

# Competition Appeal Tribunal and Competition Service Accounts 2009-2010

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

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# Competition Appeal Tribunal and Competition Service Accounts 2009-2010

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## Introduction

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

### Principal functions of the Tribunal

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

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

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

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

### Membership of the Tribunal

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

The Tribunal membership in 2009-2010 comprised

#### **President**

The Honourable Mr Justice Barling

### **Ordinary Members**

Professor Andrew Bain OBE  
 Michael Blair QC  
 Peter Clayton  
 Michael Davey  
 Peter Grant-Hutchison  
 Professor Peter Grinyer  
 Sheila Hewitt  
 Ann Kelly  
 The Honourable Antony Lewis  
 Graham Mather  
 Professor John Pickering  
 Richard Prosser OBE  
 Dr Arthur Pryor CB  
 Dr Adam Scott OBE TD  
 Dr Vindelyn Smith-Hillman  
 Professor Paul Stoneman  
 David Summers OBE

### **Panel of Chairmen**

The Honourable Mr Justice Peter Smith  
 The Honourable Mr Justice Lewison  
 The Honourable Mr Justice David Richards  
 The Honourable Mr Justice Mann  
 The Honourable Mr Justice Warren  
 The Honourable Mr Justice Kitchin  
 The Honourable Mr Justice Briggs  
 The Honourable Mr Justice Henderson  
 The Honourable Mr Justice Morgan  
 The Honourable Mr Justice Norris  
 The Honourable Mr Justice Floyd  
 The Honourable Mr Justice Sales  
 The Honourable Mrs Justice Proudman  
 The Honourable Mr Justice Arnold  
 The Honourable Mr Justice Roth  
 The Honourable Mr Justice Vos  
 The Honourable Mr Justice Newey  
 Lord Carlile QC  
 Vivien Rose  
 Marcus Smith QC

### **Registrar**

Charles Dhanowa OBE

### **Recruitment**

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

### **The CS**

The CS is an executive non-departmental public body established by the Enterprise Act 2002 to provide the administrative staff, finance and accommodation required by the Tribunal to carry out its functions.

### **Membership and senior staff of the CS**

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

### **Register of interests**

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

## Premises

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

## Finance and workload

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

# President's Statement

## Introduction

This is my third annual statement. The past year has been a busy one: not only has the Tribunal's caseload increased significantly over this period, but a good deal of time and effort has also had to be spent on other matters, including the need to identify possible efficiencies and savings in the light of the current economic climate. Much of the burden of dealing with this has fallen upon the Registrar, but everyone at the Tribunal has been involved to a greater or lesser extent. The Registrar and I have attended numerous meetings with the relevant Government departments in connection with these issues. Suffice it to say that the Tribunal continues to operate within its budget and, at this point, I do not anticipate any constraints which will directly affect the quality of service our users have rightly come to expect.

## Chairmen

I am pleased to say that, following a recruitment exercise carried out by the Judicial Appointments Commission (JAC) over the course of the summer, and in which I participated, the Lord Chancellor has appointed Marcus Smith QC, a member of Fountain Court Chambers, to be a fee-paid chairman of the Tribunal. On behalf of all the staff and members of the Tribunal I take this opportunity to congratulate Marcus not just on his appointment as a chairman, but also on his being elevated to the rank of Queen's Counsel this year. Marcus has already begun to contribute to the work of the Tribunal and I look forward very much to him playing a full role in the very near future. Marcus's appointment brings the panel of chairmen back up to the strength it enjoyed prior to the untimely death in May 2008 of Marion Simmons QC, a much valued chairman of the Tribunal. (A full tribute to Marion can be found at pages 22-23 of the Annual Review and Accounts for 2007-2008).

Once more I would like to record my thanks to our two other fee-paid chairmen, Lord Carlile QC and Vivien Rose, for the invaluable contribution they continue to make in so many ways to the work of the Tribunal.

Under the current system operated by the JAC, judges appointed to the Chancery Division are also eligible to sit as chairmen of the Tribunal. This link to the senior judiciary makes an important contribution to the overall expertise and standing of the Tribunal and to the quality of service we provide to our users. For these reasons I place a good deal of emphasis on fostering that connection, principally by trying to ensure that Chancery judges do sit regularly in the Tribunal. I am extremely grateful to the Chancellor of the High Court for the support he has provided to the Tribunal in this respect. Thus Mr Justice Briggs recently chaired the panel which determined an application for judicial review under section 179 of the Enterprise Act 2002 concerning the Competition Commission's (CC) market investigation into the supply of payment protection insurance (PPI) in the United Kingdom: *Barclays Bank plc v Competition Commission*. In addition, Mr Justice Roth has kindly agreed to chair the panel hearing the appeals against the OFT's 'Construction Recruitment Forum' decision. The main hearing in these appeals is currently listed for July this year.

Over the past 12 months we have continued to seek a way of putting in place arrangements enabling certain suitably qualified judges in Scotland and Northern Ireland to sit as chairmen of the Tribunal in appropriate cases. I regard this as very important given that the Tribunal is a United Kingdom-wide body. In October 2009 the Registrar and I had a very useful meeting with the Lord President of the Court of Session, Lord Hamilton. Following that meeting an approach has been made to the Ministry of Justice. The Ministry are aware of the existing asymmetry and have been supportive in helping the Tribunal to make progress on this issue. They propose to consider with the JAC whether a procedure short of a full scale competition can be used for this purpose. If necessary a legislative solution could be adopted, whereby the heads of judiciary in the three jurisdictions were authorised to nominate appropriate members of their respective bodies of judges to sit as chairmen of the Tribunal. I will continue to keep this matter closely under review.

While on the subject of the panel of chairmen, we congratulate the three new judges appointed to the Chancery Division of the High Court since the last Annual Review: Mr Justice Roth; Mr Justice Vos; and Mr Justice Newey. Mr Justice Roth is, of course, no stranger to the Tribunal, having appeared here as counsel on numerous occasions.



## Members

I would also like to say how grateful I am for the able and conscientious help which the Tribunal continues to receive from its members. They have brought their skills and experience to bear on the work of the Tribunal for more than a decade. They have provided incalculable help and support to me and to all the Tribunal chairmen.

## Cases

This year has seen a bumper harvest of new cases such that the current caseload is approximately double that of the previous review period. Much of this increase has arisen as a result of the appeals against the consolidated decision of the Office of Fair Trading (OFT) in relation to bid-rigging by construction firms in England, which followed one of the largest ever investigations under the Competition Act 1998. In total, the Tribunal received 25 separate appeals against the decision, one of which was held to have been lodged out of time under the Tribunal Rules (*Fish Holdings Ltd v Office of Fair Trading*). The sheer volume of appeals presents a number of unique logistical and judicial challenges for the Tribunal. I am confident that the Tribunal's chairmen, members and staff will rise to the challenge.

There have also been three other appeals from a separate decision of the OFT under the 1998 Act in relation to recruitment for the construction industry (the 'Construction Recruitment Forum' decision mentioned above). Five new appeals under the Communications Act 2003 have been received, three of which have led to references being made to the CC under the price control provisions contained in section 193 of the 2003 Act. In addition, the Tribunal has received a further follow-on damages claim (the 12th such claim to be brought) in this case relating to the European Commission's *Methionine* cartel decision, five applications for review of merger and market decisions under sections 120 or 179 of the 2002 Act, and an application for interim relief.

