

Competition Commission



Competition Commission

Annual Report and Accounts for the year ended 31 March 2010

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The work and the role of the Competition Commission

The Competition Commission (CC) is an independent public body which conducts in-depth inquiries into mergers, markets and the regulation of the major regulated industries.

All of the CC's inquiries are undertaken following a reference made by another authority, most often the Office of Fair Trading (OFT) (which refers merger and market inquiries), or one of the sector regulators (which can refer markets within their sectoral jurisdictions or make regulatory references in relation to price controls and other licence modifications) or as a result of an appeal from a decision of one of the sector regulators. Further information about each of these areas of work is given below.

Mergers

Under the Enterprise Act 2002 (the Enterprise Act), the OFT can review mergers to investigate whether there is a realistic prospect that they will lead to a substantial lessening of competition (SLC), unless it obtains undertakings from the merging parties to address its concerns or the market is of insufficient importance.

In order to qualify for investigation by the OFT, a merger must meet all three of the following criteria:

1. two or more enterprises must cease to be distinct;
2. the merger must not have taken place already, or must have taken place not more than four months ago; and
3. one of the following must be true:
 - the business being taken over has a turnover in the UK of at least £70 million; or
 - the combined businesses supply (or acquire) at least 25 per cent of a particular product or service in the UK (or in a substantial part of the UK), and the merger results in an increase in the share of supply or consumption.

In exceptional cases where public interest issues are raised, the Secretary of State may also refer mergers to the CC.

Where an inquiry is referred to the CC for in-depth investigation, the CC has wide-ranging powers to remedy any competition concerns, including preventing a merger from going ahead. It can also require a company to sell off part of its business or take other steps to improve competition.

Market investigations

The Enterprise Act enables the OFT (and the sector regulators) to investigate markets and, if they are concerned that there may

be competition problems, to refer those markets to the CC for in-depth investigation.

In market investigations the CC has to decide whether any feature or combination of features in a market prevents, restricts or distorts competition, thus constituting an adverse effect on competition (AEC). If the CC concludes that this is the case, then it must seek to remedy the problems that it identifies either by introducing remedies itself or by recommending action by others.

Reviews of undertakings or orders

Undertakings or orders are the primary means by which remedies are given effect under the Enterprise Act and the Fair Trading Act 1973. The OFT has the statutory duty to keep these undertakings or orders under review and if it considers that due to a change of circumstances a set of undertakings or an order should be varied or terminated, then the OFT refers it for consideration by the CC. Responsibility for deciding on variation or termination of undertakings lies with the CC.

Regulatory references

In relation to regulatory references, the CC's role is dictated by the relevant sector-specific legislation. Companies regulated under the gas, electricity, water and sewerage, postal services, railways or airports legislation generally have a formal instrument (a licence) setting out the terms of their operation. If a regulated company does not agree to a modification of its licence proposed by the regulator, the regulator must refer the question to the CC. The CC will consider whether any matter referred to in the reference may be expected to operate against the public interest and, if so, whether this could be remedied by modifications to the licence. These references can involve the price control applied to the company.

The CC also has roles under the Financial Services and Markets Act 2000 and the Legal Services Act 2007.

Energy code modifications and Communications Act appeals

The CC has an appeal function following decisions by the Gas and Electricity Markets Authority to modify certain energy codes under the Energy Act 2004 and in relation to price control decisions by Ofcom, following a reference by the Competition Appeal Tribunal (CAT) under the Communications Act 2003.

Chairman's statement



Peter Freeman CBE QC

Turbulence continues

It would be good to think that the economic turbulence that characterized 2008/09 was a thing of the past, but this is not the case. We have continued to operate the UK competition regime in conditions of considerable economic and financial difficulty, to which has been added political uncertainty with the run-up to the recent general election and its aftermath.

With the focus of attention moving from financial institutions to government indebtedness, the role of public authorities, including the CC, is increasingly scrutinized. So are the resources devoted to them, as cutbacks become necessary. The CC has responded well to these pressures and the measures we have taken to reduce expenditure whilst maintaining the quality of our output are described elsewhere in this review.

There is no doubt that, as times get harder, the role of competition and competition authorities will continue to be questioned. Proponents of other policies such as those relating to environment, health and transport will claim that they should be given priority over the needs of competition. According to this view, competition and the proper operation of markets either stand in the way of the fair and efficient provision of services or else encourage socially undesirable results. But these arguments reveal a confusion of thought. It should not be a question of choosing between an effective competition policy and other policies. A successful competition policy is the key to an efficient economy and this in turn enables many other policy objectives to be fulfilled. This applies particularly to regulated sectors such as banking and transport where the regulatory regime, however well constructed and applied, serves little purpose unless it has profitable enterprises to which it may be applied. In short, it is more important than ever to remember what competition does for the economic well-being of the country.

The public interest

One product of this debate is the suggestion to reintroduce a 'public interest' test into UK merger control, particularly in the light of the high-profile hostile takeover battle between Kraft and Cadbury. This is an interesting idea, and whilst it might seem to be a throwback to the pre-Enterprise Act regime, in fact the option of applying a public interest test in UK merger control is expressly preserved by the Enterprise Act albeit only in certain circumstances. The UK spent some 20 years finding its way from the emergence of the 'Tebbit Doctrine' in 1984, under which competition considerations would normally

prevail in merger control, via the 'Lilley Doctrine' of 1995, under which back-door nationalization of banks and utilities would be prevented, to the Enterprise Act of 2002. This finally established in law what was by then the current practice, namely the 'SLC' (substantial lessening of competition) test to be applied by independent competition authorities. However, the Act provided a mechanism for Ministerial override on certain clearly-specified grounds. So specific public interest considerations can, and sometimes do, apply in merger control. The BSkyB/ITV case (media plurality) and the Lloyds/HBoS merger (financial stability) are examples of this. The trouble with a more general test is that the term 'public interest', like words in Alice in Wonderland, can mean what people want it to mean and it is much better to be clear about the specific considerations that are to apply. The current list of public interest considerations can always be extended, but it is in my view important that any specific new public interest consideration should be clearly formulated and approved by Parliament before it is invoked in any particular case.

The CC's work

Turning to the CC's work over the past year, the number of merger cases has diminished in line with reduced transactional activity but I note with some concern that, although the CC has been very busy completing its existing 'stock' of market investigations, the 'flow' of new references has all but dried up, with the CC having received only one market reference (Local Bus Services) in the past three years. There may be understandable reasons for this, but no system can work effectively if proper use is not made of it and it is likely that competition enforcement will in time suffer if this continues.

As the Chief Executive later describes, the CC has also been heavily engaged in regulatory work, and two of its market investigations (ROSCOs and BAA) have also involved regulated sectors. The CC's regulatory functions are sometimes given insufficient attention. They are very important to the successful operation of sectoral regulation in the UK and if the CC were not here to perform them, some other new, untried and no doubt costly, mechanism would need to be developed. The CC provides a 'fresh pair of eyes', and a source of expertise and experience, for complex regulatory issues where regulators and the regulated companies cannot agree; and the CC can apply its experience in one regulated sector to others, helping to ensure consistency and clarity of approach. Competition and regulation have many close connections and there are many benefits in having a review body such as the CC straddling both fields.

Challenge

Last year saw a number of legal challenges to our decisions. This was always to be expected and follows naturally from the coincidence of several robust decisions in major cases. For the most part these challenges were only partially successful, and even where successful, the results could be accommodated without great disruption to the system as a whole. So in the Groceries investigation, following Tesco's appeal, we reconsidered our local competition test and made some modifications before renewing our recommendation to government; we have also reconsidered our 'point of sale' remedy in relation to Payment Protection Insurance. We have responded positively to some other less significant rulings. And in other appeals, notably BSKyB (in relation to its acquisition of a minority stake in ITV), we have been strongly vindicated. In one case, however, BAA Airports, the effect of the successful challenge in the CAT on grounds of apparent bias in our procedures would be of very considerable impact on the CC. Not only would it require us to repeat a large part of a major inquiry the substantive conclusions of which are not seriously in doubt but it also challenges how we use expert part-time members. We have appealed the decision and await the outcome.

Legal challenge is an inherent part of the competition enforcement system and we have absolutely no quarrel with the important role played by the CAT and the courts as a whole in making the competition system work effectively. We need, however, to try to keep three considerations in mind; one is that challenges should not be allowed on points that are so marginal or preliminary that it is difficult for us to fulfil our very tight timetables if they were to become routine. Second, and related, is that the level of scrutiny applied by the courts should still leave us the ability to make careful and often difficult assessments on the evidence before us and involving the exercise of our judgement; the Court of Appeal's decision in BSKyB provided some reassurance on that point; finally, that the overall time taken by the OFT and ourselves combined with the appeal process to the CAT and any subsequent remittal of tasks to us should not take so long that an unacceptable burden is placed on businesses and customers. Avoiding these risks, of course, does not lie in our hands alone.

We learn quickly and are always willing to respond constructively to adverse rulings. We have, as a result of the challenges this year, conducted extensive reviews of our handling of remedies in market cases and of our conflict of interest procedures. I am

confident that the overall effect of judicial scrutiny will continue to be beneficial to our work and to the public.

Media issues

One area of the CC's recent activities that has attracted attention is in relation to visual media—our decision to prohibit the 'Kangaroo' joint venture on grounds of concentration of UK-originated TV content, and our decision to keep in place, in a modified form, the contracts rights renewal undertakings originally offered by the parties at the time of the creation of ITV. The view has been expressed that because the CC is a competition authority it is unsuitable to consider issues involving the media. The CC has a large number of specific remits which are not about competition as such, ranging from the numerous functions relating to utility regulation to public interest issues in relation to the legal profession and other matters. For mergers, we can be asked to consider national security or financial stability, as well as media-related issues. The CC is expert in being expert on a wide variety of subjects and there is nothing in the media industry which cannot be readily assimilated by the CC process.

Arrivals and departures

Last year saw a big changeover of members with the departure of 14 long-serving and valued commissioners, replaced by an equal number of equally well-qualified newcomers. We have also been joined by two new non-executive Council members, Grey Denham and Lesley Watkins, having said goodbye to Tony Foster, and we welcome a new Deputy Chairman, Laura Carstensen, appointed from among the existing membership. Among the staff, upon whom the CC relies so heavily, it is always invidious to single out individuals but I could not omit to mention the retirement of John Banfield, a Senior Inquiry Director, with many years of dedicated service, and our Chief Legal Adviser, Clare Potter, each of whom, in their different ways, personifies the skill and dedication that are a byword for working at the CC. I thank wholeheartedly all those who have left for their splendid service and I welcome all who have joined us.

The CC continues to represent all that is best in the competition community. In addition to producing a succession of authoritative decisions, it remains dedicated to upholding the highest standards and is, besides all that, a most satisfying place to work. And perhaps I may be forgiven this year for saying that the Chairman's job, despite its many challenges and responsibilities, is surely the most satisfying of all.

The Council

The Council is the CC's strategic management board; it is led by the Chairman and currently consists of the Deputy Chairmen, the Chief Executive, and non-executive Council members. The Council meets at least six times a year to consider the plans and strategic direction of the CC and to develop policy. The Council reviews the proposed annual budget for the CC and monitors its financial performance. The Council is also responsible for ensuring that there is a proper framework for the corporate governance of the CC and it reviews the CC's performance, monitors its high-level risks and determines best practice across inquiry groups.

Additionally the Council has a statutory duty to publish general advice and information about the consideration by the CC of merger inquiries and market investigations and in relation to any matter connected with the exercise of its functions, including and publishing a statement of policy on penalties for non-provision of information.



Peter Freeman CBE QC was appointed Chairman in 2006, having been a member since May 2003 and a Deputy Chairman since September 2003. Prior to joining the CC, he was head of the EC and Competition Law Group of the international law firm Simmons & Simmons. He was co-founder of and, until 2007, Chairman of the Regulatory Policy Institute, is a Consulting Editor of Butterworths' Competition Law and a member of the Advisory Boards of the Competition Law Journal, the International Competition Law Forum and the ESRC Research Centre for Competition Policy. Recent cases include the Groceries market investigation; the Project Kangaroo–BBC/Ch4/ITV joint venture and the appeals by Carphone Warehouse against the price control decision by Ofcom.



Laura Carstensen was appointed Deputy Chairman in February 2009, having been a member since 2005. She is a senior lawyer with extensive experience of EU and UK competition law practice including as a partner in the City law firm Slaughter and May (1994–2004). She is co-founder and director of two online mail order businesses, Blue Banyan Ltd and Hortica. She is a non-executive board member of the Office of the Parliamentary Counsel (Cabinet Office), and a Member of the Cooperation & Competition Panel for NHS Funded Services. Recent or current cases include: BAA Airports; Stagecoach/Preston Buses; Brightsolid/Friends Reunited; and the Bristol Water price limits appeal. She also chaired the CC's 2009 Remedies Review.



Christopher Clarke was appointed Deputy Chairman in 2004, having been a member since 2001. From 2004 to 2010, he was a non-executive director of Omega Insurance Holdings Limited, and from 1999 to 2008, a non-executive director of The Weir Group PLC. Formerly an investment banker, he was a director of HSBC Investment Banking from 1996 to 1998, and of Samuel Montagu from 1982 to 1996. His responsibilities in the UK and internationally encompassed privatizations; mergers and acquisitions; financing; and regulatory matters. Recent or current CC cases include the BAA Airports market investigation; the reviews of airport charges at Heathrow, Gatwick and Stansted; the Capita/IBS OPENSsystems merger; the Live Nation/Ticketmaster merger; and the appeal by Cable & Wireless against a BT price control decision by Ofcom.



Dr Peter Davis was appointed Deputy Chairman in 2006 and was previously on the CC's academic panel of expert economists from 2004. He received his PhD from Yale and served on the faculties of MIT and then LSE before joining the CC. In addition, he currently serves as President of the Association of Competition Economics (ACE). He has published widely, and this year his book *Quantitative Techniques for Competition and Antitrust Analysis* (co-authored with Eliana Garces-Tolon) was published by Princeton University Press. Recent cases include the Payment Protection Insurance market investigation; the Mobile Phone Wholesale Termination Charges Appeals; the Stagecoach/Preston merger; and the Sutton and East Surrey price determination appeal.



Diana Guy was appointed Deputy Chairman in 2004, having been a member since 2001. She is a qualified solicitor and was a partner, and later a consultant, at Theodore Goddard (now part of Addleshaw Goddard). During her career she specialized in EU and competition law and was involved in some significant cases before the MMC and the European Commission. She is a non-executive director of Catlin Underwriting Agencies Limited and Catlin Insurance Company (UK) Limited. Recent cases include the Holland & Barrett/Julian Graves merger and the acquisition by Sports Direct of 31 JJB Sports stores. She also chaired the review of the CRR undertakings given at the time of the Carlton/Granada merger in 2003, and is currently chairing the market investigation into Local Bus Services.



Grey Denham was appointed non-executive Council member in 2009. He is a qualified barrister and has spent most of his career in global manufacturing businesses. He specialized in international mergers and acquisitions and in governance and compliance. Before retirement from GKN plc in 2009, after 28 years, he was its Company Secretary and Group Director Legal and Compliance. He is currently Senior Independent Director of Charter International plc and a Director and Trustee of the charity Young Enterprise. He is a former Chairman of the Primary Markets Group of the London Stock Exchange and of the CBI in the West Midlands and Oxfordshire.



Dame Patricia Hodgson DBE was appointed non-executive Council member in 2004. She is Principal of Newnham College, Cambridge, a Member of the BBC Trust and a Member of the Higher Education Funding Council for England. She began her career as both a producer and journalist. Past work includes: BBC main board Director (of Policy & Planning), Chief Executive of the Independent Television Commission, Chair of the Higher Education Regulation Review Group and non-executive director of GCap Media plc. She has served as a Governor of the Wellcome Trust and Member of the Committee for Standards in Public Life.



Lesley Watkins was appointed non-executive Council member in 2009. She was formerly a Managing Director in the corporate finance divisions of UBS and then Deutsche Bank. She is a Chartered Accountant (having qualified with Price Waterhouse, now PwC) and since 2002 has been Finance Director of Calculus Capital Limited (a private equity firm). She is also Company Secretary of Neptune-Calculus Income and Growth VCT plc.



David Saunders, Chief Executive, joined the CC in February 2009 from the Department for Business, Innovation and Skills (BIS). He had been head of consumer and competition policy in BIS from autumn 2002. He joined the civil service in 1978 and has had a variety of roles, largely in BIS and its predecessor departments, and including three years in the OFT in the mid-1980s.

Chief Executive's report



David Saunders

This year has been notable for two reasons: an increasing degree of legal challenge, foreshadowed last year, and a swing in our workload towards regulatory appeals. The latter has meant that we have not faced the significant downturn in our new caseload that we were concerned about at the start of the year. During the year we have been challenged in the CAT on five occasions. This report now includes a separate section that sets out the details of these challenges and the CAT's judgments. We have continued to devote substantial effort and resources to the ongoing post-inquiry work of implementing remedies and responding to legal challenges. In particular, we have completed the remittal that arose from the CAT's judgment on Tesco's appeal against some aspects of our Groceries remedies, and carried forward the remittal that arose from the CAT's judgment (on broadly similar grounds) on Barclays Bank's appeal against some aspects of our Payment Protection Insurance (PPI) remedies.

The year ahead is likely to provide us with some interesting challenges in terms of casework. We will also face continuing pressure to make our processes as efficient and user friendly as possible. We are continuing to work on delivering good outcomes in a shorter time and placing only the minimum necessary burden on business.

Value of the competition regime

Competition has been identified by researchers as one of the key drivers of productivity. The competition regime, by promoting effective competition, delivers direct benefits to consumers and the economy as a whole by reducing inefficiencies and driving improvements in innovation and productivity. Some of these benefits, for example those flowing from innovation, are difficult to attribute to individual actions taken by an authority. However, the CC aims to quantify, where possible, the direct financial benefits to consumers flowing from its work. The CC and the OFT have estimated direct financial benefits to consumers of £317 million for 2009/10 for the market investigation regime¹ and £310 million for mergers in the same period (these are annual estimates averaged over the three-year period 2007/08 to 2009/10 and include the work done by both the OFT and the CC). In making this estimate of consumer benefits, it is recognized that our approach is partial in scope and subject to considerable uncertainties in its application. At present, a methodology for estimating the benefits of our regulatory work has not been developed, but this will be considered during 2010/11 as part of our review and development of quantification techniques.

Workload

Figure 1 overleaf gives a feel for how our workload has changed over the year. Inquiries vary considerably in their complexity and resource requirements and it is difficult to depict this simply and accurately. But the chart does seek to reflect to some extent both post-inquiry work and appeals. In the second half of the year there has been a marked falling off in new merger cases, and a significant rise in the number of regulatory appeals.

Efficiency, effectiveness and governance

We have continued to look for efficiencies both in our back-office processes and in our inquiry working practices. We have continued to reduce our staffing, achieving a 9 per cent cut in staff costs over the year. We have also cut overhead and other non-staff costs by 3 per cent.

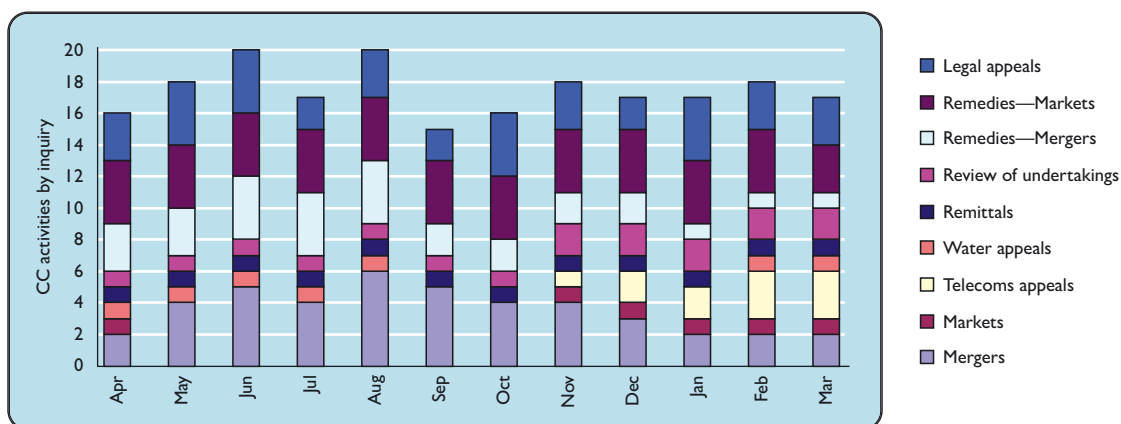
In recent years we have improved utilization of our offices in Victoria House with the result that we have vacated and let a significant proportion of our office space to a number of tenants at market rates. In the current year we have vacated a further major tranche of space that we are also seeking to let.

Further efficiency saving measures introduced during 2009/10 include the outsourcing of the CC's reprographics service and a restructuring of the Corporate Services team. The Corporate Services team now earns an income of about £250,000 annually from the provision of shared services to our tenants. During 2010/11, the CC will continue to investigate additional areas of savings including entering into further shared service arrangements with BIS and other government partners.

The hard work to achieve significant reductions on our budgets and to make the most of opportunities for efficiency over the past year has left us well placed to manage with the planned 10 per cent reduction in our budget for 2010/11, although we are likely to have to make further savings during the year to help meet government targets for reducing public expenditure. Because, however, we have no control over our workload, and have to deal with much of our work within strict statutory deadlines and to a quality that is good enough to withstand rigorous scrutiny and challenge, there must always be a risk that we will be forced due to workload to seek additional resource during the year.

The Statement of Internal Control demonstrates the improvements that the CC has implemented in terms of its corporate governance arrangements, information assurance and

Figure I The CC's resource allocation during the review period
1 April 2009 to 31 March 2010



risk management processes during the year. Additionally the CC continues to work to achieve accreditation for its security and information assurance (ISO 27,001) and for its business continuity arrangements (BS 25,777), quality management systems accreditation (ISO 9001) and the Customer Service Excellence Award.

Process improvements

Later sections of this report summarize the activities and achievements of the work streams set out in our corporate plan, each supervised by either the Council or a specially appointed group. We have made good progress on some major pieces of work during the year.

The new joint merger assessment guidelines that we have been preparing with the OFT are now in nearly final form, having been the subject of wide consultation between April and September last year. We have also launched a review of our market investigation guidelines which were published in 2003.

We have established a new Finance and Regulation Group, replacing the Cost of Capital Group, to allow us to access broader regulatory expertise, to provide strategic advice on regulatory finance matters and also to help on some specific inquiry issues.

Following the appeals against CC remedies decisions by Tesco and Barclays Bank in the CAT, we initiated a review of the remedies process in market investigations. The review was conducted by three members of the CC and was required to examine the way in which the CC assesses the effectiveness, timeliness and proportionality of remedies in market investigations and how the CC's reasoning on these issues is expressed in its reports.

The Council endorsed the review's recommendations and agreed proposed action at its meeting in January.² It is intended that many of the proposed actions will be implemented, where appropriate, on a trial basis in the current CC market investigation into Local Bus Services. They will also be incorporated in new guidance for market investigations which will emerge from our current consultation. The CC considers that adoption of the recommendations will enable it to continue to act decisively and proportionately in addressing competitive detriments identified in market investigations.

In December 2009, the CAT upheld an appeal against the CC's final report into BAA's ownership of airports. BAA's appeal was upheld on the grounds of 'apparent bias' due to what was viewed as a potential conflict of interest involving one of the inquiry group members. (We have appealed against this judgment—see

the later section on legal actions.) We subsequently asked an independent panel to examine the CC's rules and practices in relation to possible conflicts of interest of its members. The panel will report later this year.³

In April, the CC published the results of the latest Stakeholder Perception Survey. The survey was commissioned in order to monitor stakeholders' levels of satisfaction with the CC's performance and track any changes from the previous study conducted in 2007. The overall result for the CC was positive with 41 per cent of stakeholders giving a high overall satisfaction rating (between 8 and 10 out of 10)—a significant increase on the figure of 34 per cent in the previous survey. The average satisfaction rating among participants has also risen very slightly since 2007. The CC also performed well on two of the factors most important to stakeholders—'clarity and thoroughness' and 'transparency'.

The survey also highlighted some areas of stakeholder dissatisfaction. Business main parties were the least likely to be positive about the CC, particularly, perhaps not surprisingly, those in receipt of a 'negative' outcome. The CC's lowest scores related to 'understanding its impact' on organizations and the demands that its investigations make on parties. We are assessing the actions we will be taking in response to these findings, and have published a detailed response with the survey.⁴ These surveys play an important role in helping us to assess our performance and to look at ways in which we can improve.

