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# Competition Appeal Tribunal and Competition Service

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## Introduction

The Enterprise Act 2002 provided for the establishment of the Competition Appeal Tribunal (the Tribunal) and the Competition Service (the CS).

### Principal activities

To hear appeals against: decisions of the Office of Fair Trading (OFT) under Chapters I and II of the Competition Act 1998 and since 1 May 2004 Articles 81 and 82 of the EC Treaty; decisions of regulators in the telecoms, gas, electricity, water, railway and air traffic service sectors under those provisions; decisions made by the Office of Communications (Ofcom) under the Communications Act 2003; and decisions of the OFT, the Competition Commission or the Secretary of State on merger cases and market investigations under the Enterprise Act 2002.

The Tribunal also hears certain claims for damages arising out of an infringement of UK or EC competition law.

Each case is heard and decided by the President or a chairman, and two ordinary members.

The decisions of the Tribunal may be appealed to the Court of Appeal, the Court of Session in Scotland or the Court of Appeal in Northern Ireland.

The CS is an executive Non Departmental Public Body, also set up under the Enterprise Act 2002, to provide the administrative staff, finance and accommodation that the Tribunal requires in order to carry out its functions.

### Membership of the Tribunal

The Tribunal comprises the President, Sir Christopher Bellamy, the panel of chairmen (comprising each of the judges of the Chancery Division of the High Court and three other members); and a panel of 17 ordinary members.

In November 2005, after an open competition, the Lord Chancellor appointed Lord Carlile of Berriew QC and Vivien Rose as members of the panel of chairmen.

During the year two ordinary members (Barry Colgate and Patricia Quigley) resigned and were not replaced.

The Tribunal membership in 2005-2006 comprised

#### **President**

Sir Christopher Bellamy

#### **Panel of chairmen**

The Honourable Mr Justice Lindsay

The Honourable Mr Justice Evans-Lombe

The Honourable Mr Justice Blackburne

The Honourable Mr Justice Lightman

The Honourable Mr Justice Rimer

The Honourable Mr Justice Park

The Honourable Mr Justice Pumfrey

The Honourable Mr Justice Hart

The Honourable Mr Justice Lawrence Collins

The Honourable Mr Justice Patten

The Honourable Mr Justice Etherton

The Honourable Mr Justice Smith

The Honourable Mr Justice Lewison

The Honourable Mr Justice David Richards

The Honourable Mr Justice Mann

The Honourable Mr Justice Warren

Marion Simmons QC

Lord Carlile of Berriew QC

Vivien Rose

### **Ordinary members**

Professor Andrew Bain OBE  
Michael Blair QC  
Peter Clayton  
Barry Colgate (until February 2006)  
Michael Davey  
Peter Grant-Hutchison  
Professor Peter Grinyer  
Sheila Hewitt  
Ann Kelly  
The Honourable Antony Lewis

Graham Mather  
Professor John Pickering  
Richard Prosser OBE  
Dr Arthur Pryor CB  
Patricia S. Quigley WS (until March 2006)  
Adam Scott TD  
Vindelyn Smith-Hillman  
Professor Paul Stoneman  
David Summers

### **Membership of the CS**

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

### **Recruitment of members**

Ordinary members are recruited in open competition according to the guidelines of the Office of the Commissioner of Public Appointments (OCPA) and are appointed by the Secretary of State for Trade and Industry. The President and chairmen are appointed by the Lord Chancellor, by open competition as appropriate.

### **Premises**

The Tribunal and the CS operate from premises in Victoria House, Bloomsbury Place, London, WC1A 2EB.

### **Finance and workload**

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

## President's statement

### The cases

The Tribunal has once again had an active year, handing down a total of 41 judgments and rulings.

A case-by-case summary of the judgments handed down during the year can be found later in this review. The Tribunal's judgments included two judgments concerning the principles to be applied in penalty appeals in price-fixing cases (*JJB and Allsports and Argos and Littlewoods*). In *Allsports* the Tribunal increased the fine imposed on the appellant on the basis that it transpired during the appeal proceedings that a 'discount' that the OFT had applied to the penalty to reflect cooperation during the OFT's investigation had been granted on a false basis.

In *Burgess v OFT* the Tribunal set aside a decision of the OFT in an appeal by a funeral director in Hertfordshire concerning access to a local crematorium owned and operated by a rival funeral directing business. The case was notable for the intervention, before the Tribunal, of the Consumers' Association against the OFT and in support of the complainant. The Tribunal had an opportunity to consider the law relating to refusal to supply under the Chapter II prohibition and replaced the OFT decision with its own finding of infringement pursuant to its powers in Schedule 8 of the 1998 Act.

In *Genzyme v OFT* the Tribunal imposed a remedy following the Tribunal's earlier judgment on liability. In its remedy judgment the Tribunal exercised its power, for the first time, to issue a detailed pricing direction to Genzyme pursuant to its powers in Schedule 8 of the 1998 Act.

The Tribunal also had occasion to consider the law applicable to pricing abuses under the Chapter II prohibition in relation to the supply of milk to "middle ground" retailers in Scotland (*Claymore v OFT*).

The Tribunal handed down two significant judgments in relation to common carriage in the water sector during the year, both involving the same appellant, *Albion Water Limited*. In the first case (*Dŵr Cymru/Shotton Paper*) the Tribunal issued an interim judgment noting that the appeal raises important issues regarding the application of the Chapter II prohibition and the interaction of the 1998 Act, the Water Industry Act 1991 and the Water Act 2003, and requiring further argument on several issues. A further hearing took place in May 2006. In the second case (*Thames Water/Bath House*) the Tribunal set aside a decision of the Director General of Water Services concerning access prices quoted by Thames Water to Albion for common carriage. The appeal concerned Albion's desire to provide additional water resources in the London area through boreholes, which was opposed by Thames Water. The Tribunal found that the Director's decision rejecting Albion's complaint was inadequately reasoned as regards the charges/credits to be given in the context of balancing demand and supply. Other cases involving potential entrants to the water industry in England and Wales lodged or considered during the year were appeals by *Aqua Resources (UK) Limited* and *Independent Water Company Limited*.

Other significant judgments include *The Racecourse Association* and *the British Horseracing Board* in which the Tribunal had occasion to consider the application of the Chapter I prohibition to a cooperation agreement involving the exploitation of off-course betting via the internet by a company called Attheraces, which, it was accepted, did not have the 'object' of restricting or distorting competition but was alleged by the OFT to have an anti-competitive effect. The OFT's infringement decision was set aside by the Tribunal. In *Hutchison 3G* the Tribunal set aside, on one point relating to countervailing bargaining power, a decision of OFCOM under the Communications Act 2003 that the appellant had 'significant market power'. The matter was remitted to OFCOM for further investigation.

The Tribunal also heard the first application under the Enterprise Act 2002 for review of a merger decision of the Competition Commission (*Somerfield plc v Competition Commission*) and the first application for review of a decision of the OFT in a market investigation case (*Association of Convenience Stores v OFT*).

As in previous years, there continues to be a significant number of procedural issues raised in appeals. In *Floe Telecom* the Tribunal set a time period for OFCOM's further investigation of the matter remitted to it by the Tribunal. The Tribunal's judgment on this point has been appealed to the Court of Appeal.

A number of other judgments and rulings were handed down on a diverse range of procedural matters such as confidentiality, disclosure, whether a party has a 'sufficient interest' to intervene in proceedings, and the conduct of legal representatives in connection with applications to the Tribunal to withdraw an appeal.

A total of ten new cases were received during the year. Of note were appeals under the Competition Act 1998 in respect of the OFT's long running investigation leading to the *MasterCard UK Members Forum* decision. A follow-on damages action resulting from the *Genzyme* case was submitted a few days after the year under review.

## Membership

I am very pleased to be able to report the appointment of two new chairmen to the panel of chairmen: Lord Carlile of Berriew QC, who is a practising barrister and active in several other fields; and Vivien Rose, who is a legal adviser to the Clerk's Department of the House of Commons and who has extensive experience in the field of competition law. Their biographical details appear later in this review.

Barry Colgate retired from the Tribunal during the year. Both as a member of the former Restrictive Practices Court and the Tribunal, Barry Colgate has performed distinguished public service in the field of competition law and his experience has been of great benefit in several important cases including the Tribunal's first case *Napp Pharmaceuticals* and the *Football Shirts* appeals. Just before the close of the year under review Patricia Quigley WS also resigned as a member of the Tribunal. Patricia Quigley too has been an active and valuable member of the Tribunal, particularly in the *Aberdeen Journals* and *Freeserve* cases. We wish them both well.

## Other activities

The Tribunal issued a new and comprehensive *Guide to Proceedings* in October 2005.

This year we continued to welcome a number of visiting judges, competition authorities or other delegations from overseas including visitors from the United States, China, Japan, Ukraine, Australia, and Kenya. Interest has generally centred on how we run our hearings, the structure of the Tribunal, its relation to other parts of the competition regime and our case management techniques. We are pleased that a member of the Swedish judiciary, Judge Louise Petrelius, is with us for a three month stay from April 2006.

It has also been a fairly full year in terms of outside speaking engagements. Engagements in which I was invited to chair or participate include the first panel on competition law at the Commonwealth Law Conference; an OECD workshop on competition law with judges in St Petersburg; with several members of the Tribunal, an OECD conference for judges in Budapest; a seminar for judges organised by the Foreign Office in Prague and a conference organised by the European Commission in Brussels on its Green Paper on private actions for damages in respect of the infringement of European competition law. The Registrar spoke at a conference in Rome organised by the Academy of European Law for delegates from southern Mediterranean countries. Christopher Brown, one of the Tribunal's referendaire's spoke at a seminar for judges in Stockholm also organised by the Academy of European Law.

## Training

The Tribunal, as in previous years, continues to attach considerable importance to the provision of a continuing programme of training, mainly in the form of bi-monthly seminars drawing on a mix of presentations from external speakers and the expertise of the Tribunal's own members. During the year Mr Adam Scott assumed the chairmanship of the Tribunal's training committee. I am grateful for the work of the retiring chairman, Dr Arthur Pryor, and the members of the Tribunal's training committee, and for the commitment they have given in the organisation of these seminars.

Marion Simmons QC, the Registrar and myself assisted in a seminar on competition law organised by the Judicial Studies Board for members of the Court of Appeal and Chancery Division and held in London.

## The Association of European Competition Law Judges (AECLJ)

In July 2005 the Tribunal was pleased to host the annual conference of the AECLJ, which brings together judges from across the European Union with a role in deciding competition law cases. We were especially delighted that Commissioner Neelie Kroes was able to attend and speak at the conference. Other distinguished speakers at the conference included Professor William Kovacic, Professor Martin Hellwig and Professor Denis Waelbroeck. We are also very grateful to Mr Gerry Sutcliffe MP, then Parliamentary Under Secretary of State in the Department of Trade and Industry, for hosting an opening reception for the conference in the Court Room of Trinity House in the City of London. The Tribunal played a leading role in establishing the AECLJ, and also provides the AECLJ with its secretariat. I and all of the member judges of AECLJ are enormously grateful to the Tribunal staff for their work in the organisation of the conference.

At the end of the conference I stepped down as President of the AECLJ. It has been a pleasure as well as an honour to serve as President of the AECLJ since its inception in 2001. Judge Joachim Bornkamm of the Bundesgerichtshof in Germany was elected as my successor. The AECLJ will hold its fifth conference at the Deutsche Richter Akademie, Schloss Wustrau (near Berlin) in June 2006.

## Inaugural event

In October 2005 we celebrated the move of the Tribunal to its present premises with a special event at Victoria House attended by members, staff, senior representatives of government and the judiciary, and members of both branches of the legal profession. We were honoured to welcome the Secretary of State for Constitutional Affairs, Lord Falconer as our special guest and speaker.

## Staff

We are very fortunate in having a most effective team in the CS to support the Tribunal. Although only few in number, they organise hearings and carry out all the other functions of a public body smoothly and competently. All members of staff have continued to work to the highest standards during the year, and the members and I are extremely grateful to them. I would particularly like to thank the Registrar and those involved in the preparation of the Tribunal's new Guide to Proceedings.



## Registrar's statement

### Casework

This year, and coinciding with the inaugural event mentioned in the President's statement, the Tribunal published its *Guide to Proceedings*. The *Guide* is intended to give practical guidance for parties and their legal representatives as to the Tribunal's practice and procedure. Many of the points mentioned in the *Guide* are cross-referenced to the Tribunal's growing body of case law. The intention is to revise and update the *Guide* on a regular basis.

### The CS

The CS is the support organisation for the Tribunal. A fuller description of its role can be found in the Introduction.

The strategic direction of the CS continues to be set by the membership of the CS, whose members are Sir Christopher Bellamy (the President), Janet Rubin and myself.

The membership of the CS meets four times a year under the chairmanship of the President and is supported by Jeremy Straker, our Director, Operations, who acts as secretary. The membership of the CS was in post throughout the financial year.

### Future developments

The CS anticipates that the Tribunal shall handle a caseload consistent with that of previous years. The CS remains conscious of the need to operate with economy particularly with the restrictions that have been placed upon expenditure growth across government departments and their agencies.

The CS has reviewed expenditure requirements across the organisation and in addition to the annual budget has submitted separate proposals to the DTI focusing on Tribunal members' remuneration and pay for CS staff.

### Information technology

In accordance with Government policy the CS has commissioned an Electronic Document and Records Management System (EDRMS), which will assist document retrieval and case management. Negotiations on the contract for this system achieved a significant reduction in price over the original quote and the project is nearing completion.

### Administration

The CS regularly examines how to make financial savings in order to stay within prevailing budgetary constraints. The CS has recently, for example brought the previously outsourced HR function in-house to save money without employing any extra staff. The CS continues to share certain facilities support with our landlord, the Competition Commission, while strictly maintaining independence. This too brings a cost saving.

The financial performance of the Tribunal and CS in 2005-2006 is discussed in greater detail in the management commentary on pages 39 and 40 and the financial statements and accompanying notes to the accounts on pages 50 to 52 and pages 55 to 68.

## Staffing and training

In the process of changing the basis of the HR function, the CS has designed and implemented a new staff appraisal system and commissioned a full staff training needs analysis, which is now being put into effect. Individual members of staff are involved in professional training in accountancy, information management and the law. During the year a series of training seminars covering a range of work skills was arranged, open to all staff. It is gratifying to be able to report that staff turnover during the year was zero and sickness absence of 1% was far below the average for both the public and private sectors.

The CS is an equal opportunities employer and treats all staff fairly irrespective of gender, ethnic origin, marital status, religious belief, age, sexual orientation or disability.

As a small organisation a policy of full employee participation is actively encouraged. Groups focusing on specific areas of activity including casework, information and finance met throughout the year.

## 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 and Premium 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 scheme is provided in the remuneration report and note 5 of the CS's accounts.

## The CS Audit Committee

The CS Audit Committee meets four times a year under the chairmanship of Janet Rubin. The Committee has been well served since its inception by Barry Colgate, whose wealth of experience in financial controls has been of great help to the Committee. As mentioned by the President, Barry has now retired from membership of the Tribunal and of the CS Audit Committee. His place on the Committee has been taken by another Tribunal member, David Summers who has current experience of Audit Committee membership of a public company. The third member of the Committee is Peter Clayton, a member of the Tribunal and a Chartered Accountant who has extensive experience of operating with audit committees of major FTSE100 companies.

## Format of accounts

The accounts for the Tribunal and for the CS have been prepared in accordance with the separate Accounts Directions given by the Secretary of State for Trade and Industry with the consent of the Treasury in accordance with Schedule 3 of the Enterprise Act 2002.

The Accounts Direction for the Tribunal states that the Statement of Accounting Officer's Responsibilities and Statement on Internal Control are combined with those of the CS.

The accounts of the Tribunal include only the direct costs specifically attributable to the Tribunal. All support costs are included in the CS's accounts in accordance with its statutory purpose set out in the Introduction.

The Tribunal does not have any assets and its costs are incurred by the CS so the production of a separate Balance sheet and cash flow statement for the Tribunal is not appropriate.

## 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 £5,000 for the Tribunal (2004-2005: £5,000) and £19,500 for the CS (2004-2005: £20,000).

In 2005-2006 the DTI's Internal Audit Directorate continued to provide internal audit services to the CS. The cost of providing this function in 2005-2006 was £10,000 (2004-2005: £18,000).

## Charitable donations

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

## Payment of creditors

The CS is committed to pay all supplier invoices by the due date or within 30 days of receipt if no due date has been agreed. Throughout the year the average payment period was 10 days (2004-2005: 10 days) and 99.9 per cent of (undisputed) invoices were settled within 30 days (2004-2005: 99.4 per cent).