As far as decided cases are concerned, the Tribunal has handed down 38 judgments or rulings in the period under review. Among the more notable ones are

*Barclays Bank plc v Competition Commission*: Barclays applied for a review of part of the report of the CC into the market for payment protection insurance (PPI). Barclays primarily challenged the imposition of the prohibition on the sale of PPI at the point of sale of the associated credit (POSP) which was part of the remedies package proposed by the CC. The Tribunal upheld Barclay's application in part, finding that the CC had failed to take into account the loss of convenience to consumers which would flow from the imposition of a POSP in assessing whether it was proportionate to include it in its proposed remedies package. The Tribunal quashed the CC's decision to impose the POSP and remitted that question to the CC for reconsideration in accordance with the principles set out in the Tribunal's judgment.

*Enron Coal Services Ltd v English Welsh & Scottish Railway Ltd*: This was the first 'follow-on' damages claim under section 47A of the 1998 Act to reach trial. The part of Enron's claim which had not earlier been struck out in accordance with a ruling of the Court of Appeal was dismissed by the Tribunal because Enron had failed to establish that EWS's unlawful conduct had caused the loss claimed. This aspect of the case is now before the Court of Appeal.

*Wm Morrison Supermarkets plc v Competition Commission (Interim Relief)*: In advance of the lodging of any substantive appeal Morrison applied to the Tribunal for interim relief from a decision of the CC in a merger reference. The interim relief sought was prevention of the completion of the sale by Tesco to Sainsbury of a supermarket site in Slough which Tesco had acquired several years earlier from the Co-operative Group (CWS) Ltd. The sale to Sainsbury represented implementation of a remedy imposed by the CC in relation to the merger. Contracts for the sale had already been exchanged at the time Morrison brought the application for interim relief. The Tribunal concluded that interim relief to prevent completion of the sale was not appropriate and accordingly refused the application.

*BAA Ltd v Competition Commission*: This case involved an application by BAA Ltd for judicial review of the CC's final report on the BAA airports market investigation in which the CC's remedies included a requirement that BAA dispose of three of its UK airports. The Tribunal upheld an argument by BAA that the market investigation was affected by apparent (as opposed to actual) bias, whilst rejecting BAA's second ground of challenge which alleged that the CC had failed to comply with the principles of proportionality in fixing the time periods for the divestment of the three airports. This case will, in due course, be considered by the Court of Appeal.

A number of the Tribunal's decisions found their way to the Court of Appeal in the course of the year. These included:

*National Grid plc v The Gas and Electricity Markets Authority*: In February this year, the Court of Appeal dismissed an appeal by National Grid against the Tribunal's decision upholding the Authority's finding of infringement, although it allowed in part an appeal in respect of penalty and further reduced the fine to £15 million.

*BCL Old Co Ltd and Others v BASF SE and Others / Grampian Country Food Group Ltd and Others v Sanofi-Aventis SA and Others*: In May 2009, the Court of Appeal handed down an important judgment on the relevant limitation period for bringing claims for damages under section 47A of the 1998 Act. The Court held that the wording of the Act and the wider statutory context draws a distinction between an infringement decision and a decision to impose a penalty. Only appeals against a finding of infringement are relevant to the time limit for making a damages claim before the Tribunal. In November 2009, the Tribunal refused a subsequent application by the claimants under Rule 19 of the Tribunal Rules for an extension of time to bring the claim.

*Hutchison 3G UK Ltd v Office of Communications*: In July 2009 the Court of Appeal dismissed an appeal by H3G against the Tribunal's decision on the non-price control matters in its appeal against OFCOM's determinations on wholesale mobile termination charges. The Court upheld the Tribunal's findings that H3G had significant market power in the market for call termination on its own network and that OFCOM's decision to impose a price control on H3G was valid.

*British Sky Broadcasting Group plc v Competition Commission and the Secretary of State*: I referred in the previous Annual Review to Sky's appeal against the Tribunal's decision dismissing Sky's challenge to the CC's remedy in relation to the acquisition by BSkyB of 17.9 per cent of the shares in ITV plc. The Court of Appeal handed down its judgment in January 2010, dismissing Sky's appeal on the competition points. Although it made no difference to the result of the case the Court of Appeal, at the parties' request, considered another aspect of the appeal relating to the interpretation of certain provisions of the 2002 Act dealing with media plurality. The Court upheld the CC's interpretation of the provisions in question, but suggested that Parliament should clarify them. The judgment also provides useful guidance on the appropriate intensity of review in applications under section 120 of the 2002 Act.

*The Number (UK) Limited and Conduit Enterprises Limited v Office of Communications*: In December 2009, the Court of Appeal decided to make an Article 267 reference to the Court of Justice as to the proper interpretation of Article 8(1) of the Universal Service Directive (Directive 2002/22/EC) before giving judgment on the appeal. This is the first such reference to be made in any case which has come before the Tribunal.

## Other aspects of the Tribunal's operations

### Competition Service

As in previous years, I would like to record my gratitude for the advice and support of Janet Rubin, who has continued to serve as the external appointed member of the CS's Board and chair of the Tribunal's Audit Committee. The Tribunal very much values and benefits from Janet's wisdom and experience.

### Training and seminars

The Tribunal is similarly indebted to Dr Adam Scott and the other members of the Training Committee which Adam chairs for their work in planning and implementing the Tribunal's in-house training programme for our members and chairmen. Thanks to Adam's Committee, and with the help of the Tribunal's staff, over this last year we have held three half day seminars. These have included updates on a number of legal and economic issues relevant to the Tribunal's work, and have built on the substantial amount of training we have carried out in previous years.

This year again there has been no shortage of invitations to me, the chairmen, members and other representatives of the Tribunal, seeking our attendance at and participation in competition and regulatory law conferences and seminars organised by distinguished academic and professional bodies. Whilst it is necessary to ensure that our participation does not in any way impede the essential work of the Tribunal, it is important that we should be represented at some of these events in order to promote a better understanding of the role of the Tribunal. In addition to our in-house training seminars, in the period under review I have addressed 12 of these gatherings

including three outside the United Kingdom. The latter include the annual meeting of the Association of European Competition Law Judges (AECLJ), held on this occasion in Rome. The Tribunal, which is a founder member, provides an informal secretariat for the AECLJ, and our Registrar is in the process of arranging for the Tribunal to host a much needed website for that body. Once the website is up and running this will form a valuable focus point enabling the membership of the AECLJ, which comprises many competition courts and tribunals throughout Europe, to keep in touch and share information of common interest. Earlier in the year under review I had the honour of attending a distinguished colloquium in Luxembourg to commemorate the 20th anniversary of the founding of the Court of First Instance (now the General Court).

With regard to the speaking activities of others in the Tribunal, Lord Carlile QC and Vivien Rose have chaired several competition law related conferences. Vivien has also carried out many speaking engagements both in this country and abroad including speaking (together with David Bailey) at a judicial training seminar in Malta and at the annual anti-trust conference of the Academy of European Law in Trier. Vivien also spoke at a number of competition law seminars in London organised by the Jevons Institute (University College) and King's College. Both David Bailey and Stephen Hurley spoke at an evening seminar which we held for the judges of the Chancery Division of the High Court on aspects of competition law. David Bailey has also addressed other seminars both in Rome and London organised by Italian legal practitioners as well as a recent conference on Ten Years of UK competition law reform held under the aegis of the Competition Law Scholars Forum in conjunction with Linklaters.

### **Visitors to the Tribunal**

The Tribunal has had the privilege of hosting at least as many visits by foreign judges, lawyers and competition enforcement agencies as last year. Amongst those whom we have welcomed here were a Study Mission led by the Presiding Judge of the Competition Panel of the Supreme People's Court of the People's Republic of China. The delegation was given presentations by the Registrar, Vivien Rose and David Bailey on the Tribunal's work and on the wider UK competition regime. As with the Chinese competition law officials who visited us last year, the ensuing debate was lively and informative on all sides. More recently we have enjoyed visits from the Tanzanian Competition Authority, from the Singapore Competition Commission, and from the following distinguished judges: Judge Gabriella Muscolo from Italy, Judge Iannis Symplis of the Greek Council of State and Judge Thea Harles Walch from the Court of Appeal, Luxembourg.