This has been my first full year as Chief Executive, and although in some respects it has been a difficult year for the CC, at the same time we have continued to deliver a world class product,

meeting strict statutory deadlines and high standards of fairness, transparency and quality of analysis. I was pleased to see this recognized by the Global Competition Review again awarding us the top rating in their annual ranking of the world's top antitrust authorities, noting that we remain a solid, rigorous and independent organization. We clearly face a challenging few years ahead, not least due to the need to make significant cuts in public spending, but an effective competition regime makes a vital contribution to economic growth and prosperity. We will continue to play our part in this to the best of our ability.

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1. Note that the figure for the direct financial benefits to consumers from the market investigation regime is different from those presented as direct benefits for consumers from market studies and reviews in the OFT's Positive Impact 2009/2010 publication. This is for two reasons. First, the OFT's Positive Impact 2009/2010 takes into account all of the OFT's market studies, including those where referral to the CC is not considered a possible option. Secondly, the CC's estimates also include references to the CC made by bodies other than the OFT, such as sectoral regulators.

2. See www.competition-commission.org.uk/our_role/analysis/remedies_review_prop_cc_action.pdf for more details.

3. See www.competition-commission.org.uk/press_rel/2010/jan/29-10.pdf for more details.

4. See www.competition-commission.org.uk/our_role/analysis/stakeholder_survey_response_with_questionnaire.pdf for more details.

Inquiries in the review period April 2009 to March 2010

Overall workload

The CC managed a varied caseload in 2009/10 which included the completion of a large market investigation, several merger inquiries, work on three remittals from the CAT (two market investigations and one merger inquiry), and a variety of regulatory and appeal work. Although there have been no merger referrals from the OFT since November 2009, our workload remains close to forecast levels due, in part, to an increasing number of referrals from regulatory authorities during the earlier months of 2010. The table below lists the inquiries the CC has considered during the last year.

Inquiries in the review period 1 April 2009 to 31 March 2010

Market investigations	Status at 31 March 2010
Rolling Stock Leasing	Published
Groceries (remittal)	Published
Payment Protection Insurance (remittal)	Ongoing
Local Bus Services	Ongoing
Merger inquiries	
Capita Group plc/IBS OPENSsystems plc	Published
Holland & Barrett Retail Limited/Julian Graves Limited	Published
Stagecoach Group plc/Eastbourne Buses Limited/Cavendish Motor Services Limited	Published
Stagecoach Group plc/Preston Bus Limited	Final report published; appeal ongoing
Ticketmaster Entertainment, Inc/Live Nation, Inc (remittal)	Ongoing
Sports Direct International plc/JJB Sports plc	Published
RMIG Limited/Ash and Lacy Perforators Limited	Cancelled
Brightsolid Group Limited/Friends Reunited Holdings Limited	Published
Regulatory inquiries and appeals	
Sutton and East Surrey Water plc interim price determination appeal	Published
Bristol Water plc price determination appeal	Ongoing
Carphone Warehouse Group plc v Office of Communications appeal: local loop unbundling price control	Ongoing
Cable & Wireless UK v Office of Communications appeal: leased lines price control	Ongoing
Carphone Warehouse Group plc v Office of Communications appeal: wholesale line rental price control	Ongoing
Reviews of undertakings	
ITV Contract Rights Renewal	Ongoing
Kemira GrowHow Oyj/Terra Industries Inc	Ongoing

Market investigations

The CC published the final report on the Rolling Stock Leasing market investigation on 7 April 2009. A summary of the outcome of this investigation can be found on pages 17 to 19. The market investigation into Local Bus Services was referred in January 2010 and is scheduled for completion in summer 2011. This was the first market investigation that we had received from the OFT since March 2007.

Aspects of three market investigations—Groceries, BAA Airports and Payment Protection Insurance—were challenged during the past year in front of the CAT. As a result, the CC conducted a remittal process to consider further one of its proposed remedies on Groceries. The report has been published and the implementation of this remedy is now under consideration by government. Further details of this proposed remedy can be found on page 37. The CC is conducting a remittal process on Payment Protection Insurance to consider further one of its proposed remedies and is due to report in summer 2010. The CAT upheld part of BAA's appeal in March 2010. The CC has been granted leave to appeal this decision at the Court of Appeal and the hearing took place in June 2010. Further details of legal challenges to the CC's decisions can be found on pages 38 to 49.

Merger inquiries

Six mergers were referred to the CC during 2009/10, one fewer than was referred the previous year. One merger was cancelled. Of the five merger inquiries which reached final reporting stage during the year, the CC found an SLC in two, resulting in a divestment remedy in both cases. One of these cases was appealed to the CAT; the CC's finding of SLC was upheld and the divestment remedy remains in process. The remaining cases were cleared. Figure 2 shows the rolling 12-month OFT referral rates for mergers since 2003. Figure 3 shows the equivalent figures for merger outcomes.

Figure 2 Mergers: OFT referral rates (rolling 12-month totals)

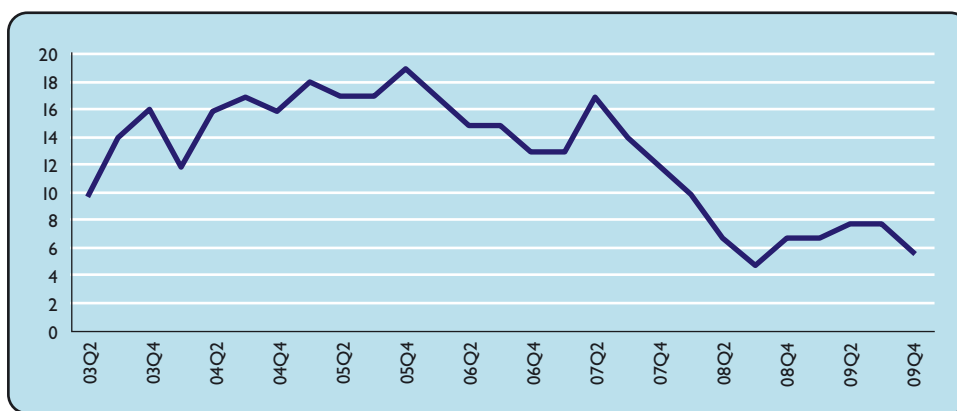
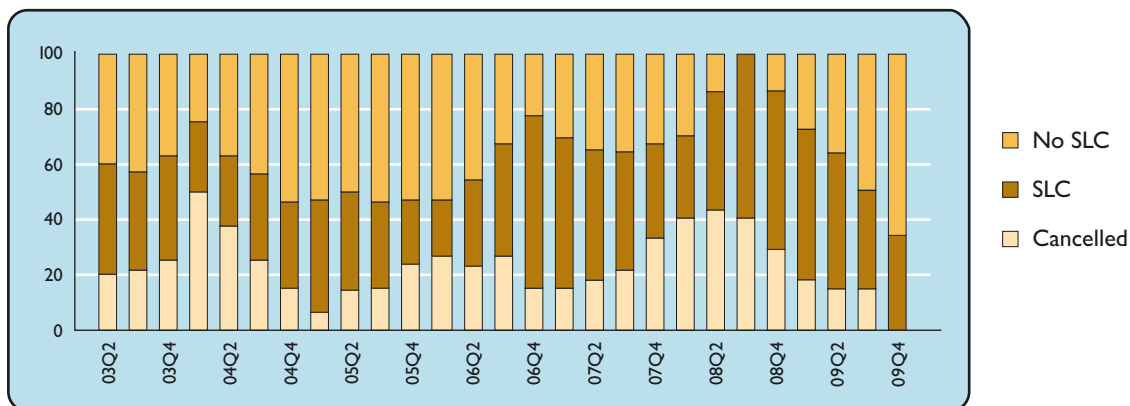


Figure 3 Merger outcomes



Regulatory inquiries and appeals

The past year saw a marked increase in the number of appeals referred to the CC from regulatory authorities. In 2009, the CC completed an interim water price determination appeal and one company decided to appeal its price determination for 2010–15. This was referred from Ofwat in February 2010. Three telecommunications price control appeals were also referred to the CC from Ofcom between November 2009 and February 2010 with reporting expected by the end of the summer 2010.

Reviews of undertakings

In May 2009, the OFT referred the ITV Contracts Rights Renewal undertakings for review by the CC. Following an extensive review exercise, the report was published in May 2010. During 2009, the OFT also referred certain aspects of the Kemira/Terra undertakings for review by the CC. In March 2010 this review was suspended until ownership uncertainties were clarified, and was subsequently resumed in April 2010.

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Market investigation into the leasing of rolling stock

A shortage of rolling stock options available to train operating companies resulted in restricted choice available at the point of franchise re-letting.

Outcome: Rolling stock leasing companies were required to modify their Codes of Practice and provide specified information when offering to lease rolling stock. Recommendations were made to the franchising authorities, including for longer franchise terms, to encourage competition.

Inquiry Group:
Diana Guy (*Chairman*)
Laurence Elks
John Smith
Anthony Stern
Professor Catherine Waddams

The market: leasing of rolling stock for franchised passenger services and supply of related maintenance services in Great Britain

Passenger rolling stock is predominantly owned by three lessors of rolling stock (ROSCOs) which were created at privatization: HSBC Rail (UK) Limited; Porterbrook Leasing Company Limited; and Angel Trains Limited. The ROSCOs lease rolling stock to train operating companies (TOCs) that operate passenger railway services, in most cases on the basis of franchises let by the Department for Transport.

Findings

Choice of rolling stock

Competition for the leasing of rolling stock occurs when TOCs are preparing to bid for franchises. The choice of rolling stock is severely constrained by technical factors (eg the physical dimensions of the vehicles or power source), operational factors (eg speed and capacity), costs, and requirements in the franchise invitations to tender (ITTs).

The CC found that TOCs often faced a limited choice of rolling stock and that in many cases very few alternatives to the incumbent rolling stock were considered. Rental increases tended to be lower where other ROSCOs offered alternative fleets. Because of lack of spare capacity in the market, ROSCOs were aware that their fleets were unlikely to be displaced and there was little risk of fleets remaining off-lease. This reduced the incentives for ROSCOs to compete.

Rental decline

The CC found that lease rentals had tended to decline on average, despite the weakness of competitive constraints from rivals. The CC considered that ROSCOs were constrained by other factors such as their Codes of Practice and a fear of intervention in the market by the franchising authorities.

Deterrents to switching

The CC found that there was active competition to supply new rolling stock at first lease. However, the costs and risks involved in switching rolling stock or introducing new rolling stock, arising in part from short franchise periods and restrictions in franchise ITTs, meant that TOCs were deterred from switching. In contrast, in a well-functioning market TOCs would have freedom to choose between existing fleets and new rolling stock.

The CC also found that the incentives on TOCs to negotiate better deals were diminished by the non-discrimination provisions in the ROSCOs' Codes of Practice, as rental reductions negotiated were likely to be offered to rival TOCs.

Conclusions

The CC identified a number of features which prevented, restricted or distorted competition:

- TOCs faced a shortage of alternative rolling stock options;
- the interaction of the franchising system and the leasing of rolling stock was an important determinant of the structure of the market and this further limited the availability of rolling stock;
- ROSCOs had weakened incentives to compete on lease rentals;
- there were high barriers to entry into the market; and
- TOCs had limited incentives to negotiate with ROSCOs.

These features made it likely that rolling stock lessors could charge higher rentals than in a more competitive market, and that TOCs were restricted in choosing rolling stock appropriate to their needs.



The CC did not identify an AEC in the market for the provision of maintenance services for passenger rolling stock.

Remedies

The CC's final remedies package included recommendations to the franchising authorities to:

- introduce longer franchise terms to encourage greater switching;

- assess the benefits of rolling stock beyond the franchise term and across other franchises when evaluating franchise bids, in order to give greater incentive to TOCs to consider alternatives; and
- reduce specificity in franchise ITTs to allow TOCs to exercise a choice of rolling stock;

and removal of the non-discrimination provisions from the ROSCOs' Codes of Practice to incentivize TOCs to negotiate.

There were also requirements for ROSCOs to provide specified information when leasing rolling stock to ensure that TOCs can make an informed choice.

The CC recognized the franchising authorities' need to take account of wider transport policy objectives. The CC also recognized that these remedies would not have an immediate effect and their impact would depend on how the recommendations were implemented.

The CC rejected proposals for remedies to control rentals directly, because there would be severe practical difficulties and costs in implementing them and such remedies would significantly distort the market.

Outcome

In July 2009, the CC accepted undertakings from the three ROSCOs to modify their Codes of Practice. The CC made an Order, which came into force in February 2010, requiring lessors of passenger rolling stock to provide TOCs with specified information when making an offer to lease rolling stock. The franchising authorities responded to the CC's recommendations in July 2009.

Full details about how the CC reached its findings and the final report can be found on the CC website: www.competition-commission.org.uk/inquiries/ref2007/rosco/index.htm.

Market investigation into the supply of groceries in the UK: remittal of the competition test by the Competition Appeal Tribunal

The competition test is likely to benefit customers by ensuring greater competition and choice in local areas.

The benefits of greater competition would substantially outweigh any costs arising from the competition test.

Outcome: The CC recommends that the Government take steps to implement the competition test.

Inquiry Group:
Peter Freeman (*Chairman*)
Jayne Almond
Barbara Donoghue
Professor Alan Gregory
Professor Alan Hamlin
Professor Bruce Lyons

The remittal

The remittal followed a legal challenge by Tesco PLC to the CC's recommendation in its report *The supply of groceries in the UK market investigation* (30 April 2008) that a competition test (the Test) should be applied to grocery retail planning applications. The CAT upheld Tesco's appeal on the grounds that the CC had not properly assessed the risk of adverse effects on consumers and had failed sufficiently to address the Test's proportionality and effectiveness. The CAT ordered that the matter be referred back to the CC for reconsideration and a new decision.

Findings

Detailed analysis showed that the Test, in combination with the CC's controlled land remedies, would prevent strong incumbents from taking actions that reduced competitors' incentive and ability to develop stores in highly-concentrated local areas. It would also encourage strong incumbents to invest in areas where their developments would produce greater consumer benefits. The Test would therefore limit the future creation or strengthening of areas of high concentration and help break down existing areas of high concentration, leading to improved retail offer and more competition for consumers locally and nationally.

Rather than predicting outcomes of the Test in specific local areas, the CC considered a range of representative local areas to analyse the likely effect of the Test across the UK.

The CC used its market model to compare consumer welfare for various outcomes under different representative market scenarios in the representative areas and to estimate the amount by which consumers might benefit as a result of increased competition. It also estimated the economic costs of the Test to consumers from the time the incumbent was prevented from expanding until a competitor entered or expanded in an area. A net present value model was used to combine quantitative estimates of benefits and costs and to model the effect of the Test under a range of different assumptions.

Consumer benefits

The CC found that, in those areas directly affected, using a wide range of reasonable assumptions, the Test would deliver a net benefit to consumers.

The CC also found that the Test would bring substantial (though unquantified) additional net benefits to consumers. A strong incumbent would alter its investment plans, delivering benefits to consumers in areas that were not directly affected by the Test. There would be net benefits from additional variety. The Test would also provide greater incentives for grocery retailers to improve their national as well as their local offer.

Overall, the CC concluded that the benefits from the Test would substantially outweigh any costs arising from it.



Variation to the Test

The CC concluded that, in order to be an effective remedy, the Test should apply to new stores and extensions. In order to ensure that the Test was not unduly onerous, a materiality threshold for extensions of less than 300 sq metres groceries sales area was included.

Conclusions

The CC concluded that the Test, with the materiality threshold, would be a proportionate and effective remedy for the AEC it found in relation to highly-concentrated local areas. It therefore recommended that the Government take steps to implement the Test.

Outcome

The Government's response is awaited.

Full details about how the CC reached its findings and the final report can be found on the CC website: www.competition-commission.org.uk/inquiries/ref2009/groceries_remittal/index.htm.

Merger inquiry into the completed acquisition by Capita Group plc of IBS OPENSystems plc

There was close competition between Capita and IBS in the supply of revenue and benefits software systems.

There was little potential for entry and little countervailing buyer power.

Outcome: Capita undertook a partial divestiture to remedy the SLC.

Inquiry Group:
Christopher Clarke (Chairman)
Dr Diane Coyle
Barbara Donoghue
Professor Stephen Wilks

The market: the supply of revenues and benefits software systems and social housing software systems in the UK

The inquiry concerned the completed acquisition by Capita Group plc (Capita) of IBS OPENSystems plc (IBS). Both Capita and IBS were suppliers of revenues and benefits (R&B) software systems and social housing (SH) software systems.

The CC obtained contractual, sales, pricing and bidding information from suppliers of R&B and SH software systems and their customers. The evidence showed that there were separate markets for these products.

Findings

The CC examined pre-merger competition, the public sector procurement procedures which apply to public organizations purchasing in these markets, the potential for entry and expansion and the possibility of any countervailing buyer power in each market.

In the R&B market, the CC found that there had been close competition between Capita and IBS for new customers and existing customers. There was evidence that Capita, IBS and the other firms in the market, Northgate and Civica, monitored each other's activity. Following Capita's acquisition of IBS, the only other supplier actively bidding for new contracts was Northgate, and only Capita, Northgate and Civica had existing contracts with customers. The R&B market was mature with a stable customer base and there was no evidence of recent market entry; nor did entry or expansion in the next two to three years appear likely. The CC found little evidence of customers possessing countervailing buyer power that would offset the increase in Capita's market power arising from the merger.

In the SH market, the CC found that competition before the merger between Capita and IBS was not close. This market was served by several software suppliers and the number of large customers had increased. Although there were some barriers to entry and expansion in this market, there was evidence that suppliers were able to enter or expand.

Conclusions

In the R&B market, the CC found that the merger brought together two closely competing bidders, and that constraints

from existing competitors, the threat of entry and countervailing buyer power would not be sufficient to prevent the combined Capita and IBS exercising market power as a result of the merger. The CC therefore concluded that an SLC might be expected to result from the completed acquisition.



The CC did not find an SLC in the SH market as there had not been close competition between Capita and IBS before the merger and the other suppliers in the market would be sufficient to constrain the merged Capita and IBS.

Remedies

After considering a range of remedies, the CC concluded that either a divestiture by Capita of the IBS R&B business (a partial divestiture) or a divestiture of the entirety of the acquired IBS business would be an effective remedy. As a partial divestiture of the IBS R&B business would be the less intrusive remedy, Capita was given the opportunity to attempt this, but if no suitable sale was achieved, it would be required to sell all of the acquired IBS business.

Outcome

The CC approved the sale of IBS OPENSystem's R&B business to Civica plc.

Full details about how the CC reached its findings and the final report can be found on the CC website: www.competition-commission.org.uk/inquiries/ref2008/ibs/index.htm.

Merger inquiry into the completed acquisition by NBTY Europe Limited of Julian Graves Limited

The merging parties were close competitors but the product market included supermarkets and other retailers.

The merger raised no concerns nationally or in the 18 local markets most affected.

Outcome: The merger was cleared.

Inquiry Group:
Diana Guy (Chairman)
Ian Jones
Peter Jones
Jonathan Whiticar

The market: the retail supply of nuts, seeds and dried fruits in the UK

The inquiry concerned the completed acquisition by NBTY Europe Limited (NBTY) of Julian Graves Limited (Julian Graves). NBTY is the parent company of Holland & Barrett Retail Limited (Holland & Barrett), with over 500 stores. Julian Graves was an independent specialist food and ingredients retailer, with over 350 UK stores. The parties overlapped in the retailing of nuts, seeds and dried fruit (NSF).

Findings

Failing firm

The CC found that before the acquisition Julian Graves was failing but that several parties were interested in buying it. The CC concluded that in the absence of the acquisition Julian Graves would have been sold to another buyer, offering a wide range of NSF and returning to profitability.

NSF pricing

The CC found that, while Julian Graves' prices were substantially lower than those of other retailers, Holland & Barrett's prices were similar to those of the supermarkets. The merged parties' prices moved together quite closely, but Holland & Barrett's margins were more closely correlated with a supermarket retailer. Neither Holland & Barrett nor Julian Graves targeted each other in their national pricing or their local promotions. These findings suggested that the parties did not operate in a distinct market from the supermarkets.

Customer behaviour

A survey commissioned by NBTY showed that customers considered supermarkets to be their first-choice alternative to Holland & Barrett or Julian Graves, and that a majority of them also shopped at a supermarket for their NSF. The CC's analysis of the effects of entry found that a Julian Graves store opening within a mile of a Holland & Barrett store had the greatest effect in reducing the incumbent's NSF revenues, but a large or medium-sized supermarket store opening nearby also had a negative effect.

Product market

The CC concluded that Holland & Barrett and Julian Graves were close competitors for NSF, but the relevant product

market included supermarkets and other retailers where a sufficiently large range of NSF products was available at similar prices. The retailing of NSF was differentiated and a retailer's NSF offer did not need to be exactly the same in order to provide a competitive constraint.

Local and national markets

The CC found that the market had both local and national features. The parties and most of the supermarkets set prices nationally, but the ability of customers to switch between retailers of NSF was limited to a local level. The CC concluded that the market was likely to be local.

The CC found that there were 18 local areas where a Holland & Barrett store overlapped with a Julian Graves store and there were limited alternatives. The CC concluded that the loss of competition in these local areas would not provide a sufficient incentive for the merged entity substantially to increase its prices of NSF, or reduce any feature of its NSF offering, on a national or local basis.

Conclusions

The CC concluded that the merger would not be expected to result in an SLC in the retail supply of NSF in the UK or in any local market in the UK.

Outcome

The merger was cleared.



Full details about how the CC reached its findings and the final report can be found on the CC website: www.competition-commission.org.uk/inquiries/ref2009/holland/index.htm.

Merger inquiry into the completed acquisitions by Stagecoach Group PLC of Eastbourne Buses Limited and Cavendish Motor Services Limited

It was likely that Cavendish would have withdrawn from a large number of routes if the merger had not taken place.

Inquiry Group:
Peter Davis (Chairman)
Alexander Johnston
Malcolm Nicholson
Roger Witcomb

It was unlikely that Cavendish would have been sold to another operator as a stand-alone operation.

Outcome: The merger was cleared.

The market: the provision of local commercial bus services in the Eastbourne area

The inquiry concerned the completed acquisitions of Eastbourne Buses Limited (EBL) and Cavendish Motor Services Limited (Cavendish) by Stagecoach Group PLC (Stagecoach). Before the acquisitions both EBL and Cavendish had operated local bus services on many of the same routes in the Eastbourne area and Stagecoach had only a small presence. The CC defined the market as the provision of commercial bus services in the Eastbourne area. The CC identified a separate market for the tendering of supported services.

Findings

Competition between Stagecoach, EBL and Cavendish

The CC found that EBL and Cavendish competed in the Eastbourne area, and overlapped on many of the services they operated immediately prior to the acquisitions, but competition with Stagecoach was very limited.

The CC considered that other market constraints were weak. The possibility of customers using alternative modes of transport did not constrain bus services and significant scale entry in the Eastbourne area was unlikely. There were a number of alternative suppliers and low barriers to entry to the tendered market.

Situation absent the mergers

The CC found that, if Stagecoach had not bought EBL and Cavendish, it was likely that EBL would have been sold to another bus operator, which would have sought to improve its performance and make it a more effective competitor. Another operator would have been unlikely to have purchased Cavendish as a stand-alone operator absent the merger.

The CC considered the strategy Cavendish's owner, Renown Coaches Limited (Renown), would have been likely to adopt. The CC initially received evidence from Renown that Cavendish was covering its direct costs and generating a positive contribution to Renown, but after expanding its network it was failing to cover those costs. However, the CC reviewed profitability following responses to the provisional findings. It found that several routes had not covered their costs since March 2008 and that this was unlikely to change

given the likely rejuvenation of EBL. The CC also noted that the rationale for Cavendish's entry in the Eastbourne area had been to exploit gaps in EBL's network, displace EBL as the main operator or force a sale to EBL's new owner. These objectives would no longer have been achievable.

The CC expected that Cavendish would most likely have chosen to withdraw from a large number of routes and become, at most, a much smaller operator than it was in 2008; most probably within 12 months.

The CC noted that Stagecoach had paid a substantial sum to acquire Cavendish, and found that Stagecoach might have had a number of motivations for the acquisition. However, the CC concluded that the competitive constraint Cavendish offered was unlikely to continue.

