioning system could cause incidents of water leakage. Should a major flood occur this may necessitate further repairs and expenditure which cannot be quantified. As a precautionary measure, the maintenance company looking after the premises has instituted a rolling programme of replacing identified defective valves in the air conditioning system.

19 Events after the reporting period

There were no events after the reporting period to report.

The Accounting Officer authorised these financial statements for issue on the date of certification.

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