### **Liaison with external authorities and other bodies**

As I said at the outset, this has been an active year also in terms of our liaison at various levels with external authorities and bodies relevant to the Tribunal's work, including in particular BIS, the Ministry of Justice (MoJ), the Tribunals Service and the National Audit Office.

The Registrar and I have had useful meetings with ministers and officials at both BIS and the MoJ at which we have continued to press for the removal, or at least the diminution, of certain anomalies in the Tribunal's jurisdiction: in particular the inability of claimants to commence 'stand-alone' claims for damages (as opposed to 'follow-on' claims) in the Tribunal. This deprives litigants of the choice of having the whole of their claim for damages, including the liability (i.e. infringement) element, determined in the specialist forum. There is little logic in the current state of affairs given that the Tribunal is empowered to make the very same findings of infringement or non-infringement when hearing an appeal from a national competition authority. Although there is some prospect that section 16 of the Enterprise Act 2002 could be brought into force, thereby allowing competition aspects of actions to be transferred by the High Court to the Tribunal, this would still not give a claimant the choice of where to begin stand-alone proceedings. Neither would it remove the current disincentive to bringing even follow-on claims in the Tribunal: so long as there is no right to commence such follow-on proceedings in the Tribunal as of right (as in the High Court) the risk of pre-emptive proceedings (colloquially termed the 'Italian torpedo') in another jurisdiction will tend to lead claimants to commence in the High Court in any case where permission would be required in the Tribunal.

There is general acknowledgment of this anomaly and of its effects upon the ability of the Tribunal to fulfil a role in relation to damages claims for infringement of the competition rules which would enhance the effectiveness of the enforcement of those rules, as well as providing appropriate use of the resources of the Tribunal. I have yet to hear any real objection to the rationalisation of the Tribunal's jurisdiction in this respect, and I will continue to press for reform.

Also in relation to claims for damages, the Registrar participated in a Civil Justice Council Working Group on the development of High Court Rules relating to collective proceedings in general.

Although the Tribunal is independent of the Tribunals Service, it is important that we are aware of the way in which the Tribunals Service is developing in its various jurisdictions, and that we share ideas and cooperate wherever possible. I am very grateful to the Senior President of the Tribunals Service, Lord Justice Carnwath, for giving me 'observer' status at meetings of the Presidents of the various Upper Tribunal Chambers and for inviting me to participate in other ways. For our part we are very glad to be able to make our accommodation (including courtrooms) at Victoria House available to the Tribunals Service from time to time.

### Tribunal's user group

The Tribunal's user group is now well-established and meets about twice a year. The group is already providing an extremely useful interchange of ideas and comments about the practice and procedures of the Tribunal. The recent minutes of the group can be found on the Tribunal's website.

### Concluding remarks

Once again I would like to express my sincere thanks to the Registrar and the Tribunal's staff for all they have done over the last year to enable the Tribunal to provide a consistently high standard of service.

I would also like to congratulate one of our members, David Summers, on his being awarded an OBE for public and charitable service, in The 2009 Queen's Birthday Honours List.

Finally I should record how saddened we all were by the untimely death last year of Rupert Anderson QC. Rupert was a distinguished member of the Competition Bar who appeared regularly in the Tribunal. He tended to be instructed in complex and difficult cases and his advocacy was always cogent, succinct and to the point. His death represents a great loss not just to his family and friends but also to the Bar and those whom he represented.

*Sir Gerald Barling*  
President  
Competition Appeal Tribunal

18 June 2010

## Registrar's Statement

### The Competition Service (the CS)

The President, Janet Rubin and I are members of the CS which constitutes the support organisation for the Tribunal and is more fully described in the introduction to this review. The membership of the CS meets four times a year and is supported by Jeremy Straker, the CS's Director, Operations, who acts as secretary to the meetings.

### Resources

During 2009-2010 our running costs were £3.79m which was a decrease on the restated 2008-2009 costs of £4.18m. The savings can be partially attributed to the 2.5 per cent input VAT reduction on goods and services. Further savings were made on member payments and administrative costs including case related expenditure.

Adverse economic conditions over the last year have inevitably meant that even closer attention has had to be paid to the need to identify possible savings and efficiencies and we have been working closely with our sponsor Department and the Treasury in making our contribution to various value for money studies across the public sector. This is despite having already taken many steps over the last three to four years to reduce our costs. As noted in previous years with now nearly all our major costs (largely accommodation) being fixed in nature there is little scope for further efficiencies in our working practices which in any event are dictated by the specialised judicial functions of the Tribunal and the particular demands of hearing complex competition and economic regulatory cases.

Nevertheless like other public bodies we will have to strive harder to realise further financial benefits. Efforts in this regard over the forthcoming year are likely to be targeted on trying to grow the income we derive from letting out our courtroom premises when not in use by the Tribunal and considering, in conjunction with our Sponsor Department, how fees might be introduced to recover some of the costs of Tribunal cases.

### Members

The panel of Ordinary Members with their wider expertise in economics, accountancy, business and other areas is a very important part of the Tribunal. Whilst a few of our Ordinary Members have left to take up other appointments or to retire, we have been lucky to retain nearly the entire cadre of Ordinary Members who were appointed at the establishment of the Tribunal. Those members are now coming to the end of their term of appointment and during this year we will need to work with BIS in carrying out a recruitment exercise (through an open competition) for new members of the panel of Ordinary Members to commence work in March 2011. Given that the role of Ordinary Members concerns deciding some of the most intellectually interesting cutting edge issues at the intersection of business, economics and law, we have every hope that the competition will attract a good field of candidates for this important and challenging work.

### Staff

This year I am pleased to report that staff turnover has been relatively moderate although slightly raised from the previous year. The rate of turnover is subject to wide fluctuations every few years as is to be expected in such a small organisation. Opportunities for career development are restricted and so once people have reached a certain stage in their careers it is sensible for them to use the training and experience gained with us in pursuing wider long term opportunities elsewhere.

During the year, Robert Wells, one of our team of referendaires left to join a telecoms company as in-house counsel. Joanne Norris, one of the Registry team, who was studying law in her spare time, left after completing her law finals to take up a training contract in a firm of solicitors. Ritu Shah, our part-time librarian, also left to devote more time to looking after her young children. We thank all of them for their hard work and commitment during their time at the Tribunal and wish them all the very best for the future. In addition our Operations Manager, Julie Hamilton, went on maternity leave during the year. With regard to newcomers, Robert was succeeded in his post by a new referendaire, George Lusty, who has joined us after several years as a competition specialist at a City law firm.

Overall, these changes have led to a small reduction in staff. Given the adverse economic climate we are endeavouring to operate with a slightly smaller team although this inevitably increases the burden for the remaining staff (many of whom already undertake several roles) particularly in the face of a rising caseload. I am very grateful to the team for coping with this additional challenge and for the pride they take in striving to do the best possible job in the most flexible and efficient manner, often working well beyond normal working hours. However now we have moved to International Accounting Standards, the great flexibility of the staff and their dedication to the work of the Tribunal has in fact created another problem that will need close management in future – the accumulation of a stock of untaken leave – which now has to be shown as a potential liability in the accounts. We will obviously need to take steps to wind down this potential liability over time.