Conclusions

The CC concluded that the mergers may not be expected to lead to an SLC for the provision of commercial or tendered bus services in the Eastbourne area.

Outcome

The mergers were cleared.



Full details about how the CC reached its findings and the final report can be found on the CC website: www.competition-commission.org.uk/inquiries/ref2009/stagecoach/index.htm.

Merger inquiry into the completed acquisition by Stagecoach Group plc of Preston Bus Limited

The merger involved bus companies operating at a significant loss following a period of abnormal competition.

The effects of the merger were assessed in relation to the most recent period of normal competition.

Outcome: The merger had resulted in an SLC. Stagecoach was required to undertake a divestiture.

Inquiry Group:
Peter Davis (*Chairman*)
Laura Carstensen
Jill Hill
Stephen Oram

The market: the provision of commercial bus services in the Preston area

The inquiry concerned the completed acquisition by Stagecoach plc (Stagecoach) of Preston Bus Limited (PBL). The merger (completed in January 2009) followed a period of abnormal competition from June 2007 to September 2008, initiated by Stagecoach, in which both companies operated at a significant loss, as a result of which PBL's owners had little realistic option but to sell to Stagecoach.

Findings

The CC assessed the effects of the merger relative to the degree of competition that existed before June 2007. In that period there was both actual competition on a limited number of main corridors into the city centre and potential competition in that either company could expand its services if the performance of the other deteriorated.



The CC found that the sequence of events that concluded with the acquisition began in 2006. In mid-2006 Stagecoach developed a plan for expansion in the Preston area and from June 2007 launched a number of intra-urban services in direct competition with PBL. Stagecoach's expansion had a number of characteristics indicating that it was not driven by normal commercial considerations. Between June 2007 and the

acquisition in January 2009, Stagecoach's intra-urban services in Preston suffered considerable losses, which were not compensated for by profit elsewhere in its Preston operation.

The CC did not accept Stagecoach's argument that the competitive effects of the merger should be assessed against the situation prevailing in the market and for PBL at the time of the acquisition, when PBL was, in Stagecoach's view, a failing firm. The CC took the starting point for its assessment to be the most recent period of normal competition (late 2006 and early 2007). Having reviewed the evidence, the CC concluded that in the absence of the merger Stagecoach and PBL would have continued to run their bus operations in Preston in much the same way as in that period of normal competition.

The CC found that before June 2007, PBL was constrained by Stagecoach by both actual and potential competition, leading to the provision of a comprehensive network of frequent services and low fares. Stagecoach was constrained by actual and potential competition from PBL to a lesser extent than PBL was by Stagecoach.

The CC found that following the merger there was unlikely to be entry on a scale that could counteract the loss of competition identified.

Conclusions

The CC concluded that the merger had resulted in an SLC in the market for the provision of commercial bus services in the Preston area.

Remedies

Stagecoach was required to sell a reconfigured PBL to a buyer capable of operating as an effective competitor.

Outcome

Stagecoach applied to the CAT for review of the CC's decision. The case was heard in March 2010 and the CAT's judgment was awaited at the end of the review period. Meanwhile, Stagecoach is proceeding with divestiture. It offered final undertakings which were accepted by the CC on 1 February 2010.

Full details about how the CC reached its findings and the final report can be found on the CC website: www.competition-commission.org.uk/inquiries/ref2009/preston/index.htm.

Merger inquiry into the completed acquisition by Sports Direct International plc of 31 stores from JJB Sports plc

JJB would still be SDI's closest national competitor and constrain its national pricing.

Incentives to price locally were unchanged.

Outcome: The acquisition was cleared.

Inquiry Group:
Diana Guy (Chairman)
Phil Evans
Roger Finbow
John Smith

The market: the retail supply of sports footwear, clothing and equipment within the UK

The inquiry concerned the completed acquisition by Sports Direct International plc (SDI) of 31 retail sports goods stores from JJB Sports plc (JJB). SDI had over 360 UK stores, and JJB over 250 stores.

Findings

Product market

A survey commissioned by the CC found that customers considered JJB and SDI to be each other's closest competitors. Customers chose to shop at SDI or JJB because they considered that both stores were likely to have the goods they wanted at a low price. The ability to provide low-priced products from Nike and Adidas was highly attractive to their customers. The CC also found that entry by JJB had a much greater effect on the revenues of SDI stores than entry by any other type of retailer.

Given the lack of diversion to other stores, and the value that consumers placed on the full product range and low prices offered only by SDI and JJB, the CC concluded that the product market comprised only those two retailers, although other retailers may also exercise some constraint on the parties.

Local and national markets

The CC found that both SDI and JJB set prices nationally, with small local variations in aspects of quality, range and service. However, the customer survey showed that consumers considered retailers only within a 5-mile radius and did not generally shop online for sports goods. The analysis on the effects of new entry suggested that stores beyond 2 miles had little effect on each other. The CC concluded that the geographic market was no wider than a 2- to 5-mile radius around any given store.

Effect on prices

The CC found some evidence of a post-acquisition increase in SDI's average prices, but it was unclear whether the rise was associated with the store transfers. The transfers might have created an incentive for SDI to increase national prices very slightly. However, the CC found that JJB continued to be SDI's closest national competitor and constrain its national pricing.

The CC noted that before the acquisition SDI faced no local competition from JJB in many areas. The acquisition did not alter significantly SDI's incentives to price locally.

Store closures

During the period of the store transfers, SDI closed ten of its stores in the vicinity of acquired JJB stores. The CC judged that five of the closed stores would have remained open in the absence of the acquisition, but the effect on consumers had been small.



Tacit coordination

The CC found no compelling evidence that the acquisition would increase the likelihood of tacit coordination. SDI and JJB were strong in different areas of the UK and the store transfers changed the number of areas of relative strength somewhat, particularly in London. However, recent store openings by both parties did not indicate any coordination.

Conclusions

The CC concluded that the store transfers were not expected to result in an SLC in any market in the UK.

Outcome

The acquisition was cleared.

Full details about how the CC reached its findings and the final report can be found on the CC website: www.competition-commission.org.uk/inquiries/ref2009/jjb/index.htm.

Merger inquiry into the anticipated acquisition by Brightsolid Group Limited of Friends Reunited Holdings Limited from ITV plc

The parties' product offerings were differentiated, with little overlap.

The largest supplier in the market would be a significant constraint on the merged entity.

Outcome: The merger was cleared.

Inquiry Group:
Laura Carstensen (*Chairman*)
Robin Mason
Edward Smith
Anthony Stern

The market: the supply of online genealogy services within the UK

The inquiry concerned the anticipated acquisition by Brightsolid Group Limited of Friends Reunited Holdings Limited from ITV plc. Find My Past Limited, a subsidiary of Brightsolid, was a leader of projects to digitize, transcribe and index historical records, and an online retailer of data relevant to family history. Genes Reunited Limited, a subsidiary of Friends Reunited Holdings, operated a social networking family history website, which also provided its users with access to some historical records. The parties to the merger were two of the three largest suppliers of those services.

Findings

Differentiation between the parties

The CC found that there was considerable differentiation between the offerings of Find My Past and Genes Reunited, with a different focus on the supply of data and social networking respectively and only limited overlap. The results of the CC's customer survey of some 4,000 users of the parties' websites was consistent with the view that the offerings of those two providers were to a large extent complementary.

Market and price constraints

Although it appeared that the merging parties took competitors' prices into account in their pricing decisions, the CC found nothing to suggest that they represented a closer constraint on each other than the largest provider in the market (Ancestry) or other providers. Ancestry would continue to be the largest provider of online genealogy services by some margin after the merger and would continue to be a significant constraint in the market. Prices might also be constrained by websites offering data free of charge. The merged firm would not have the incentive or ability profitably to increase prices or otherwise worsen its product offering. The CC found no evidence to suggest that in the absence of the merger the parties would become significantly closer in product offering and hence closer competitors on price.

Potential pro-competitive effects

The CC considered that there was potential for the merger to have pro-competitive effects on prices, although it did not base its assessment on any such expectation. The CC also

considered that by reducing the risk associated with upfront investment costs the merger might increase the scope of investment and innovation, leading to increased competition in innovation and improvements in product quality.

Coordinated effects

The CC found that the merger was unlikely to give rise to coordinated effects because the market was much less transparent than might have been expected. The merged firm would also be much smaller than the main supplier in the market, so firms that could in principle coordinate would be significantly asymmetric in size.

Possible market foreclosure

The CC considered whether the merger might affect competition in the supply of digitization services or result in any market foreclosure by affecting the availability of data to retailers of online genealogy services, but concluded that this was unlikely. There had been significant entry into the market and there was scope for further new entry.

Conclusions

The CC concluded that the merger may not be expected to result in an SLC.

Outcome

The merger was cleared.



Full details about how the CC reached its findings and the final report can be found on the CC website: www.competition-commission.org.uk/inquiries/ref2009/brightsolid/index.htm.

Sutton & East Surrey Water plc: Interim Price Determination

SES's claim satisfied the materiality test.

The consumer objective would not be furthered by an increase in price limits.

SES was able to finance the proper carrying out of its functions.

Outcome: No adjustment was made to SES's price limits.

Inquiry Group:
Peter Davis (Chairman)
Jayne Almond
Christopher Bright
Bruce Lyons

The reference

In March 2009, the Water Services Regulation Authority (Ofwat) referred the disputed determination of a substantial adverse effect (SAE) claim by Sutton and East Surrey Water (SES) to the CC. SES had originally made its SAE claim to Ofwat in September 2008 seeking an interim increase to the prices SES could charge customers because of two adverse circumstances: increased power costs and lower than expected revenues. Ofwat rejected SES's claim in December 2008, and SES required Ofwat to refer the disputed determination to the CC.

In accordance with the terms of SES's licence, the CC was required to answer two questions:

- (a) first, whether a circumstance had occurred which had or would have an SAE on SES's business, not being one which would have been avoided by prudent management action ('the materiality test'); and
- (b) second, if so, what change should be made to the company's price limits.

Findings

The materiality test

In relation to the increased power costs circumstance, the CC concluded that SES's energy procurement decision was a calculated commercial decision towards the riskier end of the spectrum of a range of prudent actions for a regulated utility. The CC found, however, that neither the increased power costs circumstance nor the lower than expected revenues circumstance would have been avoided by prudent management action, and that SES's claim satisfied the materiality test.

Consideration of the price limits

The CC was of the view that it had a wide discretion in deciding what change should be made to the price limits. It was required to make a determination in accordance with the statutory principles set out in section 2 of the Water Industry Act 1991. The CC considered two of the statutory duties in section 2(2A) of the Act to be particularly relevant: the section 2(2A)(a) duty—to further the 'consumer objective'—and the section 2(2A)(c) duty—to secure that the company is able, in particular by securing reasonable returns on its capital, to finance the proper carrying out of its functions.

In relation to the section 2(2A)(c) duty, the CC looked at SES's return on capital compared with, among other things, the cost of capital used at the time of the 2004 regulatory settlement and current estimates of the cost of capital. The CC also looked at SES's performance against other financial indicators. The CC noted that SES's return on regulatory capital value had fallen below the assumptions used at the last regulatory settlement, but that SES's return on capital was, in its view, reasonable. The CC considered SES's financial ratios to be within investment grade guidelines, and that Ofwat's (then) pending 2010–2015 price control settlement would be expected to secure the ability of SES to finance its functions in the medium to long term.

In relation to the section 2(2A)(a) duty, the CC observed that, in general, it was in the interests of consumers to keep prices, in the short term, within the limits set at the last regulatory settlement but that it might be in consumers' long-term interests to allow an increase in price limits if that was required in order to avoid higher prices in the medium to long term. The CC thought that the impact on SES was of a scale that was unlikely to have implications in the longer term for the cost at which SES could obtain capital.



Outcome

The CC concluded that the consumer objective would not be furthered by an increase in the price limits and that SES was able to finance the proper carrying out of its functions. Having regard to the section 2(2A)(a), 2(2A)(c) and other statutory duties of the Water Industry Act 1991, the CC determined that no adjustment to SES's price limits should be made.

Full details about how the CC reached its findings and the final report can be found on the CC website: www.competition-commission.org.uk/inquiries/ref2009/sutton/index.htm.

The Competition Commission's post-inquiry activities

For those investigations requiring remedies or where our findings are subject to legal challenge, the CC's involvement or workload does not end with the publication of its final report.

The Enterprise Act made the CC responsible for implementing remedies following its investigations. This is done by accepting undertakings from parties, by making an Order or by making recommendations to others. In some cases, the CC's work continues after these actions. For example, where a structural remedy is required, the CC will oversee the divestiture process to ensure that this remedy is successfully implemented.

A summary of the CC's post-inquiry remedies for the financial year 2009/10 is shown in Table 3 below.

Table 3: Post-inquiry activities

<i>Investigation</i>	<i>Type of investigation</i>	<i>Type of remedy</i>	<i>Publication of final report</i>	<i>Method of implementation</i>
Tesco/Co-op store acquisition in Slough	Merger	Divestiture	28 November 2007	Order
BSkyB/ITV	Merger	Divestiture	20 December 2007	BIS lead on implementation
Groceries	Market	Structural/ Behavioural	30 April 2008	
Payment Protection Insurance	Market	Structural/ Behavioural	29 January 2009	Order and recommendation
Nufarm Crop Products/AH Marks	Merger	Structural/ Behavioural	10 February 2009	Undertakings
BAA Airports	Market	Divestiture/ Behavioural	19 March 2009	Undertakings and recommendations
Rolling Stock Leasing	Market	Behavioural	7 April 2009	Order, undertakings and recommendations
Capita Group/ IBS OPENSystems	Merger	Divestiture	4 June 2009	Undertakings
Stagecoach Group/ Preston Bus	Merger	Divestiture	11 November 2009	Undertakings

<i>Date on which remedy fully implemented</i>	<i>Implementation activity in 2009/10</i>	<i>Status as at March 2010</i>
7 December 2009	Overseeing divestiture	Complete
8 February 2010	Defending appeals by BSKyB and Virgin Group to Court of Appeal	Complete
April 2010	Dealing with residual issues on the Controlled Land Order	Incomplete
Ongoing	Developing and consulting on terms of Order. Consumer testing of information remedies. Defending appeal by Barclays and others to the CAT. Reconsidering matters remitted to the CC by the CAT.	Reconsidering matters remitted to the CC by the CAT
3 August 2009	Acceptance of final undertakings. Overseeing implementation of remedy.	Complete
Ongoing	Negotiation and acceptance of final undertakings. Overseeing divestiture of Gatwick Airport. Defending appeal by BAA to the CAT.	Negotiation of final undertakings. CC pursuing appeal to Court of Appeal
22 February 2010	Negotiation and acceptance of final undertakings. Consultation on and making of Order.	Complete
31 August 2009	Negotiation and acceptance of final undertakings. Overseeing divestiture.	Complete
Ongoing	Negotiation and acceptance of final undertakings. Overseeing divestiture. Defending appeal by Stagecoach Group to the CAT.	Overseeing divestiture

Legal challenges to the Competition Commission's decisions

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Barclays Bank PLC v Competition Commission

Inquiry background

On 7 February 2007, the OFT referred to the CC for investigation the supply of payment protection insurance (PPI) services in the UK. In its final report (the report) published on 29 January 2009, the CC found that certain features of the PPI market, including the sale of PPI at the point of sale of credit, gave rise to an AEC and proposed a package of remedies, which included the point-of-sale prohibition (POSP), to address this.

Barclays' challenge

On 30 March 2009, Barclays Bank PLC (Barclays) challenged aspects of the report, including the inclusion of the POSP in the package of remedies. Lloyds Banking Group PLC (Lloyds) and Shop Direct Group Financial Services Ltd (SDGFS) intervened in support of Barclays; the Financial Services Authority (FSA) intervened in support of the CC.

Barclays' challenge alleged that:

1. The CC had failed to take account of considerations that were relevant to the consideration of proportionality of the POSP (the extent of benefits that would arise from the remedies and the incremental benefits of the POSP).
2. The CC did not have a proper evidential basis for its finding that the POSP was justified as it had failed to take into account the detriment arising from loss of convenience if the POSP were introduced.
3. The CC's analysis of the extent of consumer detriment arising from the AEC and whether its benefits of its intervention would outweigh the loss of relevant customer benefits was flawed (this was essentially a challenge to aspects of the modelling that had been carried out by the CC).
4. The CC's analysis of the relevant markets and of the extent of the competition problems which existed in those markets was flawed.

The CAT's judgment

The CAT handed down its judgment on 16 October 2009 (*Barclays Bank PLC and others v Competition Commission [2009] CAT 27*). It quashed the decision to impose the POSP as part of the remedies package on the grounds that the CC, in conducting its proportionality analysis, had failed to take account of a material consideration—namely the effect of the loss of convenience of purchasing PPI at the point of sale of credit on take-up rates—which should

also have been included in the modelling of the effects on consumer welfare of the remedies package. The CAT stated explicitly that this decision did not mean that the CC could not lawfully decide to include the POSP as the result of its reconsideration.

In addition, whilst not sufficient in themselves to warrant the quashing of the decision, the CAT identified the following issues to be included in a reconsideration of the decision to include the POSP:

- (a) the timescale over which the remedy package (including the POSP) may be expected to take effect;
- (b) inclusion of the likely costs of implementing the package of remedies, and the ongoing costs of the remedies, as well as the likely increased costs of marketing PPI products in the model used to determine the consumer gains from the remedy package; and
- (c) reconsideration of the input of price elasticity of demand for PPI into the model.

Finally, the CAT suggested that the CC might wish to bear in mind SDGFS's submission that the remedies package offered no solution to a 'conundrum': that the CC's choice of remedies package involved a judgement that stand-alone providers would be able to offer real competition to distributors; but in relation to retail PPI the CC recognized that competition from stand-alone providers was adversely affected by their inability to tailor a stand-alone PPI policy to the exact amount owed from time to time by the consumer.

Outcome

On 26 November 2009, the CAT directed the CC to reconsider the imposition of its POSP as part of its remedies package in accordance with the principles set out in the judgment.

The CC is currently reconsidering its decision on remedies and on 14 May 2010 the CC published a provisional decision on remedies, which provisionally confirmed its decision to include the POSP in a remedies package for all types of PPI except retail PPI. In relation to retail PPI, the CC published a remedies notice on 14 May 2010 inviting views on possible remedies for retail PPI. The CC's final decision on remedies is expected to be published in summer 2010.

Sports Direct International plc v Competition Commission

Inquiry background

On 7 August 2009, the OFT referred the completed acquisition of 31 stores from JJB Sports plc stores by Sports Direct International plc (SDI) to the CC.

SDI's challenge

This case concerned a procedural challenge made during the merger investigation of the completed acquisition of 31 stores from JJB Sports plc stores by SDI.

SDI challenged the CC's refusal to disclose information redacted from two working papers on the grounds of:

- (i) commercial confidentiality; or
- (ii) public interest (to protect an OFT cartel investigation).

The relevant passages of the working papers disclosed the conclusions being drawn, but redacted the supporting reasoning. The CC said that it was not clear whether the redacted passages would, in fact, be relevant to the main party hearing or to its reasoning in provisional findings, and that a challenge was premature. SDI claimed that it was essential for it to see the redactions in order to prepare for the hearing.

The CAT's judgment

The CAT agreed to decide the procedural point of whether the challenge was premature as a separate issue. On 4 December 2009, following a hearing, the CAT ruled that the challenge was not premature. As a result, the CC withdrew its decision to withhold the information and agreed to reconsider the matter in light of the CAT's full judgment.

The CAT gave its full judgment on 14 December 2009 (*Sports Direct International PLC v Competition Commission [2009] CAT 32*). The main reasons for its procedural ruling were as follows:

1. The refusal to disclose was a 'decision' for the purposes of section 120(1) of the Enterprise Act 2002.
2. The primary concern of the CAT was 'whether what has happened has resulted in real injustice'.
3. The CC must act fairly to the parties affected by the carrying out of its 'inquisitorial function'.

4. In relation to the information redacted on the basis of the public interest, there was a risk that SDI might be denied access to information relevant to the merger investigation because of the 'needs of another investigation'.
5. SDI's application related to disclosure 'prior to a non-adversarial hearing and one at which assertions seriously adverse to its interests were to be investigated and inquired into without SDI having full knowledge of the underlying material or issues forming provisional propositions'.
6. The 'inquisition would include questioning of directors founded upon some assertions which they are in no position to answer or comment upon'.
7. SDI was, at least potentially, adversely affected by the suggested findings of fact and conclusions contained in the working papers. SDI would have been able to rely on non-disclosure as a ground of review, if it had challenged the CC's final report, and so it would be unfair for the CAT not to allow the challenge to be heard now.

The CAT considered that in the context of applications for review of preliminary decisions, the primary concern of the CAT was whether what has happened could have resulted in real injustice. On this basis, the application was not premature. However, the CAT stated expressly that its 'judgment should not be taken to imply that the substantive content of working papers would ordinarily be subject to review'.

Outcome

In light of the CAT's ruling that the challenge was not premature, the CC withdrew its decision not to disclose the redacted information and agreed to reconsider the matter. The CC subsequently provided SDI with alternative versions of the working papers with what the CC considered to be sufficient information for the purposes of the hearing. The inquiry continued without further challenge and the CC ultimately cleared the merger in its final report dated 16 March 2010.

Wm Morrison Supermarkets plc v Competition Commission

Inquiry background

On 19 April 2007, the OFT referred to the CC for investigation the completed acquisition of the Co-operative Group (CWS) Limited (CGL) grocery store in Slough by Tesco. In its final report published on 28 November 2007, the CC found that the acquisition of the CGL store by Tesco had resulted in an SLC in the relevant market. The CC proposed that a divestiture remedy should be implemented. The sale of the entire CGL site (the site) as a whole for development as a large grocery store was considered to be the most effective option.

On 23 April 2009, the CC made an Order setting out a detailed process for the divestiture of the site including the appointment of a divestiture trustee and the identification of the purchaser for the site.

Morrison's application for interim relief

On 3 December 2009 Wm Morrison Supermarkets plc (Morrison's) lodged an application for interim relief to prevent the completion of the sale of the site from taking place. Completion was due to take place on 7 December 2009. Morrison's proposed that the CAT suspend the CC's decision, notified to Tesco on 18 November, approving Sainsbury's as the purchaser.

The CAT's judgment

The CAT handed down its judgment on 4 December 2009 (*Wm Morrison Supermarkets PLC v Competition Commission*

[2009] CAT 33), refusing the application for interim relief to suspend the CC's decision. The President held that the grant of interim relief was always a matter of discretion and in the exercise of that discretion the CAT must take account of all relevant circumstances, including the urgency of the matter, the effect on the party concerned if relief were not granted, and the effect on competition if relief were granted.

Having considered the draft application for judicial review submitted by Morrison's along with its application for interim relief, the President considered that there was likely to be a ground of challenge to the CC's decision which was properly arguable. However, by its delay in seeking interim relief, Morrison's had allowed Sainsbury's and Tesco to alter their position by entering into a legally binding contract for the sale of the site. Morrison's was informed that it was not the successful bidder on 18 November but waited until 3 December before seeking interim relief. Morrison's was aware that unless Tesco and Sainsbury's were notified at the earliest opportunity they would almost certainly change their position by exchanging contracts. The President did not consider that the effect on competition of making an order was a determinative factor.

Outcome

Morrison's application for interim relief was refused and the sale of the site to Sainsbury's took place as planned.

BAA Limited v Competition Commission

Inquiry background

On 29 March 2007, the OFT made a reference to the CC concerning the supply of airport services by BAA in the UK. The CC published its report titled *BAA airports market investigation* on 19 March 2009 (the report).

In the report, the CC concluded that BAA's common ownership of airports in south-east England and lowland Scotland were features that give rise to AECs in connection with the supply of airport services by BAA. The CC also concluded that a number of other features of the relevant markets give rise to AECs, namely: Heathrow Airport's position as a significant hub; Aberdeen Airport's position; aspects of the planning system; aspects of government policy; and the current regulatory system for airports.

The CC concluded that the following package of remedies would be effective in remedying the AECs identified:

- (a) the divestiture of both Stansted Airport and Gatwick Airport to different purchasers;
- (b) the divestiture by BAA of either Edinburgh Airport or Glasgow Airport;
- (c) the strengthening of consultation procedures and provisions on quality of service at Heathrow, until a new regulatory system is introduced;
- (d) undertakings in relation to Aberdeen, to require the reporting of relevant information and consultation with stakeholders on capital expenditure; and
- (e) recommendations to the Department for Transport in relation to economic regulation of airports.