## Disclosure of relevant audit information

- So far as I am aware, there is no relevant audit information of which the Tribunal 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 and CS's auditors.

*Charles Dhanowa*  
Registrar and Accounting Officer  
Competition Service

21 June 2006

## Membership

### President

Sir Christopher Bellamy

Sir Christopher Bellamy is President of the Competition Appeal Tribunal. After qualifying as a barrister, he practised mainly in the fields of competition law, EC law and public law. He was appointed Queen's Counsel in 1986. From 1992 to 1999 he was a judge of the Court of First Instance of the European Communities. He is also authorised to sit as a High Court judge, a judge of the Employment Appeal Tribunal, and a Recorder of the Crown Court.

### Chairmen

The following judges of the Chancery Division of the High Court

The Honourable Mr Justice Lindsay

The Honourable Mr Justice Evans-Lombe

The Honourable Mr Justice Blackburne

The Honourable Mr Justice Lightman

The Honourable Mr Justice Rimer

The Honourable Mr Justice Park

The Honourable Mr Justice Pumfrey

The Honourable Mr Justice Hart

The Honourable Mr Justice Lawrence Collins

The Honourable Mr Justice Patten

The Honourable Mr Justice Etherton

The Honourable Mr Justice Smith

The Honourable Mr Justice Lewison

The Honourable Mr Justice David Richards

The Honourable Mr Justice Mann

The Honourable Mr Justice Warren

### **Marion Simmons QC**

Marion Simmons QC is a practising barrister and also sits as an arbitrator. She was called to the Bar in 1970, and was appointed QC in 1994. She was appointed an Assistant Recorder in 1990 and has been a Recorder of the Crown Court since 1998 (sitting in criminal and civil cases). She was the Vice-Chairman of the Appeals Committee of the Institute of Chartered Accountants of England and Wales (2000-2005). She is a member of the Mental Health Review Tribunal Restricted Patients Presidents Panel, a member of the Panel of Chairmen of the Disciplinary and Appeal Tribunal of the Accountancy Investigation and Disciplinary Board, the Chairman of the Disciplinary Committee of the Taxation Disciplinary Board and an Assistant Boundary Commissioner. Her main areas of practice are business, financial and commercial law, including banking, insurance, contract, partnership, financial services, professional negligence and discipline, the commercial aspects of company law, insolvency and the regulation and disciplinary functions of professional and equivalent bodies.

### **Lord Carlile of Berriew QC**

Lord Carlile is Head of Chambers at 9-12 Bell Yard, London, specialising in criminal and civil aspects of commercial fraud. He was called to the Bar in 1970 and took silk in 1984. He is also a Fellow of King's College, London. He is the Independent Reviewer of Terrorism Legislation for the government.

He was Chair of the Welsh Assembly Review of the Safety of Children in the NHS in Wales and in 2004-2005 was Chairman of the Joint Select Scrutiny Committee on the Government's draft Mental Health Bill. From 1989-1999 he was a lay member of the General Medical Council. From 1983-1997 he was the Liberal, then Liberal Democrat, MP for Montgomery. During that time he was, variously, spokesman on Home Affairs, Health, Trade and Industry, and Wales. From 1992-1997 he was Leader of the Liberal Democrats in Wales. He was created a life peer in 1999.

He is a non-executive director of Wynnstay Group Plc, an agri-feed and supplies company. He has written, lectured and spoken on a wide range of issues. Recently he was a contributing observing member of a committee formed by the John F Kennedy School of Government at Harvard University to produce a report on US counter-terrorism legislation.

### **Vivien Rose**

Vivien Rose was called to the Bar in 1984 and was a member of Monckton Chambers, London, for ten years.

She was appointed Standing Counsel to the Director General of Fair Trading in 1992. In 1995 she left private practice and joined the Government Legal Service working for several years in HM Treasury advising on financial services regulation. Between 2002 and 2005 she worked in the Ministry of Defence advising on international law of armed conflict.

She was the editor of the 4th edition of Bellamy & Child European Community Law of Competition (1993) and an author of the chapter on restrictive agreements of Chitty on Contracts. She was also on the editorial board of the European Competition Law Review for many years.

She currently works part-time as a legal adviser to the Clerk's Department of the House of Commons and is co-editor of the planned 6th edition of Bellamy & Child.

## Ordinary members

### **Professor Andrew Bain OBE**

Professor Andrew Bain OBE 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.

### **Michael Blair QC**

Michael Blair QC is a practising barrister with chambers in Gray's Inn and the Chairman of the Doctors' and Dentists' Pay Review Body. 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) and was employed as a civil servant in the Lord Chancellor's Department for 20 years. He is a past Chairman of the Bar Association for Commerce, Finance and Industry.

### **Peter Clayton**

Peter Clayton is a fellow of the Institute of Chartered Accountants in England and Wales. He has held senior financial positions in major FTSE 100 companies such as Group General Manager Finance of General Accident Plc and Group Financial Controller of Forte Plc. He was also Secretary of the Technical Committee of The Hundred Group of Finance Directors.

### **Barry Colgate**

Barry Colgate is a non-executive Director of The Michael Shanly Group. He has been Chairman of Harrington Food Group Ltd. and used to be Group Director of Planning/Legal and Business Advisor in Ranks Hovis McDougall. He is a Fellow of the Institute of Chartered Secretaries and Administrators. He was a Member of the Restrictive Practices Court.

### **Michael Davey**

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

### **Peter Grant-Hutchison**

Peter Grant-Hutchison is a Scottish advocate. He is a part-time chairman of the Social Security Appeal Tribunals and the Disability Appeal Tribunals and a part-time Immigration Adjudicator.

### **Professor Peter Grinyer**

Professor Peter Grinyer is Emeritus Professor at the University of St Andrews, where he was also Vice-Principal, and is a visiting professor at Imperial College, London. He was, for some years, a visiting professor of New York University and has also held a chair at the City University. For eight years he was a member of the Scottish Legal Aid Board and has been non-executive director of a number of companies including Mclroy Coates and John Brown Plc. He is a member of the editorial boards of several journals on managerial economics and strategy.

### **Sheila Hewitt**

Sheila Hewitt is a JP, a member of the General Medical Council and a member of the Immigration Appeals Tribunal. She is an Associate of the Chartered Institute of Bankers, and an Independent Assessor for OCPA (the Office of the Commissioner for Public Appointments).

### **Ann Kelly**

Ann Kelly is an Independent Member of the Ministry of Defence Police Committee, a Deputy Electoral Commissioner, a Lay Member of the Discipline and Appeal Boards of the Royal Institution of Chartered Surveyors, a Lay Member of the Adjudication Panel of the Law Society and a Lay Member of the Registration and Conduct Committees of the General Social Care Council. She was 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.

### **The Honourable Antony Lewis**

The Honourable Antony Lewis is a barrister and Chairman of the Mid Wales Food and Land Trust Ltd. 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. He is widely involved in the charity sector, e.g. as a trustee of the Frank Buttle Trust for Children and Young People, the Community Foundation in Wales and the Institute of Rural Health.

### **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, now the Competition 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, a director of Greenham Common Trust and a member of the OFCOM Consumer Panel.

### **Professor John Pickering**

John Pickering is an Economic and Business Consultant and chairman of an Educational Trust. 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 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 as Church Commissioner and director of several companies.

**Richard Prosser OBE**

Richard Prosser OBE has considerable experience of the small business sector. He currently holds non-executive directorships in engineering and agricultural supply businesses. He was until recently a reporting panel member of the Competition Commission and has served on a considerable number of inquiries.

**Dr Arthur Pryor CB**

Dr Arthur John Pryor CB 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.

**Patricia S Quigley WS**

Patricia S Quigley WS is a solicitor and Writer to the Signet. She has been an in-house solicitor with the former Lothian Regional Council and practised in firms in Glasgow and Edinburgh before setting up her own law practice in 1986. She has been a Voluntary Legal Adviser with the Citizens Advice Bureau and part-time Chairman of The Appeals Service (for Social Security Appeals). She presently holds part-time positions as an Immigration Judge and as a Reporter to the Client Relations Office of the Law Society of Scotland. She is a member of the International Association of Refugee Law Judges.

**Adam Scott TD**

Adam Scott is a Senior Research Fellow at the University of St Andrews where his interests include economic and legal regulation of competition and of utilities, team working and scenario planning. He has also worked in these fields for various private and public sector organisations. After qualifying at the Bar with an intellectual property background, he worked mainly in the telecommunications industry, being corporate planner in the creation and privatisation of British Telecommunications Plc, then heading BT's international affairs and latterly its apparatus business. He is a Chartered Engineer, a Fellow of the Institution of Engineering and Technology and a member of Guernsey's Utility Appeal Panel.

**Vindelyn Smith-Hillman**

Vindelyn Smith-Hillman is a Senior Economics Lecturer at University of Northampton having previously been a lecturer with the Open University and the Jamaica Institute of Management. She was a Senior Economist at the Bank of Jamaica in Kingston. She is a listed Assistant Examiner with Cambridge and London Examining Boards and also an assessor with the Government Economic Service.

**Professor Paul Stoneman**

Professor Paul Stoneman is Research Professor in Warwick Business School. He has been an ESRC Senior Research Fellow, a Visiting Professor at Stanford University and a Visiting Fellow at Nuffield College, Oxford. He has held many external positions of responsibility and has been on various editorial boards. He is and has been an external examiner for several academic institutions. He has published extensively.

**David Summers**

David Summers is a publishing and media consultant and a JP. He is non-executive Chairman of Wilmington Group plc. He also serves on The Lord Chancellor's Advisory Sub-Committee for Kent. He used to be Managing Director of Butterworths, the publishers and was formerly a member of the Restrictive Practices Court. He is Chairman of St. Bede's School Trust, Sussex.

## Appointed member of the Competition Service

### **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 Smiths, and the Littlewoods organisation. More recently she has held a number of private and public sector appointments as a non-executive director of Bonmarche Limited, of the Strategic Rail Authority and of the SHL Group Plc. Amongst other non-executive appointments, she has previously been a member of the Employment Appeals Tribunal, a Civil Service and an Equal Opportunities Commissioner, Independent Assessor for the Office of the Commissioner for Public Appointments, a member of the Civil Service Arbitration Tribunal, the Diplomatic Service Appeal Board, the Rail Passenger Council and the Senior Salaries Review Body.



## Judgments handed down within the period 1 April 2005 to 31 March 2006

Note: The details set out below are only intended to be brief summaries of judgments. There is no intention to add to, interpret or otherwise gloss the judgments. The definitive text of each judgment can be found in the Competition Appeal Reports or on the website of the Competition Appeal Tribunal.

| <b>Judgement</b>  | <b>Subject matter</b>  |
|---|--|
| <p><b>1 UniChem Limited v Office of Fair Trading</b></p> <p>[2005] CAT 8            1 April 2005</p> <p><b>Tribunal</b></p> <p>Sir Christopher Bellamy<br/>Graham Mather<br/>Professor Paul Stoneman</p>                                  | <p>Judgment on an application pursuant to section 120 of the Enterprise Act 2002 for judicial review of a decision of the OFT not to refer the proposed acquisition of East Anglian Pharmaceuticals Limited by Phoenix Healthcare Distribution Limited to the Competition Commission.</p> <p>The Tribunal allowed the application, quashed the OFT's decision and remitted the matter to the OFT to take a fresh decision. The remittal to the OFT was not "at large" but was confined to the evidential challenges made by UniChem before the Tribunal to the OFT's findings in paragraphs 34 to 38 of the decision.</p> <p>The Tribunal held that the OFT had made findings of primary fact central to its decision concerning the distribution system of UniChem that were not put to UniChem during the OFT's investigation of the merger and were subsequently challenged by UniChem in evidence before the Tribunal. The Tribunal found that the evidence relied upon by the OFT for its conclusions was not adequate in the face of the challenges made to them and the Tribunal was not in a position to say that UniChem's evidence was obviously incredible or irrelevant. The Tribunal was not itself able, in the context of judicial review proceedings, to resolve disputed issues of fact which had not been properly considered by the OFT.</p> <p>The Tribunal also found that, in circumstances where the OFT had placed material reliance on facts concerning UniChem, the OFT's failure to cross-check material facts submitted to the OFT by the merging parties about UniChem amounted to procedural unfairness.</p> |
| <p><b>2 Pernod-Ricard SA and Campbell Distillers Limited v Office of Fair Trading</b></p> <p>[2005] CAT 9            8 April 2005</p> <p><b>Tribunal</b></p> <p>Sir Christopher Bellamy<br/>Professor Paul Stoneman<br/>David Summers</p> | <p>Ruling on disposal of proceedings and costs.</p>  |

**3 Double Quick Supplyline Limited v Office of Fair Trading**

[2005] CAT 10 7 April 2005

**Tribunal**

Marion Simmons QC  
Peter Grant-Hutchison  
Graham Mather

Ruling on the appellant's application that the matter be remitted forthwith to the OFT.

The appellant contended that the OFT's decision should be remitted because it did not take into account the fact that Double Quick Supplyline Limited (as a limited company) came into existence only in 2001 and that it had been fined for activities that had taken place before its incorporation. The OFT submitted that it was content to reply only on the material in the decision and on no other evidence, and did not intend to adduce any additional evidence. The Tribunal was therefore not persuaded that it was appropriate to remit the matter at that time.

Following consideration of further written representations from the parties, the Tribunal subsequently made a consent order on 19 May 2005 bringing the appeal proceedings to an end. By consent, the Tribunal reduced the penalty imposed on the appellant from £109,000 to £36,210. This reduction took account of the fact that the OFT no longer contested the appellant's case that it was involved in an infringement of the Chapter I prohibition for a shorter period than that found in the OFT's decision.

**4 Apex Asphalt and Paving Co. Limited v Office of Fair Trading**

[2005] CAT 11 20 April 2005

**Tribunal**

Marion Simmons QC  
Dr Arthur Pryor CB  
David Summers

Judgment on (i) the amount of interest to be paid on the penalty and (ii) costs.

**5 Richard W Price (Roofing Contractors) Ltd v Office of Fair Trading**

[2005] CAT 12 20 April 2005

**Tribunal**

Marion Simmons QC  
Dr Arthur Pryor CB  
David Summers

Judgment on (i) the amount of interest to be paid on the penalty and (ii) costs.

**6 Argos Limited and Littlewoods Limited v Office of Fair Trading**

[2005] CAT 13 29 April 2005

**Tribunal**

Sir Christopher Bellamy  
The Honourable Antony Lewis  
Vindelyn Smith-Hillman

Judgment on the penalty aspects of appeals brought by Argos Limited and Littlewoods Limited against a decision of the OFT finding that Argos and Littlewoods had infringed the Chapter I prohibition contained in section 2 of the Competition Act 1998 by entering into agreements and/or concerted practices which fixed prices at which certain toys and games manufactured by Hasbro would be retailed by Argos and Littlewoods. The Tribunal had dismissed the appeals on liability in their entirety: [2004] CAT 24.

The Tribunal altered the penalties payable, in Argos' case from £17.28 million to £15 million and in Littlewoods' case from £5.37 million to £4.5 million. The judgment contains guidance on the calculation of the penalty in infringement cases and on the nature of the Tribunal's review of the OFT's decision in this regard.

**7 Floe Telecom Limited (in administration) v Office of Communications**

[2005] CAT 14 5 May 2005

**Tribunal**

Marion Simmons QC

Michael Davey

Sheila Hewitt

Judgment on an application by OFCOM to set aside an Order directing OFCOM to reconsider a decision under the Competition Act 1998 within 5 months.

This application followed the Tribunal's judgment in November 2004 quashing OFCOM's decision to reject Floe's complaint under the 1998 Act: see [2004] CAT 18.

OFCOM submitted that the Tribunal had no power to make an Order directing reconsideration within a specified time period. The Tribunal dismissed OFCOM's application holding that it did have power to make the Order.

The Tribunal held that the power to make an Order directing a time period for a further investigation by OFCOM was expressly given to it by paragraph 3(2)(d) of Schedule 8 to the Competition Act 1998 and was covered by the words "give such directions or take such other steps as the OFT could itself have given or taken". The Tribunal further held that had there been any ambiguity as to the true construction of paragraph 3(2) of Schedule 8 the power to make the Order would, in the circumstances of the case, have been a necessary and incidental implied power and, in accordance with section 3 of the Human Rights Act 1998, the relevant provisions should be given effect to in a way that is compatible with Convention Rights (see further below: [2005] CAT 17).

**8 Argos Limited and Littlewoods Limited v Office of Fair Trading**

[2005] CAT 15 29 April 2005

**Tribunal**

Sir Christopher Bellamy

The Honourable Antony Lewis

Vindelyn Smith-Hillman

Ruling in which the Tribunal made certain observations on the issue of costs in heavy price-fixing cases.