We continue to monitor staff training needs closely and provide suitable training where appropriate and taking account of prevailing economic conditions. In particular we have assisted several staff in obtaining professional qualifications. We regard our willingness to identify and invest in the training needs of staff as a means of attracting and retaining, for a reasonable period, highly motivated personnel committed to delivering a high standard of service in the public interest.

As in previous years the staff absence rate has been far below the average for both the private and public sectors and we gratefully take this as an indicator of the dedication shown by all the staff in the performance of their duties.

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

## Information Technology

Further work has continued this year on implementing Cabinet Office best practice with regard to data security. In accordance with requirements coming from central government, all our staff have completed the Cabinet Office sponsored Information Assurance e-learning package made available by the National School of Government. Also, controls have been put on the use of removable media for transfer of information between premises. There have been no incidents involving a breach of data security in the year.

## Pensions

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

## The CS Audit Committee

The CS Audit Committee meets four times a year under the chairmanship of Janet Rubin, who has held various non-executive director roles in other organisations including having chaired remuneration committees and been a member of several audit committees. The other members of the Audit Committee are: Peter Clayton, who is a Tribunal member as well as being a Chartered Accountant with extensive experience of operating with audit committees of major FTSE 100 companies; and David Summers, also a Tribunal member, who has many years experience of being a board member of several public limited companies.

## Format of accounts

The accounts for the Tribunal and for the CS have been prepared in accordance with the 2009-2010 Government Financial Reporting Manual (FRM) and the separate Accounts Directions for the Tribunal and the CS given by the Secretary of State with the consent of the Treasury in accordance with Schedule 3 of the Enterprise Act 2002.

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



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

In accordance with government policy, the accounts have been drawn up for the first time according to International Financial Reporting Standards as generally applied to the public sector and the previous years comparatives have been restated.

### Auditors

The financial statements of the Tribunal and the CS are audited under Schedule 3 paragraph 12(4) of the Enterprise Act 2002 by the Comptroller and Auditor General. The cost of the external statutory audit was £5,500 for the Tribunal (2008-2009: £5,500) and £21,500 for the CS (2008-2009: £21,500).

In 2009-2010 BIS's Internal Audit Directorate continued to provide internal audit services to the CS. The cost of providing this function was £14,400 (2008-2009: £13,000).

### Charitable donations

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

### Payment of creditors

The CS aims to pay all supplier invoices by the due date or within 10 working days of receipt if no due date has been agreed. This accords with new government guidelines aimed at assisting suppliers with their cashflow. Throughout the year the average payment period was nine days (2008-2009: five days) and 99 per cent of (undisputed) invoices were settled within 30 days (2008-2009: 99.7 per cent).

### Disclosure of relevant audit information

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

*Charles Dhanowa OBE*  
Registrar and Accounting Officer  
Competition Service

18 June 2010

# Membership

## President

### **The Honourable Mr Justice Barling**

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

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

Whilst at Brick Court Chambers he was frequently instructed by both government and private clients, appearing regularly in the courts in this country (including the Competition Appeal Tribunal) and in the European Court of Justice in Luxembourg.

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

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

## Chairmen

### **The following Judges of the Chancery Division of the High Court**

The Honourable Mr Justice Peter Smith  
 The Honourable Mr Justice Lewison  
 The Honourable Mr Justice David Richards  
 The Honourable Mr Justice Mann  
 The Honourable Mr Justice Warren  
 The Honourable Mr Justice Kitchin  
 The Honourable Mr Justice Briggs  
 The Honourable Mr Justice Henderson  
 The Honourable Mr Justice Morgan  
 The Honourable Mr Justice Norris  
 The Honourable Mr Justice Floyd  
 The Honourable Mr Justice Sales  
 The Honourable Mrs Justice Proudman  
 The Honourable Mr Justice Arnold  
 The Honourable Mr Justice Roth  
 The Honourable Mr Justice Vos  
 The Honourable Mr Justice Newey



## Chairmen

### **Lord Carlile QC**

Alex Carlile was called to the Bar by Gray's Inn in 1970 and became a QC in 1984. He is a Bencher of Gray's Inn. He sits as a Recorder of the Crown Court and as a Deputy High Court judge. He has been the Independent Reviewer of Terrorism Legislation since 2001. He is the president of the Howard League for Penal Reform. He is a fellow of King's College London, and a fellow of the Industry and Parliament Trust.

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

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

### **Vivien Rose**

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

She was co-editor (with Sir Peter Roth) of the sixth edition of Bellamy & Child European Community Law of Competition (2008) and is the editor of the forthcoming supplement to that edition. She is a judge of the First-Tier Tribunal in the Charity jurisdiction and in 2009 she was appointed to be a Recorder on the South-Eastern Circuit.

### **Marcus Smith QC**

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

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

### **Professor Andrew Bain OBE**

Andrew Bain has held full professorships in economics at the universities of Glasgow, Strathclyde and Stirling, was for six years group economic adviser at Midland Bank and has also worked as an economic consultant.

Previous public appointments include membership of the committee to review the functioning of financial institutions (the Wilson Committee on the City), the Monopolies and Mergers Commission, the Secretary of State for Scotland's Panel of Economic Consultants and the Board of Scottish Enterprise.

**Michael Blair QC**

Michael Blair is a practising barrister with chambers in 3 Verulam Buildings, Gray's Inn, specialising in financial services and financial regulation. He has been in independent practice since 2000. He is also a member of the Board of the Dubai Financial Services Authority and a chairman of the Disciplinary Tribunal for the Bar of England and Wales. He was until recently the chairman of SWX Europe Ltd, the London exchange where the major Swiss equities were traded until 2009, the treasurer of his Inn of Court, the Middle Temple, and president of the Guernsey Financial Services Tribunal. Until 2000 he was general counsel to the Financial Services Authority.

He served on the Bar Council for nine years (including as Treasurer for four years) and had earlier been employed as a civil servant in the Lord Chancellor's Department for 20 years. He is the author or editor of a number of textbooks on financial services.

**Peter Clayton**

Peter Clayton is a fellow of the Institute of Chartered Accountants in England and Wales. He has held senior financial management positions in FTSE 100 companies such as group general manager finance of General Accident plc and group financial controller of Forte Plc. He is a director of Walking on Air Ltd – a charity providing gliding training for disabled people.

**Michael Davey**

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

**Peter Grant-Hutchison**

Peter Grant-Hutchison is a Scottish advocate specialising in employment law. He also holds appointments as a part-time sheriff, immigration judge, Mental Health Tribunal convenor and Social Security Appeal Tribunal chairman.

**Professor Peter Grinyer**

Peter Grinyer is emeritus professor at the University of St Andrews, was Esmee Fairbairn professor of economics, founded the School of Management, and was in the 1980s vice-principal and, in 1985, acting principal. Prior to St Andrews he held the FME chair in business strategy at City University.

He has been a visiting professor at New York University and Erskine fellow at the University of Canterbury, New Zealand. He has also been a member of the Scottish Legal Aid Board, a non-executive director of Ellis and Goldstein Plc, Don Brothers Buist Plc, John Brown Plc and Mclroy Coates. He is on the editorial boards of several journals on managerial economics and strategy.

**Sheila Hewitt**

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

**Ann Kelly**

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

### **The Honourable Antony Lewis**

Antony Lewis is a barrister and chairman of the Community Foundation in Wales and the Mid Wales Food and Land Trust Ltd. From 1996 to 2003 he was chairman of Powys Health Care NHS Trust and prior to that, chairman of Powys Family Health Services Authority. He has been a lecturer in law at University College, Cardiff, and a JP. He is widely involved in the charity sector, as a trustee of the Institute of Rural Health, Rekindle – a mental health charity, and the Powys Association of Voluntary Organisations.