BAA's challenge

On 18 May 2009, BAA applied for the review of the report on the grounds of apparent bias and the proportionality of

the divestiture remedy; Ryanair intervened in support of the CC. The apparent bias ground concerned the question of whether certain links between a member of the group of CC members appointed to decide upon the reference (the Group) and an undertaking interested in acquiring airports that BAA may have been required to sell in order to remedy any AEC arising from its common ownership of airports could give rise to apparent bias (rather than actual bias) on the part of the member concerned and of the Group. In relation to the second ground, BAA submitted that, in assessing the proportionality of the divestiture remedies, the CC failed to take account, or carry out an assessment, of material considerations relating to the costs of divestiture, particularly in the context of the current financial and economic environment.

The CAT's judgment

The CAT handed down its judgment on 21 December 2009 (*BAA Limited v Competition Commission [2009] CAT 35*). It upheld BAA's application on the ground of apparent bias, whilst rejecting BAA's second ground of challenge, concerning the proportionality of the divestiture remedy. On 25 February 2010, the CAT quashed the findings in the report relating to the adverse effects of, and remedies for, BAA's common ownership airports, and remitted these matters back to the CC for reconsideration by a freshly constituted group of members. In the same judgment the CAT denied both the CC's and Ryanair's applications for permission to appeal.

Outcome

On 25 March 2010 the Court of Appeal granted the CC and Ryanair permission to appeal against the findings of the CAT. The Court of Appeal's hearing took place on 23–24 June 2010 and judgment is awaited.

British Sky Broadcasting Group plc (Sky) v Competition Commission and The Secretary of State for BERR¹ and Sky, Competition Commission and Secretary of State v Virgin Media Inc

Inquiry background

On 24 May 2007, the Secretary of State for Trade and Industry (subsequently BERR and now BIS) referred the completed acquisition by Sky of 17.9 per cent in ITV plc to the CC. The reference to the CC was made by the Secretary of State under powers that enable the Secretary of State to issue an intervention notice in merger cases involving broadcasting entities if it appears that the merger may give rise to concerns regarding media plurality. Under these powers, the final decision on remedies in this case lay with the Secretary of State and not with the CC.

On 14 December 2007, the CC sent its report to the Secretary of State concluding that the acquisition of this shareholding in ITV plc by Sky was a relevant merger situation, that it gave rise to an SLC in the all-TV market, but that it did not consider that the merger gave rise to concerns regarding media plurality. The CC recommended that Sky be required to divest part of its shareholding in ITV plc to a level below that at which Sky would have the ability materially to influence the policy of ITV plc (in this instance, below 7.5 per cent). The Secretary of State accepted this recommendation.

The challenges by Sky and Virgin Media

On 22 February 2008, Sky challenged the findings in the CC's report (and the decision of the Secretary of State to accept those findings) that its acquisition of a 17.9 per cent shareholding in ITV plc was a relevant merger situation and that this gave rise to an SLC in the all-TV market.

On 26 February 2008, Virgin Media challenged the CC's decision on media plurality.

The CAT's judgment

By a judgment dated 29 September 2008, the CAT dismissed an application for review of a report of the CC and subsequent decision of the Secretary of State relating to Sky's acquisition of approximately 17.9 per cent of ITV plc.² The CAT found that the CC was correct to find that the acquisition had led to a relevant merger situation as Sky had acquired the ability materially to influence the

policy of ITV plc. The CAT also upheld the CC's findings that this merger would lead to an SLC in the all-TV market. However, the CAT concluded that the CC had been wrong in its assessment of the media plurality considerations and the CAT set aside the CC's conclusions on the media public interest and the Secretary of State's corresponding decisions.

Grounds of appeal to the Court of Appeal

On 4 December 2008, the CAT refused applications to appeal made by Sky and Virgin Media. On 17 and 18 December 2008, Virgin Media and Sky respectively issued applications to the Court of Appeal for permission to appeal the CAT's judgment. These applications were granted by the Court of Appeal on 17 March 2009.

Sky appealed against the CAT's findings, which had upheld the CC's and Secretary of State's decisions on competition grounds and the consequent remedy but quashed the CC's decision on media plurality. Virgin Media appealed on a contingent basis against the CAT's decision not to remit matters to the CC following the quashing of the CC's media plurality decision (ie its appeal was only relevant if Sky's appeal was successful).

The CC and the Secretary of State also appealed against the CAT's decision on media plurality.

In its appeal Sky argued that the CAT had erred in law in its approach to the standard of review in that it should have exercised a more intensive scrutiny because it was a specialist tribunal. Sky also argued that the CAT should have set aside the CC's decision on competition because it applied the relevant standard of proof and the necessary counterfactual analysis wrongly, and that the CC's decision to reject alternative remedies proposed by Sky was incorrect in law. In relation to media plurality, Sky, the CC and the Secretary of State each contended that the CC's approach to the relevant media public interest issue was correct and the CAT was wrong to set aside that part of

the decision. Virgin contested this, arguing that the CAT's decision should be upheld.

The Court of Appeal's judgment

After a hearing in October 2009 the Court of Appeal delivered its judgment on 21 January 2010.³ It dismissed all the arguments relating to the competition findings, upholding the CAT's decision. Specifically it confirmed that the CAT had applied the appropriate standard of review and had rightly rejected Sky's challenge to the standard of proof and counterfactual analysis. It also dismissed Sky's appeal relating to remedies. As a result, the CC's findings on these issues were upheld.

On media plurality, the Court of Appeal noted that it was far from easy to find an interpretation which gave effect to the relevant statutory provisions and that as a matter of statutory construction the issue was finely balanced. However, it concluded that the CC's approach was to be preferred to that of the CAT because it allowed the CC to take into account the actual extent of the control exercised. It therefore allowed the appeals brought by Sky, the CC and the Secretary of State on this issue and quashed the CAT's decision overturning this aspect of the CC's report. The Court of Appeal noted that it was unsatisfactory that the provisions had been open to these conflicting interpretations and noted that it might be desirable to amend the legislation if the protection of media plurality afforded by the Court's interpretation was not considered adequate.

Outcome

Following the Court of Appeal judgment, Sky gave undertakings to the Secretary of State to reduce its shareholding in ITV to below 7.5 per cent. These undertakings were accepted by the Secretary of State on 8 February 2010 and shortly thereafter the required disposal was completed.

(2) *Secretary of State for Business, Enterprise and Regulatory Reform [2008] CAT 25.*

3. *British Sky Broadcasting Group plc v (1) Competition Commission (2) The Secretary of State and Virgin Media, Inc v (1) Competition Commission*

(2) *Secretary of State for Business, Enterprise and Regulatory Reform [2010] EWCA Civ 2.*

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1. The Department for Business, Enterprise and Regulatory Reform (BERR) has subsequently been renamed as the Department for Business, Innovation and Skills (BIS).

2. *British Sky Broadcasting Group plc v (1) Competition Commission*

(2) *The Secretary of State and Virgin Media, Inc v (1) Competition Commission*

CTS Eventim AG v Competition Commission

Inquiry background

On 10 June 2009, the OFT referred the anticipated merger of Live Nation, Inc (Live Nation) and Ticketmaster Entertainment, Inc (Ticketmaster) to the CC for investigation. On 22 December 2009, the CC published its report on the merger. The CC concluded that the merger would not be expected to give rise to an SLC. This case was relatively unusual in that the CC had previously provisionally found that the merger would give rise to an SLC. However, the CC changed its decision as a result of the new evidence that it received following publication of its provisional finding.

Live Nation is a significant live music promoter. Ticketmaster is a ticket retailer and the market leader in the UK. CTS Eventim AG (Eventim) is a significant ticket retailer in a number of European markets. Live Nation had been cooperating with Ticketmaster globally for many years on the basis of long-term agreements that made Ticketmaster Live Nation's preferred and often exclusive supplier of ticketing services. These contracts expired in the USA and Continental Europe on 31 December 2008 and in the UK on 31 December 2009. Under a letter of intent (LOI) signed on 20 December 2007, Eventim replaced Ticketmaster as Live Nation's preferred ticketing technology and sale partner.

Eventim's challenge

Eventim challenged the CC's decision that the merger of Live Nation and Ticketmaster would not give rise to an SLC. Eventim alleged that:

- I. The CC denied Eventim its right to a fair hearing, depriving Eventim of a reasonable opportunity to respond intelligently to the main reasons for the CC's reversal of its view on SLC and/or to comment specifically on the CC's analysis of:
 - (i) Eventim's own German language board documents; and/or
 - (ii) Eventim's own forecasts for its proposed UK activities

before adopting its final decision.

2. The CC erred in its assessment of the relevant counterfactual, ie in assessing how competition would likely have developed absent the merger.
3. The CC erred in its assessment of the effect of the merger on the market. Moreover, in finding that the LOI would provide Eventim with an assured revenue stream for the provision of a managed ticketing service, the CC failed to consider the likelihood and consequences of breach by Live Nation of its obligations under the LOI.
4. The CC erred in its application of the SLC test, ie in assessing whether the merger would result in an SLC on any market compared with the situation absent the merger.

The CAT's judgment

The CC requested that the CAT remit the matter back to the CC for reconsideration, on the basis that the ground relating to failure to consult was arguable given the particular circumstances of the case, and that remittal was a more efficient and less costly means of dealing with the issue. On 11 February 2010, the CAT agreed to remit the matter to the CC for reconsideration within a period of three months.¹

Outcome

On 12 February 2010, the CC reissued its 22 December 2009 report as Further Provisional Findings and after considering the responses to that consultation published its Final Report on 7 May 2010, again concluding that the merger would not give rise to an SLC.

1. *CTS Eventim v Competition Commission* [2010] CAT 7.

Work streams

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Work stream 1

Objective: To make investigations more efficient and effective.

Approach: The Chief Legal Adviser and the Senior Director, Inquiries, work with the Inquiry Directors to implement improvements across inquiries, overseen by the Practices and Procedures Committee.

<i>Key issues for 2009/10</i>	<i>Outcome</i>
Improve the market investigation regime	<ul style="list-style-type: none"> ✓ Significant work undertaken with the OFT with a view to conducting more targeted market investigations in shorter periods. ✓ The streamlined market investigation process is currently being piloted on the Local Bus Services market investigation.¹
Run inquiries more efficiently by identifying and implementing best practice processes and procedures, including standardization of best practice on transparency and disclosure	<ul style="list-style-type: none"> ✓ Feedback on inquiries routinely sought from internal and external stakeholders, embedding a culture of continuous improvement in our inquiry processes. ✓ Provisional findings on merger inquiries in 2009/10 were published within an average of 15 weeks. ✓ Options for ensuring appropriate levels of transparency in both merger and market investigations, without imposing undue cost or burden on parties, are being considered, taking into account recent CAT judgments.
Develop detailed public guidance on merger procedure	<ul style="list-style-type: none"> ✓ Aspects of the CC's merger procedure were reappraised. New best practice has been put into practice in recent cases. ✗ Procedural guidance is progressing gradually due to diversion of legal resource and the prioritization of joint substantive guidance.
Develop guidance on the conduct of regulatory inquiries	<ul style="list-style-type: none"> ✓ In the last 24 months several different kinds of regulatory procedures were conducted under various jurisdictions. Key lessons from each inquiry were captured in internal guidance. ✓ The appropriate form of general external guidance for such inquiries is being considered.

Market investigations

The significant work undertaken with the OFT to outline a more efficient market regime is expected to result in time and cost savings, without compromising the quality of the evidence gathered or the analysis undertaken. These improvements are now being piloted on the Local Bus Services market investigation, seeking, in particular, to:

- make better use of information available from the OFT ahead of the reference;
- publish an issues statement early in the process, setting out theories of harm and providing the framework for analysis;
- publish working papers describing the CC's analysis, together with a brief cover note, rather than publishing a consolidated emerging thinking document;
- conduct only one round of formal hearings prior to the publication of provisional findings; and
- engage the parties in the details of the remedies as quickly as possible after the publication of provisional findings.

Merger inquiries

We continue to implement changes to our merger inquiry process as a result of the Council's Review. As reported last year, these changes have included, in particular, greater use of theories of harm to focus the analytical process, more strategic use of Group members, improved effectiveness of hearings and papers, and greater focus on primary documents and data. The implementation of these improved ways of working, originally developed for merger inquiries, are being applied across all aspects of our business as appropriate.

The CC has succeeded in publishing provisional findings on merger inquiries in 2009/10 by week 15, and in publishing final reports rapidly thereafter where a clearance decision has been taken with one exception.²

Practices and procedures

The CC aims to provide a fair process without imposing undue cost or burden on parties. It strives to establish best practice in

achieving transparency in both merger and market investigations. The parties will have access to evidence and information about the development of the CC's thinking in sufficient detail and at the appropriate time. One of the lessons learned from the CAT judgments³ is to emphasize the importance of disclosure to ensure fair process throughout the course of our investigations and the importance of adequate disclosure in advance of hearings. This has influenced the CC's thinking and has been reflected in refinements to our processes. The intention is to publish a draft of procedural guidance for consultation during 2010/11.

Over the last two years several different kinds of regulatory procedures under different regulatory jurisdictions were conducted (for example, appeals under the Communications Act, price control reviews under the Airports Act and an interim determination review under the Water Industry Act). The procedures for these inquiries vary considerably reflecting the nature of our role (appellate or investigatory, determinative or advisory), the complexity of the issues and the time allowed for conduct of the process. The key lessons from these inquiries were captured in internal guidance and the CC is continuing to consider what form of general external guidance might be appropriate.

In December, in anticipation of possible appeals against the water price determinations, we held an industry-wide meeting with regulated companies and Ofwat to address key procedural queries. This was a useful exercise which might be repeated where there are potential multiple cases.

1. For further details on the administrative timetable for this inquiry, please refer to: www.competition-commission.org.uk/inquiries/ref2010/localbus/index.htm. The CC has not received an appropriate small market investigation to pilot a much quicker process.

2. The Sports Direct International/JJB inquiry was subject both to a section 109 extension and to a CAT appeal during the first part of the inquiry and therefore took somewhat longer to reach provisional findings.

3. See summary for Sports Direct International v Competition Commission (pages 40–41).

Work stream 2

Objective: To make the right decisions.

Approach: The CC's Analysis Group is responsible for the governance of this work stream which is led by the Chief Economist, with the aim of ensuring that the CC has the processes in place to improve the quality of the CC's analysis to support decision-making.

<i>Key issues for 2009/10</i>	<i>Outcome</i>
Update the CC's published guidance on the substantive analysis of mergers	<ul style="list-style-type: none"> ✓ Draft versions of the merger guidelines were developed jointly with the OFT and issued for consultation in April 2009 and April 2010.
Improve debate and learning about competition analysis across the CC	<ul style="list-style-type: none"> ✓ The CC continues to operate a range of internal seminars suited to different audiences. ✓ Regular presentations on the analysis in inquiries given by the OFT to CC staff and members and CC staff to OFT staff.
Commission research to improve the CC's approach	<ul style="list-style-type: none"> ✓ A report into the gathering and use of stated preference data was completed, with recommendations on how to ensure that data is robust and useful. ✓ An evaluation of a selection of past CC decisions in merger inquiries in the retail sector was commissioned to improve the CC's practice in retail mergers.
Publicize the CC's analytical approach and new thinking in the area of competition analysis	<ul style="list-style-type: none"> ✓ The CC published two papers on important areas of analysis. One covers the analysis of the counterfactual. The other concerns the analysis of coordinated effects. The results of both papers fed into the revision of the draft merger guidelines. ✓ Members of the economics team have participated in a number of public seminars throughout the year.

Revision of merger guidelines

The consultation on the initial draft of the revised merger guidelines was well received by stakeholders. In autumn 2009 the US competition agencies announced their own review of merger guidelines and this raised additional issues that the CC needed to consider. A revised draft was issued for comment in April 2010.

Debate and learning

A range of seminars were launched during the past year aimed at promoting debate and encouraging wider learning about competition analysis from various audiences across the CC. These included:

- the introduction of bimonthly Analysis Seminars for inquiry staff and inquiry chairs;
- presentations by external speakers on key topics of interest including recent research topics, the works of other competition bodies and developments in economic analysis;
- weekly meetings of the economics group, which provide a platform to discuss analytical issues that arose in the CC's inquiries; and
- regular presentations on the analysis in inquiries given by the OFT to CC staff and members and CC staff to OFT staff.

Research

The CC continued to invest in developing its analytical frameworks. Commissioned research into the gathering and use

of stated preference data was completed and the CC will use its recommendations to improve its use of survey evidence.

The ex post evaluation research of a selection of retail merger cases was commissioned to provide an in-depth analysis of a selection of inquiries in the retail sector. The results of this research will be used to improve the CC's assessment of retail mergers.

The CC also published two papers by members and staff on aspects of the assessment of mergers. These papers assisted the development of the joint merger guidelines.

Work stream 3

Objective: To ensure that the CC takes the right remedial action.

Approach: The CC's Remedies Standing Group is responsible for the governance of this work stream, led by the Chief Financial and Business Adviser and Head of Remedies. It considers issues of policy, lessons arising from CC inquiries, developments in international practice and the development of new or updated guidance.

<i>Key issues for 2009/10</i>	<i>Outcome</i>
Improve guidance and process on remedies	<ul style="list-style-type: none">✓ A review of the remedies process in market investigations was completed and proposed action was published in February 2010.✓ A consultation was launched on new market investigation guidance.
Evaluating remedies outcomes and capturing learning	<ul style="list-style-type: none">✓ Evaluation of two past merger cases completed. Remedies learning points reviewed on completion of each case.
Undertake training and sharing expertise on remedies	<ul style="list-style-type: none">✓ Training was provided throughout the year to members and staff and presentations were given to external audiences.
Apply remedies on merger inquiries and market investigations	<ul style="list-style-type: none">✓ Remedies implementation work proceeded on two merger inquiries and one market investigation reporting during the financial year and on three market investigations and two merger inquiries that reported previously.

Developing the CC's approach to remedies

Following the partly successful appeals against the CC's remedies decisions by Tesco (Groceries) and Barclays Bank (PPI) in the CAT, a focused review of the remedies process in market investigations was conducted by three members of the CC, chaired by the Deputy Chairman Laura Carstensen. The Remedies Review team examined the way in which the CC assesses the effectiveness, timeliness and proportionality of remedies in market investigations and how the CC's reasoning on these issues is expressed in its reports. The recommendations of the review and the CC's proposed actions were published in February 2010.¹

In March 2010, the CC began reviewing guidance (CC3) to cover market investigations by sending a consultation letter to stakeholders about the priority areas for revision. Developing the treatment of remedies in the guidance, in the light of experience including the judgments of the CAT, is one of the priority areas for revision.

Evaluation and capturing learning

The Remedies Standing Group reviews remedies learning points on conclusion of all relevant cases. The CC has an ongoing programme of reviewing the outcomes of remedies on past inquiries. Case studies evaluating the results of remedies on two past merger inquiries (Somerfield and Stericycle) were conducted during 2009/10 and will be published in 2010. A case study was also started on the results of remedies on a past market investigation (Store Cards), which is planned for publication later in 2010.

Communication and sharing expertise

Training on the CC's remedies approach and issues of topical interest on remedies were regularly provided to members and staff during 2009/10. The CC's staff also presented the CC's remedies approach and policy to external audiences, in conjunction with the OFT, to the International Competition Network (ICN) in February 2010.

Practical application

The application of remedies continued to be a major focus for the CC during 2009/10 as remedies were required in two merger inquiries and one market investigation reporting during the financial year. Both merger inquiries (Capita/IBS and Stagecoach/Preston Bus) were subject to divestiture remedies. The market investigation on Rolling Stock Leasing resulted in a package of behavioural remedies, including measures to improve transparency and recommendations relating to the rail franchising process. Throughout the year, work also continued in implementing remedies on three other market investigations (Groceries, Payment Protection Insurance and BAA) and two merger inquiries (Tesco/Co-op and Nufarm/AH Marks), which reported in 2008/09.

More information on the outcomes of inquiries reported during 2009/10 can be found on pages 17 to 35. A table of ongoing post-inquiry work on implementing remedies and responding to legal challenges can be found on page 37.

.....
1. www.competition-commission.org.uk/our_role/analysis/remedies_review_prop_cc_action.pdf.

Work stream 4

Objective: Contribute effectively to development of competition policy and practice.

Approach: This work stream is responsible for the coordination of external communications, and is managed by the Communications Group and led by the Director of Policy with the Head of International.

<i>Key issues for 2009/10</i>	<i>Outcome</i>
Contribute effectively to competition policy and procedural issues in order to improve the operation of the UK competition regime	<ul style="list-style-type: none"> ✓ The CC continues to work with and effectively communicate with other government departments, including the OFT, BIS and HM Treasury.
Promote an understanding of the CC's work and the benefits of competition to UK stakeholders including the business community and consumers	<ul style="list-style-type: none"> ✓ The Chairman, Deputy Chairmen and senior staff have delivered speeches to a broad range of audiences in the UK. ✓ Work continues on developing a communications strategy and an Internet Users' Group considers improvements which can be made to the CC's website.
Contribute effectively to international competition networks where the CC has expertise	<ul style="list-style-type: none"> ✓ The CC actively participated in key international competition events, including OECD and ICN during the past year. ✓ A forward programme of international policy activity was developed to continue to reinforce relations with overseas competition authorities, share good practice and increase cooperation on similar cases.
Develop the CC's bilateral relations with overseas competition authorities, both within and outside Europe, so as to increase cooperation on similar cases, as appropriate, and to share lessons learned	<ul style="list-style-type: none"> ✓ The CC has hosted and participated in an effective programme of visits for the Chairman, Deputy Chairmen and senior staff to and from overseas authorities. ✓ The CC has responded to a number of overseas requests for information.

Relations with other government departments

Over the past year the CC has continued to work closely with the OFT, BIS and HM Treasury. The CC and the OFT have continued to assess the functioning of the market investigations regime so as to ensure that it is used appropriately in the future. This has included identifying suitable markets for ideas generation and developing suitable time frames for the market investigation process. The CC has also worked with these departments to identify further scope for joint working, savings and efficiencies.

International relations

The Chairman, Deputy Chairmen and senior staff have participated in events hosted by overseas competition authorities, including the EU competition authority in Brussels, China, Poland, South Africa, Spain and the USA.

The CC has also responded to many requests for information, and has successfully hosted numerous visitors, from international government ministries, academic institutions and competition authorities, including the US Department of Justice and Federal Trade Commission, the Association of South East Asian Nations Secretariat, the Israel Antimonopoly Authority, the Competition Commission of Singapore, the Macedonia Commission for the Protection of Competition, the Mauritius Competition Authority, the Tanzanian Competition Authority and the Embassy of Japan in London.

The CC has continued to be involved in and benefit from involvement in international competition organizations such as the Organisation for Economic Cooperation and Development (OECD), the ICN and the United Nations Conference on Trade and Development. In particular, the CC has participated in the Mergers, Unilateral Conduct and Advocacy Working Groups of the ICN. The CC has provided speakers for OECD workshops

and the CC's Chairman has attended (by invitation) meetings of the European Competition Network and the European Competition Authorities. Peter Davis, Deputy Chairman, has been appointed as the Chairman of the Association of Chief Economists.

In the coming year, the CC will have ongoing liaison with other competition authorities and overseas government departments. The CC will be taking into account the experience and policies of such organizations and recommended best practices published by the ICN and OECD, for example, as it reviews and updates its guidance and working procedures.

Work stream 5

Objective: To make efficient and effective use of resources.

Approach: The Director of Corporate Services manages and leads the team which provides back office support services, including finance, procurement, facilities, security, catering, HR, internal communications, business planning, members' support, information services, administrative services and publishing for the organization. Additionally, the team is responsible for risk management, corporate governance, and business continuity and disaster recovery arrangements on behalf of the CC.

<i>Key issues for 2009/10</i>	<i>Outcome</i>
To comply with Cabinet Office guidance on data handling and information assurance	✓ The CC is fully compliant with data handling and broader information assurance requirements.
To comply with Security Policy Framework (SPF)	✓ The CC is fully compliant with 68 of the 70 mandatory SPF requirements and is classified as largely compliant against the remaining two criteria.
To improve management capability throughout the CC	<ul style="list-style-type: none"> ✓ The new pay system has been implemented. The new pay system aims to address market differences based on role and expertise. ✓ The first cohort of the Management Development Programme (MDP) has been completed. ✓ The staff welfare strategy has been agreed. ✓ A new employee assistance programme is in place following a service review with occupational health providers and new account management processes have been agreed.
To put in place harmonized conditions of service which are in line with employment legislation and best practice	<ul style="list-style-type: none"> ✓ The Employee Handbook has been launched and all staff have signed to say they agree to the terms in it. ✓ The main procedures used by HR have been simplified and made more accessible to the CC. Procedures will be added as necessary. A change process for HR has been agreed using IT's expertise in this area.