**9 Argos Limited and Littlewoods Limited v Office of Fair Trading**

[2005] CAT 16 29 April 2005

**Tribunal**

Sir Christopher Bellamy

The Honourable Antony Lewis

Vindelyn Smith-Hillman

Ruling refusing Argos Limited and Littlewoods Limited permission to appeal the judgments on liability: [2004] CAT 24; and penalty: [2005] CAT 13.

**10 Floe Telecom Limited (in administration) v Office of Communications**

VIP Communications Limited v Office of Communications

[2005] CAT 17 5 May 2005

**Tribunal**

Marion Simmons QC

Michael Davey

Sheila Hewitt

Ruling of the Tribunal in respect of both the Floe and VIP cases extending the time period for OFCOM's re-investigation of the matters remitted to it by the Tribunal ([2005] CAT 14) by a further eight weeks.

**11 Albion Water Limited (Dŵr Cymru/Shotton Paper) v Water Services Regulation Authority (formerly the Director General of Water Services)**

[2005] CAT 18 9 May 2005

**Tribunal**

Sir Christopher Bellamy  
The Honourable Antony Lewis  
Professor John Pickering

Ruling of the Tribunal refusing an application by an intervener, Aquavitae (UK) Limited, to admit a further witness statement during the hearing of the appeal.

**12 Albion Water Limited (Interim Relief) v Water Services Regulation Authority (formerly the Director General of Water Services)**

[2005] CAT 19 11 May 2005

**Tribunal**

Sir Christopher Bellamy  
The Honourable Antony Lewis  
Professor John Pickering

Ruling of the Tribunal varying the terms of a consent Order relating to interim measures pending the outcome of the appeal to take account of a change of circumstances.

**13 British Telecommunications Plc v Office of Communications (formerly the Director General of Telecommunications) (RBS Backhaul)**

[2005] CAT 20 18 May 2005

**Tribunal**

Sir Christopher Bellamy  
Michael Blair QC  
Dr Arthur Pryor CB

Judgment of the Tribunal on the successful appellant's (BT) application for costs.

This was the first judgment of the Tribunal on a costs application following an appeal under section 192 of the Communications Act 2003.

The Tribunal noted that the appeal followed a dispute between BT and Vodafone which OFCOM had resolved pursuant to a statutory procedure.

Having resolved the dispute against BT, OFCOM was bound to appear before the Tribunal to defend its decision and would have been in the same position had it reached the opposite conclusion and had been facing an appeal by the intervener, Vodafone.

The appeal concerned complex technical issues and European legislation which had not previously been judicially considered. OFCOM's submissions in support of its decision had been reasonable, albeit unsuccessful, and had taken into account what OFCOM believed to be wider benefits to the public interest. BT had succeeded in its appeal on legitimate but nonetheless narrow legal grounds.

In all these circumstances the Tribunal decided that the correct order was that each side should bear its own costs of the appeal.

**14 British Telecommunications Plc v Office of Communications (formerly the Director General of Telecommunications) (CPS Save Activity)**

[2005] CAT 21 18 May 2005

**Tribunal**

Sir Christopher Bellamy  
Ann Kelly  
Marion Simmons QC

Judgment handed down on the same day as judgment in another appeal by BT pursuant to the 2003 Act against a decision of OFCOM: [2005] CAT 20.

Although OFCOM successfully resisted BT's appeal in this case it did not apply for its costs. Nonetheless BT submitted, in line with its submissions to the Tribunal in the 'RBS Backhaul' case, that BT should not be ordered to pay OFCOM's costs.

The Tribunal noted that BT's appeal in this case was the first appeal to consider matters arising under the General Conditions of Entitlement and raised matters of considerable importance to the industry. The issues which the Tribunal was required to adjudicate were complicated and BT's appeal raised serious and important issues regarding the practice of 'slamming' in the industry which, as a consequence of the appeal, OFCOM now sought to address. Furthermore OFCOM modified its stance as to certain matters following BT's appeal.

In all the circumstances the correct order was that each side should bear its own costs.

**15. Umbro Holdings Limited v Office of Fair Trading**

**Manchester United Plc v Office of Fair Trading**

**Allsports Limited v Office of Fair Trading**

**JJB Sports Plc v Office of Fair Trading**

[2005] CAT 22 19 May 2005

**Tribunal**

Sir Christopher Bellamy  
Barry Colgate  
Richard Prosser OBE

Judgment on appeals brought by Umbro Holdings Limited ('Umbro'), Manchester United Plc ('MU'), and on the penalty aspects of appeals brought by Allsports Limited ('Allsports') and JJB Sports Plc ('JJB Sports'), against a decision of the OFT finding that Umbro, MU, Allsports and JJB Sports, together with other undertakings, had infringed the Chapter I prohibition contained in section 2 of the Competition Act 1998 by entering into certain agreements and concerted practices designed to fix the prices of certain replica football shirts during 2000 and 2001. At an earlier date the Tribunal had largely dismissed the appeals of Allsports and JJB Sports on liability: [2004] CAT 17).

The Tribunal altered the penalties payable, in the cases of Umbro and JJB Sports partly as a result of the Tribunal's judgment on liability, as follows

- the penalty for Umbro was reduced from £6.641 million to £5.3 million;
- the penalty for MU was reduced from £1.652 million to £1.5 million;
- the penalty for Allsports was increased from £1.35 million to £1.42 million; and
- the penalty for JJB Sports was reduced from £8.373 million to £6.7 million.

Thus, for the first time the Tribunal increased the amount of a penalty on appeal, in this case on the basis that, as emerged during the hearing on liability, a 5% 'discount' in the level of the penalty imposed on Allsports by the OFT in the decision to reflect Allsports' co-operation during the administrative stage had been granted on a false basis.

**16 Albion Water Limited  
(Thames Water/Bath House)  
v Water Services Regulation  
Authority (formerly the Director  
General of Water Services)**

[2005] CAT 23 20 June 2005

**Tribunal**

Sir Christopher Bellamy  
The Honourable Antony Lewis  
Professor John Pickering

Ruling refusing an application to strike out the appellant's appeal.

**17 Wanadoo (UK) Plc (formerly  
Freeserve.com Plc) v Office of  
Communications**

[2005] CAT 24 14 June 2005

**Tribunal**

Sir Christopher Bellamy  
Patricia S. Quigley WS  
Professor John Pickering

Ruling in which the President, sitting alone, vacated the hearing date set for 4 July 2005 and adjourned the hearing pending completion of related administrative proceedings being conducted by OFCOM.

**18 ME Burgess JJ Burgess and  
SJ Burgess (trading as JJ Burgess  
& Sons) v Office of Fair Trading**

[2005] CAT 25 6 July 2005

**Tribunal**

Sir Christopher Bellamy  
Professor John Pickering  
Richard Prosser OBE

Judgment on an appeal brought by JJ Burgess & Sons ('Burgess'), a funeral director, against a decision by the OFT dated 29 June 2004 in which the OFT found that W Austin and Sons (Stevenage) Limited ('Austins') had not abused a dominant position contrary to section 18 of the Competition Act 1998 in refusing Burgess access to the Harwood Park Crematorium. Austins owned and controlled Harwood Park Crematorium and also competed with Burgess in the downstream market for funeral directing services.

The Tribunal set aside the OFT's decision on the grounds that the OFT's analysis of the relevant geographic market for crematoria services and the issue of abuse was inadequately supported by the evidence and contained errors of fact and law and that the decision should, in any event, be set aside for procedural reasons.

The Tribunal replaced the OFT's decision with its own decision, pursuant to Schedule 8, paragraph 3(2)(d) and (e) of the Competition Act 1998. The Tribunal found that Austins had a dominant position within at least the Stevenage/Knebworth area in respect of both the supply of crematoria services and the supply of funeral directing services. The Tribunal also found that both the terms on which Burgess was allowed access to Harwood Park in the period leading up to 22 March 2004 and the refusal of access to Harwood Park after that date constituted an abuse within the meaning of the Chapter II prohibition of either or both of these dominant positions and that the abuse directly affected Burgess' branch in Stevenage/Knebworth. The Tribunal further found that the Chapter II prohibition extended to cover the actions of Austins/Harwood Park having material effects on competition in the Welwyn/Welwyn Garden City area, even assuming that Austins/Harwood Park had merely a leading, but not a dominant, position in that area.

**19 Umbro Holdings Limited v Office of Fair Trading**

**Manchester United Plc v Office of Fair Trading**

**Allsports Limited v Office of Fair Trading**

**JJB Sports Plc v Office of Fair Trading**

[2005] CAT 26 15 July 2005

**Tribunal**

Sir Christopher Bellamy

Barry Colgate

Richard Prosser OBE

Ruling on costs in relation to both the liability and penalty aspects of the appeals. In the ruling the Tribunal also gave its reasons for granting Sports World International Limited permission to intervene in the proceedings involving Allsports Limited and JJB Sports Plc for the purpose of seeking to recover its costs of assisting the Tribunal in relation to the liability aspects of the appeals.

**20 JJB Sports Plc v Office of Fair Trading**

[2005] CAT 27 18 July 2005

**Tribunal**

Sir Christopher Bellamy

Barry Colgate

Richard Prosser OBE

Ruling refusing JJB Sports Plc permission to appeal the judgments on liability: [2004] CAT 17; and penalty: [2005] CAT 22.

**21 Floe Telecom Limited (in administration) v Office of Communications**

[2005] CAT 28 20 July 2005

**Tribunal**

Marion Simmons QC

Michael Davey

Sheila Hewitt

Reasons for refusing an application by OFCOM and the OFT for permission to appeal to the Court of Appeal against the Tribunal's judgment of 5 May 2005: [2005] CAT 14.

**22 The Racecourse Association & Others v Office of Fair Trading**

**The British Horseracing Board v Office of Fair Trading**

[2005] CAT 29 2 August 2005

**Tribunal**

The Honourable Mr Justice Rimer

Professor Andrew Bain OBE

Sheila Hewitt

Judgment on appeals brought by the Racecourse Association and the British Horseracing Board against a decision of the OFT dated 5 April 2004 that the collective sale of certain media rights under an agreement dated 2 May 2001 infringed the Chapter I prohibition imposed by section 2 of the Competition Act 1998 and did not qualify for individual exemption under section 9. The relevant rights were sold to Attheraces, a joint venture company which intended to launch a pay-TV channel and associated website to provide live pictures of British horseracing and an interactive betting service.

The Tribunal upheld the appeal and set aside the OFT's decision. The Tribunal held that the OFT's central conclusion that the relevant media rights constituted a distinct, narrow, product market was flawed. In particular, the OFT had attempted to apply the hypothetical monopolist test to the provision of a novel service where there was no empirical evidence of a competitive price. The OFT's economic analysis of the market in the decision relied on a counterfactual that the OFT subsequently disclaimed in its submissions at the hearing of the appeal and therefore could not be upheld. Even on the assumption that the counterfactual relied on by the OFT was correct there were serious flaws in the economic analysis.

The Tribunal further found that even if the OFT had identified the correct relevant product market, in the circumstances of this case, an acquisition of the media rights via a central negotiation was the only realistic way forward from the viewpoint of both bidders and sellers and was therefore necessary for the legitimate commercial objective of launching a new product.

The Tribunal further held that the OFT had failed to prove that the relevant agreement had had an appreciable effect on competition, either by increasing prices or by restricting incentives for competition and this was a further reason to set aside the OFT's decision.

**23 Claymore Dairies Limited (Chapter II) and Arla Foods UK Plc v Office of Fair Trading**

[2005] CAT 30 2 September 2005

**Tribunal**

Sir Christopher Bellamy

Peter Clayton

Peter Grant-Hutchison

Judgment on an appeal brought by the appellants against a decision of the OFT contained in a letter of 9 August 2002 to the effect that certain conduct on the part of the intervener ('Wiseman') in relation to the supply of milk to 'middle ground' customers in Scotland did not, on the evidence available, infringe the Chapter II prohibition contained in section 18 of the Competition Act 1998. That letter was supplemented by a witness statement of 13 May 2003 following the Tribunal's judgment declaring the appeal to be admissible: [2003] CAT 3. The appellants had complained that Wiseman had engaged in predatory pricing, targeted discriminatory pricing and exclusionary contracting.

The Tribunal set aside the decision on the basis of serious doubts as to the adequacy of the OFT's investigation into (i) Wiseman's average total costs and average variable costs, and (ii) Wiseman's arrangements with certain customers (the offering of 'All of Scotland' contracts). Given the historical nature of the dispute, however, the Tribunal did not remit the matter to the OFT.



**24 UniChem Limited v Office of Fair Trading**

[2005] CAT 31 8 September 2005

**Tribunal**

Sir Christopher Bellamy  
Graham Mather  
Professor Paul Stoneman

Judgment on UniChem’s application for costs following its successful application to set aside the OFT’s decision not to refer a merger to the Competition Commission: [2005] CAT 8. The Tribunal ruled that UniChem should recover some of its costs; however, as it had succeeded before the Tribunal only on limited grounds, it was appropriate that UniChem should recover half of its costs reasonably and proportionately incurred. In addition, the Tribunal sought further information from UniChem pertinent to issues of assessment of costs. Following a response to the further questions posed by the Tribunal the OFT and UniChem agreed the terms of a consent order disposing of outstanding costs issues.

**25 Genzyme Limited v Office of Fair Trading**

[2005] CAT 32 29 September 2005

**Tribunal**

Sir Christopher Bellamy  
Professor Peter Grinyer  
Graham Mather

Judgment as to the remedy to be imposed following the judgment of the Tribunal on Genzyme’s appeal against a decision of the OFT that Genzyme had infringed the Chapter II prohibition of the 1998 Act (the ‘Substantive Judgment’: see [2004] CAT 4). Following the Substantive Judgment the Tribunal adjourned the proceedings to enable negotiations to take place concerning the appropriate remedy. However, as it did not prove possible to resolve the outstanding issues in the case the Tribunal gave judgment setting the appropriate remedy. The Tribunal subsequently exercised its power under paragraph 3(2) of Schedule 8 to the 1998 Act to issue a direction to Genzyme.

**26 Claymore Dairies Limited (Chapter II) and Arla Foods UK Plc v Office of Fair Trading**

[2005] CAT 33 14 October 2005

**Tribunal**

Sir Christopher Bellamy  
Peter Clayton  
Peter Grant-Hutchison

Judgment on expenses.

**27 Allsports Limited v Office of Fair Trading**

**JJB Sports Plc v Office of Fair Trading**

[2005] CAT 34 11 October 2005

**Tribunal**

Sir Christopher Bellamy,  
Barry Colgate  
Richard Prosser OBE

Judgment on Sports World International Limited’s application for an order for costs.

**28 Floe Telecom Limited (in administration) v Office of Communications**

[2005] CAT 35 13 October 2005

**Tribunal**

Marion Simmons QC  
Michael Davey  
Sheila Hewitt

Ruling rejecting an application by an intervener, Vodafone Limited, to strike out a ground of the appellant’s appeal.

**29 Association of Convenience Stores v Office of Fair Trading**

[2005] CAT 36 1 November 2005

**Tribunal**

Sir Christopher Bellamy  
Michael Blair QC  
Ann Kelly

Ruling setting aside by consent a decision of the OFT dated 3 August 2005 not to make a market investigation reference under section 131 of the Enterprise Act 2002 in respect of the supermarkets sector.

This was the first application to the Tribunal pursuant to section 179 of the Enterprise Act 2002 for review of a decision by the OFT in respect of a market investigation reference.

In response to the applicant's Notice of Application the OFT indicated in writing its intention to withdraw its decision on the grounds that, upon reflection, it was clear that the decision was insufficiently reasoned. The OFT further indicated that it would consider the decision afresh taking account of all relevant circumstances.

The Tribunal, accordingly, formally quashed the OFT's decision and remitted the matter to the OFT with a direction to reconsider the matter and take a fresh decision.

**30 Somerfield Plc v Competition Commission**

[2005] CAT 37 1 November 2005

**Tribunal**

Sir Christopher Bellamy  
Marion Simmons QC  
Professor Paul Stoneman

Ruling refusing the application by Vue Entertainment Holdings (UK) Limited ('Vue') for permission to intervene on the basis that Vue did not have a sufficient interest to intervene.

**31 JJB Sports Plc v Office of Fair Trading**

**Allsports Limited v Office of Fair Trading**

[2005] CAT 38 21 November 2005

**Tribunal**

Sir Christopher Bellamy  
Barry Colgate  
Richard Prosser OBE

Judgment in which the Tribunal conducted a summary assessment of Sports World International Limited's costs.