### **Graham Mather**

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

### **Professor John Pickering**

John Pickering is an economic and business consultant. Former appointments have included: dean, vice-principal and professor of Industrial Economics at UMIST; deputy vice-chancellor of the University of Portsmouth and professor of business strategy at the University of Bath School of Management; visiting professor at the Universities of Durham and Southampton. He served for nine years as a member of the Monopolies and Mergers Commission. He has also held various external positions of responsibility including as Church Commissioner and director of several companies.

### **Richard Prosser OBE**

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

### **Dr Arthur Pryor CB**

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

### **Dr Adam Scott OBE TD**

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

### **Dr Vindelyn Smith-Hillman**

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

### **Professor Paul Stoneman**

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

### **David Summers OBE**

David Summers is a publishing and media consultant and a JP. He is non-executive chairman of Wilmington Group Plc. He also serves on The Lord Chancellor's Advisory Committee for Kent. He used to be managing director of Butterworths, the publisher, and was formerly a member of the Restrictive Practices Court. He is a governor and former chairman of St Bede's School Trust, Sussex.

### **Janet Rubin**

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

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

She is currently undertaking senior HR/OD interim assignments in the legal and health sectors. She is also a non-executive director on the Fair Markets Board of the Department for Business, Innovation and Skills.

## Cases

Judgments handed down within the period 1 April 2009 to 31 March 2010

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
1	<p><b>Hutchison 3G UK Limited v Office of Communications (Mobile Call Termination)</b></p> <p><b>British Telecommunications Plc v Office of Communications (Mobile Call Termination)</b></p> <p><b>[2009] CAT 11</b></p> <p><b>2-Apr-09</b></p>	<p>Vivien Rose</p> <p>Professor Andrew Bain OBE</p> <p>Dr Adam Scott OBE TD</p>	<p>Judgment on the disposal of the appeal.</p> <p>Hutchison 3G UK Limited ('H3G') and British Telecommunications Plc ('BT') appealed against the price control conditions contained in the Office of Communications' ('OFCOM') 2007 Statement on mobile call termination ('MCT') rates ('the 2007 Statement'). Those price control conditions set a target average charge ('TAC') for each mobile network operator for each of the years of the price control, covering the period from 2007 to 2011. The price control matters raised in the appeal were referred to the Competition Commission ('CC') under section 193 of the Communications Act 2003 on 8 March 2008 (see [2008] CAT 5).</p> <p>On 16 January 2009 the CC notified the Tribunal of its determination of those price control matters. Broadly, the CC rejected H3G's appeal. In relation to BT's appeal, the CC upheld two of BT's grounds finding that OFCOM had erred in its approach to the inclusion of spectrum costs and in its inclusion of a network externality surcharge in the TAC. The CC went on to consider what action should be taken to rectify these errors. As regards the second error, the correction to be made and the consequential adjustment to the price control was straightforward: the amount that OFCOM had included for the externality surcharge could just be deducted from the TACs. But the question of remedy in relation to the errors found in OFCOM's approach to the inclusion of spectrum costs was more complicated and was, in large part, the subject of the Tribunal's judgment.</p> <p>The criticisms made of the CC determination by the interveners: Vodafone, T-Mobile and Orange, focused on three aspects of the determination. The first was the way in which the CC applied the 2G cap when assessing the value of 3G spectrum to the mobile network operators ('MNOs'). The second was the asymmetric treatment of H3G, namely the fact that H3G's final year TAC was set at a higher level than the TAC of the 2G/3G MNOs because of the CC's approach to the inclusion of spectrum costs and network operating costs. The third was the fact that the CC concluded that OFCOM should be directed to redetermine the TACs for all four years of the price control and not just for the period that remains unexpired at the time when the redetermination takes place.</p> <p>For the reasons given in the judgment, the Tribunal unanimously rejected the challenges that were made to the CC's determination of the price control matters in these appeals. However, all parties were agreed that the CC had made an error in the calculation of H3G's final year TAC and that the CC's conclusion should have been that the final year TAC was 4.3 ppm not 4.4 ppm.</p>

Judgment	Tribunal	Subject matter
<p>2 <b>Albion Water Limited v Water Services Regulation Authority (formerly the Director General of Water Services) (Interim Relief)</b></p> <p><b>Albion Water Limited v Water Services Regulation Authority (formerly the Director General of Water Services) (Dŵr Cymru/Shotton Paper)</b></p> <p><b>[2009] CAT 12</b></p> <p><b>9-Apr-09</b></p>	<p>Lord Carlile QC</p> <p>The Honourable Antony Lewis</p> <p>Professor John Pickering</p>	<p>Pursuant to sections 193(6) and 195(2) of the Communications Act 2003, the Tribunal unanimously decided that in accordance with the CC's determination of specified price control matters, the remainder of H3G's appeal should be dismissed (the Tribunal had previously dismissed the non-price control matters raised by the H3G appeal (see [2008] CAT 11). The Tribunal concluded that BT's appeal should be upheld to the extent set out in the CC's determination.</p> <p>Further, pursuant to section 195(4) of the Communications Act 2003, paragraph [82] of the judgment sets out the directions which the Tribunal considered appropriate for giving effect to the decision and directed OFCOM accordingly.</p> <p>Judgment on the issues raised by the applications of Albion Water Limited ('Albion') and Dŵr Cymru Cyfyngedig ('Dŵr Cymru'), both dated 24 November 2008, for final relief.</p> <p>Albion appealed against a decision of the Water Services Regulation Authority ('the Authority') finding that Dŵr Cymru had not infringed the Chapter II prohibition of the Competition Act 1998. On appeal the Tribunal found and held otherwise. Having set aside the decision, the Tribunal unanimously decided that the disputed price for common carriage of non-potable water via the Ashgrove system imposed a margin squeeze and was excessive and unfair in itself.</p> <p>Following the Tribunal's principal judgments, Albion and Dŵr Cymru applied for final relief. Their applications raised three main issues: the first two issues concerned the Order the Tribunal should make to remedy the unfair pricing and margin squeeze abuses respectively. While the parties agreed that Albion should be awarded its legal costs, the third issue concerned their disagreement about the assessment of costs and the amount of any interim payment in respect of costs.</p> <p>All sides accepted that the Tribunal should make a declaration that Dŵr Cymru had abused its dominant position in the manner described in the Tribunal's earlier judgments. Accordingly, the Tribunal so ordered.</p> <p>As regards the unfair pricing abuse, the Tribunal ordered that Dŵr Cymru bring the infringement it had identified to an end and refrain from any conduct having the same or equivalent effect. The Tribunal ordered that any common carriage access price offered by Dŵr Cymru to Albion not exceeding 14.4p/m<sup>3</sup> in 2000-2001 prices shall not be conduct having the same or equivalent effect as the infringement identified by the Tribunal.</p> <p>The case for Albion to remedy the unfair pricing abuse principally focused on the so-called 'Bulk Supply Price' ('BSP') since that was the price which it was paying Dŵr Cymru for the supply of non-potable water at the material time. Albion sought an order modifying the BSP. However the Tribunal concluded that it could not give a Direction in respect of the BSP because it had made no finding (expressly or by necessary implication) as to whether that price was an abuse of a dominant position. The Tribunal's power to give final directions in accordance with paragraph 3(2)(d) of Schedule 8 of the Competition Act 1998 was limited to directions which the Authority could have made.</p>