Efficiency, shared services and budgets

The Corporate Services team has an overarching role in ensuring that the CC works as efficiently and effectively as possible.

This is an ongoing role for the team. Spending on Corporate Services functions in 2009/10 was £9.4 million, 6 per cent under the budget of £10 million. Of this, £5.7 million was spent on accommodation costs, approximately £2.2 million was spent on staffing the Corporate Services department and the remaining £1.5 million was spent on running costs and the funding of projects throughout the year.

The Corporate Services team has been actively seeking opportunities for sharing its services. The team has successfully established and renewed shared services that generate £250,000 of income.

Data handling and security

The CC has worked hard to ensure that it meets all government security, data handling and information assurance requirements. The CC's security and information assurance work is led by the CC's Senior Information Risk Owner and Departmental Security Officer with the support of the CC's Security Working Group.

The 2009/10 the Cabinet Office's Information Assurance Maturity Model (IAMM) introduced a number of new and amended compliance measures making it significantly harder for the CC to achieve 'level three' compliance. The CC has worked hard to ensure that it met the new revised requirements and achieved 'level three' compliance against the six individual compliance areas. Under the new SPF criteria, the CC is 'fully compliant' against 68 of the 70 criteria and is classified as 'largely compliant' against the remaining two criteria. Work is under way to ensure that the CC is fully compliant against the remaining two criteria as soon as practically possible.

During 2009/10 the CC created its own SPF to replace its existing Security Manual, and updated a number of core security-related policies including the IT acceptable working

policy and the remote working policies, which were approved in March 2010.

In March 2010, all staff role profiles were updated to include information assurance responsibilities. The CC's security induction presentation has been incorporated into the staff induction training. During 2009/10 all new staff have received the Level 1 information awareness training (and Level 2 if an Information Assurance Officer).

Additionally the CC's Disaster Recovery site went fully operational during the year, ensuring that the CC can meet its statutory targets even if power fails at Victoria House or staff are unable to access the building.

Our people and working environment

Pay system

A new pay system was introduced for the 2008/09 performance reporting year. The system provides the CC with market-facing pay arrangements to enable fair pay decisions for the CC's staff and to afford the organization sufficient flexibility to enable it to respond quickly and appropriately to meeting its challenges and obligations as well as to ensure that the CC achieves value for money in relation to its payroll costs.

Management Development Programme

The MDP was introduced to raise the level of management competency within the CC and to provide participants with a personal development plan and management career path which runs alongside their professional career.

Harmonized conditions of service

The CC has ensured that all staff are on harmonized terms and conditions of service regardless of their length of service. It has also redeveloped and relaunched its online Employee Handbook.

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Council report

1. Format of accounts

These financial statements have been prepared in a form directed by the then Secretary of State for Trade and Industry with the consent of the Treasury in accordance with paragraph 12 of Schedule 7 to the Competition Act 1998.

2. Brief history of the Competition Commission and principal activities

The CC is an independent public body established by the Competition Act 1998. It replaced the Monopolies and Mergers Commission on 1 April 1999.

The CC conducts in-depth inquiries into mergers, markets and the major regulated industries in accordance with the Enterprise Act 2002, and the regulation of the major regulated industries in accordance with the legislation governing those industries. Every inquiry is undertaken in response to a reference made to it by another authority: usually by the OFT but in certain circumstances the Secretary of State, or under sector-specific legislative provisions relating to regulated industries. Since July 2005 the CC has also had jurisdiction to consider appeals against Gas and Electricity Markets Authority (GEMA) decisions on modifications of certain energy industry codes. The CC has no power to conduct inquiries on its own initiative.

3. Council and membership

The CC consists of members, who are supported by staff. The Chairman and Deputy Chairmen are members of the CC. The Chairman chairs the Council (the strategic management board), which also includes the Deputy Chairmen, the Chief Executive, and three non-executive CC members.

At 31 March 2010 the membership comprised the Chairman, four Deputy Chairmen, three non-executives,¹ and 38 members² of the reporting panel, of whom 13 were also members of the specialist utilities panel, 3 were members of the newspaper panel and 7 were members of the Communications Act panel. All members are appointed by the Secretary of State.

Table 4: CC members appointed during April 2009 to March 2010

<i>Members at 31 March 2010</i>	
Chairman	1
Deputy Chairmen	4
Non-executives	3
Reporting panel members	38

(includes 13 members also on the utilities panel, 3 on the newspaper panel and 7 on the Communications Act specialist panel)

The three non-executives are Dame Patricia Hodgson, Grey Denham and Lesley Watkins. David Saunders has been the Chief Executive since February 2009. Please refer to the earlier section on the role of the CC Council on pages 8 & 9 for full membership details.

Each inquiry is conducted by a Group, usually consisting of between three and six members, appointed by the Chairman.

The names, responsibilities, biographical details and changes to CC members are given on pages 84–88.

Remuneration details of the Council members are disclosed in the Remuneration Report on page 54.

4. Register of members' interests

A register of the outside interests of the CC's Council, and other CC members, is maintained on the CC's public website: www.competition-commission.org.uk.

5. Financial results

The CC's main source of funding is grant-in-aid received from BIS. The CC draws down the grant to meet its cash requirements. Some other income is generated, primarily from sub-tenants occupying space at Victoria House.

Revenue grant-in-aid received was £19,655,000 (2008/09: £20,909,000). Capital grant received was £345,000 (2008/09: £591,000).

Income and expenditure is accounted for on an accruals basis. This treatment results in an annual deficit that is taken to the Income and Expenditure reserve balance that appears in the balance sheet.

In 2009/10 the overall deficit for the year of expenditure over income after interest and taxation was £21,610,000 (2008/09 deficit £23,111,000). Operating expenditure was £25,853,000 (2008/09: £26,761,000).

Council report *(continued)*

6. Financial performance measure

BIS reviews CC expenditure on the basis of department expenditure limits (DEL). Revenue DEL is operating expenditure plus taxation and cost of capital, less interest receivable and other income receivable.

The table below shows a three-year summary in DEL format including the forecast for 2010/11 (although our funding for this year is not yet agreed).

Table 5: CC's three-year expenditure and forecast

	2008/09 Actual £'000	2009/10 Actual £'000	2010/11 Forecast £'000
Payroll costs	11,993	11,122	10,310
Accommodation costs (net)	4,628	4,452	4,125
Other costs less sundry income	6,498	6,036	4,917
Total costs	23,119	21,610	19,352
Relocation provision	(8)	0	0
Revenue DEL	23,111	21,610	19,352
Capital expenditure	591	345	565

The following table reconciles the revenue DEL format for 2009/10 with the total operating expenditure of £25,853,000 shown in the Income and Expenditure account:

Table 6: Revenue DEL, 2009/10

	2009/10 Actual £'000
Revenue DEL	21,610
Add:	
Income receivable	4,093
Interest receivable	7
Cost of capital	146
Deduct:	
Corporation Tax	(3)
Operating expenditure per Net Expenditure account	25,853

The final budget set by BIS for 2009/10 was £21,526,000 (2008/09; £22,026,000), made up of revenue expenditure of £20,900,000 and capital expenditure of £626,000; a decrease of 2.27 per cent from 2008/09. The CC spent £21,955,000 made up of revenue expenditure of £21,610,000 and capital expenditure of £345,000 resulting in an overall overspend of £429,000 (2 per cent). The overspend was due to the legal costs for the appeal cases and an employment tribunal and redundancy costs which amounted to £2,596,000. If these costs had not been incurred the CC would have had an underspend of £2,167,000 (10 per cent).

BIS budget allocation for 2010/11 is £19,917,000 made up of revenue expenditure of £19,352,000 and capital expenditure of £565,000 but the budget is likely to reduce.

7. Income arising from CC activities not reported in the financial statements

There is no further income accruing to the CC from its activities that is not reported in the financial statements.

Under certain of the Acts under which references can be made by sector regulators, a statement of costs incurred by the CC in its inquiries is provided to the appropriate regulator, which is responsible for collecting these costs from the regulated body. The regulators collect these costs and surrender the proceeds to the Consolidated Fund, not to the CC. The CC also provides a statement of the costs of merger inquiries to the OFT, which is responsible for setting the level of merger clearance fees. The OFT includes the CC's costs of merger inquiries in its memorandum trading account used in accounting for merger fees.

8. Payment of creditors

The CC is committed to pay all supplier invoices by the due date or within ten days of receipt if no due date has been agreed. Throughout the year 96 per cent of relevant invoices were settled within ten days (2008/09: 86 per cent for December 2008 to March 2009); 100 per cent was not achieved mainly due to invoices arriving that did not quote a valid CC purchase order reference. These are not processed for payment until the validation of the respective purchase order is completed.

9. Financial instruments

Please refer to note 9 in the notes to the financial statements.

10. Pension liabilities

Please refer to accounting policy I(f) and note I6 in the notes to the financial statements.

11. Employee involvement

The CC maintains an open management style and involves staff in the management of change. It has a Staff Council with staff representation from all parts of the organization. This is an important consultative forum for discussing new developments affecting staff. Recent examples of this are discussions on: new pay system, Employee Handbook, and the Management Development Programme. The Chief Executive runs regular seminars and all staff are invited to hear presentations on issues of interest, updates on management changes and to raise any questions.

Please refer to the Management Commentary for information on the CC's average sickness absence.

12. Employment of disabled people

The CC adheres to BIS's policy statement set out in its code of practice on the employment of disabled people.

13. Auditor

The CC's annual financial statements are audited by the Comptroller and Auditor General (C&AG). For the year ended 31 March 2010 the cost of work performed was £41,650. This included £3,650 for additional audit on the comparative accounts in preparation for International Financial Standards. The audit services provided by the C&AG's staff related only to statutory audit work.

The Accounting Officer has taken all necessary steps to make himself aware of any relevant audit information and to establish that the CC's auditors are aware of that information.

So far as the Accounting Officer is aware, there is no relevant information of which the CC's auditors are unaware.

14. Events after the reporting period

There are no events after the reporting period to report.

15. Future developments

These are described in the Chairman's statement and the Chief Executive's report.

16. Data handling

Please refer to the Statement on Internal Control.



David Saunders
Chief Executive and Secretary
Accounting Officer
30 June 2010

-
1. BIS appointed two new non-executive Council members (to join one existing non-executive) with effect from 1 September 2009. One additional non-executive Council member will join the Council later in early 2011.
 2. BIS appointed 14 new members in 2009. Eight of the new members were appointed on 1 April 2009, two were appointed on 1 May 2009 and four were appointed on 1 September 2009. These new appointments replace the 14 members whose appointments ended in September 2009.

Management commentary

1. The CC and its external environment

The CC is an independent public body which conducts in-depth inquiries into mergers, markets and the regulation of the major regulated industries. It is a purely reactive body, conducting inquiries only after it has received a reference, in most cases from the OFT, or another regulator with powers to refer to the CC. The OFT conducts initial probes into mergers and markets, and refers cases to the CC where it has a reasonable belief that there might be problems with competition. The CC also has jurisdiction to consider appeals against GEMA decisions on modifications of certain energy industry codes and to determine price control matters raised in appeals to the CAT. Other regulators make licence modification referrals or price control references intermittently.

2. The CC's employees

The CC had 122 employees at the end of March 2010 (154 at end of March 2009). Staff turnover for the year was 14 per cent excluding retirees and fixed-term appointees. The CC looks to recruit high-calibre people from the private and public sector. The CC continues to promote a diverse workforce. During the year, 57 per cent of the new staff appointed were women and 11 per cent were from ethnic minorities; 31 per cent of the CC's most senior staff (Band A and above) are women. The CC's average sickness absence is 2.85 days per employee; this is below the level across the civil service as a whole, which is expected to be around nine days per employee according to www.civilservice.gov.uk. During 2009/10 the CC was challenged in the Employment Tribunal by an ex-member of CC staff. The CC was cleared of all the charges brought against it and the respondent did not receive any award from the tribunal. The case has not been appealed to the Employment Appeals Tribunal.

3. Environmental matters

The CC is committed to minimizing the environmental impact of our activities. Up to 96 per cent of all waste materials are recycled via our nominated supplier Grosvenor Waste.

4. Social and community issues

The CC supports its staff in contributing to society and may grant special leave with pay to employees who act as magistrates, elected members of a local authority or members of health authorities, tribunals and training in youth leadership or other voluntary activity. The CC is in the process of introducing an apprenticeship scheme as part of the Government's Back Young Britain Campaign and should have its first recruits next year.

5. Key performance indicators

In April 2005 the CC set the following key performance indicators (KPIs) and agreed in conjunction with BIS to:

- monitor the level of satisfaction of the CC's stakeholders as surveyed approximately every two years by an independent third party; the latest survey was published in March 2010;

- commission a peer review, which assesses the performance of the UK competition regime (including the CC) against the objective of being world class. This is carried out by independent consultants every three years; the latest review by KPMG was published in June 2007; and
- monitor the CC's financial performance as measured by budget compliance, and progress in achieving annual efficiency improvements.

Operations are divided into five work streams: efficient and effective investigations, making the right decisions, taking the right remedial action, developing competition policy and efficient and effective use of resources. Analysis of the work streams is covered in more detail on pages 38–47.

6. Objectives and strategy for achieving them

The Corporate Plan 2010/11 was published on the CC website on 6 April 2010, and sets the KPIs, objectives and strategy for the new financial year.

7. Significant features of the development and performance of the organization in the financial year

During 2009/10 there were four inquiries brought forward from the previous financial year and 14 new inquiries. Of these, nine were completed, one was cancelled, and nine carried forward to the next financial year. Of the 14 new inquiries received in 2009/10, six were merger inquiries, one was a market investigation, one was a remittal, one was an appeal under the Water Industry Act, three were appeals under the Communications Act and two were a review of undertakings.

8. The main trends and factors that the Council considers likely to impact on future prospects

The CC is a purely reactive body, conducting inquiries only after it has received a reference from the OFT, another regulator or other body with powers to refer to the CC. The CC's workload is therefore unpredictable and future prospects are affected by conditions in the economy as a whole, changes to the legal framework in which the CC works, and the OFT's and other regulators' practice on referrals.

9. The CC's resources and how they are managed

The CC's primary resource is its staff. 59 per cent of CC staff are skilled professionals with competition expertise in economics, law, accountancy and business analysis. Inquiries are managed by seven Inquiry Directors. Inquiry work is supported by inquiry administration teams and Corporate Services functions. Staff are managed by the Chief Executive, three Heads of Profession, a Senior Inquiry Director, a Director of Policy and a Director of Corporate Services.

10. The principal risks and uncertainties facing the CC and the approach to them

The principal uncertainty facing the CC is the variability of its workload. To mitigate this the CC employs some staff on a short-term basis using fixed-term contracts, fee-paid workers, agency staff and contractors, and uses secondments both into and out of the CC to give maximum flexibility on staff numbers. We also take university students as summer interns, giving them experience of working in a professional environment for anything from two weeks to three months. During 2009/10 the proportion of short-term staff was on average 23 per cent (2008/09: 21 per cent). The CC also arranges appropriate developmental secondments to other agencies when workload is lower.

The other major challenge facing the CC was the actual budget cut of £0.5 million in 2009/10, reducing the CC's budget to £21.5 million and the planned budget cut of 10 per cent in 2010/11 due to public expenditure restraint. To prepare for this, the CC implemented a number of efficiency savings and overhead cost reductions in 2009/10 including restructuring the Corporate Services team and reprioritizing expenditure to where it was most needed. We are likely to have to make further savings in 2010/11 to help meet government targets for reducing public expenditure.

The CC has continued to manage its risks through its risk management processes and policies during 2009/10. These are more fully recorded in the Statement on Internal Control (pages 57–61), specifically under the capacity to handle risk and the risk and control framework. During 2009/10 there were no reported security data incidents.

11. Resources and liquidity

The accounts show a cumulative deficit on the Income and Expenditure Reserve of £5,671,000 at 31 March 2010. The CC's sponsoring department, BIS, has confirmed that there is no reason to believe that its future sponsorship will not be forthcoming within the capital and resource budgets set by Spending Review Settlements.



David Saunders
Chief Executive and Secretary
Accounting Officer
30 June 2010

I. This employee data is calculated in a different way from the calculations in the accounts which looks at costs. The difference is in part owing to the change in the way the base is calculated to exclude agency staff this year. For employee figures the CC excludes agency workers and contractors.

Table 7: CC workload, 2009/10

Inquiries summary	Mergers	Markets	Remittals	Energy Code Mod Appeal	Appeal under Water Industry Act	Appeal under Communications Act	Review of Undertakings	Total
New inquiries 2009/10	6	1	1	0	1	3	2	14
Inquiries brought forward from 2008/09	1	1	1	0	1	0	0	4
Deduct inquiries cancelled	1	0	0	0	0	0	0	1
Deduct inquiries carried forward at 31 March 2010	0	1	1	0	1	3	2	(8)
Inquiries completed in 2009/10	6	1	1	0	1	0	0	9

Remuneration report

1. Remuneration policy

Remuneration of the Chairman, Deputy Chairmen and non-executives is set by the Secretary of State for BIS. The remuneration of the Chief Executive and all CC staff is considered by the CC's Remuneration Committee, which is chaired by a non-executive Council member and normally meets twice each year. Reference is made to the Senior Salaries Review Body and the CC's Chairman writes to the Secretary of State for final approval of the Chief Executive's pay and bonus proposals.

2. Appointments

Members of the Council are appointed by the Secretary of State for fixed terms in accordance with the Competition Act 1998 as amended by the Enterprise Act 2002—see Table 8.

3. Council members' remuneration

The following information is subject to audit.

The remuneration of members of the Council of the CC is given in Table 9.

Benefits in kind were zero. Taxable expenses relate to home to office travel, which are paid by the CC, including the Income Tax and National Insurance thereon. The Chief Executive chose not to receive a bonus payment for 2009/10.

Salary payments shown above for Grey Denham, Tony Foster, Patricia Hodgson and Lesley Watkins relate to fees paid.

The salary payments for Laura Carstensen are for the period 1 February to 31 March 2010; her full salary is £102,640 a year.

As at 31 March 2010 David Saunders had £1,232 of employee benefits which relates to untaken leave.

4. Pension details of Council members

Peter Freeman, Christopher Clarke, Peter Davis and Diana Guy are pensioned by analogy to the Principal Civil Service Pension Scheme (PCSPS), gaining benefits commensurate with their salary and service. No contributions are made to this scheme by the CC but the pensions are paid to retired members when they

Table 8: Council member appointments

	<i>Date appointed</i>	<i>Date appointment ends</i>
Peter Freeman (Chairman)*	1 January 2006	31 December 2010
Laura Carstensen (Deputy Chairman)	1 February 2010	31 March 2013
Christopher Clarke (Deputy Chairman)	1 September 2004	9 September 2010
Peter Davis (Deputy Chairman)	18 September 2006	17 September 2012
Diana Guy (Deputy Chairman)*	1 September 2004	30 November 2010
Grey Denham (non-executive)*	1 September 2009	31 August 2013
Tony Foster (non-executive)*	1 September 2003	31 August 2009
Patricia Hodgson (non-executive)*	1 January 2004	31 December 2011
Lesley Watkins (non-executive)	1 September 2009	31 August 2015
David Saunders (Chief Executive)	9 February 2009	8 February 2014

*Member of the Remuneration Committee.

Table 9: Remuneration of Council Members

	<i>Salary</i>	<i>Pension contributions</i>	<i>Taxable expenses</i>	<i>2009/10 total</i>	<i>2008/09 total</i>
Peter Freeman (Chairman)	171,074		5,337	176,411	171,491
Laura Carstensen (Deputy Chairman)*	17,106		2,058	19,164	-
Christopher Clarke (Deputy Chairman)*	102,640			102,640	100,038
Peter Davis (Deputy Chairman)	128,296			128,296	125,045
Diana Guy (Deputy Chairman)*	102,640			102,640	100,038
Grey Denham (non-executive)	2,625			2,625	-
Tony Foster (non-executive)	4,900			4,900	25,714
Patricia Hodgson (non-executive)	4,550			4,550	7,525
Lesley Watkins (non-executive)	4,550			4,550	-
David Saunders (Chief Executive)	140,000	30,035		170,035	24,074

*Three of the Deputy Chairmen are employed on a four-day-week basis.

become due. Laura Carstensen has a private pension scheme that the CC makes monthly contributions towards based on a percentage of her annual salary, in line with the percentages paid on behalf of staff to the PSCPS scheme. David Saunders is a member of the PCSPS scheme and the pension benefits quoted below are accrued from his total Civil Service employment, not just his time with the CC. As non-executives, Grey Denham, Tony Foster, Patricia Hodgson and Lesley Watkins are not part of the pension scheme.

The members quoted do not have pension arrangements that differ from the standard. The members quoted do not hold membership of the PCSPS (Earnings Cap) Scheme or accelerated Accrual arrangements.

The members quoted are not contributing at a rate other than the standard PCSPS rate.

The figures in column 5 of Table 10 at the start of period Cash Equivalent Transfer Value (CETV) for 2009/10 are slightly different from the final period CETV 2008/09 shown in the accounts for 2008/09 due to certain factors being incorrect in last year's CETV calculator.

Cash equivalent transfer values

A CETV is the actuarially assessed capitalized 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 his or her total membership of the pension scheme, not just his or her service in a senior capacity to which disclosure applies. The CETV figures, and 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 Civil Superannuation 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 his or her purchasing additional years of pension service in the scheme at his or her own cost. CETVs are calculated within the guidelines and framework prescribed by the Institute and Faculty of Actuaries.

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.



David Saunders
Chief Executive and Secretary
Accounting Officer
30 June 2010

Table 10: Cash equivalent transfer values

	Column 1 Real increase in pension £'000	Column 2 Real increase in lump sum £'000	Column 3 Pension at 31/03/10 £'000	Column 4 Lump sum at 31/03/10 £'000
Peter Freeman	2.5–5	N/A	10–15	N/A
Christopher Clarke	0–2.5	N/A	5–10	N/A
Peter Davis	0–2.5	N/A	5–10	N/A
Diana Guy	0–2.5	N/A	5–10	N/A
David Saunders	12.5–15	40–45	55–60	165

	Column 5 CETV at 31/03/09 (nearest £'000)	Column 6 CETV at 31/03/10 (nearest £'000)	Column 7 Employee contributions and transfers-in £'000	Column 8 Real increase in CETV after adjustment for inflation and changes in market investment factors (nearest £'000)
Peter Freeman	218	270	4.0–4.5	48
Christopher Clarke	133	172	3.5–4.0	35
Peter Davis	51	79	4.0–4.5	21
Diana Guy	132	166	3.5–4.0	31
David Saunders	858	1,209	1.5–2	296

Statement of the CC's and the Accounting Officer's responsibilities

Under paragraph 12 of Schedule 7 of the Competition Act 1998, the Secretary of State, with the approval of the Treasury, has directed the CC to prepare a financial statement for each financial year in the form and on the basis set out in the Accounts Direction. The financial statements are prepared on an accruals basis and must give a true and fair view of the CC's state of affairs at the year end and of its income and expenditure, recognized gains and losses and cash flows for the financial year.

In preparing financial statements the CC is required to comply with the requirements of the Government Financial Reporting Manual and in particular:

- observe the Accounts Direction 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 as set out in the Government Financial Reporting Manual have been

followed, and disclose and explain any material departures in the financial statements; and

- prepare the financial statements on the going concern basis, unless it is inappropriate to presume that the CC will continue in operation.

The Accounting Officer for BIS has designated the Chief Executive to the CC as the Accounting Officer for the CC. The responsibilities of an Accounting Officer, including responsibility for the propriety and regularity of the public finances for which the Accounting Officer is answerable, for keeping of proper records and for safeguarding the CC's assets, are set out in the Accounting Officer's Memorandum issued by the Treasury and published in *Managing Public Money*.

Statement on internal control

Scope of responsibility

As Accounting Officer, I have responsibility for maintaining a sound system of internal control that supports the achievement of the CC's statutory obligations, policies, aims and objectives, whilst safeguarding the public funds and the CC's assets for which I am personally responsible, in accordance with the responsibilities assigned to me in *Managing Public Money*.

As Accounting Officer, I have responsibility for ensuring that the CC meets quarterly with its sponsor department BIS. At these meetings, BIS is informed of all high-level risks, and in particular those affecting our financial situation.