**32 Hutchison 3G (UK) Limited v Office of Communications**

[2005] CAT 39 29 November 2005

**Tribunal**

The Honourable Mr Justice Mann  
Adam Scott TD  
Professor Paul Stoneman

Judgment on an appeal by Hutchison 3G (UK) ('H3G') Limited under section 192 of the Communications Act 2003 against the determination, dated 1 June 2004, by OFCOM, made under sections 48 and 79 of the Communications Act 2003, that H3G had significant market power in the market for wholesale mobile voice call termination on its network and imposing certain reporting obligations.

The Tribunal partially upheld the appeal and found that OFCOM had erred in its determination as to the existence of significant market power because it had not carried out a full assessment of the extent to which British Telecommunications Plc had exercised countervailing buyer power.

**33 Albion Water Limited (Dŵr Cymru/Shotton Paper) v Water Services Regulation Authority (formerly the Director General of Water Services)**

[2005] CAT 40 22 December 2005

**Tribunal**

Sir Christopher Bellamy  
The Honourable Antony Lewis  
Professor John Pickering

Interim judgment of the Tribunal on an appeal brought by Albion Water Limited ('Albion') against a decision of the Director General of Water Services ('the Director') that Dŵr Cymru Cyfyngedig ('Dŵr Cymru') had not infringed the Chapter II prohibition in section 18 of the Competition Act 1998 in relation to the price offered by Dŵr Cymru to Albion for the 'common carriage' of non-potable water across a part of Dŵr Cymru's water transportation network known as the 'Ashgrove System'.

The Tribunal noted that the appeal raised important issues regarding the application of the Chapter II prohibition and the interaction between the Competition Act 1998 and the Water Industry Act 1991 in relation to the supply of non-potable water to the very largest industrial customers in England and Wales.

The Tribunal noted that, partly as a result of the appellant initially being self-represented, certain highly relevant disclosure was sought and given only at a late stage in proceedings and that certain matters came into sharper focus at the hearing. Having considered the extensive material before it since the hearing the Tribunal considered that there were certain issues that required the matter to be restored for further directions before it reached a final judgment. Those issues were

*Firstly* the central factual issue of whether, as maintained by the Director, the cost of the bulk distribution of non-potable water was the same as the cost of distribution of potable water;

*Secondly* further argument was required as to whether the Tribunal should receive evidence as to the costs of non-potable water supply, including the costs of the Ashgrove System; and

*Thirdly* the workings and implications of an economic principle known as the Efficient Component Pricing Rule ('ECPR') were a central issue which was not, in the Tribunal's view, sufficiently ventilated at the hearing in order fairly to decide the matter under the Chapter II prohibition.

Furthermore, in relation to the appellant's allegation of 'margin squeeze' the Tribunal did not find itself in a position of being able to accept the Director's submissions but equally did not feel able to accept the appellant's submissions, at least until it had heard further argument. The margin squeeze issue was closely related to the ECPR issue and the Tribunal did not wish to decide those two issues separately.

The matter was restored for further directions and a further hearing scheduled to take place in May 2006.

**34 The Racecourse Association & Others v Office of Fair Trading**

**The British Horseracing Board v Office of Fair Trading**

[2006] CAT 1 8 February 2006

**Tribunal**

Mr Justice Rimer  
Professor Andrew Bain OBE  
Sheila Hewitt

Judgment on costs.

**35 MasterCard UK Members Forum Limited and Mastercard International Incorporated/ Mastercard Europe SPRL and Royal Bank of Scotland Group v Office of Fair Trading**

[2006] CAT 2 31 January 2006

**Tribunal**

Sir Christopher Bellamy  
Dr Arthur Pryor CB  
David Summers

Ruling on the British Retail Consortium's application for disclosure of documents from the appellants.

**36 Claymore Dairies Limited (Chapter II) and Arla Foods UK Plc v Office of Fair Trading**

[2006] CAT 3 17 February 2006

**Tribunal**

Sir Christopher Bellamy  
Peter Clayton  
Peter Grant-Hutchison

Guidance on conduct in the context of the withdrawal of appeal.

**37 Somerfield Plc v Competition Commission**

[2006] CAT 4 13 February 2006

**Tribunal**

Sir Christopher Bellamy  
Marion Simmons QC  
Professor Paul Stoneman

Judgment on an application by Somerfield Plc ('Somerfield') for judicial review of a decision of the Competition Commission ('CC') concluding that the completed acquisition by Somerfield of 115 stores previously owned by Wm Morrison Supermarkets Plc may be expected to result in a substantial lessening of competition ('SLC') in twelve local grocery markets in Great Britain.

The Tribunal dismissed the application, which by the time of the hearing was limited to a ground of review relating to the remedy.

The Tribunal found that the CC acted reasonably in (i) requiring Somerfield to divest the acquired, rather than the existing store, in relation to seven local markets so as to remedy the SLC identified by the CC; and (ii) excluding for an initial period Limited Assortment Discounters from the set of permitted purchasers of divested stores.

This was the first application for review of a decision of the CC.

**38 Claymore Dairies Limited (Chapter II) and Arla Foods UK Plc v Office of Fair Trading**

[2006] CAT 5 27 March 2006

**Tribunal**

Sir Christopher Bellamy  
Peter Clayton  
Peter Grant-Hutchison

Order on expenses in relation to the matters dealt with in the Tribunal's judgment of 17 February 2006: [2006] CAT 3.

**39 Claymore Dairies Limited  
(Chapter I) and Arla Foods UK Plc  
v Office of Fair Trading**

[2006] CAT 6 27 March 2006

**Tribunal**

Sir Christopher Bellamy  
Peter Clayton  
Peter Grant-Hutchison

Order of the Tribunal (continuation of stay of proceedings until 1 October 2006).

**40 Albion Water Limited  
(Thames Water/Bath House)  
v Water Services Regulation  
Authority (formerly the Director  
General of Water Services)**

[2006] CAT 7 31 March 2006

**Tribunal**

Sir Christopher Bellamy  
The Honourable Antony Lewis  
Professor John Pickering

Judgment of the Tribunal on an appeal by Albion Water Limited ('Albion') against a decision of the Director General of Water Services (the 'Director') that Thames Water Utilities Limited ('Thames') had not infringed the Chapter II prohibition in section 18 of the Competition Act 1998 in respect of Thames' conduct in responding to requests by Albion or its former parent company for the common carriage of water through Thames' supply network.

The first issue in the case concerned the initial access price quoted by Thames to Albion of 27p/m<sup>3</sup>. This price was subsequently revised to 13.6p/m<sup>3</sup> some fifteen months later following the intervention of the Director.

The Director's decision that in providing an indicative access price of 27p/m<sup>3</sup> Thames had not infringed the Chapter II prohibition which was set aside by the Tribunal. That decision could not formally stand on the grounds that such decision was inconsistent with the Director's stated view, expressed in the contemporaneous correspondence, that that price was potentially in breach of the Competition Act 1998.

The second issue in the case concerned Thames' refusal to give credit to Albion for water surplus to the requirements of its own customers and thus available to Thames for supply to its own customers. This issue involved two separate submissions by the appellant: (a) Thames should give credit for the total amount of the water introduced to its system by Albion on the grounds that all such water was valuable to Thames given that Thames was in a position of 'supply zone deficit' in the London area; and (b) that credit should be given to Albion for any over supply in circumstances where Thames proposed to charge Albion for any under supply (the 'overs and unders' issue).

In respect of the first submission (credit for total supply) the Tribunal ruled that the appellant's submissions had not been raised in its complaint to the Director and it was not, in the circumstances of the case, appropriate to permit Albion to enlarge the ambit of its complaint before the Tribunal.

In respect of the second submission (overs and unders) the Director's decision that Thames had not infringed the Chapter II prohibition was set aside on ground of insufficiency of reasoning. There was no reasoning in the Director's decision dealing with the appellant's complaint that its inputs of water were intended to be predictable and constant. Furthermore the Director's consideration of whether the over supplies to Thames had a value in all the circumstances had not sufficiently been considered, especially in circumstances where Thames had a potential supply deficit.

The matter was not remitted by the Tribunal to the Director as the provisions of the Water Act 2003 had, in the intervening period, entered into force and for the future issues of over and under supply will have to be addressed in that context, subject to the application of the Chapter II prohibition and EC law.

**41 Hutchison 3G (UK) Limited v  
Office of Communications**

[2006] CAT 8 31 March 2006

**Tribunal**

Mr Justice Mann

Adam Scott TD

Professor Paul Stoneman

Judgment on consequential directions and costs.

## Activity by case within the period 1 April 2005 to 31 March 2006

Figures in bold relate to the year under review;

Plain figures relate to events in years prior to the year under review.

| Case name, number and date lodged   | Number of applications to intervene | Number of case management conferences | Number of hearings (sitting days in brackets) <sup>1</sup> | Number of judgments <sup>2</sup> | Date of judgment on the main issues                               | Duration <sup>3</sup>          | Requests for permission to appeal during the period under review | Status as at 31 March 2006 |
|---|-------------------------------------|---------------------------------------|--|----------------------------------|---|--------------------------------|--|----------------------------|
| Claymore Dairies Limited (Chapter II) and Arla Foods UK Plc v Office of Fair Trading Case No. 1008/2/1/02 6 November 2002 | 0<br>1                              | 0<br>7                                | 1<br>2<br>(1)<br>(4)                                       | 4<br>5                           | <b>2 September 2005</b><br>0                                      | <b>34</b><br>0                 | 0<br>0   | Case closed                |
| Claymore Dairies Limited (Chapter I) and Arla Foods UK Plc v Office of Fair Trading Case No. 1011/2/1/03 3 February 2003  | 0<br>1                              | 0<br>2                                | 0<br>0<br>0  | 1<br>0                           | 0<br>0  | 0<br>0                         | 0<br>0   | Stayed                     |
| Argos Limited and Littlewoods Limited v Office of Fair Trading Case Nos. 1014/1/1/03 and 1015/1/1/03 17 April 2003        | 0<br>0                              | 0<br>5                                | 1<br>3<br>(1)<br>(9)                                       | 3<br>5                           | <b>29 April 2005<sup>5</sup></b><br>14 December 2004 <sup>6</sup> | <b>24.5</b><br>20 <sup>7</sup> | <b>1</b><br>0  | Cases closed               |
| Genzyme Limited v Office of Fair Trading Case No. 1016/1/1/03 20 May 2003   | 0<br>1                              | 0<br>4                                | 0<br>5<br>(7)  | 1<br>1                           | <b>29 September 2005</b><br>11 March 2004                         | <b>28.5</b><br>10              | 0<br>0   | Case closed                |
| Pernod-Ricard SA and Campbell Distillers Limited v Office of Fair Trading Case No. 1017/2/1/03 15 July 2003               | 0<br>1                              | 1<br>2                                | 0<br>2<br>(2)  | 1<br>1                           | <b>8 April 2005</b><br>10 June 2004                               | <b>21</b><br>11                | 0<br>0   | Case closed                |

| Case name, number and date lodged  | Number of applications to intervene | Number of case management conferences | Number of hearings (sitting days in brackets) <sup>1</sup> | Number of judgments <sup>2</sup> | Date of judgment on the main issues               | Duration <sup>3</sup> | Requests for permission to appeal during the period under review | Status as at 31 March 2006 |
|--|-------------------------------------|---------------------------------------|--|----------------------------------|---|-----------------------|--|----------------------------|
| British Telecommunications Plc v Director General of Telecommunications (RSB Backhaul)<br>Case No. 1018/3/03<br>21 August 2003 | 0<br>2                              | 0<br>1                                | 0<br>1<br>(2)  | <b>1</b><br>2                    | 0<br>12 May 2004                                  | 0<br>9                | 0<br>0   | Case closed                |
| Umbro Holdings Limited v Office of Fair Trading <sup>8</sup><br>Case No. 1019/1/03<br>30 September 2003                        |                                     |                                       |  |                                  |   |                       |  |                            |
| Manchester United Plc v Office of Fair Trading<br>Case No. 1020/1/03<br>1 October 2003   |                                     |                                       |  |                                  |   |                       |  |                            |
| Allsports Limited v Office of Fair Trading<br>Case No. 1021/1/03<br>1 October 2003   |                                     |                                       |  |                                  |   |                       |  |                            |
| JJB Sports Plc v Office of Fair Trading<br>Case No. 1022/1/03<br>1 October 2003  | 0<br>1                              | 0<br>6                                | <b>1</b><br>6<br>(22)                                      | <b>5</b><br>10                   | <b>19 May 2005</b> <sup>9</sup><br>1 October 2004 | <b>19.5</b><br>12     | <b>1</b><br>1  | Cases closed               |
| Floe Telecom Limited (in administration) v Office of Communications <sup>10</sup><br>Case No. 1024/2/04<br>2 January 2004      | <b>1</b><br>3                       | <b>6</b><br>8                         | <b>2</b><br>3<br>(4)                                       | <b>4</b><br>5                    | 0<br>19 November 2004                             | 0<br>10.5             | <b>1</b><br>-  | Ongoing at 31 March 2006   |



| Case name, number and date lodged   | Number of applications to intervene | Number of case management conferences | Number of hearings (sitting days in brackets) <sup>1</sup> | Number of judgments <sup>2</sup> | Date of judgment on the main issues | Duration <sup>3</sup> | Requests for permission to appeal during the period under review | Status as at 31 March 2006 |
|---|-------------------------------------|---------------------------------------|--|----------------------------------|-------------------------------------|-----------------------|--|----------------------------|
| British Telecommunications Plc v Office of Communications (CPS Save Activity)<br>Case No. 1025/3/04<br>7 January 2004                               | 0<br>2                              | 0<br>2                                | 0<br>2 (3)   | 1<br>1                           | 0<br>9 December 2004                | 0<br>11               | 0<br>0   | 0<br>Case closed           |
| Wanadoo (UK) Plc (formerly Freeserve.com Plc) v Office of Communications<br>Case No. 1026/2/04<br>20 January 2004                                   | 0<br>1                              | 1<br>6                                | 0<br>0   | 1<br>4                           | 0<br>0                              | 0<br>0                | 0<br>0   | Ongoing at 31 March 2006   |
| VIP Communications Limited v Office of Communications <sup>11</sup><br>Case No. 1027/2/04<br>20 February 2004                                       | 0<br>0                              | 0<br>0                                | 0<br>0 (0)   | 0<br>0                           | 0<br>19 November 2004               | 0<br>10.5             | 0<br>0   | Stayed                     |
| Albion Water Limited v Water Services Regulation Authority (formerly the Director General of Water Services)<br>Case No. 1031/2/04<br>01 April 2004 | 0<br>2                              | 0<br>2                                | 0<br>0 (0)   | 0<br>1                           | 0<br>0                              | 0<br>0                | 0<br>0   | Stayed                     |
| Apex Asphalt and Paving Co. Limited v Office of Fair Trading <sup>12</sup><br>Case No. 1032/1/04<br>14 May 2004                                     |                                     |                                       |  |                                  |                                     |                       |  |                            |

| Case name, number and date lodged  | Number of applications to intervene | Number of case management conferences | Number of hearings (sitting days in brackets) <sup>1</sup> | Number of judgments <sup>2</sup> | Date of judgment on the main issues | Duration <sup>3</sup> | Requests for permission to appeal during the period under review | Status as at 31 March 2006 |
|--|-------------------------------------|---------------------------------------|--|----------------------------------|-------------------------------------|-----------------------|--|----------------------------|
| Richard W. Price (Roofing Contractors) Limited v Office of Fair Trading<br>Case No. 1033/1/04<br>24 May 2004   | 0<br>0                              | 0<br>1                                | 0<br>1 (2)   | 2<br>2                           | 0<br>24 February 2005               | 0<br>9                | 0<br>0   | Cases closed               |
| Albion Water Limited v Water Services Regulation Authority (formerly the Director General of Water Services)<br>Case No. 1034/2/4/04 (IR)<br>28 May 2004 | 0<br>2                              | 0<br>1                                | 0<br>0 (0)   | 1<br>0                           | 11 May 2005<br>2 June 2004          | 0<br>0                | 0<br>0   | Stayed                     |
| The Racecourse Association & Others v Office of Fair Trading <sup>13</sup><br>Case No. 1035/1/04<br>7 June 2004  | 0<br>0                              | 0<br>3                                | 1<br>1 (3)   | 2<br>0                           | 2 August 2005<br>0                  | 14<br>0               | 0<br>0   | Case closed                |
| ME Burgess, JJ Burgess and SJ Burgess (trading as JJ Burgess & Sons) v Office of Fair Trading<br>Case No. 1037/2/1/04 (IR)<br>24 June 2004               | 0<br>0                              | 1<br>2                                | 0<br>0 (0)   | 0<br>0                           | 6 July 2005<br>0                    | 12.5<br>0             | 0<br>0   | Case closed                |
| ME Burgess, JJ Burgess and SJ Burgess (trading as JJ Burgess & Sons) v Office of Fair Trading<br>Case No. 1038/2/1/04<br>23 June 2004                    | 0<br>0                              | 1<br>2                                | 0<br>0 (0)   | 0<br>0                           | 6 July 2005<br>0                    | 12.5<br>0             | 0<br>0   | Appeal withdrawn           |