Judgment	Tribunal	Subject matter
<p>3 <b>Tesco Plc v Competition Commission</b> [2009] CAT 13 3-Apr-09</p>	<p>The President Professor John Pickering Graham Mather</p>	<p>As regards the margin squeeze abuse, the Tribunal ruled that setting a minimum retail margin was not an appropriate direction to bring to an end the infringement found by the Tribunal.</p> <p>Finally, the Tribunal ordered that Albion's reasonably incurred legal costs from 8 January 2007 to 30 January 2009 should be paid by the Authority and Dŵr Cymru. In addition, the Tribunal directed the Authority and Dŵr Cymru to pay two-thirds of the costs claimed by Albion, by way of an interim payment.</p> <p>Ruling of the Tribunal following an application by Tesco Plc ('Tesco') for permission to appeal the Tribunal's judgment on relief of 3 April 2009 (see [2009] CAT 9). The Tribunal ordered that permission to appeal be refused.</p>
<p>4 <b>National Grid Plc v Gas and Electricity Markets Authority</b> [2009] CAT 14 29-Apr-09</p>	<p>Vivien Rose Professor Paul Stoneman David Summers OBE</p>	<p>Judgment on an appeal by National Grid Plc ('National Grid') under section 46 of the Competition Act 1998 ('the 1998 Act') against a decision of the Gas and Electricity Markets Authority ('the Authority') published on 21 February 2008. In that decision ('the Decision') the Authority found that National Grid had abused its dominant position in the market in Great Britain for the provision of domestic-sized gas meters, contrary to section 18 of the 1998 Act and Article 82 of the EC Treaty. The Decision imposed a fine of £41.6 million on National Grid and ordered National Grid to put an end to the infringement.</p> <p>The Tribunal dismissed National Grid's appeal but varied the fine imposed on National Grid to £30 million.</p> <p>The Tribunal upheld the Authority's findings on market definition and dominance. It also upheld the finding in the Decision that the early replacement provisions of contracts entered into between National Grid and gas suppliers in respect of meters rented as at 1 January 2004 ('the Legacy MSAs') constituted an abuse of a dominant position. The contracts clearly had a foreclosure effect in discouraging gas suppliers from moving more of their business to competing gas meter operators and hence were likely to delay the reduction of National Grid's market share in the market for the provision of domestic-sized meters. The Tribunal found that the disproportionate nature of the early replacement charges in the Legacy MSAs was amply demonstrated by the comparison carried out by the Authority between the terms of the National Grid contracts and those of competing meter operators.</p> <p>However the Tribunal concluded that a fine of £30 million properly reflected the seriousness of the infringement and the mitigating factor arising from the Authority's involvement in the development of the Legacy MSAs.</p>
<p>5 <b>Barclays Bank Plc v Competition Commission</b> [2009] CAT 15 28-Apr-09</p>	<p>Mr Justice Briggs Dr Vindelyn Smith-Hillman Professor Paul Stoneman</p>	<p>Judgment of the Tribunal granting Shop Direct Group Financial Services Limited, Lloyds Banking Group and the Financial Services Authority permission to intervene. The application of Mrs Rosemary Clark was refused.</p>



	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
6	<b>Enron Coal Services Limited (in liquidation) v English Welsh &amp; Scottish Railway Limited</b>  [2009] CAT 16  19-May-09	Lord Carlile QC	Order of the Chairman refusing an application by Enron Coal Services Limited (in liquidation) to vacate and re-schedule the date fixed for the main hearing of its damages action against English Welsh and Scottish Railway Limited.
7	<b>Hutchison 3G UK Limited v Office of Communications (Mobile Call Termination)</b>  <b>British Telecommunications Plc v Office of Communications (Mobile Call Termination)</b>  [2009] CAT 17  26-May-09	Vivien Rose  Professor Andrew Bain OBE  Dr Adam Scott OBE TD	<p>Ruling of the Tribunal setting out its reasons for granting Telefónica O2 UK Limited, T-Mobile (UK) Limited ('T-Mobile'), Vodafone Limited ('Vodafone') and Orange Personal Communications Services Limited permission to appeal from the Tribunal's judgment handed down on 22 January 2009 (see [2009] CAT 1) and/or the Tribunal's judgment handed down on 2 April 2009 (see [2009] CAT 11).</p> <p>The Tribunal granted permission on all of the grounds proposed.</p> <p>The requests for permission to appeal primarily related to the Tribunal's decision that it had power to give a replacement price control direction and that such a direction would not constitute the exercise of a retrospective power. The Tribunal accepted that this was one of many difficult issues of construction raised by the unusual appeal regime under the Communications Act 2003. The Tribunal therefore granted permission to appeal on this ground on the basis both that the ground had a reasonable prospect of success and because it was of great importance to the outcome of this case and of future cases that the scope of the Tribunal's powers were clarified.</p> <p>In addition, Vodafone and T-Mobile requested permission to appeal from the Tribunal's finding that assuming that the disputed power did exist, it was right to direct the Office of Communications in this case to adopt a replacement price control. The Tribunal considered that there were other compelling reasons for this ground of appeal also to be considered by the Court of Appeal, namely that the issues follow on from the primary issue of the scope of the Tribunal's powers. Furthermore, it may be that a higher court would take a different view of the factors which are relevant to the exercise of the power by the Tribunal (or the Competition Commission), if that power was held to exist. It was therefore appropriate to grant permission to appeal on this point as well.</p>
8	<b>Enron Coal Services Limited (in liquidation) v English Welsh &amp; Scottish Railway Limited</b>  [2009] CAT 18  16-Jun-09	Lord Carlile QC	Ruling of the Chairman under rule 34 of the Competition Appeal Tribunal Rules 2003 (SI No.1372) granting an application by Enron Coal Services Limited (in liquidation) to amend certain paragraphs of its claim form. The Chairman also refused English Welsh & Scottish Railway Limited's application for a split trial and reserved judgment on costs.