I am also (as the secretary of the CC) a member of the CC's Council. The Council is the CC's strategic board and is responsible for ensuring the efficient discharge of the CC's statutory functions and that the CC complies with any statutory or administrative requirements for the use of public funds.

I am responsible for:

- advising the Council on the discharge of the CC's responsibilities as defined in the CC's Framework Agreement;

- advising the Council on the CC's performance compared with its aims and objectives;
- ensuring that financial considerations are taken into account fully by the Council at all stages in reaching and executing its decisions, and that appropriate financial appraisal techniques are followed; and
- taking action as set out in *Managing Public Money* if the Council, or its Chairman, is contemplating a course of action involving a transaction which I consider would infringe the requirements of propriety or regularity, does not represent prudent or economical administration, is of questionable feasibility, or is unethical.

The purpose of the system of internal control

The system of internal control is designed to manage risk to a reasonable level rather than eliminate all risk of failure to achieve statutory obligations, policies, aims and objectives; it can therefore only provide reasonable and not absolute assurance of effectiveness. The system of internal control is an ongoing process designed to:

Statement on internal control *(continued)*

- identify and prioritize the risks to the achievement of the CC's statutory obligations, policies, aims and objectives;
- evaluate the likelihood of those risks being realized and the impact should they be realized; and
- manage them efficiently, effectively and economically.

The system of internal control has been fully in place in the CC for the year ended 31 March 2010 and up to the date of approval of the annual report and accounts, and accords with Treasury and Cabinet Office guidance. At no time has any part of the CC's system of control been suspended.

Capacity to handle risk

During the year the CC has reviewed and changed its risk management process and improved its capacity to handle risk. The CC actively identifies, assesses and manages key risks using the CC's risk register. The risk register records all the CC's core risks by workstream. Each workstream leader is responsible for managing the risks allocated to them on a daily basis. The risk register also includes the CC's most significant or strategic risks which are managed by the Council. Day-to-day management and oversight of the CC's risk register has transferred from the Operations Board to the CC's Senior Management Team (SMT).²

The CC has introduced a new risk management tool which has significantly improved search functionality and enhances the CC's ability to analyse and mitigate the risks it faces. The CC has also updated its Risk and Data Handling Policy. The purpose of these changes is to allow the CC to control and manage more effectively any risk that it faces, including new risks that have developed as part of a changing risk environment. The improvements also help to guarantee that pan directorate (ie risks that have an impact across more than one directorate) and/or new risks have appropriate oversight by senior managers to ensure that effective mitigation actions are in place.

The following risk management processes are in place:

1. The SMT informs the Audit Committee³ about risk.
2. The SMT also ensures that risks have been properly identified, evaluated and monitored; that appropriate procedures are established to address the risks identified; that staff are aware of risk management practices; and that risk training is undertaken as necessary. The SMT's commitment to the management of risk is set out in its terms of reference and supported by the Risk and Data Handling Policy.
3. All managers of risks are given internal training and directed to the Risk and Data Handling Policy published on the intranet. Further external training is available through the Management Development Programme.
4. The SMT is responsible for the maintenance of the CC's risk register in which risks have been ranked in terms of impact and likelihood. This register is updated regularly.
5. The SMT is also responsible for advising the Council about key strategic risks. The Council reviews the CC's strategic risks at its bi-monthly Council meetings.
6. The SMT is responsible for overall security policies and procedures and overseeing effective security management.
7. The Business Continuity Group (BCG), comprising relevant Heads of Function, which I chair, is responsible for business continuity planning and contingency operations. Also a team of Incident Controllers is in place to deal with any immediate emergencies that may occur. Off-site HQ facilities and off-site IT arrangements are in place to ensure that the CC and/or core IT systems are up and running as soon as possible.
8. Policies are in place in the event of a pandemic or a terrorist attack.
9. The Security Working Group (SWG) works alongside the BCG and reports to the SMT and the Audit Committee. It is responsible for ensuring that the CC implements guidance on protection and security of its IT, physical and data assets from the Communications-Electronics Security Group (CESG) which is the national technical authority for information assurance, Cabinet Office and the Centre for the Protection of the National Infrastructure (CPNI). The Director of Corporate Services, who is the Chair of the Committee, is also the CC's Departmental Security Officer (DSO) and Senior Information Risk Owner (SIRO). During 2009/10 there were no security data incidents that needed to be reported to the Information Commissioner or Cabinet Office.
10. The SIRO, with the help of the SWG, completed the following information assurance returns for 2009/10:
 - Cabinet Office Information Assurance report;
 - Cabinet Office Information Maturity Model (IAMM); and
 - BIS Security Policy Framework return.

Following a final review by the Audit Committee, and approval by me, the returns were submitted to BIS and the Cabinet Office in April 2010.

The CC also completed regular risk assessment and data handling returns to BIS. These returns have provided a high degree of assurance that sufficient processes and systems are in place to ensure that the CC is able to handle security and information assurance risks effectively.

The risk and control framework

The CC's Risk and Data Handling Policy sets out responsibilities for the identification, evaluation and control of risks including data handling, information and information technology risks recorded in the CC's risk register.

The nature and impact of the CC's work leads the CC to be necessarily risk averse in its policies and procedures. The CC therefore has a low appetite for risk in its operations (while being fully prepared to reach potentially contentious conclusions in its inquiries, on the basis of the evidence, and therefore to face the risk of challenge in the courts).

The CC's Risk and Data Handling Policy defines the importance of managing the CC's risks and is in line with the Government's risk appetite as identified by the Government Chief Information Officer. The CC's risk register spreadsheet reflects the CC's risk tolerance. Where residual risks are classified as low, the CC will accept the risk. Where risks are ranked as medium or high, the CC will endeavour to mitigate the risk. The CC will, however, always monitor any residual risks classified as low to ensure that the risk is correctly assessed and does not change materially.

The following processes are in place as part of the CC's overall risk and control framework and demonstrate how risk management is embedded into the work and decision making of the CC:

1. The SMT includes the SIRO and senior representatives from across the CC; the SMT usually meets twice a month and any risk and data handling issues of concern can be addressed at this time; ad-hoc meetings can be arranged if there is an urgent issue that needs to be discussed. In addition, the SMT specifically meets quarterly to discuss risk and information risk management. In terms of risk management, the SMT has the following overarching objectives and is assisted by the Planning department in ensuring that:

- the operational and other risks faced by the CC in carrying out its functions have been properly identified and are evaluated regularly and monitored by management at appropriate levels;
- appropriate and effective procedures have been established and are maintained by management to address the identified risks;
- risk owners and those responsible for taking forward individual risks ensure that:
 - identified controls are effectively managed and regularly reviewed;
 - additional actions highlighted in the plan are carried forward;

- contingency plans are workable and robust; and
- the existing management structures enable risk to be managed appropriately.

2. The following positions are responsible for managing specific parts of the CC's risk register:

- Those risks that are identified as strategic are managed by the Council. However, the SMT has a key role in ensuring that relevant risks are put up to the Council for consideration, review and potential reclassification or inclusion as a strategic risk. The Council will also identify risks.
 - Work stream 1 risks (Making our investigations more efficient and effective) are managed by the Senior Inquiry Director and the Chief Legal Adviser (oversight by the Practices and Procedures group).
 - Work stream 2 risks (Making the right decisions) are managed by the Chief Economic Adviser (oversight by the Analysis Group).
 - Work stream 3 risks (Taking the right remedial action) are managed by the Chief Business Adviser and Head of Remedies (oversight by the Remedies Standing Group).
 - Work stream 4 risks (Making effective contributions to the development of competition policy and practice in the UK, the EU and internationally) are managed by the Director of Policy.
 - Work stream 5 risks (Providing efficient and effective corporate services support) are managed by the Director of Corporate Services (oversight by the Corporate Services Review Group). Work stream 5 risks also include risks associated with information assurance and personal data.
3. Each set of work stream risks are overseen by a committee as identified above. The key purpose of the oversight committees is to ensure that risk owners are appropriately challenged on how they are managing their risks and whether suitable mitigating actions or contingency plans are in place. They may also suggest new risks and challenge current risks as well as challenging the ratings given to individual risks.
4. Below work streams 1 and 5 a number of individuals are also responsible for managing specific risks. These are set out below. Any significant risks identified by them are included on the CC's risk register:
- Individual Inquiry Directors are responsible for risks associated with each inquiry and report on the progress

Statement on internal control *(continued)*

and risks associated with each inquiry through the Inquiry Progress report. Any key risks feed into work stream I.

- Corporate Services managers are responsible for managing and recording risks within their area of responsibility:

- Head of HR considers risks related to HR and Internal Communications;

- Head of Finance and Facilities considers risks related to finance, procurement and facilities;

- Head of IS considers risks in relation to Information Services, and the Administrative Services Unit; and

- Head of Planning considers risks in relation to business planning, freedom of information, data protection and the Members Support Unit.

5. Every manager within the CC is responsible for identifying the types of risks that fall within their own remit.
6. An annually updated Corporate and Business Plan is agreed with BIS. It contains the CC's priority objectives from which the objectives of all functions, teams and managers are derived.
7. Project plans are drawn up for all inquiries and Inquiry Directors report progress to me on a weekly basis. A formal report on the status of each inquiry is issued at key stages of the inquiry and the progress report identifies key risks facing the inquiry, which are discussed in a progress meeting. Upon completion of the inquiry, formal reports are issued commenting on all aspects of the inquiry plan and process.
8. Financial control and value-for-money considerations are overseen by the Head of Finance and the Procurement Officer through the financial and procurement policy and procedures, a strict delegated financial authority structure, control of purchases through a purchase order system and by a monthly financial reporting system to all senior managers and monthly reporting to BIS.
9. A Competition Commission Programme Board (CCPB) meets quarterly and reviews the progress on all CC projects, sets long-term CC strategy goals and reviews benefits of completed projects.
10. Project Boards are established for all major projects (such as the Finance System project) in accordance with Prince 2 project management guidelines to ensure that projects are managed under generally accepted project management techniques, including identification and assessment of project risks.

11. A Staff Council, with representatives from staff at all levels, meets at least three times a year to advise staff of changes affecting the organization and to take account of their views and concerns.

12. Responsibility for health and safety (including the maintenance of annual external audits) is delegated to an officer and is reported to the Staff Council at each meeting. Additionally the SWG is responsible for ensuring that the CC complies fully with the Health and Safety legislation.

Public stakeholders are not involved in the management of risk because of the nature of the CC's work.

The CC's risk and control framework, combined with the changes made to the CC's risk-handling processes, ensure that changes in the day-to-day working practices of the CC can be made quickly and embedded into the CC's practices and procedures.

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 is informed by the work of the internal auditors, the executive managers within the CC who have responsibility for the development and maintenance of the internal control framework, and by comments made by the external auditors in their management letter and other reports. The CC has strong risk management processes in place, and seeks to ensure that these processes help the CC to mitigate any risk effectively. My review of the effectiveness of the system of internal control as part of the Statement of Internal Control process has been considered by the Council and the Audit Committee. I am content that plans are in place to address weaknesses, for example via the IAMM, the Information Assurance Strategy and the mitigating actions that are in place as part of the CC's risk management processes and to ensure continuous improvement.

The following processes were in place to maintain and review the effectiveness of the system of internal control:

1. A Council that meets at least six times a year to consider the plans and strategic direction of the CC and to review recent inquiries, high-level risks and discuss best practice across inquiry groups.
2. An Audit Committee chaired by a non-executive member of the Council which meets at least three times a year to advise me in my role as Accounting Officer on the adequacy of audit arrangements (internal and external) and on the implications of assurances provided in respect of risk and control in the CC. If appropriate, I will raise any concerns that I may have with the Council. The Audit Committee provides regular updates on its activities to the Council.

3. An internal audit service. This has been provided by RSM Tenon from April 2008 to date; during the year they gave the CC's Audit Committee an opinion of the CC's internal controls as being adequate and effective.
4. The work of the SIRO supported by the SWG, specifically in relation to the Security Policy Framework (the CC's security manual for staff, members and contractors) and for meeting Cabinet Office Information Assurance requirements.

The internal auditors report regularly to standards defined in the Government Internal Audit Standard and the Head of Internal Audit reports on the adequacy and effectiveness of the CC's system of internal control and provides recommendations for improvement.

Significant control issues

As part of the review of effectiveness, I am required to disclose any actions taken or any proposed actions to deal with significant control issues. Taking into account the tests in *Managing Public Money*, I can confirm that the CC has not had any significant control issues during 2009/10 and currently has no significant weaknesses to address.



David Saunders
Chief Executive and Secretary
Accounting Officer
30 June 2010

-
1. As provided by Schedule 7 to the Competition Act 1998, the Council is composed of the Chairman and the secretary of the CC, appointed persons and such other members as the Secretary of State may appoint. The Council currently comprises the Chairman, the Secretary, four Deputy Chairmen and three non-executive directors.
 2. The SMT comprises the Chief Executive, the three Heads of Profession, the Senior Director, Inquiries, the Director of Corporate Services, and the Director of Policy. The CC's Operations Board no longer exists and was abolished during 2009/10.
 3. The Audit Committee comprises a non-executive member of Council who is an Accountant, and two members of the CC.

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

I certify that I have audited the financial statements of the Competition Commission for the year ended 31 March 2010 under the Competition Act 1998. These comprise the Net Expenditure Account, the Statement of Financial Position, the Statement of Cash Flows, the Statement of Changes in Taxpayers' Equity and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration Report that is described in that report as having been audited.

Respective responsibilities of the Competition Commission, Accounting Officer and auditor

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

Scope of the Audit of the Financial Statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the Competition Commission's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Competition Commission; and the overall presentation of the financial statements.

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

Opinion on regularity

In my opinion, 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.

Opinion on financial statements

In my opinion:

- the financial statements give a true and fair view of the state of the Competition Commission's affairs as at 31 March 2010 and of its deficit, changes in taxpayers' equity and cash flows for the year then ended; and
- the financial statements have been properly prepared in accordance with the Competition Act 1998 and the Secretary of State's directions issued thereunder.

Opinion on other matters

In my opinion:

- the part of the Remuneration Report to be audited has been properly prepared in accordance with the Secretary of State's directions issued under the Competition Act 1998; and
- the information given in the Council's report and the Management Commentary for the financial year for which the financial statements are prepared is consistent with the financial statements.

Matters on which I report by exception

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

- adequate accounting records have not been kept; or
- the financial statements are not in agreement with the accounting records or returns; or
- I have not received all of the information and explanations I require for my audit; or
- the Statement on Internal Control does not reflect compliance with HM Treasury's guidance.

Report

I have no observations to make on these financial statements.

Amyas C E Morse
Comptroller and Auditor General
National Audit Office
157–197 Buckingham Palace Road
Victoria
London SW1W 9SP
2 July 2010


Net Expenditure Account for the year ended 31 March 2010

	Note	2009/10 £'000	Restated 2008/09 £'000
Expenditure:			
Staff costs	3	10,090	11,061
Members costs	3	1,651	1,238
Depreciation	4,6,7&8	1,093	1,689
Other expenditure	4	13,019	12,773
		25,853	26,761
Income:			
Other income	5	(4,093)	(3,494)
Net expenditure		21,760	23,267
Cost of capital		(146)	(83)
Interest receivable		(7)	(92)
Net expenditure after cost of capital charge and interest		21,607	23,092
Corporation Tax		3	19
Net expenditure after cost of capital charge, interest and tax		21,610	23,111
Reversal of cost of capital		146	83
Retained deficit		21,756	23,194

Figures for 2008/09 have been restated in line with International Financial Reporting Standards. The notes on pages 67–83 are part of these financial statements.

Statement of financial position as at 31 March 2010

	Note	31 March 2010 £'000	Restated 31 March 2009 £'000	Restated 1 April 2008 £'000
Non-current assets:				
Property, plant and equipment	6	5,278	6,099	6,691
Intangible assets	7	193	261	325
Dilapidations asset provision	8	1,995	2,131	1,123
Trade and other receivables due after one year	10	1,509	1,414	1,269
Total non-current assets		8,975	9,905	9,408
Current assets:				
Trade and other receivables due within one year	10	373	547	886
Cash and cash equivalents	11	708	167	478
Total current assets		1,081	714	1,364
Total assets		10,056	10,619	10,772
Current liabilities:				
Trade and other payables	12	(2,546)	(1,931)	(2,435)
Total current liabilities		(2,546)	(1,931)	(2,435)
Non-current assets plus/less net current assets/liabilities		7,510	8,688	8,337
Non-current liabilities:				
Provisions	13(a)	(3,069)	(3,053)	(1,598)
Pension liabilities	13(b)	(2,458)	(1,905)	(1,884)
Other payables	12	(7,654)	(7,277)	(6,668)
Total non-current liabilities		(13,181)	(12,235)	(10,150)
Assets less liabilities		(5,671)	(3,547)	(1,813)
Taxpayers' Equity:				
Income and expenditure reserve		(5,671)	(3,915)	(2,261)
Revaluation reserve		-	368	448
		(5,671)	(3,547)	(1,813)



David Saunders
Chief Executive and Secretary
Accounting Officer
30 June 2010

Statement of cash flows for the year ended 31 March 2010

	Note	2009/10 £'000	Restated 2008/09 £'000
Cash flows from operating activities:			
Net deficit after cost of capital and interest		(21,610)	(23,092)
Adjustments for cost of capital charge		(146)	(83)
Depreciation	4,6,7&8	1,093	1,689
Release of revaluation reserve		(74)	-
Decrease in trade and other receivables	10	79	194
Increase in trade payables	12	963	132
Use of provisions		553	(15)
Taxation		(19)	(39)
Net cash outflow from operating activities		(19,161)	(21,214)
Cash flows from investing activities:			
Purchase of property, plant and equipment		(147)	(456)
Purchase of intangible assets		(151)	(142)
Proceeds of disposal of property, plant and equipment		-	1
Net cash outflow from investing activities		(298)	(597)
Cash flows from financing activities:			
Grant from parent department		20,000	21,500
		20,000	21,500
Net financing		541	(311)
Net increase/(decrease) in cash and cash equivalents in the period		541	(311)
Cash and cash equivalents at the beginning of the period		167	478
Cash and cash equivalents at the end of the period		708	167

Statement of changes in Taxpayers' Equity

	Note	I&E Reserve £'000	Revaluation Reserve £'000	Total Reserves £'000
Balance as at 31 March 2008		1,853	448	2,301
Changes in accounting policy	2	(4,114)		(4,114)
Restated balance at 1 April 2008		(2,261)	448	(1,813)
Changes in Taxpayers' Equity 2008/09:				
Net gain/(loss) on revaluation of property, plant and equipment			(48)	(48)
Release of reserves to the I&E		40	(40)	-
Retained deficit	2	(23,194)	8	(23,186)
Total recognized income and expense for 2008/09		(23,154)	(80)	(23,234)
Balance as at 31 March 2009		(25,415)	368	(25,047)
Grant from BIS:				
Revenue expenditure		20,909		20,909
Capital expenditure		591		591
Balance as at 31 March 2009		(3,915)	368	(3,547)
Changes in Taxpayers' Equity 2009/10:				
Net gain/(loss) on revaluation of property, plant and equipment			(368)	(368)
Retained deficit	2	(21,756)		(21,756)
Total recognized income and expense for 2009/10		(21,756)	(368)	(22,124)
Balance as at 31 March 2010		(25,671)	-	(25,671)
Grant from BIS:				
Revenue expenditure		19,655		19,655
Capital expenditure		345		345
Balance as at 31 March 2010		(5,671)	-	(5,671)

Notes to the financial statements

1. Accounting policies

These financial statements have been prepared in accordance with the 2009/10 Government Financial Reporting Manual (FRoM). The accounting policies contained in the FRoM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector context. Where the FRoM permits a choice of accounting policy, the accounting policy which is judged to be the most appropriate to the particular circumstances of the CC for the purposes of giving a true and fair view has been selected. The particular policies adopted by the CC for the purpose of financial reporting are described below. They have been applied consistently in dealing with items that are considered material to the accounts. These are the first financial statements prepared under IFRS and IFRS I First Time Adoption has been applied. In note 2 there is an explanation of how the transition from UK GAAP to IFRS has affected Taxpayer's Equity and the Net Expenditure Account.

1.1 Accounting convention

These accounts have been prepared under the historical cost convention modified to account for the revaluation of property assets.

(a) Income

The net cash needs of the CC are financed by grant-in-aid from BIS.

Income relates mainly to charges to tenants for occupancy and service charges for Finance, IT and Facilities along with charges to other government bodies for secondees. Income is recognized when the service is provided.

(b) Non-current assets

Expenditure on non-current assets is capitalized. Intangible non-current assets comprise software licences. Tangible non-current assets comprise IT equipment such as servers, PCs and printers as well as office fixtures and fittings and office leasehold improvements. The capitalization threshold limits and depreciation policy are explained below and at note (d). Tangible assets are carried at fair value.

Expenditure on major IT projects is capitalized. This includes expenditure directly incurred on hardware, software and appropriate consultants' costs. Non-current assets are capitalized where the cost is £1,000 or over. However, for grouped purchases of IT equipment, IT software or fixtures and furniture, individual items with a cost of £200 or greater are capitalized where the total grouped purchase is £1,000 or more. Consultants' expenditure is generally charged to the Net Expenditure Account when incurred. However, where the level of expenditure is over £100,000 and creates a distinct asset for the CC which has a life of more than one year, consultants' costs that are directly attributable to the asset are capitalized.

Assets in the course of construction are capitalized at purchase cost and then depreciated from the date that they become operational.

Depreciated historical cost is used as a proxy for fair value as this realistically reflects consumption of the assets. This is used for non-property assets that have a short useful economic life and/or have a low value (ie IT, fixtures and fittings and intangibles). Revaluations would not cause a material difference.

The leasehold asset is revalued each year using private commercial output price indices supplied by the Office for National Statistics. These indices can either go up, increasing the value of the asset, or fall, which causes a devaluation of the asset.

(c) Depreciation

Depreciation is charged in respect of all capitalized non-current assets and charged to the Net Expenditure Account at rates calculated (less any estimated residual value) for each asset evenly over its expected useful life as follows:

Intangible non-current assets

Software licences	2 to 4 years
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Tangible non-current assets

IT	3 to 5 years
Fixtures & furniture	5 to 10 years
Leasehold improvements	20 years, ie over lease term
Leasehold dilapidations	20 years

(d) Notional cost of capital

In accordance with HM Treasury requirements, a notional charge on capital of 3.5 per cent a year (2008/09: 3.5 per cent a year) is levied on the CC on the average net capital employed. However, the charge is at a nil rate for the CC's cash balances as these are held with the Office of HM Paymaster General.

(e) Taxation

- (i) The CC is liable for Corporation Tax on interest earned on bank deposits.
- (ii) Costs shown for capitalized non-current assets include related Value Added Tax (VAT). Expenditure in the Net Expenditure Account is also shown inclusive of VAT, with the exception of costs relating to property subletting and some miscellaneous trading activities. The CC charges VAT to its tenants on property transactions and reclaims VAT on its related expenditure. Expenditure on property that is sublet and expenditure on miscellaneous trading activities is shown exclusive of VAT in the Net Expenditure Account.

Notes to the financial statements (*continued*)

(f) Pensions

Full staff and members pension details are given in note 16. Provision is made for the actuarially assessed liability of the CC's 'PCSPS by analogy' pension scheme for members who are or were Chairmen or Deputy Chairmen. In accordance with HM Treasury guidelines, the full calculated pension liability is accrued and recognized in the Net Expenditure Account.

No recognition of the staff PCSPS scheme is made in the CC's accounts as this is an unfunded multi-employer defined benefits scheme and the CC is unable to identify its share of the underlying assets and liabilities. Liability for payment of future benefits is a charge on the PCSPS. In respect of the defined contribution elements of the schemes, the CC recognizes the contributions payable for the year.

(g) Operating leases

Rentals are charged to the Net Expenditure Account in equal amounts over the lease term.

(h) Going concern

BIS has confirmed that there is no reason to believe that its future sponsorship will not be forthcoming within the capital and resource budgets set by Spending Review Settlements. It has accordingly been considered appropriate to adopt a going concern basis for the preparation of these financial statements.

(i) Provisions

The CC provides for legal or constructive obligations which are of uncertain timing and/or amount at the balance sheet date on the basis of the best estimate of the expenditure required to settle the obligation. Where the effect of the time value of money is significant, the estimated risk-adjusted cash flows are discounted using HM Treasury discount rate of 2.2 per cent a year in real terms (2008/09: 2.2 per cent a year).