| Case name, number and date lodged  | Number of applications to intervene | Number of case management conferences | Number of hearings (sitting days in brackets) <sup>1</sup> | Number of judgments <sup>2</sup> | Date of judgment on the main issues | Duration <sup>3</sup> | Requests for permission to appeal during the period under review | Status as at 31 March 2006                     |
|--|-------------------------------------|---------------------------------------|--|----------------------------------|-------------------------------------|-----------------------|--|--|
| British Telecommunications Plc (WLR Save Activity) v Office of Communications<br>Case No. 1040/3/3/04<br>9 July 2004   | 0<br>0                              | 0<br>0                                | 0<br>1 (1)   | 0<br>0                           | 11 August 2005                      | 13<br>0               | 0<br>0   | Appeal withdrawn                               |
| The British Horseracing Board v Office of Fair Trading <sup>14</sup><br>Case No. 1041/2/1/04<br>12 July 2004   | 0<br>0                              | 0<br>0                                | 0<br>0 (0)   | 0<br>0                           | 2 August 2005                       | 13<br>0               | -<br>0   | Case closed                                    |
| Albion Water Limited (Thames Water/Bath House) v Water Services Regulation Authority (formerly the Director General of Water Services)<br>Case No. 1042/2/4/04<br>12 July 2004   | 0<br>1                              | 0<br>3                                | 1<br>0 (0)   | 2<br>1                           | 31 March 2006                       | 20.5<br>0             | 0<br>0   | Ongoing at 31 March 2006 with regards to costs |
| ME Burges JJ Burgess and SJ Burgess (trading as JJ Burgess & Sons) v Office of Fair Trading<br>Case No. 1044/2/1/04<br>15 July 2004  | 0<br>3                              | 0<br>1                                | 1<br>1 (2)   | 1<br>0                           | 6 July 2005                         | 12<br>0               | 0<br>0   | Case closed                                    |
| Aquavitae (UK) Limited (Dŵr Cymru/Shotton Paper) v Water Services Regulation Authority (formerly the Director General of Water Services)<br>Case No. 1045/2/4/04<br>21 July 2004 | 0<br>0                              | 0<br>1                                | 0<br>0 (0)   | 0<br>1                           |                                     | 0<br>0                | 0<br>0   | Stayed   |

| Case name, number and date lodged  | Number of applications to intervene | Number of case management conferences | Number of hearings (sitting days in brackets) <sup>1</sup> | Number of judgments <sup>2</sup> | Date of judgment on the main issues  | Duration <sup>3</sup> | Requests for permission to appeal during the period under review | Status as at 31 March 2006 |
|--|-------------------------------------|---------------------------------------|--|----------------------------------|--------------------------------------|-----------------------|--|----------------------------|
| Albion Water Limited (Dŵr Cymru/Shotton Paper) v Water Services Regulation Authority (formerly the Director General of Water Services)<br>Case No. 1046/2/4/04<br>23 July 2004 | 0<br>3                              | 2<br>2                                | 1 (3)<br>0 (0)   | 221<br>0                         | 221 December 2005 <sup>15</sup><br>0 | 17<br>0               | 0<br>0   | Ongoing at 31 March 2006   |
| Hutchison 3G (UK) Limited v Office of Communications<br>Case No. 1047/3/3/04<br>28 July 2004   | 0<br>1                              | 0<br>3                                | 2 (5)<br>0 (0)   | 2<br>0                           | 29 November 2005<br>0                | 16<br>0               | 0<br>0   | Case closed                |
| Double Quick Supplyline Limited v Office of Fair Trading<br>Case No. 1048/1/1/05<br>10 January 2005  | 0<br>0                              | 1<br>2                                | 1 (1)<br>0 (0)   | 1<br>1                           | 7 April 2005<br>0                    | 3<br>0                | 0<br>0   | Case closed                |
| UniChem Limited v Office of Fair Trading<br>Case No. 1049/4/1/05<br>19 January 2005  | 0<br>1                              | 0<br>1                                | 0<br>1 (2)   | 2<br>0                           | 1 April 2005<br>0                    | 2.5<br>0              | 0<br>0   | Case closed                |
| Aqua Resources Limited v Water Services Regulation Authority (formerly the Director General of Water Services)<br>Case No. 1050/2/4/05<br>14 April 2005                        | 1                                   | 1                                     | 0<br>0   | 0<br>0                           | 11 July 2005                         | 3                     | 0  | Appeal withdrawn           |

| Case name, number and date lodged  | Number of applications to intervene | Number of case management conferences | Number of hearings (sitting days in brackets) <sup>1</sup> | Number of judgments <sup>2</sup> | Date of judgment on the main issues | Duration <sup>3</sup> | Requests for permission to appeal during the period under review | Status as at 31 March 2006                    |
|--|-------------------------------------|---------------------------------------|--|----------------------------------|-------------------------------------|-----------------------|--|---|
| Somerfield Plc v Competition Commission<br>Case No. 1051/4/8/05<br>29 September 2005   | 0                                   | 2                                     | 1 (1)  | 2                                | 13 February 2006                    | 4.5                   | 0  | Ongoing at 31 March 2006 with regard to costs |
| The Association of Convenience Stores v Office of Fair Trading<br>Case No. 1052/6/1/05<br>3 October 2005                             | 1                                   | 1                                     | 0  | 1                                | 1 November 2005                     | 1                     | 0  | Ongoing at 31 March 2006                      |
| Media Marketing Promotions v Office of Communications<br>Case No. 1053/3/3/05<br>25 October 2005                                     | 0                                   | 2                                     | 1 (1)  | 0                                | -                                   | 0                     | 0  | Ongoing at 31 March 2006                      |
| MasterCard UK Members Forum Limited v Office of Fair Trading <sup>16</sup><br>Case No. 1054/1/1/05<br>2 November 2005                |                                     |                                       |  |                                  |                                     |                       |  |   |
| MasterCard International Incorporated and MasterCard Europe Sprl v Office of Fair Trading<br>Case No. 1055/1/1/05<br>2 November 2005 |                                     |                                       |  |                                  |                                     |                       |  |   |
| Royal Bank of Scotland Group v Office of Fair Trading<br>Case No. 1056/1/1/05<br>2 November 2005                                     | 2                                   | 3                                     | 1 (1)  | 1                                | -                                   | 0                     | 0  | Ongoing at 31 March 2006                      |

| Case name, number and date lodged  | Number of applications to intervene | Number of case management conferences | Number of hearings (sitting days in brackets) <sup>1</sup> | Number of judgments <sup>2</sup> | Date of judgment on the main issues | Duration <sup>3</sup> | Requests for permission to appeal during the period under review | Status as at 31 March 2006 |
|--|-------------------------------------|---------------------------------------|--|----------------------------------|-------------------------------------|-----------------------|--|----------------------------|
| The Number (UK) Limited v Office of Communications<br>Case No. 1057/3/3/05<br>30 November 2005   | 0                                   | 0                                     | 0  | 0                                | 0                                   | 0                     | 0  | Ongoing at 31 March 2006   |
| Independent Water Company Limited v Water Services Regulation Authority (formerly the Director General of Water Services)<br>Case No. 1058/2/4/06<br>12 January 2006 | 2                                   | 1                                     | 0  | 0                                | 0                                   | 0                     | 0  | Ongoing at 31 March 2006   |
| Celesio AG v Office of Fair Trading<br>Case No. 1059/4/1/06<br>21 March 2006   | 2                                   | 1                                     | 0  | 0                                | 0                                   | 0                     | 0  | Ongoing at 31 March 2006   |
| <b>Total</b>   | <b>9</b><br>27                      | <b>24</b><br>67                       | <b>15 (25)</b><br>29 (63)                                  | <b>41</b><br>40                  |                                     |                       | <b>3</b><br>1  |                            |

## Notes to activity by case within the period 1 April 2005 to 31 March 2006

- 1 Excludes days limited to formal handing down of judgments.
- 2 Includes judgments on interlocutory issues, final judgments and ancillary matters such as costs and refusal or grant of permission to appeal.
- 3 In terms of months from registration of proceedings to judgments on the main issues or termination of the case without a main hearing.
- 4 These two cases were consolidated by an Order of the President dated 22 May 2003.
- 5 Date of judgment on penalty.
- 6 Date of judgment on liability.
- 7 These cases were remitted back to the OFT for further investigation during the period 30 July – 21 November 2003.
- 8 Although the appeals by Umbro Holdings Limited, Manchester United plc, Allsports Limited and JJB Sports Plc were not formally consolidated, for practical purposes they were heard concurrently. The figures shown therefore relate to all four cases.
- 9 The judgment handed down on 1 October 2004 related to liability in respect of appeals brought by JJB Sports Plc and Allsports Limited. The judgment handed down on 19 May 2005 related to penalties imposed on the appellants by the OFT.
- 10 This case was heard concurrently with VIP Communications Limited (Case No. 1027/2/3/04). The figures shown therefore relate to both cases.
- 11 See Floe Telecom Limited (in administration) (Case No. 1024/2/3/04) for details of application to intervene, case management conferences, number of hearings and number of judgments.
- 12 Although the appeals by Apex Asphalt and Paving Co. Limited and Richard W. Price (Roofing Contractors) limited were not formally consolidated, for practical purposes they were heard concurrently. The figures shown for the number of case management conferences and hearings relate to both cases.
- 13 This case was consolidated and heard together with the British Horseracing Board v Office of Fair Trading (Case No. 1041/2/1/04).
- 14 See the Racecourse Association v Office of Fair Trading (Case No. 1035/1/1/04) for details of application to intervene, case management conferences, number of hearings and number of judgments.
- 15 Interim judgment on the issues.
- 16 The two Mastercard and Royal Bank of Scotland cases have been consolidated and will be heard together.

## Overall case activity within the period 1 April 2005 to 31 March 2006

|   | 2005-2006     | 2004-2005 | 2003-2004 |
|---|---------------|-----------|-----------|
| <b>Appeals received</b>                           | <b>10</b>     | 20        | 17        |
| <i>of which:</i>                                  |               |           |           |
| Section 46 Competition Act 1998 (1)               | <b>3</b>      | 6         | 7         |
| Section 47 Competition Act 1998 (2)               | <b>2</b>      | 7         | 4         |
| Section 47A Competition Act 1998 (3)              | -             | -         | 2         |
| Section 120 Enterprise Act 2002 (4)               | <b>2</b>      | 2         | 1         |
| Section 192 Communication Act 2003 (5)            | <b>2</b>      | 2         | 2         |
| Section 179 Enterprise Act 2002 (6)               | <b>1</b>      | -         | -         |
| Applications for interim relief                   | -             | 3         | 1         |
| <b>Applications to intervene</b>                  | <b>9</b>      | 21        | 19        |
| <b>Case management conferences held</b>           | <b>24</b>     | 57        | 24        |
| <b>Hearings held (hearing days)</b>               | <b>15(25)</b> | 18(38)    | 15(31)    |
| <b>Judgments handed down</b>                      | <b>41</b>     | 26        | 34        |
| <i>of which:</i>                                  |               |           |           |
| Judgments disposing of main issue or issues       | <b>13</b>     | 8         | 6         |
| Judgments on procedural and interlocutory matters | <b>11</b>     | 17        | 22        |
| Judgments on ancillary matters (e.g. costs)       | <b>17</b>     | 1         | 6         |
| <b>Orders made</b>                                | <b>96</b>     | 106       | 63        |

- 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 2006 appealable decisions included decisions as to whether the Chapter I prohibition or Chapter II prohibition of the Competition Act had been infringed, as to whether Articles 81 and 82 of the EC Treaty had been infringed and the imposition of a penalty for infringement of those provisions or the amount of such infringement.
- 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 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 An application by 'any person aggrieved' by a decision by the Office of Fair Trading, the Office of Communications, the Secretary of State or the Competition Commission in connection with a reference in relation to a relevant merger situation or special merger situation under the Enterprise Act 2002. In determining appeals under this section the Tribunal applies the same principles as would be applied by a court on an application for judicial review.
- 5 An appeal by 'a person affected' by a decision by the Office of Communications or of the Secretary of State in relation to certain specified communications matters set out in that section.
- 6 An application by 'any person aggrieved' by a decision by the Office of Fair Trading, the Competition Commission or the Secretary of State in connection with a merger reference or possible merger reference may apply to the Tribunal for a review of the decision. In determining applications under this section, the Tribunal applies the same principles as would be applied by a court on an application for judicial review.



## Management commentary in respect of the Tribunal and the CS

The principal activities of the Tribunal and the CS are explained in the Introduction to the Annual Review. Similarly, the performance of the Tribunal and the CS in carrying out their respective functions are discussed in the statements of the President and Registrar. The case statistics on pages 15 to 38 provide details of activity by case and judgments handed down during the year.

The Tribunal and the CS have not been set specific performance targets to meet by the DTI but aim to ensure that proceedings are conducted efficiently and economically whilst observing the requirements of justice.

### Financial performance

Actual expenditure for the Tribunal fell from £682,000 (2004-2005) to £646,000 in 2005-2006. This reduced spend arose due to lower remuneration costs for the panel of chairmen and ordinary members as a result of a slightly smaller number of hearings compared with the previous year.

Actual expenditure for the CS rose from £2,692,000 (2004-2005) to £2,954,000 in 2005-2006. This increase is mainly due to increased staff salary costs with all posts filled throughout the year and higher accommodation costs.

Throughout the year the CS took steps to reduce administrative support costs. The CS made a number of savings by seeking alternative suppliers of office equipment and materials. Expenditure was also reduced on IT and HR consultancy.

### Income and expenditure

The CS's income and expenditure account shows an accounting deficit for the year of £211,000 after receiving a revenue grant of £3,217,000 and a capital grant of £183,000.

In 2005-2006, the CS operated in deficit to counteract the surplus reported in the previous financial year. The accumulated deficit of £32,000 in the CS's income and expenditure account is as a consequence of the recognition of the value of the initial nine month rent-free period for the Victoria House premises used by the Tribunal and the CS. Without this recognition, a surplus balance of £308,000 on the income and expenditure account would have been reported.

### Balance sheet

The value of the CS's fixed assets increased by £47,000 to £507,000. Capital expenditure during the year amounted to £185,000. The main items of expenditure were on EDRMS software and design and the purchase of server equipment from the Competition Commission.

Net current assets fell by £208,000 to £310,000. This reduction is largely as a result of the decrease in cash balances held. In 2006-2007, the CS intends to further reduce the level of cash balances that it holds.

### Net cash requirement

The net cash utilised in the year was £3,643,000 and was £444,000 below the budgeted level. This arose firstly as a result of the CS carrying forward a cash surplus from the previous financial year of £147,000 following the reversal of accrued Stamp Duty (no longer required) and secondly because the total number of new cases received in 2005-2006 and the consequent expenditure was lower than budgeted.

## Cash flow

In 2005-2006 grant-in-aid of £3,400,000 was drawn down from the DTI to fund the activities of the Tribunal and the CS. This was £466,000 lower than the allocation for the year. Closing cash balances were £483,000 (2004-2005: £686,000).

## Future developments

For the 2006-2007 resource request, the CS has responded to the DTI's call to restrict the growth in future expenditure and make savings where it is appropriate to do so.

Due to the inherent difficulty in anticipating the Tribunal's future caseload, the CS has in the past been cautious when preparing budgets for the Tribunal and an underspend has occurred. For 2006-2007, the CS's request for funding for the Tribunal reflects a more moderate budgeted workload on the understanding that the DTI will look favourably on the position of the Tribunal and the CS if the actual caseload is above the budgeted level.

# Remuneration report

## Remuneration policy

The remuneration of the President and 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.

In determining the President's and Registrar's salaries for the forthcoming year, the Secretary of State considers the recommendations of the Senior Salaries Review Body (SSRB) which makes recommendations about the pay of the senior civil service, senior military personnel and the judiciary.

For 2005-2006, the Secretary of State determined that the salaries of the President and Registrar should be increased by 3% in line with the SSRB's recommendation.

The salary costs of the President are charged to the Tribunal's income and expenditure account. The salary costs of the Registrar are charged to the CS's income and expenditure account.