	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
9	<p><b>Merger Action Group v Secretary of State for Business, Enterprise and Regulatory Reform</b></p> <p>[2009] CAT 19</p> <p>22-Jun-09</p>	<p>The President</p> <p>Michael Blair QC</p> <p>Professor Peter Grinyer</p>	<p>Judgment of the Tribunal following an application by the Secretary of State for Business, Enterprise and Regulatory Reform ('the Secretary of State') for expenses. The Tribunal reviewed the jurisprudence under rule 55 of the Competition Appeal Tribunal Rules 2003 (SI No.1372) and ordered that the Merger Action Group pay the Secretary of State the sum of £35,000 in respect of the latter's expenses.</p>
10	<p><b>British Sky Broadcasting Group Plc v (1) Competition Commission (2) Secretary of State for Business, Enterprise and Regulatory Reform</b></p> <p><b>Virgin Media, Inc. v (1) Competition Commission (2) Secretary of State for Business, Enterprise and Regulatory Reform</b></p> <p>[2009] CAT 20</p> <p>22-Jun-09</p>	<p>The President</p> <p>Professor Peter Grinyer</p> <p>Peter Clayton</p>	<p>Ruling of the Tribunal on applications by the Competition Commission ('CC'), the Secretary of State for Business, Enterprise and Regulatory Reform ('the Secretary of State') and Virgin Media, Inc. ('Virgin') for their legal costs in respect of judicial review proceedings brought by British Sky Broadcasting Group Plc ('Sky'). The Tribunal ordered that Sky should pay the CC's and Secretary of State's costs of their respective defences. The Tribunal also ruled that the costs of Virgin's intervention should not be the subject of any specific order.</p> <p>Ruling of the Tribunal on an application by Virgin for its legal costs in respect of its application for review (save for the costs relating to its unsuccessful challenge to the remedy imposed and its unsuccessful attempt to have the plurality issue referred back to the CC). The Tribunal ordered that all parties should bear their own costs.</p>
11	<p><b>National Grid Plc v Gas and Electricity Markets Authority</b></p> <p>[2009] CAT 21</p> <p>30-Jun-09</p>	<p>Vivien Rose</p> <p>Professor Paul Stoneman</p> <p>David Summers OBE</p>	<p>Ruling of the Tribunal following an application by National Grid Plc for permission to appeal the Tribunal's judgment of 29 April 2009. The Tribunal concluded that none of the grounds of appeal raised an issue which was sufficiently material to the Tribunal's findings to establish a real prospect of success. There was also no other compelling reason for the matter being considered by the Court of Appeal. Accordingly, the Tribunal ordered that permission to appeal be refused.</p>
12	<p><b>BAA Limited v Competition Commission</b></p> <p>[2009] CAT 22</p> <p>1-Jul-09</p>	<p>The President</p> <p>Lord Carlile QC</p> <p>Sheila Hewitt</p>	<p>Ruling of the Tribunal in relation to the scope of Ryanair Limited's ('Ryanair') intervention. The Tribunal ruled that Ryanair had established a sufficient interest in the outcome of the judicial review as a whole and not just in relation to ground 2 of BAA Limited's notice of application.</p>
13	<p><b>VIP Communications Limited (in administration) v Office of Communications</b></p> <p>[2009] CAT 23</p> <p>17-Jul-09</p>	<p>Vivien Rose</p> <p>Michael Davey</p> <p>Sheila Hewitt</p>	<p>Ruling of the Tribunal in relation to the effect of the judgment of the Court of Appeal in <i>Floe Telecom Limited (in liquidation) v Office of Communications</i> ([2009] EWCA Civ 47) on these proceedings. The Tribunal ruled that VIP Communications Limited (in administration) should be allowed to apply to amend its notice of appeal and that any opposition to that amendment should be dealt with in conjunction with any application to reject the appeal under rule 10 of the Competition Appeal Tribunal Rules 2003 (SI No.1372).</p>
14	<p><b>National Grid Plc v Gas and Electricity Markets Authority</b></p> <p>[2009] CAT 24</p> <p>23-Jul-09</p>	<p>Vivien Rose</p> <p>Professor Paul Stoneman</p> <p>David Summers OBE</p>	<p>Ruling of the Tribunal in relation to applications for costs by the Gas and Electricity Markets Authority ('the Authority'), Capital Meters Limited ('CML') and Siemens Plc ('Siemens'). The Tribunal decided that National Grid Plc should pay the Authority 50 per cent of such sum as may be agreed between the parties. In relation to the interveners, CML and Siemens, the Tribunal decided that each should bear their own costs.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
15	<p><b>The Carphone Warehouse Group Plc v Office of Communications (Local Loop Unbundling)</b></p> <p><b>[2009] CAT 25</b></p> <p><b>25-Sep-09</b></p>	<p>Vivien Rose</p> <p>The Honourable Antony Lewis</p> <p>Dr Arthur Pryor CB</p>	<p>Ruling on case management issues.</p>
16	<p><b>Tesco Plc v Competition Commission</b></p> <p><b>[2009] CAT 26</b></p> <p><b>15-Oct-09</b></p>	<p>The President</p> <p>Professor John Pickering</p> <p>Graham Mather</p>	<p>Ruling of the Tribunal in relation to applications for costs by Tesco Plc ('Tesco') and the Competition Commission ('CC').</p> <p>The Tribunal considered that the appropriate starting point for dealing with costs of a judicial review under section 179 of the Enterprise Act 2002 is that a successful party will normally obtain a costs award.</p> <p>In the present case, Tesco had established that the CC's decision to recommend the adoption of the competition test was invalid. The Tribunal therefore started from the position that an award of costs in favour of Tesco was likely to be appropriate.</p> <p>The position was different so far as the argument on relief was concerned. In that respect Tesco sought unsuccessfully to prevent the CC from having an opportunity to reconsider the recommendation in question by arguing that the Tribunal either could not or should not refer the matter back to the CC. The Tribunal therefore considered it was appropriate that an order for costs relating to the relief issues should be made in favour of the CC.</p> <p>The Tribunal considered that a lump sum costs award would achieve a just result in this case. The Tribunal noted that any sum awarded in respect of costs should be fair, reasonable and proportionate as between the parties and generally. Having considered the amount of the costs claimed by each party, the Tribunal decided to make a costs award in Tesco's favour of £342,000. As against that the Tribunal awarded the CC its costs in relation to the relief issues and argument on permission to appeal in the sum of £30,000. The Tribunal therefore ordered the CC to pay the net amount of £312,000 in respect of the costs claimed by Tesco.</p>