Where provisions for leasehold dilapidations are required, the CC creates a dilapidations asset, using indexation to revalue the asset annually, and depreciates the asset over the remaining term of the leasehold. Further information on the dilapidations asset is detailed in note 8.

Details of the pension provision is provided in note 16.

(j) Financial instruments

Financial instruments are initially measured at fair value plus transaction costs unless they are carried at fair value through

profit and loss in which case transaction costs are charged to operating costs.

The categorization of financial assets and liabilities depends on the purpose for which the asset or liability is held or acquired. Management determines the categorization of assets and liabilities at initial recognition and re-evaluates this designation at each reporting date.

Financial assets

The CC holds financial assets, which comprise cash at bank and in hand and receivables, classified as loans and receivables. These are non-derivative financial assets with fixed or determinable payments that are not traded in an active market. Since these balances are expected to be realized within 12 months of the reporting date, there is no material difference between fair value, amortized cost and historical cost.

Financial liabilities

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

(k) Reserves

Income and expenditure reserve

The CC accounts for its accumulated deficit in the Income and Expenditure reserve.

Revaluation reserve

The revaluation reserve reflects the unrealized balance of the cumulative indexation and revaluation adjustments to assets. The CC's reserve reflects the revaluation of the leasehold asset.

2. First-time adoption of IFRS

The CC's financial statements for the year ended 31 March 2010 are the first financial statements that comply with IFRS as adapted and interpreted in the FReM. The following table shows the changes in taxpayers' equity, resulting from the transition from UK GAAP to IFRS at 1 April 2008.

	<i>Income & expenditure reserve £000</i>
Taxpayers' equity 31 March 2008 under UK GAAP	1,853
Adjustments for:	
IAS 19 Employee benefits: ¹	
Holiday pay accrual	(434)
IAS 17 Leases: ²	
Operating lease liability	(4,667)
Operating lease receivable	987
Taxpayers' equity at 1 April 2009 under IFRS	(2,261)
Net expenditure for 2008/09 under UK GAAP	(22,648)
IAS 19 Employee benefits: ¹	
Adjustments for decrease in holiday pay accrual	43
IAS 17 Leases: ²	
Adjustments for operating lease liability rental costs	(747)
Adjustments for operating lease receivable rental costs	158
Net expenditure for 2008/09 under IFRS	(23,194)

- IAS 19 requires the CC to recognize the expected cost of short-term employee benefits for services rendered to the CC during the financial year. Under UK GAAP, the CC already recognizes most short-term employee benefits. However, CC employees are permitted to accumulate a certain amount of annual leave. Therefore, under IFRS, the CC recognized a liability of £434,000 for untaken annual leave at 1 April 2008. This liability was reduced by £43,000 in 2008/09. The adjustments are reflected in figures shown in notes 3 and 12.
- The CC's lease of Victoria House has an agreed rent increase every five years. Previously, in accordance with SSAP 21, the CC has used an appropriate 'systematic and rational basis' to recognize operating lease payments and income. However, IAS 17 requires that any alternative systematic basis must be 'representative of the time pattern of the user's benefit'. Since the CC has full use of Victoria House for the lease term and that benefit does not change with time, operating lease payments and income are now recognized on a straight line basis over the lease term. The adjustments are reflected in figures shown in notes 4, 5, 10, 12 and 15.

Notes to the financial statements (*continued*)

3. Staff numbers and related costs

The cost of members' remuneration was:

	2009/10 £'000	2009/10 £'000	2009/10 £'000	2008/09 £'000
	Chairman & Deputy Chairmen	Other members	Total	Total
Wages and salaries	522	390	912	1,022
Social security costs	61	29	90	102
Pension costs	649	-	649	114
Total	1,232	419	1,651	1,238

- (a) The Chairman and Deputy Chairmen's pension costs relate to payments made to the pension scheme. See note 16 for information. The pension costs were higher than in 2008/09 due to the increase in the pension provision following the valuation from the Government Actuary's Department.
- (b) Members of the CC during the year are listed on pages 84–88. Terms and conditions of appointment for members are determined by the Secretary of State with the approval of the Treasury. Under the Enterprise Act 2002, new appointments will normally be for eight years. Members appointed prior to the Enterprise Act 2002 are normally on four-year terms with an option to extend for a further four years.
- (c) Members, including non-executive Council members, are paid a 'per diem' rate of £350 a day, which is equivalent to £50 per hour, and are reimbursed for their travel expenses.

The cost of staff remuneration was:

	2009/10 £'000	2009/10 £'000	2009/10 £'000	Restated 2008/09 £'000
	Permanent staff	Other staff	Total	Total
Wages and salaries	6,365	1,882	8,247	8,982
Social security costs	569	52	621	674
Pension costs	1,154	68	1,222	1,405
Total	8,088	2,002	10,090	11,061

- (i) The remuneration of the Chief Executive is included in staff remuneration.
- (ii) Salaries include redundancy payments of £414,380 (2008/09: £145,434).
- (iii) £619,000 was recovered in respect of the outward secondment of permanent staff (see note 5).
- (iv) The restated figure for wages and salaries in 2008/09 reflects the £43,000 adjustment for holiday pay referred to in note 2.

3. Staff numbers and related costs *(continued)*

Average number of staff employed

The average monthly number of full-time-equivalent staff (FTE), including secondees from government departments, other organizations, staff employed on short-term contract and temporary staff was:

	2009/10 FTE	2008/09 FTE
Employed on references:		
Permanent staff	84	88
Other staff	9	10
Total employed on references	93	98
Inquiry support:		
Permanent staff	17	20
Other staff	1	3
Total inquiry support	18	23
Support staff:		
Permanent staff	19	20
Other staff	11	13
Total support staff	30	33
Total staff	141	154

Notes to the financial statements (*continued*)

4. Other expenditure

	2009/10 £'000	Restated 2008/09 £'000
Rentals under operating leases	5,453	5,609
Running costs—Victoria House	2,339	2,159
Consultants' fees—inquiry related	829	1,545
Consultants' fees—not inquiry related	128	244
External surveys—inquiry related	182	13
Legal costs—appeals	1,762	330
Legal costs—employment tribunal	420	75
Legal costs—other	168	394
IT support and maintenance	151	205
Software licences	47	84
IT equipment and consumables	63	186
Telecommunications and internet charges	344	248
Inquiry variable costs	154	149
Travel, subsistence and hospitality:		
Members	108	168
Staff & contractors	60	115
Staff training	201	265
Staff recruitment	99	193
Subscriptions	154	161
Catering	206	194
Audit fees for statutory audit work	42	43
Other audit fees	23	31
Other administration	160	369
Non-cash items:		
Devaluation charge	218	-
Accounting estimate adjustment*	(292)	-
Loss on disposal of asset	-	1
Office relocation (decrease in provision)	-	(8)
Other expenditure	13,019	12,773
Other non-cash items		
Cost of capital credit	(146)	(83)
Depreciation	1,093	1,689
Total other operating charges	13,966	14,379

The CC occupies 54 per cent of its office space at Victoria House with the remainder sublet. The accommodation costs shown above are the full costs before sublet income of £3,340,000 (2008/09: £3,140,000) which is included as income (see note 5).

Operating lease rental costs included above were £5,575,000 for the year (2008/09: £5,149,000). The restated figure reflects the adjustment for operating lease liability rental costs referred to in note 2. The figure under rentals under operating leases includes an amount of £124,000 which relates to the CC's rent-free period which has been calculated over the lifetime of the lease.

Legal costs—appeals relate to the legal costs incurred by the CC on the inquiries that were appealed against in the CAT. Legal costs—employment tribunal relate to the legal costs incurred on an employment case that the CC successfully defended in 2009/10.

Other administration charges include office supplies, catering and other accountancy fees.

The devaluation charge is the amount charged to expenditure because of the downwards revaluation of the leasehold asset.

*See note 6.

5. Income

	2009/10 £'000	Restated 2008/09 £'000
Rent and other occupancy charges including corporate services charges:		
External:		
Garbe	-	293
Sinclair Knight Merz	622	307
Intra-Government:		
Competition Service (CAT)	1,718	1,661
NHS Institute for Innovation and Improvement	225	207
Legal Services Board	552	525
Museums, Libraries and Archives Council	-	108
Security Industry Authority	223	39
	3,340	3,140*
Charges for seconded-out staff:		
Intra-Government—Department for Transport	87	58
Intra-Government—Ofwat	-	8
Intra-Government—Office of Fair Trading	57	-
Intra-Government—Bank of England	8	81
Intra-Government—Civil Aviation Authority	90	83
Intra-Government—Department of Health	-	7
Intra-Government—HM Treasury	42	-
Intra-Government—Cooperation & Competition Panel	335	50
External	-	19
	619	306
Sundry income	134	48
Total income	4,093	3,494

*The £3,140,000 restated income for 2008/09 reflects the £158,000 adjustment for operating lease rental costs referred to in note 2.

Notes to the financial statements (*continued*)

6. Property, plant and equipment

	2009/10 £'000 Information technology	2009/10 £'000 Fixtures & fittings	2009/10 £'000 Leasehold costs	2009/10 £'000 Assets in course of construction	2009/10 £'000 Total
Cost:					
At 1 April 2009	3,570	807	7,666	107	12,150
Additions at cost	158	23	-	-	181
Disposals	(271)	-	-	-	(271)
Transfer to intangible assets	-	-	-	-	-
Revaluation	-	-	(822)	-	(822)
At 31 March 2010	3,457	830	6,844	107	11,238
Depreciation:					
At 1 April 2009	3,072	645	2,334	-	6,051
Provision for the year	318	42	349	-	709
Released on disposal	(271)	-	-	-	(271)
Revaluation	-	-	(529)	-	(529)
At 31 March 2010	3,119	687	2,154	-	5,960
Net Book Value:					
At 31 March 2010	338	143	4,690	107	5,278
At 31 March 2009	498	162	5,332	107	6,099

Assets in the course of construction carried forward are in respect of software licences for the Autonomy search tool (£107,000). There has been no movement in the current financial year.

The revaluation relates to a decrease in the value of leasehold assets based on the relevant Office for National Statistics and BIS price indices. The indices fell considerably in 2009/10 causing the devaluation of the asset.

In accordance with IAS 16 the residual value of the leasehold asset was reviewed and expectations differ from estimates in previous years. The change has been accounted for as a change in accounting estimate—see note 4. The credit to the Net Expenditure Account affects expenses for 2009/10; it does not affect any future periods.

6. Property, plant and equipment (*continued*)

	2008/09 £'000 Information technology	2008/09 £'000 Fixtures & fittings	2008/09 £'000 Leasehold costs	2008/09 £'000 Assets in course of construction	2008/09 £'000 Total
Cost:					
At 1 April 2008	3,316	665	7,714	107	11,802
Additions at cost	307	142	-	-	449
Disposals	(53)	-	-	-	(53)
Revaluation	-	-	(48)	-	(48)
At 31 March 2009	3,570	807	7,666	107	12,150
Depreciation:					
At 1 April 2008	2,609	530	1,972	-	5,111
Provision for the year	515	115	370	-	1,000
Released on disposal	(52)	-	-	-	(52)
Revaluation	-	-	(8)	-	(8)
At 31 March 2009	3,072	645	2,334	-	6,051
Net Book Value:					
At 31 March 2009	498	162	5,332	107	6,099
At 31 March 2008	707	135	5,742	107	6,691

Notes to the financial statements *(continued)*

7. Intangible assets

	2009/10 Software licences £'000
Cost:	
At 1 April 2009	1,105
Additions at cost	164
Disposals	(4)
At 31 March 2010	1,265
Amortization:	
At 1 April 2009	844
Provision for the year	232
Disposals	(4)
At 31 March 2010	1,072
Net Book Value:	
At 31 March 2010	193
At 31 March 2009	261
	2008/09 £'000 Software licences £'000
Cost:	
At 1 April 2008	963
Additions at cost	142
At 31 March 2009	1,105
Amortization:	
At 1 April 2008	638
Provision for the year	206
At 31 March 2009	844
Net Book Value:	
At 31 March 2009	261
At 31 March 2008	325

8. Dilapidations asset provision

	<i>2009/10</i> <i>£'000</i>
Cost:	
At 1 April 2009	2,940
Revaluation	16
At 31 March 2010	2,956
Depreciation:	
At 1 April 2009	809
Provision for the year	148
Revaluation	4
At 31 March 2010	961
Net Book Value:	
At 31 March 2010	1,995
At 31 March 2009	2,131

The estimated cost of restoring Victoria House to its original state at the end of the CC's lease in 2023 has been capitalized. It is revalued on a quinquennial basis by surveyors, supplemented by annual indexation. The last review was undertaken by Drivers Jonas in March 2009 and an estimated settlement figure was given, which incorporated the floor space and current market factors. This has been revalued using appropriate indices for construction repair and maintenance as supplied by the Office for National Statistics.

	<i>2008/09</i> <i>£'000</i>
Cost:	
At 1 April 2008	1,449
Revaluation	1,491
At 31 March 2009	2,940
Depreciation:	
At 1 April 2008	326
Provision for the year	483
At 31 March 2009	809
Net Book Value:	
At 31 March 2009	2,131
At 31 March 2008	1,123

9. Financial instruments

As the cash requirements of the CC are met through grant-in-aid paid by BIS, the CC has limited exposure to financial instruments. The majority of financial instruments relate to contracts to buy non-financial items in line with the CC's expected purchases and usage requirements and the CC is therefore exposed to little credit, liquidity or market risk.

Notes to the financial statements *(continued)*

10. Trade receivables and other assets

	2009/10 £'000	2008/09 £'000	1 April 2008 £'000
Amounts falling due within one year:			
Trade receivables:			
External	114	314	386
Intra-Government—OFT	-	4	4
Intra-Government—Competition Service (CAT)	9	22	(5)
Intra-Government—Cabinet Office	-	2	-
Intra-Government—Cooperation and Competition Panel	48	-	-
Intra-Government—Civil Aviation Authority	16	-	-
Intra-Government—Museums, Libraries and Archives Council	-	-	(2)
Intra-Government—The Office for Legal Complaints	3	-	-
Intra-Government—NHS Institute for Innovation and Improvement	9	9	19
Intra-Government—Sport England	4	-	-
Intra-Government—Department of Health	-	9	-
Intra-Government—Security Industry Authority	12	-	-
Intra-Government—Legal Services Board	14	68	-
Prepayments	99	75	373
VAT debtor	-	-	35
Tenants' rent-free period	19	19	41
Deposits and advances	26	24	23
Other receivables	-	1	4
Interest accrued	-	-	8
	373	547	886

Amounts falling due after more than one year:

	2009/10 £'000	Restated 2008/09 £'000	Restated 1 April 2008 £'000
Tenants' rent-free period	255	269	282
Competition Service rent	1,254	1,145	987
	1,509	1,414	1,269

Debtors falling due after one year represent a rent-free period granted to tenants. This amount is being amortized over the periods of the respective leases. The total rent-free period debtor at 31 March 2010, including those amounts shown at note 10 above falling due within one year, was £274,000.

The Competition Service rent represents the remaining amount receivable over the lifetime of the lease for the rent calculated on a straight line basis. The restated figures reflect the £987,000 operating lease receivable and the £158,000 adjustment for operating lease receivable rental costs referred to in note 2.

11. Cash and cash equivalents

	2009/10 £'000	2008/09 £'000
Balance at 1 April	167	478
Net change in cash and cash equivalent balances	541	(311)
Balance at 31 March	708	167
The following balances at 31 March were held at:		
Government Banking Service	708	167

The CC's bank account is an interest-bearing current account with the Government Banking Service.

12. Trade payables and other current liabilities

Amounts falling due within one year:

	2009/10 £'000	Restated 2008/09 £'000	Restated 1 April 2008 £'000
Trade payables:			
External	301	419	322
Intra-Government—BIS	8	9	-
Victoria House rent—deferred income	138	138	138
PAYE, National Insurance & pension	363	384	401
Bonus pay accrual	250	250	-
Holiday pay accrual	380	391	434
VAT	20	39	-
Corporation Tax	2	19	39
Other payables	1,084	282	1,101
	2,546	1,931	2,435

The restated figures reflect the £434,000 holiday pay accrual and the £43,000 adjustment for decrease in holiday accrual referred to in note 2.

Amounts falling due after more than one year:

	2009/10 £'000	Restated 2008/09 £'000	Restated 1 April 2008 £'000
Victoria House rent—deferred income	1,725	1,863	2,001
Victoria House rent—operating lease liability	5,929	5,414	4,667
	7,654	7,277	6,668

The Victoria House rent—deferred income relates to the amortization of a rent-free period. Under the rules of UITF Abstract 28: Operating Leases, the value of the rent-free period is being amortized on a straight line basis over the 20-year term of the lease.

The Victoria House rent—operating lease charge is the remaining liability for the rental charge over the lifetime of the lease which has been calculated on a straight line basis.

The restated figures reflect the £4,667,000 operating lease liability and the £747,000 adjustment for operating lease liability rental costs referred to in note 2.

Notes to the financial statements *(continued)*

13. Provisions for liabilities and charges

(a) Provisions for the period ended 31 March 2010 are:

	Office relocation £'000	Capitalized office dilapidations £'000	Total provisions £'000
Balance as at 1 April 2009	113	2,940	3,053
Provided in the year	-	16	16
At 31 March 2010	113	2,956	3,069
Analysis of expected timing of discounted flows			
One to five years	113	-	113
More than five years	-	2,956	2,956
	113	2,956	3,069

The office relocation provision relates to the CC's former offices at New Court, London WC2, which were vacated in February 2004. Provision is made to cover contracted office rental liabilities at New Court. The provision is the CC's best estimate of its eventual liabilities and represents the cost of the remaining two years of the agreement taking into account likely subletting income. See note 15 on operating leases for an explanation of the CC's contractual obligations for New Court.

The capitalized office dilapidations provision relates to the CC's offices at Victoria House. The provision is made to cover the CC's estimated liability to restore Victoria House to its original state at the end of the lease in 2023. This cost has been capitalized—see note 8.

(a) Provisions for the period ended 31 March 2009 are:

	Office relocation £'000	Capitalized office dilapidations £'000	Total provisions £'000
Balance as at 1 April 2008	149	1,449	1,598
Provided in the year	-	1,491	1,491
Provisions not required written back	(8)	-	(8)
Provisions utilized during the year	(28)	-	(28)
At 31 March 2009	113	2,940	3,053
Analysis of expected timing of discounted flows:			
One to five years	113	-	113
More than five years	-	2,940	2,940
	113	2,940	3,053

13. Provisions for liabilities and charges *(continued)*

(b) Pension provisions for the period ended 31 March 2010 are:

	<i>Pension liabilities 2009/10 £'000</i>
As at 1 April 2009	1,905
Provided in year	658
Provisions utilized in the year	(105)
As at 31 March 2010	2,458

In accordance with the requirements of FRS 17, the CC has provided for the actuarially assessed liability of the CC's 'PCSPS by analogy' pension scheme (see note 16).

(b) Pension provisions for the period ended 31 March 2009 are:

	<i>Pension liabilities 2008/09 £'000</i>
As at 1 April 2008	1,884
Provided in year	114
Provisions utilized in the year	(93)
As at 31 March 2009	1,905

14. Capital commitments

The CC has no capital commitments.

Notes to the financial statements *(continued)*

15. Operating leases

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

	2009/10 £'000	2008/9 £'000
Land and buildings		
Not later than one year	5,497	5,380
Later than one year and not later than five years	23,071	22,349
Later than five years	56,951	63,170

The CC has a 20-year lease for office space in Victoria House, Southampton Row, London WC2. The lease start date was September 2003. The total space is 8,261 sq metres, of which 3,838 sq metres (46 per cent) has been sublet and 4,423 sq metres (54 per cent) is the CC's net space. The CC's net operating lease commitment is £67,426,000 (2008/09 £71,686,000).

The terms of the Victoria House lease include a compounded annual rent increase of 2.5 per cent that is applied every five years. The operating lease commitments shown above include the compounded annual rent increase. The first increase was in September 2008 and was 13.14 per cent.

The CC also has an existing tenancy agreement under a memorandum of terms of occupation (MOTO) between BIS and The Valuation Office for approximately 3,000 sq metres of office space in New Court, Carey Street, London WC2. This agreement expires on 24 March 2012. The CC has no formal or contractual responsibility for the liabilities under this agreement. However, it has agreed with BIS to manage the reassignment of the agreement and to make financial provision for the potential future liabilities. The provision made under 'office relocation' is the CC's best estimate of its likely continuing cost up to the point when the MOTO expires taking account of potential sublet income. Provision has been made for remaining liabilities.

16. Staff and members' pension costs

Ordinary and panel members of the CC are not pensioned. Members who are or were Chairmen or Deputy Chairmen are members of the CC's 'PCSPS by analogy' scheme, gaining benefits commensurate with their salary and service. This is a defined benefit scheme and is unfunded and non-contributory except in respect of dependants' benefits and additional employee contributions to the classic and premium schemes. At 31 March 2010 there were four active members and ten current pensioners. The CC makes no contributions to the scheme. Instead it pays pensions to retired members as they become due. The actuarial liability at 31 March 2010 was £2,458,000 (31 March 2009: £1,905,000). Pensions in payment of retirees (and deferred pensions) did not increase from 12 April 2010. The CC is satisfied that any obligation it is unable to meet in the normal course of its activities in respect of members' pensions would be met by the Secretary of State.

The valuation was carried out by the Government Actuary's Department from membership information supplied to it. The financial and demographic assumptions used in the assessment are consistent with those used elsewhere in central government for resource accounting. The key financial assumption, that rates of return net of price increases are 1.8 per cent a year, is specified for resource accounting purposes by HM Treasury. The following allowances are assumed: increase in salaries 4.3 per cent a year, price inflation 2.75 per cent a year, and increase for pensions in payment and deferred pensions 2.75 per cent a year.

During the period ended 31 March 2010 pension payments of £105,000 (2008/09: £108,000) were made to retired Chairmen and Deputy Chairmen.

Laura Carstensen, Deputy Chairman, is not part of the CC's 'PCSPS by analogy' scheme; the CC makes contributions to her private pension scheme in line with civil service pension arrangements.

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

Employee contributions are set at the rate of 1.5 per cent of pensionable earnings for classic and 3.5 per cent for premium and classic plus and nuvos. 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 hybrid with benefits in respect of service before 1 October 2002 calculated broadly as per classic and benefits for service from October 2002 calculated as in

premium. In nuvos a member builds up a pension based on his pensionable earnings during his period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3 per cent of his or her pensionable earnings in that scheme year and the accrued pension is uprated in line with RPI.

In all cases members may opt to give up (commute) pension for lump sum up to the limits set by the Finance Act 2004.

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

Further details about this and other civil service pension arrangements can be found at www.civilservice-pensions.gov.uk.

For the year ended 31 March 2010, employer's contributions of £1,222,000 were payable to the PCSPS (2008/09: £1,405,000).

17. Contingent liabilities

There are no contingent liabilities to report.

18. Related party transactions

The CC is a non-departmental public body (NDPB) sponsored by BIS and funded by a grant-in-aid from that department. BIS is regarded as a related party. During the year, the CC had various material transactions with BIS, all of which were conducted at arm's length prices. In addition, the CC had a small number of material transactions with other government departments and other central government bodies, all conducted at arm's length prices.

None of the CC members or key managerial staff undertook any material transactions with the CC during the year, except for remuneration paid for their services and, in the case of members, reimbursement of home to office travel expenses.

The CC has sublet part of its office premises at Victoria House to the Competition Service (sponsored by BIS), under the same terms as its own lease. It has also sublet office space on shorter terms to the NHS Institute for Innovation and Improvement, Legal Services Board, Security Industry Authority and to a private company Sinclair Knight Merz.

19. Events after the reporting period

There are no post balance sheet events to report.

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

Members' biographies



Jayne Almond (appointed in 2005) is currently Chief Executive of Stonehaven, a specialist Equity Release mortgage business, and Chairman of Squarestone, a private commercial property business with interests in the UK and Portugal. She has previously been Managing Director of Barclays' Home Finance business, Group Marketing Director at Lloyds TSB, and Managing Director of Lloyds TSB's European Internet banking business. In her earlier career she worked for Shell, and was a senior partner at LEK Consulting, in charge of its financial service practice. She has held a number of non-executive appointments including Ascot plc and Deputy Chair of CDC.