The non-executive member of the CS is remunerated on a per diem basis at a rate determined by the Secretary of State. The remuneration costs of the non-executive member are charged to the CS's income and expenditure account.

## Remuneration Committee

In 2005-2006 the CS established a Remuneration Committee comprising Janet Rubin and a former Tribunal member, Professor Graham Zellick. The Committee's remit is to make recommendations to the DTI on the levels of remuneration of the President, Registrar, the panel of chairmen and ordinary members. The present way of determining these levels was set some years ago in an arbitrary way and the Committee intends to construct a more objective basis for them. The Committee met twice in 2005-2006 and has submitted a paper with its recommendations to officials and ministers at the DTI.

## Service 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.

### Service 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 is a member of the judiciary and the normal retirement age for judicial appointments is 70. If the appointment were to be terminated early, should the Secretary of State determine that there were special circumstances relating to the termination, the CS would pay the President an amount of compensation determined by the Secretary of State.

The Registrar's appointment must satisfy the requirements of Rule 4 of the Competition Appeal Tribunal Rules 2003 (SI. 2003 No 1372) with regard to the possession of a legal qualification. The normal retirement age for this appointment is 60.

The non-executive member of the CS is appointed by the Secretary of State under Schedule 3 of the Enterprise Act 2002. The appointment is for four years and shall expire in July 2007 and carries no right of pension, gratuity or allowance on its termination.

## Remuneration

|           | <b>2005-2006<br/>Salary<br/>£000</b> | <b>2005-2006<br/>Benefits in<br/>kind (to<br/>nearest £100)</b> | <b>2004-2005<br/>Salary<br/>£000</b> | <b>2004-2005<br/>Benefits in<br/>kind (to<br/>nearest £100)</b> |
|-----------|--------------------------------------|---|--------------------------------------|---|
| President | 170 -175                             | 0   | 165 -170                             | 0   |
| Registrar | 75 - 80                              | 0   | 75 - 80                              | 0   |

'Salary' for the President and Registrar consists of gross salary only. There are no additional allowances paid.

The non-executive member of the CS is remunerated at a rate of £350 per day. Total remuneration payable in 2005-2006 was £6,125 (2004-2005: £5,250).

## Benefits in kind

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

## President's pension benefits

|           | <b>Accrued pension<br/>at age 65 as at<br/>31 March 2006 and<br/>related lump sum<br/>£000</b> | <b>Real increase in<br/>pension and<br/>related lump<br/>sum at age 65<br/>£000</b> | <b>CETV at<br/>31 March<br/>2006<br/>£000</b> | <b>CETV at<br/>31 March<br/>2005<br/>£000</b> | <b>Employee<br/>contributions<br/>and<br/>transfers in<br/>£000</b> | <b>Real increase<br/>in CETV<br/>£000</b> |
|-----------|--|---|---|---|---|---|
| President | 25 - 27.5<br>60 - 62.5   | 2.5 - 5<br>7.5 - 10   | 461   | 367   | 2.5 - 5   | 82  |

## Judicial pensions

The President is a member of the Judicial Pension Scheme (JPS). For 2005-2006, employer contributions of £50,000 (2004-2005: £49,000) were payable to the JPS at a rate of 29.25 per cent of pensionable pay.

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 (JUPRA).

The JPS is an un-funded 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 2005-2006 has been assessed as 29.25% of the relevant judicial salary. This includes an element of 0.25% as a contribution towards the administration costs of the scheme. For 2006-2007, the rate of employer contributions shall increase to 30.75 per cent of pensionable pay.

The liability for future payment is not chargeable to the CS but is a charge on the JPS. The CS is unable to identify its share of the underlying assets and liabilities. There is a separate scheme statement for the JPS as a whole and a full actuarial valuation as at 31 March 2006 is being carried out. Details of the Resource Accounts of the Department for Constitutional Affairs: Judicial Pensions Scheme can be found on the Department for Constitutional Affairs' website [www.dca.gov.uk](http://www.dca.gov.uk).

## Long service award

In 2005-2006 the Lord Chancellor with the agreement of the Treasury made a provision for judges to receive a long service award which will be payable in their final month of service.

The CS has accordingly made a provision in this year's accounts for the President's long service award as it shall be funded from the Tribunal's running costs in the final month of service. The provision made is a proportion of the lump sum and is an actuarial valuation reflecting the President's length of service and judicial grade.

### Registrar's pension benefits

|           | <b>Accrued pension at age 60 as at 31 March 2006 and related lump sum<br/>£000</b> | <b>Real increase in pension and related lump sum at age 60<br/>£000</b> | <b>CETV at 31 March 2006<br/>£000</b> | <b>CETV at 31 March 2005<br/>£000</b> | <b>Employee contributions and transfers in<br/>£000</b> | <b>Real increase in CETV<br/>£000</b> |
|-----------|--|---|---------------------------------------|---------------------------------------|---|---------------------------------------|
| Registrar | 10 – 15<br>35 – 40   | 0 – 2.5<br>2.5 – 5  | 192                                   | 127                                   | 5 – 7.5   | 13                                    |

The Registrar's pension benefits are provided through the Principal Civil Service Pension Scheme (PCSPS). For 2005-2006, employer contributions of £19,000 (2004-2005: £14,000) were payable to the PCSPS scheme at a rate of 24.6 per cent (2004-2005: 18.5 per cent) of pensionable pay.

Further information regarding the 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 CETV figures, and from 2003-2004 the other pension details, include the value of any pension benefit in another scheme or arrangement which the individual has transferred to the Civil Service pension arrangements and for which the CS Vote has received a transfer payment commensurate with the additional pension liabilities being assumed. They also include any additional pension benefit accrued to the member as a result of their purchasing additional years of pension service in the scheme at their own cost. CETVs are calculated within the guidelines and framework prescribed by the Institute and Faculty of Actuaries.

Please note that the factors used to calculate the CETV were revised on 1 April 2005 on the advice of the Scheme Actuary. The CETV figure for 31 March 2005 has been restated using the new factors so that it is calculated on the same basis as the CETV figure for 31 March 2006.

### Real increase in CETV

This reflects the increase in CETV effectively funded by the employer. It takes account of 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.

*Charles Dhanowa*  
Registrar and Accounting Officer  
Competition Service

21 June 2006

## 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 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 CS at the year end and of income and expenditure, 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 presume that the Tribunal and the CS will continue in operation.

The Accounting Officer for the DTI 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 Government Accounting.

# Statement on Internal Control for the Tribunal and the CS

## Scope of responsibility

As Accounting Officer I have responsibility for maintaining a sound system of internal control that supports the achievement of the policies, aims and objectives of the Tribunal and those of the CS, whilst safeguarding public funds and assets for which I am personally responsible, in accordance with the responsibilities assigned to me in Government Accounting. The CS was set up to provide administrative support to the Tribunal to enable it to carry out its functions.

As Accounting Officer I have responsibility to the DTI and ultimately to Parliament for the proper handling of the Tribunal's and the CS's finances in accordance with the responsibilities assigned to me in Government Accounting. The CS receives its funds solely from government in the form of grant-in-aid. Once the budget is agreed with the DTI the CS has discretion as to how funds are allocated for specific requirements within certain given limits. These limits, and the relationship generally with the DTI, are defined in the Memorandum of Understanding agreed with the DTI and the Management Statement and Financial Memorandum.

## The purpose of the system of internal control

The system of internal control is designed to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable and not absolute assurance of effectiveness. The system of internal control is based on an ongoing process designed to identify and prioritise the risks to the achievement of the Tribunal's and the CS's policies, aims and objectives; to evaluate the likelihood of those risks being realised and the impact should they be realised; and to manage them efficiently, effectively and economically. The system of internal control for the Tribunal and the CS has been in place for the year ended 31 March 2006 and up to the date of the approval of the annual review and accounts, and accords with Treasury guidance.

## Capacity to handle risk

The CS has continued to review and strengthen where appropriate the measures put in place to manage risk. Following discussions with internal audit, the CS is participating in the DTI's group corporate governance submission. This process involved management evaluating the risk management processes currently in place and identifying measures to promote awareness and understanding of issues under eight specific headings throughout the organisation.

The key measures that the CS has put in place to manage risk are

- i the Finance Committee, which meets throughout the year, discusses risk management as part of its standing agenda;
- ii the Director, Operations reports to the Audit Committee on the progress made in addressing key risks;
- iii groups focusing on specific organisational activities such as casework, IT and accommodation meet as and when the need arises throughout the year;
- iv the Finance Manager is responsible for maintaining the CS's risk register. The risk register groups risks into ten generic risk categories, ranks each risk in terms of risk and likelihood and prioritises risks for action. From this analysis, risks are assigned to individuals and additional actions are devised and agreed with risk owners;
- v the Finance Manager meets throughout the year with risk owners to discuss the progress made in addressing risks developments are then reported to the Finance Committee, the membership of the CS and the Audit Committee;
- vi the Director, Operations is a member of the DTI Agencies Risk Management Network, a forum by which senior management from across the DTI's agencies can discuss risk and receive guidance on achieving best practice;

- vii a Departmental Security Officer and Information Technology Security Officer ensure that the CS complies with Cabinet Office and National Infrastructure Security Coordination Centre standards (BS7799) on security procedures; and
- viii Risk guidance is available to all staff and the CS provides training to all staff responsible for risk management.

### The risk and control framework

The CS made further progress in 2005-2006 to embed the system of internal control, address key risks and develop the organisation's risk management strategy.

The following processes are in place to manage the risk and control framework

- i In 2005-2006 the membership of the CS addressed the organisation's key risk which was that the President, being at the time the only CAT member able to chair cases, could become unavailable thereby preventing the efficient processing of cases. In 2005-2006, following a recruitment exercise conducted by the Department for Constitutional Affairs an additional two members were appointed to the panel of chairmen. The CS is satisfied that this action (together with Marion Simmons QC and the judges of the Chancery Division now being involved in hearing cases) has resulted in this risk being reduced to an acceptable level;
- ii the CS receives internal audit services from the DTI's internal audit directorate. During the year to 31 March 2006 internal audit assessed the adequacy of the CS's financial and accounting system, corporate governance and risk management. The CS responds to the recommendations made by internal audit within agreed timescales in order to achieve best practice;
- iii financial control is maintained by a monthly financial reporting system to senior management, the Audit Committee and the membership of the CS. The DTI is informed of the CS's financial position through the submission of monthly returns and quarterly grant-in-aid requests;
- iv the CS maintains strong working relationships with the DTI. Senior management meet officials from Consumer and Competition Policy Directorate to share management and financial information. For 2006-2007, this arrangement has been formalised with meetings scheduled to take place on a quarterly basis;
- v an annual business plan is drafted identifying the objectives for the year ahead and is agreed with the DTI; and
- vi where specific services have been outsourced to external contractors, senior management has satisfied itself that these organisations have the appropriate risk management policies in place.

### Review of effectiveness

As Accounting Officer, I have responsibility for reviewing the effectiveness of the system of internal control. My review of the effectiveness of the system of internal control is informed by the work of the internal auditors and the managers within the CS who have responsibility for the development and maintenance of the internal control framework, and comments made by the external auditors in their management letter and other reports. I have been advised on the implications of the results of my review of effectiveness by the Audit Committee and the membership of the CS and a plan to address weaknesses and ensure continuous improvement of the system is in place.

There are a number of processes and controls present within both the Tribunal and the CS that have been established to ensure that the system of internal control is constantly monitored and reviewed.



The following processes are in place to further maintain and review the effectiveness of the system of internal control

- i the membership of the CS meets four times a year to discuss the strategic direction of the Tribunal and the CS;<sup>1</sup>
- ii the Audit Committee chaired by the non-executive member of the CS meets four times a year to scrutinise financial performance, progress made in addressing the organisation's key risks and the adequacy of internal and external audit arrangements;<sup>2</sup> and
- iii the DTI's internal audit directorate was retained in 2005-2006 with part of their work programme focusing on the CS's corporate governance and risk management strategy. A programme of work for internal audit has been agreed for 2006-2007 and shall cover areas including IT and the finance and accounting system.

*Charles Dhanowa*  
Registrar and Accounting Officer  
Competition Service

21 June 2006

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1 The membership of the CS comprises the President of the Tribunal, the Registrar of the Tribunal and one appointed member.

2 The Audit Committee comprises one appointed member and two members of the Tribunal.

# 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 Tribunal for the year ended 31 March 2006 under the Enterprise Act 2002. These comprise the income and expenditure account and the related notes. These financial statements have been prepared under the accounting policies set out within them.

### Respective responsibilities of the CS, the Accounting Officer and the Auditor

The CS and the Accounting Officer are responsible for preparing the annual review, the remuneration report and the financial statements in accordance with the Enterprise Act 2002 and the Secretary of State for the Department of Trade and Industry's directions made thereunder and for ensuring the regularity of financial transactions. These responsibilities are set out in the Statement of Accounting Officer's Responsibilities.

My responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements, and with International Standards on Auditing (UK and Ireland).

I report to you my opinion as to whether the financial statements give a true and fair view and whether the financial statements and the part of the remuneration report to be audited have been properly prepared in accordance with the Enterprise Act 2002 and the Secretary of State for the Department of Trade and Industry's directions made thereunder. I also report whether in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them. I also report to you if, in my opinion, the annual report is not consistent with the financial statements, if the CS has not kept proper accounting records, if I have not received all the information and explanations I require for my audit, or if information specified by relevant authorities regarding remuneration and other transactions is not disclosed.

I review whether the joint statement on pages 45 to 47 reflects the CS's compliance with HM Treasury's guidance on the Statement on Internal Control, and I report if it does not. I am not required to consider whether the Accounting Officer's statements on internal control cover all risks and controls, or form an opinion on the effectiveness of the CS's corporate governance procedures or its risk and control procedures.

I read the other information contained in the annual review and consider whether it is consistent with the audited financial statements. This other information comprises the Introduction, President's statement, Registrar's statement, biographies and case statistics included within the annual review, the unaudited part of the remuneration report and the management commentary. I consider the implications for my report if I become aware of any apparent misstatements or material inconsistencies with the financial statements. My responsibilities do not extend to any other information.

### Basis of audit opinion

I conducted my audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. My audit includes examination, on a test basis, of evidence relevant to the amounts, disclosures and regularity of financial transactions included in the financial statements and the part of the remuneration report to be audited. It also includes an assessment of the significant estimates and judgements made by the CS and the Accounting Officer in the preparation of the financial statements, and of whether the accounting policies are most appropriate to the Tribunal's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations which I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements and the part of the remuneration report to be audited are free from material misstatement, whether caused by fraud or error and that in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements and the part of the remuneration report to be audited.

## Opinions

In my opinion

- the financial statements give a true and fair view, in accordance with the Enterprise Act 2002 and directions made thereunder by the Secretary of State for the Department of Trade and Industry, of the state of the Tribunal's affairs as at 31 March 2006;
- the financial statements and the part of the remuneration report to be audited have been properly prepared in accordance with the Enterprise Act 2002 and Secretary of State for the Department of Trade and Industry's directions made thereunder; and
- in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

I have no observations to make on these financial statements.

*John Bourn*  
Comptroller and Auditor General

27 June 2006

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

## Income and expenditure account for the year ended 31 March 2006

|   | Notes | <b>2005-2006</b><br><b>£000</b> | 2004-2005<br>£000 |
|---|-------|---------------------------------|-------------------|
| <b>Income</b>                                   |       |                                 |                   |
| Allocation of grant-in-aid from the CS          |       | <b>646</b>                      | 682               |
|   |       | <b>646</b>                      | 682               |
| <b>Expenditure</b>                              |       |                                 |                   |
| Members' remuneration costs                     | 2a    | <b>520</b>                      | 564               |
| Other operating charges                         | 3a    | <b>126</b>                      | 118               |
|   |       | <b>646</b>                      | 682               |
| <b>Surplus/(deficit) for the financial year</b> |       | <b>0</b>                        | 0                 |

There were no gains or losses in the year other than those included in the income and expenditure account.

All income and expenditure are derived from continuing operations.

*The notes on pages 51 to 52 form part of the financial statements.*

# Notes to the accounts

## 1 Statement of accounting policies

These financial statements have been prepared in accordance with the 2005-2006 Government Financial Reporting Manual (FRoM). The accounting policies contained in the FRoM follow UK generally accepted accounting practice for companies (UK GAAP) to the extent that it is meaningful and appropriate to the public sector.

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 CS'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 modified historic cost convention.