Robin Aaronson (appointed in 2009) is an economist specializing in competition policy. In the 1980s he was senior economic adviser to the MMC. Subsequently, he worked as a consultant in the field, as a partner at Coopers and Lybrand and later at LECG. From 2000 to 2006 he was a member of the Postal Services Commission and he has previously worked at HM Treasury and in the Ministry of Defence.



Professor John Baillie (appointed in 2001) is a chartered accountant, specializing in share and business valuation and dispute resolution. He was previously a partner in KPMG. In 1983 he was appointed Professor of Accounting at the University of Glasgow, where he is now a visiting Professor. He is Chair of the Accounts Commission and Chair of Audit Scotland. He has recently completed an independent review of local government finance in Scotland for the Scottish Executive. He has also chaired various committees and groups for the Institute of Chartered Accountants of Scotland.

Professor John Cubbin (appointed in 2005) is Emeritus Professor of Economics at City University in London. He was Director of the Centre for Competition and Regulatory Policy at City, where he founded one of the first Masters degrees in Regulation and Competition. He was previously an Associate Director with National Economic Research Associates (NERA); Professor of Economics at UMIST; Reader in Economics at Queen Mary College, University of London; and a Lecturer in Economics at the University of Warwick. He is widely published on the economics of markets, competition and regulation and has carried out an extensive range of consultancy studies in the regulated sector.



Roger Davis (appointed in 2005) is a Chartered Accountant. Until 2003 he was a partner of PricewaterhouseCoopers. For several years he was the Senior Audit Partner and then Global Head of Professional Affairs. He also spent two years with HM Treasury. He was until recently a board member of the Professional Oversight Board, the UK's independent regulator for the accountancy and actuarial professions.

Carolyn Dobson (appointed in 2005) is the Chairman of Qinetiq's Pension Fund, a trustee of the Avon Pension Fund and an expert adviser to a number of other corporate and Local Government Pension Funds. She was Head of the Investment Floor at Abbey Asset Managers, a director of Murray Johnstone and the fund manager of two award-winning Investment Trusts. She is also a non-executive director of Shires Smaller Companies plc, Chairman of Lomond School and a council member of Sport Scotland.



Barbara Donoghue (appointed in 2005) is a banker with experience in raising capital, both debt and equity, in domestic and international markets. She is a non-executive director and Chairman of the Audit Committee of Eniro AB, and a director of Manzanita Capital. She is a former Teaching Fellow in Strategic and International Management at the London Business School and Member of the Independent Television Commission and a Trustee of Refuge. She holds a Bachelors degree in Economics and a Masters degree in Business Administration, both from McGill University, Canada.



Phil Evans (appointed in 2009) is an independent consultant on consumer, competition and trade issues and a senior consultant to Fipra International. He spent a decade at Which?, has taught at a number of universities and authored numerous books and articles on trade, competition, intellectual property and shopping. He has provided technical assistance to the World Trade Organization, the United Nations Conference on Trade and Development and UNICEF and is on the advisory boards of the American Antitrust Institute and the Loyola University Consumer Antitrust Institute. He is a visiting fellow at Oxford University's Saïd Business School Centre for Corporate Reputation.

Professor Simon Evenett (appointed in 2009) is Professor of International Trade & Economic Development, University of St Gallen, Switzerland. He is also Programme Director of the International Trade and Regional Economics Programme of the Centre of Economic Policy Research. His research interests include national and international cartels, cross-border mergers and acquisitions, and the pros and cons of international norms on competition law and policy.



Richard Farrant (appointed in 2005) is a non-executive director of Daiwa Capital Markets Europe, member of the Investigation Committee of the Institute of Chartered Accountants and a member of the National Trust's Council. Former positions include Chairman of Sustrans, Vice Chairman of United Financial Japan International Limited, Chief Executive of the Securities and Futures Authority, Managing Director and Chief Operating Officer of the Financial Services Authority, and board member of the Gas and Electricity Markets Authority.

Roger Finbow (appointed in 2009) has been a partner of international solicitors Ashurst LLP since 1984 and retired on 30 April 2009. The last five years have been spent as Managing Partner of the Corporate Department. He is the joint author of *UK Merger Control: Law and Practice*. He is now a consultant at Ashurst and has a number of board and advisory roles in the education, sport and career development sectors.



Ivar Grey (appointed in 2005) is a self-employed financial adviser. He also works as a non-executive director of Finance Wales PLC, non-executive director of the Cardiff and Vale University Health Board, Chairman of Kids in the Middle, and as Governor of Port Regis School. He acts as a Forensic Accountant and works with various charitable and business organizations. He is also a Chartered Accountant. In 2002 he retired as a partner with KPMG, having worked with them in the UK, Norway, Denmark and the Netherlands.

Jill Hill (appointed in 2005) was a director of Remploy for seven years, after many years with Rolls-Royce plc. She is currently a Member of the General Teaching Council for England, and a Trustee of Guide Dogs for the Blind. She is a Chartered Engineer and a Fellow of the British Computer Society. She has previously been a non-executive director of NDI Ltd, a member of several trade organizations, including a Regional Council Member and an Education and Training Committee member of the CBI, and a director of the Employment Related Services Association. She was an advisory member to the Foster Review on Further Education.



Thomas Hoehn (appointed in 2009) is a Visiting Professor at Imperial College Business School, London, where he teaches on the MBA programme. Previously a Partner at PricewaterhouseCoopers, he specializes in the application of economic analysis to competition law, intellectual property and sport. Between 2001 and 2006 he advised the BBC Board of Governors as part of its Fair Trading audit team. His recent work has focused on the design and implementation of merger remedies and compliance issues in EC competition law more generally.

Members' biographies *(continued)*



Katherine Holmes (appointed in 2009) has been a partner and head of the competition department at the London office of Reed Smith which merged in 2007 with Richards Butler, her former firm. Before joining Richards Butler in 1989, she was an in-house competition lawyer for more than eight years, latterly as senior competition counsel at Guinness PLC; before that, she was at the Confederation of British Industry. She is the immediate past Chairman of the Joint Working Party of the Bars and Law Societies of the UK on Competition Law.

Alexander Johnston (appointed in 2005) is an external member of the Finance Committee and Chairman of the North West Cambridge Project Board of Cambridge University, senior adviser to a corporate advisory firm Lilja & Co AG and a member of the Thames Estuary Steering Group. He was until 2003 a Managing Director at Lazard, London, where he worked in corporate and project finance, mainly in electricity, rail and utility industries, in the UK and in Europe. He has also been Chairman of BMS Associates Limited, a reinsurance broker.



Ian Jones (appointed in 2005) is a director of Croft Consulting Services, an economics consultancy, where he works for clients in the UK and overseas. Until his retirement in 2003, he was a director and Head of the European Transport Practice of NERA Economic Consulting, where he was extensively involved in the privatization of UK airports and railways, and directed major studies for the European Commission on the use of market mechanisms to allocate scarce airport capacity; on rail infrastructure charging and regulation; and on competition in European aviation markets. He has also worked with the National Institute of Economic and Social Research, the MMC, London Business School and the Government Economic Service.

Peter Jones (appointed in 2005) is a non-executive director of The National Nuclear Laboratory Limited, and a Fellow of the Chartered Association of Certified Accountants. From 2003 to 2010 he was a director of Rhydfach Consulting Limited, a private consultancy company. Prior to forming his consultancy company, he was a Managing Director in corporate finance at HSBC Bank plc, working latterly in the Energy and Utilities sectors and previously on a number of major UK privatizations. He has subsequently undertaken consultancy work for clients including the Government's Shareholder Executive, British Nuclear Fuels plc and Royal Mail Group Limited.



John Longworth (appointed in 2009) was originally a scientist. He was an Executive Main Board Director of Asda Group and held senior director positions at Tesco Stores Ltd and the CWS (Cooperative Group). His non-executive roles included a Healthcare Trust and the British Retail Consortium. He was economic spokesman for the CBI and Chairman of the Distributive Trades Panel, and Chairman of the Paris-based CIES International Product Standards and Trade Panel. Until recently a Health and Safety Commissioner and Chairman of the HSE Audit Committee, he also sat on the original Deregulation Task Force. He is currently helping a Healthcare Trust establish a Commercial and Marketing operation and is a shareholder director of a Midlands-based science and technology company, SVA Ltd.

Professor Bruce Lyons (appointed in 2002) is Professor of Economics at the University of East Anglia. Previously he was an economics lecturer at St John's College, Cambridge. Since 1994, he has been a member of the Economic Advisory Group on Competition Policy for the European Commission. He is Deputy Director of the ESRC Centre for Competition Policy at UEA, and is involved in a research programme on the economics of competition policy. He was formerly Editor of the *Journal of Industrial Economics* and is Associate Editor of *Economica*. He has published various books and articles on the economics of industry.



Professor Robin Mason (appointed in 2009) is Professor of Economics and Associate Dean of the Business School at the University of Exeter. He is a fellow of the CEPR and associate editor of the *Journal of Industrial Economics*. He has acted as adviser to Ofcom and the Prime Minister of Mauritius on competition policy.



Tony Morris (appointed in 2009) is a solicitor with over 30 years' experience of UK and EU competition law. Before retiring in May 2009, he spent 24 years as a partner in the city firm of Linklaters specializing in the control of cartels and mergers and the conduct of industry competition inquiries.

Malcolm Nicholson (appointed in 2009) has been a partner at Slaughter and May specializing in competition matters for over 25 years, and in that capacity has been involved in many cutting edge competition cases.



Stephen Oram (appointed in 2009) worked for 28 years at director level in the regional and national newspaper industry and as a Chief Executive of daily, weekly and free regional newspapers. He was Director of the Newspaper Publishers Association for ten years. Currently he is Executive Chairman of the London Press Club, non-executive Chairman of a national newspaper advertising consumer protection scheme and National Secretary of the Western Front Association.

Jeremy Peat (appointed in 2005) is a member of the Board of Trustees of the BBC, a National Trustee for Scotland, and Director of the Edinburgh-based David Hume Institute. He was Group Chief Economist at The Royal Bank of Scotland from 1993 to 2005 and previously he was an economic adviser at The Scottish Office, HM Treasury, the Manpower Services Commission and the Ministry of Overseas Development. He is a fellow of the Royal Society of Edinburgh and the Chartered Institute of Bankers for Scotland, an Honorary Professor at Heriot Watt University and a director of the Signet Accreditation Company.



Ed Smith (appointed in 2009) is a former senior partner and Global Assurance COO and Strategy Chairman of PricewaterhouseCoopers. He now enjoys a portfolio of board roles in education, transport, sport, thought leadership and the environment and sustainable development. He is Chairman of WWF-UK, Deputy Chairman of the Higher Education Funding Council for England, and a Member of Council and Treasurer of Chatham House. He joined the board of the Department for Transport on 1 January 2009.

John Smith (appointed in 2005) has had a career which spans central government and regulated industries. He was Director of Regulation with Anglian Water (1990–97) and with Railtrack plc (1997–2002). Previously, he was a member of the Government Economic Service, working mainly in the Department of the Environment, in the areas of transport, local government finance, environmental protection and water privatization. Currently, he works as an independent consultant, and is an associate of Indepen Consulting Ltd. He is also a trustee of Groundwork North London, an environmental regeneration charity, and a member of the Groundwork London Board.



Anthony Stern (appointed in 2005) is a director of InterContinental Hotels UK pension trust. He was Director of Treasury for Bass and InterContinental hotels from 1988 to 2003, where he participated in financing mergers and acquisitions, a number of which involved competition investigations. Prior to this he worked for Dixons, Marks & Spencer and Chase Manhattan Bank. From 2001 to 2002 he was President of the Association of Corporate Treasurers. He has written for the Economist Intelligence Unit on aspects of financial markets.

Members' biographies *(continued)*



Tony Stoller CBE (appointed in 2009) was Chief Executive of the Radio Authority until it was subsumed into Ofcom in 2003. He then helped set up the new regulator. He is currently Deputy Chair of the Joseph Rowntree Foundation, Chair of the Committee of Reference for F&C Asset Management's Stewardship Funds, Editor of *The Friends Quarterly*, and a member of the Freedom of Information Tribunal.

Professor Sudi Sudarsanam (appointed in 2005) is Professor of Finance & Corporate Control at the School of Management, Cranfield University, and Co-Director of the Centre for Research in Economics and Finance. He is the author of a number of books and articles about mergers and acquisitions and co-editor of *Corporate Governance and Corporate Finance in Europe*. He is on the editorial board for the *Journal of Business Finance & Accounting* and *Review of Behavioural Finance*. He is Honorary Senior Visiting Fellow at the Mergers and Acquisitions Research Centre, Cass Business School, London, and an affiliate of the Centre for Management Buyout Research at Nottingham University. He is an Associate of the Chartered Institute of Bankers, London.



Richard Taylor (appointed in 2005) was a partner at CMS Cameron McKenna, where he worked for 30 years and specialized in competition law. During this time, he also both founded and chaired CMS, an alliance of European law firms. He is a member of the board of the Solicitors Regulation Authority and is co-Chair of the Corporate Social Responsibility committee of the International Bar Association. He is also a trustee of the charities Beating Bowel Cancer and beat (the Eating Disorders Association).

Professor Michael Waterson (appointed in 2005) is Professor of Economics at the University of Warwick. He held previous academic posts at the Universities of Reading and Newcastle and was President of the European Association for Research in Industrial Economics. He was also General Editor of the *Journal of Industrial Economics*. Currently he is Chair of the (UK) Network of Industrial Economists. He has published widely in a variety of areas of industrial economics. He has served as Specialist Adviser to Subcommittee B of the European Union Committee of the House of Lords.



Jonathan Whitarcar (appointed in 2005) is non-executive director of Countrywide Principal Services Limited and a Chartered Accountant in England & Wales and in Ontario, Canada. Until 2005, he was a Managing Director of The Royal Bank of Scotland, with over 20 years' experience in mergers and acquisitions, banking and capital markets. He is a consultant to professional regulatory bodies and has been a consultant to BIS. He is a Trustee and Treasurer of the Hampshire and Isle of Wight Community Foundation.

Roger Witcomb (appointed in 2009) is Chair of Governors of the University of Winchester and a non-executive director of a number of companies, including Anglian Water. He was Finance Director of National Power from 1996 to 2000, having previously been at BP and Cambridge University, where he taught economics.



Fiona Woolf CBE (appointed in 2005) is a consultant with CMS Cameron McKenna where she built an international energy and infrastructure practice as a partner. She has worked on energy, water and infrastructure reforms, projects and regulation in over 38 jurisdictions. She is also a senior adviser with London Economics International LLC, a non-executive director of Three Valleys Water plc and a trustee of Raleigh International. She was previously President of The Law Society of England and Wales and is an Alderman in the City of London.

Academic panellists

The CC has an academic panel of economists to act in an advisory capacity to staff. These individuals have been invited to sit on the panel because of their background and experience. Their biographies can be found on the CC website: www.competition-commission.org.uk/our_peop/members/index.htm.

Dr Walter Beckert, Academic Economist at Birkbeck College, University of London.

Dr Pierre Dubois, Research Director of INRA at the Toulouse School of Economics at the University of Toulouse and a research fellow of the Institute of Industrial Economics.

Professor Richard Green, Director of the Institute for Energy Research and Policy and Professor of Energy Economics in the Department of Economics at the University of Birmingham.

Professor Paul Klempner, Professor of Economics at Oxford University.

Dr Lars Nesheim, Lecturer in the Department of Economics at University College, London, and Co-Director of the Centre for Microdata Methods and Practice.

Professor Volker Nocke, Professor of Industrial Economics at the University of Oxford and a Fellow of Jesus College, Oxford.

Dr Philipp Schmidt-Dengler, Lecturer in Economics at the London School of Economics.

Dr Howard Smith, Lecturer in the Economics Department, University of Oxford.

Dr Andrew Sweeting, an academic in the Economics Department at Duke University, North Carolina.

Professor Tommaso Valletti, Professor of Economics at Imperial College, London, and also Professor of Economics at the University of Rome 'Tor Vergata' (Italy).

Senior team



Rachel Merelie, Senior Director, Inquiries. Rachel Merelie joined the CC in 2003 from Cap Gemini Ernst & Young. She previously managed business planning for Ernst & Young, worked as a management consultant, and held a variety of posts in the electricity industry. She has an MBA from HEC in France. At the CC she led the market investigation into personal current accounts in Northern Ireland and has worked on a variety of merger inquiries including, most recently, those in the media sector.

Mark Bethell, Inquiry Director. Mark Bethell joined the CC in 2008. He previously practised competition law in private practice in Brussels, and was a case handler at the OFT. He has also acted as one of the UK's agents in litigation before the EC courts, and as an advisory lawyer at Defra.



Douglas Cooper, Inquiry Director. Douglas Cooper joined the CC in 1999 as an Economic Adviser. He acted as lead economist on many merger and market inquiries. Before joining the CC, he worked at BIS dealing with various industry sectoral issues, and at MAFF, working in the area of international agricultural policy reform. He holds a PhD in economics from Nottingham University. He became an Inquiry Director in 2007, and has led several merger inquiries, and the market investigations into railway rolling stock leasing, and the current investigation into the Local Bus Services market.

John Pigott, Inquiry Director. John Pigott joined the CC in 2003 from consultants Stern Stewart. He had previously held various positions at Tate & Lyle including senior treasury, planning and IT roles. Since joining the CC he has worked on a wide variety of merger inquiries, market investigations and appeals. His most recent work includes directing the CC's consideration of price control appeals by Cable & Wireless and by TalkTalk Group.



Anthony Pygram, Inquiry Director. Anthony Pygram joined the CC in 2005 from BIS, where he worked, among other things, on mergers and nuclear non-proliferation. He has also worked as a postdoctoral researcher in ceramics, in product development of microporous materials, and in the nuclear industry. Since joining the CC he has worked as Inquiry Director on several merger inquiries and one market investigation, and spent a year acting as Director of Policy. Most recently he directed the payment protection insurance market investigation remittal.

Caroline Wallace, Inquiry Director. Caroline Wallace joined the CC in 2005. She spent the previous five years at Of tel and then Ofcom, where she was a Director of Competition Policy. She is a chartered engineer and, prior to joining Of tel, had worked in the telecommunications, water and manufacturing industries. Since joining the CC she has worked on merger inquiries in the transport, chemicals, food, entertainment and software sectors.



Andrew Wright, Inquiry Director. Andrew Wright joined the CC in 2005. Previously, he was a manager at Deloitte Corporate Finance where he advised on transactions in the technology and telecommunications sectors. He is a Chartered Accountant, having initially trained with Arthur Andersen. Since joining the CC, he has led inquiries in various sectors, including live music event promotion and ticketing, health food retailing, the transmission of television and radio, Stilton cheese production and mass spectrometry.



Lucy Beverley, Deputy Director of Financial Analysis. Lucy Beverley joined the CC in 2002. She qualified as a Chartered Accountant with Coopers & Lybrand in 1997 and then moved to the firm's management consulting division specializing in telecommunications strategy and policy. Prior to joining the CC she was Finance Director of an AIM listed company. Since joining the CC she has completed an MA in Competition and Regulation Policy from the University of East Anglia.

Adam Cooper, Deputy Director of Financial Analysis. Adam Cooper joined the CC as an Accounting Adviser in 2004. He qualified as a Chartered Accountant with Ernst & Young and remained there until 2001, including three years working as a consultant in the firm's Centre for Business Knowledge. In 2001 he moved to Abbey National plc as an e-business analyst in the company's Corporate Strategy department. Since joining the CC he has worked on a number of cases including Store Cards and Home Credit. In 2006 he spent three months at the OFT investigating profitability issues in UK retail banking.



David Roberts, Chief Business Adviser and Head of Remedies. David Roberts joined the CC in 2002 from Sainsbury's where his roles included Director of Corporate Finance and Group Treasurer. He previously worked for BP and Deloitte Haskins & Sells Management Consultants. He is a Chartered Accountant and has an MA in economics from Cambridge University. Since joining the CC, he has led advice on remedies for a wide variety of mergers and several market investigations.

Adam Land, Director of Remedies and Business Analysis. Adam Land joined the CC in May 2004 from HM Treasury where, among other responsibilities, he worked on the Cruickshank Review of banking service and the Barker Review of housing supply. Before that, he worked as an economist at the OFT for five years, specializing in mergers and financial services. Since joining the CC, he has worked on a number of significant cases, including the Payment Protection Insurance and Home Credit market investigations and the BskyB/ITV merger inquiry.



Graeme Reynolds, Director of Remedies and Business Analysis. Graeme Reynolds joined the CC in 2005. Before becoming Director of Remedies and Business Analysis in 2008, he worked in the economics team, acting as lead economist on the rolling stock market investigation and a number of merger inquiries. He has also spent a period on secondment to the OFT's mergers branch. Prior to joining the CC, he worked as an economic consultant for Andersen and, later, Deloitte, with particular experience in regulated utilities, notably energy and telecommunications. He is also a qualified Chartered Accountant.

Alison Oldale, Chief Economist. Alison Oldale joined the CC in 2009 from economic consultancy LECCG, where she was a director. She has over ten years of consulting experience, including three years based in Brussels, and has provided economic advice on a wide range of competition and regulatory issues. She holds a BA in economics from Cambridge University, and MSc and PhD from the London School of Economics.



Robin Finer, Director of Economic Analysis. Robin Finer joined the CC in 2007. Previously, he was a director in the Markets and Projects area of the OFT, where he led market studies and Competition Act 1998 investigations. Prior to this he worked as an economist on a wide range of OFT merger and antitrust investigations across many sectors, particularly transport and financial services. He has also worked in the Directorate General for Competition of the European Commission in Brussels where he dealt with antitrust matters in the food, drink, agricultural and pharmaceutical sectors.

Senior team *(continued)*



Tom Kitchen, Director of Economic Analysis. Tom Kitchen joined the CC in the late 1990s for his second stint at the CC and became a director in the economics team in 2003. He has worked on many inquiries. Before joining the CC, his competition and regulatory work focused mainly on the transport and energy industries.

Clare Potter, Chief Legal Adviser. Clare Potter joined the CC in 2004 from private practice. She was previously a partner in the competition group at City law firm Simmons & Simmons where she specialized in UK and EC competition law, utility regulation and telecommunications. She advised a wide range of companies in regulated and unregulated sectors as well as a number of regulatory bodies. She had periods of secondment to BIS and the European Commission. At the CC she has worked on many of the significant market and merger investigations and has responsibility for the CC's conduct of appeals before the CAT and in the High Court. She resigned from the CC in May 2010.



Carole Begent, Deputy Chief Legal Adviser & Head of International. Carole Begent joined the CC in 2000. She has specialized in competition and regulation, previously holding legal and policy posts at the Office of Rail Regulation and Ofwat. Before joining Ofwat she was a solicitor in private practice specializing in corporate, commercial and regulatory law. In addition to her involvement with investigations, she has helped revise the CC's working practices and prepare guidance, most recently participating in the review of the merger guidance. She is responsible for the CC's participation and contribution to international discussion of competition policy at the OECD and ICN.

Morven Hadden, Legal Director. Morven Hadden joined the CC in 2007. She was previously a senior associate in the EU, Competition & Regulatory department of City law firm Simmons & Simmons where she specialized in EU and competition law. She was seconded to BIS in 2003 where she worked as a competition policy adviser on the media merger provisions of the Communications Act 2003. Since joining the CC, she has advised the CC on merger, market and regulatory inquiries as well as acting for the CC in litigation. She has also been involved in revising the CC's merger guidance and merger remedies guidance and in developing procedural guidance.



Simon Jones, Legal Director. Simon Jones joined the CC from the Treasury Solicitor's Department in 2001. Since then, he has advised the CC in numerous merger, market, complex monopoly and regulatory cases. He has also acted for the CC in litigation and advised on code modification appeals and governance.

Rebecca Lawrence, Director of Corporate Services. Rebecca Lawrence joined the CC in 2005. She was formerly the Operations Director at the Rent Service (a Department for Work and Pensions agency). She has a background in policy development and implementation, change management and frontline service delivery. She holds a degree in housing administration, is a qualified chartered accountant (CPFA) and holds a postgraduate diploma in Public Finance and Leadership from Warwick Business School.



Chloe MacEwen, Director of Policy. Chloe MacEwen joined the CC in 2008. She was previously Deputy Director of Mergers at the OFT where she was responsible for delivery of mergers casework across a variety of industry sectors including transport and financial services. Prior to this, she worked as a seconded national expert in the mergers policy and strategic support unit of DG Competition, European Commission, and as a Legal Adviser at the CC working on mergers and market inquiries. Before working at the CC, she qualified as a solicitor at Simmons & Simmons and also spent three years at Herbert Smith working on a variety of mergers and antitrust work.



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