### b Basis of preparation of accounts

There is a statutory requirement for the CS to produce separate accounts for the Tribunal and the CS. The accounts of the Tribunal include only the direct costs specifically attributable to the Tribunal. The Tribunal has no bank account or other assets and liabilities and all costs are paid by the CS; therefore the production of a Balance sheet and cash flow statement for the Tribunal is not appropriate. The Tribunal's accounts therefore comprise an income and expenditure account and supporting notes. 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 Statement on Internal Control.

### c Income

Under the terms of the Enterprise Act 2002, the expenses of the Tribunal are paid by the CS. The CS is funded by grant-in-aid from the DTI. In making requests for funding the CS draws down sums appropriate to fund the activities of the Tribunal and to carry out its other activities.

### d 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.

### e Going concern

The accounts have been prepared on a going concern basis.

## 2 Members' remuneration

a The total cost of members' remuneration is shown in the table below.

|  | <b>2005-2006</b> | 2004-2005 |
|--|------------------|-----------|
|  | <b>£000</b>      | £000      |
| Members' remuneration (including the President and chairmen) | <b>424</b>       | 463       |
| Social security costs  | <b>46</b>        | 52        |
| Pension contributions for the President                      | <b>50</b>        | 49        |
|  | <b>520</b>       | 564       |

b Members of the Tribunal during the year are listed in the Introduction. The President and the chairmen are appointed by the Lord Chancellor. Ordinary members are appointed by the Secretary of State. The appointments are for a fixed term of up to eight years.

c Remuneration costs for members of the panel of chairmen are shown in the table below.

|   | <b>2005-2006</b> | 2004-2005 |
|---|------------------|-----------|
| Marion Simmons QC                               | <b>85,800</b>    | 94,200    |
| Lord Carlile of Berriew QC (from November 2005) | <b>1,800</b>     | 0         |
| Vivien Rose (from November 2005)                | <b>3,300</b>     | 0         |

Marion Simmons QC, Lord Carlile QC and Vivien Rose are remunerated on a per diem basis at a rate of £600 per day. Their remuneration costs are included in note 2 (a).

The salary costs of the judges of the Chancery Division of the High Court when sitting as Tribunal chairmen are paid by the Department for Constitutional Affairs.

d The ordinary members are remunerated at a rate of £300 per day. The total remuneration payable to ordinary members of £162,450 (2004-2005: £202,350) is included in note 2 (a).

### 3 Other operating charges

a

|   | <b>2005-2006</b> | 2004-2005 |
|---|------------------|-----------|
|   | <b>£000</b>      | £000      |
| Members' travel and subsistence   | <b>49</b>        | 54        |
| Members' PAYE and National Insurance on travel and subsistence expenses | <b>41</b>        | 49        |
| Members' training   | <b>9</b>         | 10        |
| Long service award  | <b>22</b>        | 0         |
| Audit fees*   | <b>5</b>         | 5         |
|   | <b>126</b>       | 118       |

\* Audit fees related only to statutory audit work.

b *The long service award relates to provision made for the payment of £22,000 to Sir Christopher Bellamy in his final month of service. This is in accordance with amendments made to the terms of the Judicial Pension Scheme by the Lord Chancellor with the agreement of the Treasury during the year. This amount is shown as a liability in the CS's Balance sheet. See note 14 in the CS's accounts.*

### 4 Related party transactions

All expenses of the Tribunal are paid by the CS.

The President and the chairmen did not undertake any material transactions with the CS during the year.

## 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 CS for the year ended 31 March 2006 under the Enterprise Act 2002. These comprise the income and expenditure account, statement of total recognised gains and losses, the balance sheet, the cash flow statement and the related notes. These financial statements have been prepared under the accounting policies set out within them.

### Respective responsibilities of the CS, the Accounting Officer and the Auditor

The CS and the Accounting Officer are responsible for preparing the annual review, the remuneration report and the financial statements in accordance with the Enterprise Act 2002 and the Secretary of State for the Department of Trade and Industry's directions made thereunder and for ensuring the regularity of financial transactions. These responsibilities are set out in the Statement of Accounting Officer's Responsibilities.

My responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements, and with International Standards on Auditing (UK and Ireland).

I report to you my opinion as to whether the financial statements give a true and fair view and whether the financial statements and the part of the remuneration report to be audited have been properly prepared in accordance with the Enterprise Act 2002 and the Secretary of State for the Department of Trade and Industry's directions made thereunder. I also report whether in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them. I also report to you if, in my opinion, the annual review is not consistent with the financial statements, if the CS has not kept proper accounting records, if I have not received all the information and explanations I require for my audit, or if information specified by relevant authorities regarding remuneration and other transactions is not disclosed.

I review whether the joint statement on pages 45 to 47 reflects the CS's compliance with HM Treasury's guidance on the Statement on Internal Control, and I report if it does not. I am not required to consider whether the Accounting Officer's statements on internal control cover all risks and controls, or form an opinion on the effectiveness of the CS's corporate governance procedures or its risk and control procedures.

I read the other information contained in the annual review and consider whether it is consistent with the audited financial statements. This other information comprises the Introduction, President's statement, Registrar's statement, biographies and case statistics included within the annual review, the unaudited part of the remuneration report and the management commentary. I consider the implications for my report if I become aware of any apparent misstatements or material inconsistencies with the financial statements. My responsibilities do not extend to any other information.

### Basis of audit opinion

I conducted my audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. My audit includes examination, on a test basis, of evidence relevant to the amounts, disclosures and regularity of financial transactions included in the financial statements and the part of the remuneration report to be audited. It also includes an assessment of the significant estimates and judgements made by the CS and the Accounting Officer in the preparation of the financial statements, and of whether the accounting policies are most appropriate to the CS's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations which I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements and the part of the remuneration report to be audited are free from material misstatement, whether caused by fraud or error and that in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements and the part of the remuneration report to be audited.

## Opinions

In my opinion

- the financial statements give a true and fair view, in accordance with the Enterprise Act 2002 and directions made thereunder by the Secretary of State for the Department of Trade and Industry, of the state of the CS's affairs as at 31 March 2006 and of its deficit for the year then ended;
- the financial statements and the part of the remuneration report to be audited have been properly prepared in accordance with the Enterprise Act 2002 and the Secretary of State for the Department of Trade and Industry's directions made thereunder; and
- in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

I have no observations to make on these financial statements.

*John Bourn*  
Comptroller and Auditor General

27 June 2006

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



## Competition Service

### Income and expenditure account for the year ended 31 March 2006

|  | Notes | 2005-2006<br>£000 | 2004-2005<br>£000 |
|--|-------|-------------------|-------------------|
| <b>Income</b>  |       |                   |                   |
| Gross income: grant-in-aid   | 2     | 3,217             | 3,550             |
| Transfer from deferred government grant reserve                              | 15    | 140               | 135               |
|  |       | <u>3,357</u>      | <u>3,685</u>      |
| Less allocation to cover costs of the Tribunal                               |       | (646)             | (682)             |
|  |       | <u>2,711</u>      | <u>3,003</u>      |
| <b>Expenditure</b>   |       |                   |                   |
| CS and Audit Committee members' remuneration                                 | 3a    | 12                | 11                |
| Staff salary costs   | 4a    | 857               | 762               |
| Depreciation and amortisation  | 9,10  | 127               | 121               |
| Permanent diminution in value of fixed assets                                | 9,10  | 13                | 14                |
| Other operating charges  | 6     | 1,945             | 1,784             |
|  |       | <u>2,954</u>      | <u>2,692</u>      |
| <b>(Deficit)/surplus on ordinary activities before interest and taxation</b> |       | <b>(243)</b>      | <b>311</b>        |
| Interest receivable  | 7     | 40                | 47                |
| Notional cost of capital   | 7     | (19)              | (17)              |
| <b>(Deficit)/surplus on ordinary activities before taxation</b>              |       | <b>(222)</b>      | <b>341</b>        |
| Corporation tax  | 8     | (8)               | (9)               |
| <b>(Deficit)/surplus for the financial year after taxation</b>               |       | <b>(230)</b>      | <b>332</b>        |
| Add back – notional cost of capital  | 7     | 19                | 17                |
| <b>Overall (deficit)/surplus for the financial year</b>                      |       | <b>(211)</b>      | <b>349</b>        |

All income and expenditure are derived from continuing operations.

### Statement of Total Recognised Gains and Losses for the year ended 31 March 2006

|  | Note | 2005-2006<br>£000 | 2004-2005<br>£000 |
|--|------|-------------------|-------------------|
| Net gain on revaluation of tangible fixed assets | 16   | 2                 | 6                 |
| <b>Recognised gains for the year</b>             |      | <b>2</b>          | <b>6</b>          |

Accounting policies and notes forming part of these accounts are on pages 58 to 68.

# Competition Service

## Balance sheet as at 31 March 2006

|   | Notes | 31 March<br>2006<br>£000 | 31 March<br>2006<br>£000 | 31 March<br>2005<br>£000 | 31 March<br>2005<br>£000 |
|---|-------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Fixed assets</b>                                     |       |                          |                          |                          |                          |
| Intangible fixed assets                                 | 9     | 27                       |                          | 20                       |                          |
| Tangible fixed assets                                   | 10    | 480                      |                          | 440                      |                          |
|   |       |                          | <b>507</b>               |                          | 460                      |
| <b>Current assets</b>                                   |       |                          |                          |                          |                          |
| Debtors   | 11a   | 59                       |                          | 70                       |                          |
| Cash at bank and in hand                                | 12    | 483                      |                          | 686                      |                          |
|   |       |                          | <b>542</b>               |                          | 756                      |
| <b>Current liabilities</b>                              |       |                          |                          |                          |                          |
| Creditors: Amounts falling due within one year          | 13a   |                          | <b>(232)</b>             |                          | (238)                    |
| <b>Net current assets</b>                               |       |                          |                          |                          |                          |
|   |       |                          | <b>310</b>               |                          | 518                      |
| <b>Total assets less current liabilities</b>            |       |                          |                          |                          |                          |
| Creditors: Amounts falling due after more than one year | 13a   |                          | <b>(320)</b>             |                          | (340)                    |
| Provisions for liabilities and charges                  | 14    |                          | <b>(22)</b>              |                          | 0                        |
|   |       |                          | <b>475</b>               |                          | 638                      |
| <b>Financed by</b>                                      |       |                          |                          |                          |                          |
| Deferred government grant reserve                       | 15    |                          | <b>499</b>               |                          | 454                      |
| Revaluation reserve                                     | 16    |                          | <b>8</b>                 |                          | 6                        |
| Income and expenditure account                          | 17    |                          | <b>(32)</b>              |                          | 178                      |
|   |       |                          | <b>475</b>               |                          | 638                      |

Accounting policies and notes forming part of these accounts are on pages 58 to 68.

Charles Dhanowa  
Registrar and Accounting Officer  
Competition Appeal Tribunal

21 June 2006

## Competition Service

### Cash flow statement for the year ended 31 March 2006

|   | Notes | 2004-2005<br>£000 | 2004-2005<br>£000 | 2003-2004<br>£000 | 2003-2004<br>£000 |
|---|-------|-------------------|-------------------|-------------------|-------------------|
| <b>Net cash (outflow) from operating activities</b>   | 21    |                   | <b>(264)</b>      |                   | (1)               |
| <b>Returns on investment and servicing of finance</b> |       |                   |                   |                   |                   |
| Interest received                                     |       |                   | <b>40</b>         |                   | 47                |
| Taxation  |       |                   | <b>(9)</b>        |                   | (5)               |
| <b>Capital expenditure</b>                            |       |                   |                   |                   |                   |
| Payments to acquire tangible fixed assets             | 10    | <b>130</b>        |                   | 287               |                   |
| Payments to acquire intangible fixed assets           | 9     | <b>23</b>         |                   | 27                |                   |
|   |       |                   | <b>(153)</b>      |                   | (314)             |
|   |       |                   | <b>(386)</b>      |                   | (273)             |
| <b>Financing</b>                                      |       |                   |                   |                   |                   |
| Deferred government grant – capital grant-in-aid      | 15    |                   | <b>183</b>        |                   | 105               |
| <b>(Decrease) in cash</b>                             | 12    |                   | <b>(203)</b>      |                   | (168)             |

The purchase of fixed assets represents the cash paid in year. The deferred income represents capital expenditure accrued and paid for.

*Accounting policies and notes forming part of these accounts are on pages 58 to 68.*

# Competition Service

## Notes to the accounts

### 1 Statement of accounting policies

These financial statements have been prepared in accordance with the 2005-2006 Government Financial Reporting Manual (FRM). The accounting policies contained in the FRM follow UK generally accepted accounting practice for companies (UK GAAP) to the extent that it is meaningful and appropriate to the public sector.

Where the FRM 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 Accounting convention*

The financial statements have been prepared under the modified historic cost convention modified to account for the revaluation of certain fixed assets.

#### *b Basis of preparation of accounts*

The 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. There is therefore a statutory requirement to produce separate statements of accounts for the Tribunal and for the CS.

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 Statement on Internal Control.

#### *c Income*

The CS is funded by grant-in-aid from the DTI. The revenue portion of the grant-in-aid is credited to income in the year to which it related. The portion receivable for capital expenditure is credited to a deferred government grant account and released to the income and expenditure account over the expected useful lives of the relevant assets. In drawing down grant-in-aid the CS draws down sums considered appropriate for the purpose of enabling the Tribunal to perform its functions.

#### *d Fixed 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.

Assets are reviewed annually using relevant producer price indices.

*e Depreciation*

Depreciation is provided on all fixed assets, using the straight line method, at rates calculated to write off, in equal instalments, the current replacement cost less any estimated residual value of each asset over its expected useful life. Fixed assets are depreciated from the month following acquisition.

**Tangible fixed assets**

*Information Technology*

|   |             |
|---|-------------|
| Desktop and laptop computers and printers | three years |
| Servers and audio visual equipment        | five years  |
| Office equipment                          | five years  |
| Furniture                                 | seven years |

Assets under construction relate to an electronic documents and records management system. This system, which was due for completion in 2005-2006 will now not be completed until 2006-2007 and will be depreciated from the date that it becomes operational.

**Intangible fixed assets**

*Information Technology*

|                   |                    |
|-------------------|--------------------|
| Software licences | one to three years |
|-------------------|--------------------|

*f Capital charge*

In accordance with Treasury requirements, a charge reflecting the cost of capital utilised by the CS is included in operating costs. The charge is calculated at the Government's standard rate of 3.5 per cent (2004-2005: 3.5 per cent) on the average value of items comprising capital employed over the year.

*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 did not recover any VAT. Expenditure in the income and expenditure account is shown inclusive of VAT, and VAT on the purchase of fixed 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 employee's 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 Operating leases*

Rentals payable under operating leases are charged to the income and expenditure account on a straight-line basis over the term of the lease.

*j* *Going concern*

There is no reason to believe that future sponsorship from the DTI will not be forthcoming within the capital and resource budgets set by Spending Review Settlements and fluctuations in the level of workload. It has accordingly been considered appropriate to adopt a going concern basis for the preparation of these financial statements.

*k* *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.

**2 Government grant-in-aid**

|  | <b>2005-2006</b><br><b>£000</b> | 2004-2005<br>£000 |
|--|---------------------------------|-------------------|
| Allocated by the DTI   | <b>3,866</b>                    | 4,717             |
| Drawn down   | <b>3,400</b>                    | 3,655             |
| Revenue – to income  | <b>3,217</b>                    | 3,550             |
| Capital – to deferred Government grant reserve               | <b>183</b>                      | 105               |
| <b>Net grant-in-aid</b>                                      | <b>3,400</b>                    | 3,655             |
| <i>The reconciliation to the cash drawn from the DTI was</i> |                                 |                   |
| Net cash drawn from the DTI                                  | <b>3,400</b>                    | 3,655             |
| Balance on account   | <b>0</b>                        | 0                 |
| <b>Net grant-in-aid</b>                                      | <b>3,400</b>                    | 3,655             |

**3 CS and Audit Committee members' remuneration**

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

|  | <b>2005-2006</b><br><b>£000</b> | 2004-2005<br>£000 |
|--|---------------------------------|-------------------|
| CS and Audit Committee members' remuneration | <b>11</b>                       | 10                |
| Social security costs                        | <b>1</b>                        | 1                 |
|  | <b>12</b>                       | 11                |

*b* The membership of the CS is chaired by Sir Christopher Bellamy, President of the Tribunal. The President's salary costs are included in note 2(a) of the Tribunal's accounts. Charles Dhanowa is also a member of the CS. His salary costs are included in note 4(a).

Mrs Janet Rubin is a non-executive member of the CS. This is a fixed term appointment of up to four years. Mrs Rubin is also Chairman of the CS's Audit Committee and a member of the CS's Remuneration Committee. Her appointment is not pensionable. Mrs Rubin is remunerated at a rate of £350 per day. Her remuneration of £6,125 in the year (2004-2005: £5,250) is included in note 3 (a).

The Audit Committee's two other current members are Mr Peter Clayton and Mr David Summers. Both are Tribunal ordinary members. Mr Summers replaced Barry Colgate who stood down from the Audit Committee during the year. Mr Clayton and Mr Summers are remunerated at a rate of £300 per day. The total remuneration payable in 2005-2006 (including the remuneration of Mr Colgate) of £4,800 (2004-2005: £5,100) is included in note 3 (a).

#### 4 Staff numbers and related costs

##### a Staff costs comprise

|                             | <b>Total<br/>2005-2006</b> | Permanently<br>employed<br>staff<br>2005-2006 | Others<br>2005-2006 | 2004-2005 |
|-----------------------------|----------------------------|---|---------------------|-----------|
|                             | <b>£000</b>                | £000  | £000                | £000      |
| Wages and salaries          | <b>665</b>                 | 608   | 57                  | 617       |
| Social security costs       | <b>60</b>                  | 54  | 6                   | 54        |
| Other pension costs         | <b>132</b>                 | 120   | 12                  | 91        |
| <b>Total employee costs</b> | <b>857</b>                 | 782   | 75                  | 762       |

##### b The average number of whole-time persons employed during the year was as follows

|                   | <b>Total<br/>2005-2006</b> | Permanently<br>employed<br>staff<br>2005-2006 | Others<br>2005-2006 | 2004-2005 |
|-------------------|----------------------------|---|---------------------|-----------|
| Employed on cases | <b>9</b>                   | 9   | 0                   | 9         |
| Support staff     | <b>9</b>                   | 8   | 1                   | 9         |
| <b>Total</b>      | <b>18</b>                  | 17  | 1                   | 18        |

#### 5 Pension costs

For 2005-2006, employer contributions of £132,000 (2004-2005: £91,000) were payable to the PCSPS at one of four rates in the range 16.2 to 24.6 per cent of pensionable pay, based on salary bands. For 2006-2007, employer contributions shall be payable to the PCSPS at one of four rates in the range 17.1 to 25.5 per cent.

Pension benefits are provided through the Civil Service pension arrangements. From 1 October 2002, civil servants may be in one of three statutory based 'final salary' defined benefit schemes (classic, premium, and classic plus). The schemes are unfunded with the cost of benefits met by monies voted by Parliament each year. Pensions payable under classic, premium, and classic plus are increased annually in line with changes in the Retail Prices Index. New entrants after 1 October 2002 may choose between membership of premium or joining a good quality 'money purchase' stakeholder arrangement with a significant employer contribution (partnership pension account).

Employee contributions are set at the rate of 1.5% of pensionable earnings for classic and 3.5% for premium and classic plus. Benefits in classic accrue at the rate of 1/80th of pensionable salary for each year of service. In addition, a lump sum equivalent to three years' 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 (but members may give up (commute) some of their pension to provide a lump sum). Classic plus is essentially a variation of premium, but with benefits in respect of service before 1 October 2002 calculated broadly in the same way as in classic.

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

Further details about the Civil Service pension arrangements can be found at the website [www.civilservice-pensions.gov.uk](http://www.civilservice-pensions.gov.uk)

**6 Other operating charges**

|                                     | <b>2005-2006</b><br><b>£000</b> | 2004-2005<br>£000 |
|-------------------------------------|---------------------------------|-------------------|
| Hire of plant and machinery         | <b>13</b>                       | 12                |
| Other operating leases              | <b>1,028</b>                    | 953               |
| Consultants fees – not case related | <b>32</b>                       | 51                |
| Consultants fees – IT               | <b>118</b>                      | 123               |
| Accommodation                       | <b>448</b>                      | 449               |
| Travel, subsistence and hospitality | <b>8</b>                        | 14                |
| Audit fees                          | <b>20</b>                       | 20                |
| Other administration                | <b>278</b>                      | 162               |
|                                     | <b><u>1,945</u></b>             | <u>1,784</u>      |

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

Audit fees related only to statutory audit work.

**7 Interest**

|                          | <b>2005-2006</b><br><b>£000</b> | 2004-2005<br>£000 |
|--------------------------|---------------------------------|-------------------|
| Interest receivable      | <b>40</b>                       | 47                |
| Notional cost of capital | <b>(19)</b>                     | (17)              |
|                          | <b><u>21</u></b>                | <u>30</u>         |

Interest was received on funds deposited in the CS's bank accounts. In accordance with Treasury guidelines, notional interest payable on capital employed was calculated at 3.5 per cent on the average capital employed by the CS for the year (2004-2005: 3.5 per cent).

**8 Taxation**

|                         | <b>2005-2006</b><br><b>£000</b> | 2004-2005<br>£000 |
|-------------------------|---------------------------------|-------------------|
| Corporation tax payable | <b><u>8</u></b>                 | <u>9</u>          |

Corporation tax payable is based on 19 per cent of gross interest receivable (2004-2005: 19 per cent).



**9 Intangible fixed assets**

|  | Purchased<br>software<br>licences<br>£000 |
|--|---|
| <b>Current cost</b>  |   |
| At 1 April 2005  | 27  |
| Additions at cost  | 23  |
| Reclassifications of assets previously capitalised                         | (2)                                       |
| Revaluation  | (4)                                       |
| <b>At 31 March 2006</b>  | <u>44</u>                                 |
| <b>Amortisation</b>  |   |
| At 1 April 2005  | 7   |
| Provision for the year   | 12  |
| Depreciation released on reclassification of assets previously capitalised | (1)                                       |
| Revaluation  | (1)                                       |
| <b>At 31 March 2006</b>  | <u>17</u>                                 |
| <b>Net book value</b>  |   |
| 1 April 2005   | <u>20</u>                                 |
| <b>31 March 2006</b>   | <u>27</u>                                 |

**10 Tangible fixed assets**

|                         | Information<br>technology<br>£000 | Furniture and<br>fittings<br>£000 | Office<br>machinery<br>£000 | Assets<br>under<br>construction<br>£000 | <b>Total<br/>£000</b> |
|-------------------------|-----------------------------------|-----------------------------------|-----------------------------|---|-----------------------|
| <b>Current cost</b>     |                                   |                                   |                             |   |                       |
| At 1 April 2005         | 248                               | 289                               | 7                           | 12                                      | <b>556</b>            |
| Additions at cost       | 76                                | 9                                 | 0                           | 77                                      | <b>162</b>            |
| Disposals               | (3)                               | 0                                 | 0                           | 0                                       | <b>(3)</b>            |
| Revaluation             | (13)                              | 4                                 | 0                           | 0                                       | <b>(9)</b>            |
| <b>At 31 March 2006</b> | <u>308</u>                        | <u>302</u>                        | <u>7</u>                    | <u>89</u>                               | <b>706</b>            |
| <b>Depreciation</b>     |                                   |                                   |                             |   |                       |
| At 1 April 2005         | 74                                | 41                                | 1                           | 0                                       | <b>116</b>            |
| Provision for the year  | 72                                | 42                                | 2                           | 0                                       | <b>115</b>            |
| Released on disposal    | (3)                               | 0                                 | 0                           | 0                                       | <b>(3)</b>            |
| Revaluation             | (3)                               | 1                                 | 0                           | 0                                       | <b>(2)</b>            |
| <b>At 31 March 2006</b> | <u>140</u>                        | <u>84</u>                         | <u>3</u>                    | <u>-</u>                                | <b>226</b>            |
| <b>Net book value</b>   |                                   |                                   |                             |   |                       |
| 1 April 2005            | <u>174</u>                        | <u>248</u>                        | <u>6</u>                    | <u>12</u>                               | <b>440</b>            |
| <b>31 March 2006</b>    | <u>168</u>                        | <u>218</u>                        | <u>4</u>                    | <u>89</u>                               | <b>480</b>            |

Assets under construction relate to an electronic documents and records management system. This asset is made up of both tangible and intangible assets and shall be split into tangible and intangible assets upon completion.

## 11 Debtors: Amounts falling due within one year

### a Analysis by type

|                                | <b>31 March<br/>2006<br/>£000</b> | 31 March<br>2005<br>£000 |
|--------------------------------|-----------------------------------|--------------------------|
| Trade debtors                  | <b>0</b>                          | -                        |
| Deposits and advances          | <b>4</b>                          | 4                        |
| Other debtors                  | <b>6</b>                          | 34                       |
| Prepayments and accrued income | <b>49</b>                         | 32                       |
|                                | <b>59</b>                         | 70                       |

### b Intra-government balances

|   | <b>Amounts falling<br/>due within<br/>one year<br/>2005-2006<br/>£000</b> | Amounts falling<br>due within<br>one year<br>2004-2005<br>£000 | <b>Amounts falling<br/>due after<br/>more than<br/>one year<br/>2005-2006<br/>£000</b> | Amounts falling<br>due after<br>more than<br>one year<br>2004-2005<br>£000 |
|---|---|--|--|--|
| Balances with other central government bodies | <b>13</b>   | 24   | <b>0</b>   | 0  |
| Balances with bodies external to government   | <b>46</b>   | 46   | 0  | 0  |
| <b>Total debtors at 31 March</b>              | <b>59</b>   | 70   | <b>0</b>   | 0  |

## 12 Cash at bank and in hand

|  | <b>2005-2006<br/>£000</b> | 2004-2005<br>£000 |
|--|---------------------------|-------------------|
| Balance at 1 April                         | <b>686</b>                | 854               |
| Net change in cash balances                | <b>(203)</b>              | (168)             |
| <b>Balance at 31 March</b>                 | <b>483</b>                | 686               |
| <i>The following balances were held at</i> |                           |                   |
| Office of HM Paymaster General             | <b>81</b>                 | 195               |
| Commercial banks and cash in hand          | <b>402</b>                | 491               |
| <b>Balance at 31 March</b>                 | <b>483</b>                | 686               |

### 13 Creditors

#### a Analysis by type

|   | <b>31 March<br/>2006<br/>£000</b> | 31 March<br>2005<br>£000 |
|---|-----------------------------------|--------------------------|
| <i>Amounts falling due within one year</i>          |                                   |                          |
| Taxation and social security                        | <b>55</b>                         | 61                       |
| Trade creditors                                     | <b>9</b>                          | 9                        |
| Accruals  | <b>148</b>                        | 148                      |
| Deferred income                                     | <b>20</b>                         | 20                       |
|   | <b>232</b>                        | 238                      |
| <i>Amounts falling due after more than one year</i> |                                   |                          |
| Deferred income                                     | <b>320</b>                        | 340                      |

#### b Intra-government balances

|   | <b>Amounts falling<br/>due within<br/>one year<br/>2005-2006<br/>£000</b> | Amounts falling<br>due within<br>one year<br>2004-2005<br>£000 | <b>Amounts falling<br/>due after<br/>more than<br/>one year<br/>2005-2006<br/>£000</b> | Amounts falling<br>due after<br>more than<br>one year<br>2004-2005<br>£000 |
|---|---|--|--|--|
| Balances with other central government bodies | <b>101</b>  | 99   | <b>320</b>   | 340  |
| Balances with bodies external to government   | <b>131</b>  | 139  | <b>0</b>   | 0  |
| <b>Total creditors at 31 March</b>            | <b>232</b>  | 238  | <b>320</b>   | 340  |

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

In accordance with the principles of SSAP21 (Accounting for leases and hire purchase contracts) and the supplementary guidance specified in UITF abstract 28 (Operating lease 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.

### 14 Provisions for liabilities and charges

|                                 | <b>Long service<br/>award costs<br/>£000</b> |
|---------------------------------|--|
| Balance at 1 April 2005         | <b>0</b>                                     |
| Provided in the year            | <b>22</b>                                    |
| <b>Balance at 31 March 2006</b> | <b>22</b>                                    |

The provision made in the year relates to the expected cost of the President's long service award which shall become payable in his final month of service and is in accordance with amendments made to the terms of the Judicial Pension Scheme by the Lord Chancellor with the agreement of the Treasury. The amount provided has been recharged to the Tribunal. The liability was calculated by the Government Actuary's Department and is based on his judicial grade and length of service.

## 15 Deferred government grant reserve

|  | 2005-2006<br>£000 | 2004-2005<br>£000 |
|--|-------------------|-------------------|
| Balance at 1 April   | 454               | 484               |
| Capital grant received (note 2)                              | 183               | 105               |
| Deferred income released on reclassification of fixed assets | 2                 | 0                 |
| Transferred to income and expenditure account                | (140)             | (135)             |
| <b>Balance at 31 March</b>                                   | <b>499</b>        | <b>454</b>        |

## 16 Movement on revaluation reserve

|   | 2005-2006<br>£000 | 2004-2005<br>£000 |
|---|-------------------|-------------------|
| Balance at 1 April  | 6                 | 0                 |
| Arising on revaluation during the year (net)  | 3                 | 6                 |
| Transferred to the income and expenditure account in respect of realised element of revaluation reserve | (1)               | 0                 |
| <b>Balance at 31 March</b>  | <b>8</b>          | <b>6</b>          |

## 17 Income and expenditure account

|   | 2005-2006<br>£000 | 2004-2005<br>£000 |
|---|-------------------|-------------------|
| Balance at 1 April  | 178               | (171)             |
| Transferred from the revaluation reserve in respect of realised element of depreciation | 1                 | 0                 |
| (Deficit)/surplus for year  | (211)             | 349               |
| <b>Balance at 31 March</b>  | <b>(32)</b>       | <b>178</b>        |

## 18 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.

|  | 2005-2006<br>£000 | 2004-2005<br>£000 |
|--|-------------------|-------------------|
| <b>Obligations under operating leases comprise</b> |                   |                   |
| <i>Land and buildings</i>                          |                   |                   |
| Expiry within 1 year                               | 0                 | 0                 |
| Expiry after 1 year but not more than 5 years      | 0                 | 0                 |
| Expiry thereafter                                  | 1,028             | 1,028             |
| <i>Other</i>                                       |                   |                   |
| Expiry within 1 year                               | 0                 | 0                 |
| Expiry after 1 year but not more than 5 years      | 13                | 13                |
| Expiry thereafter                                  | 0                 | 0                 |
|  | <b>1,041</b>      | <b>1,041</b>      |

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

## 19 Related party transactions

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

The CS's sponsor department is the DTI from which it receives grant-in-aid. During the year the CS also had various other material transactions with the DTI including pension administration, internal audit services and the reimbursement of salary costs for one member of staff on secondment from the DTI.

In addition, the CS had material transactions with the Department for Constitutional Affairs and the Cabinet Office to which accruing superannuation liability charges and employee contributions were paid over for the President and permanent staff respectively.

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

## 20 Financial instruments

FRS 13, Derivatives and Other Financial Instruments, 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 FRS 13, debtors and creditors 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 the DTI for its cash requirements, and is therefore not exposed to liquidity risks. The CS has no material deposits other than cash balances held in current accounts with the Office of HM Paymaster and 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 2006.

|              | Book value<br>£000 | Fair value<br>£000 |
|--------------|--------------------|--------------------|
| Cash at bank | <u>483</u>         | <u>483</u>         |

## 21 Reconciliation of operating deficit/(surplus) to net cash flows from operating activities

|   | 2005-2006<br>£000   | 2004-2005<br>£000 |
|---|---------------------|-------------------|
| Operating (deficit)/surplus                         | <b>(243)</b>        | 311               |
| <i>Movements not involving cash</i>                 |                     |                   |
| Depreciation and amortisation                       | <b>127</b>          | 121               |
| Permanent diminution in value of fixed assets       | <b>13</b>           | 14                |
| Decrease/(increase) in debtors                      | <b>16</b>           | (47)              |
| (Decrease) in creditors                             | <b>(37)</b>         | (265)             |
| Transfer from capital grant-in-aid                  | <b>(140)</b>        | (135)             |
| <b>Net cash (outflow) from operating activities</b> | <b><u>(264)</u></b> | <b><u>(1)</u></b> |

The amount shown for debtors excludes bank interest accrued as this is not operating income.

The creditors amount is net of non-operating expenses relating to corporation tax and fixed asset purchases accrued at 31 March 2006.

**22 Reconciliation of net cash flow to movement in net funds**

|                              | <b>2005-2006</b> | 2004-2005 |
|------------------------------|------------------|-----------|
|                              | <b>£000</b>      | £000      |
| Decrease in cash in the year | <b>(203)</b>     | (168)     |
| Net funds at 1 April         | <b>686</b>       | 854       |
| <b>Net funds at 31 March</b> | <b>483</b>       | 686       |

The change in net funds is due entirely to cash flows of cash in hand and at bank.

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