<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
<p>17 <b>Barclays Bank Plc v Competition Commission</b>  <b>[2009] CAT 27</b>  <b>16-Oct-09</b></p>	<p>Mr Justice Briggs  Professor Paul Stoneman  Dr Vindelyn Smith-Hillman</p>	<p>Judgment of the Tribunal on an application by Barclays Bank Plc ('Barclays') for a review under section 179 of the Enterprise Act 2002 of certain findings made by the Competition Commission ('CC') contained in a report entitled 'Market investigation into payment protection insurance' dated 29 January 2009 ('the Report').</p> <p>Barclays' application contained four grounds of challenge, three of which concerned the CC's decision to include, as part of its proposed package of remedies, a prohibition on the sale of payment protection insurance at the point of sale of the associated credit ('POSP'). In particular, Barclays claimed: (i) that the CC failed to take account of considerations which were relevant to the proportionality of the POSP; (ii) that the CC lacked the proper evidential basis for concluding that the POSP was justified; and (iii) that the CC had failed to take account of relevant considerations (and/or had taken account of irrelevant considerations) in its analysis of the extent of the consumer detriment arising from the identified adverse effect on competition and whether the benefits of its intervention would outweigh the loss of the relevant consumer benefits. Barclays' fourth ground of challenge concerned the CC's analysis of the relevant market(s) and the extent of the competition problems which existed in the relevant market(s). Barclays claimed that the CC's analysis was flawed by its failure to take account of relevant considerations.</p> <p>The Tribunal concluded that the CC had failed to take into account the loss of convenience which would flow from the imposition of the POSP in assessing whether it was proportionate to include it in its proposed remedies package. In the Tribunal's view, this constituted a failure to take into account a relevant consideration, and the Tribunal therefore decided to quash that part of the Report which imposed the POSP as part of the proposed remedies package and remitted the question whether a POSP should be so included for the further consideration of the CC in accordance with the principles set out in the Tribunal's judgment.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
18	<b>VIP Communications Limited (in administration) v Office of Communications</b> [2009] CAT 28 19-Nov-09	Vivien Rose Michael Davey Sheila Hewitt	<p>Ruling of the Tribunal on an application by VIP Communications Limited (in administration) ('VIP') to amend its notice of appeal under rule 11 of the Competition Appeal Tribunal Rules 2003 (SI No.1372) and an application by the Office of Communications ('OFCOM') to reject the existing notice of appeal pursuant to rule 10 of those rules.</p> <p>The applications arose from the judgment of the Court of Appeal in <i>OFCOM and T-Mobile v Floe Telecom Limited</i> [2009] EWCA Civ 47 which held that the use of Commercial Multi-User GSM Gateways ('COMUGs') without a licence was unlawful. VIP had given an undertaking to the Tribunal to abide by the determinations in <i>Floe</i> in its appeal against the rejection by OFCOM of VIP's complaint that a refusal by T-Mobile (UK) Limited ('T-Mobile') to provide SIM cards amounted to an infringement of Article 82 of the EC Treaty ('EC') and the Chapter II prohibition of the Competition Act 1998. In its application to amend its notice of appeal, VIP submitted that the UK domestic provisions which required a licence for the use of COMUGs were inconsistent with the European regulatory framework for telecommunications.</p> <p>The Tribunal first considered VIP's submission that the Tribunal was entitled to examine whether or not UK domestic provisions were compatible with European law when considering OFCOM's determination of VIP's complaint against T-Mobile. The Tribunal concluded that it did not have jurisdiction in the context of the appeal by VIP against a rejection of a complaint against T-Mobile to determine as a free-standing point that OFCOM should have set aside or disapplied the domestic legislation alleged by VIP to be inconsistent with the European regulatory framework.</p> <p>The Tribunal next considered how the alleged illegality of the UK domestic legislation affected the characterisation of T-Mobile's conduct as abusive under Article 82 EC or the Chapter II prohibition. The Tribunal concluded that the issue had been decided in OFCOM's and T-Mobile's favour by the European Court of Justice in Case C-198/01 <i>Conorzio Industrie Fiammiferi v Autorità Garante della Concorrenza e del Mercato</i> [2003] ECR I-8055. Although, according to that judgment, OFCOM as an emanation of the State was obliged to disapply domestic UK provisions which were inconsistent with EC law, unless or until the decision to disapply the relevant UK domestic provisions became definitive, T-Mobile was shielded from all the consequences of an infringement of Articles 81 EC and 82 EC vis-à-vis both public authorities and other economic operators. Consequently, T-Mobile could not be held liable under Article 82 EC or the Chapter II prohibition for refusing to supply SIMs to VIP when VIP's intention was to use those SIMs for activity contrary to the UK domestic provisions.</p> <p>The Tribunal therefore ordered that VIP's application to amend its notice of appeal be dismissed and that the notice of appeal be rejected.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
19	<p><b>BCL Old Co Limited and Others v BASF SE and Others</b></p> <p><b>Grampian Country Food Group Limited and Others v Sanofi-Aventis SA and Others</b></p> <p><b>[2009] CAT 29</b></p> <p><b>19-Nov-09</b></p>	<p>The President</p> <p>Ann Kelly</p> <p>Michael Davey</p>	<p>Ruling of the Tribunal on applications by BCL Old Co Limited and Others ('the BCL claimants') and Grampian Country Food Group Limited and Others ('the Grampian claimants') for an extension of time for lodging their claims under rule 19 of the Competition Appeal Tribunal Rules 2003 (SI No.1372).</p> <p>The Tribunal concluded that the decision whether or not to extend time was a two stage test. At stage one, the court must consider whether good reason for an extension has been demonstrated by the claimant; essentially a question of fact. If, and only if, the claimant succeeded in establishing a good reason could the Tribunal proceed to stage two, which is a discretionary exercise involving value judgments including, where appropriate, having regard to the balance of hardship.</p> <p>The Tribunal held that while the BCL claimants satisfied the requirements of stage one, it refused to exercise its discretion under stage two. The BCL claimants should have taken at least some steps to establish and pursue their claim during the period when they wrongly thought that they were precluded by section 47A of the Competition Act 1998 from actually starting proceedings.</p> <p>In relation to the Grampian claimants, the Tribunal found that they had failed to establish that there was a good reason why they did not lodge their claim in time and therefore did not satisfy stage one of the test.</p>
20	<p><b>The Carphone Warehouse Group Plc v Office of Communications (Local Loop Unbundling)</b></p> <p><b>[2009] CAT 30</b></p> <p><b>23-Nov-09</b></p>	<p>Vivien Rose</p> <p>The Honourable Antony Lewis</p> <p>Dr Arthur Pryor</p> <p>CB</p>	<p>Ruling granting The Carphone Warehouse Group Plc ('CPW') permission under Rule 11 of the Competition Appeal Tribunal Rules 2003 (SI No.1372) to amend its notice of appeal.</p> <p>CPW applied to amend its notice of appeal to add an allegation that the consultation carried out by the Office of Communications ('OFCOM') was inadequate because OFCOM refused to disclose to CPW the economic model and underlying information used to arrive at the prices set in the price control for local loop unbundling.</p> <p>OFCOM resisted the proposed amendments, primarily on the basis that they introduced a new ground within the meaning of Rule 11 and none of the conditions of Rule 11(3) were fulfilled and, in the alternative, because the proposed amendments were sterile since no relief was claimed in respect of the failure to disclose and they were not linked to any substantive complaint about the final decision. OFCOM also argued that defending the allegation would place a substantial burden on OFCOM.</p> <p>The Tribunal concluded that the amendments proposed by CPW did not amount to a new ground within the meaning of Rule 11(3) of the Tribunal Rules. The Tribunal granted permission to make the amendments proposed in the exercise of its discretion under Rule 11(1), subject to the condition that the proposed paragraph 74A.3, which set out the ways in which CPW alleged it was disadvantaged by the failure to disclose, was clarified and particularised further by CPW.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
21	<p><b>Barclays Bank Plc v Competition Commission</b>  <b>[2009] CAT 31</b>  <b>26-Nov-09</b></p>	<p>Mr Justice Briggs  Dr Vindelyn Smith-Hillman  Professor Paul Stoneman</p>	<p>Judgment of the Tribunal in relation to the form of the order to give effect to the Main Judgment (see [2009] CAT 27) and costs.</p> <p>In respect of the form of the order, the Tribunal considered that the Main Judgment was to be read as a whole, rather than in a series of isolated sections. It therefore rejected the submissions of the Competition Commission ('CC') and Barclays Bank Plc ('Barclays') that the CC should reconsider the decision to impose the point of sale prohibition ('POSP') in accordance with the principles set out in particular paragraphs of the Main Judgment. The Tribunal concluded that it was for the CC to decide upon the proper scope of its reconsideration of the question whether to impose the POSP, provided that, in doing so, it took into account the principles set out in the main judgment.</p> <p>The Tribunal concluded that the appropriate order in relation to costs was that Barclays should obtain payment by the CC of half of its reasonable and proportionate costs, subject to assessment by a Costs Judge. The Tribunal refused to award Lloyds Banking Group its costs against the CC and also refused the CC's application for its costs of responding to the intervention of Shop Direct Group Financial Services Limited. The Tribunal referred to its approach whereby it has generally been found to be just to direct that the costs of and occasioned by interventions should lie where they fall, save where particular circumstances lead to a conclusion that justice would be served by some different order.</p>
22	<p><b>Sports Direct International Plc v Competition Commission</b>  <b>[2009] CAT 32</b>  <b>14-Dec-09</b></p>	<p>Lord Carlile QC  Ann Kelly  Dr Arthur Pryor  CB</p>	<p>Judgment of the Tribunal setting out its reasons for a ruling made in connection with an application by Sports Direct International Plc ('Sports Direct') for review of a decision ('the Decision') of the Competition Commission ('CC') refusing to provide information redacted from certain working papers prepared during the CC's investigation into the completed acquisition by Sports Direct of 31 retail outlets from JJB Sports Plc.</p> <p>The CC, supported by the Office of Fair Trading, submitted that Sports Direct's application was premature given that the redactions appeared in working papers and not in any provisional or final decision and, in any event, may not be relied upon in any such decision. The Tribunal ruled that Sports Direct's application was not premature. The Tribunal held that the constituent elements of section 120(1) of the Enterprise Act 2002 were satisfied on the facts of the instant case. The Tribunal was persuaded that Sports Direct was, at least potentially, adversely affected by the suggested findings of fact and conclusions contained in the working papers and that real injustice could have resulted from the CC's decision to withhold material information and/or analysis supporting those findings.</p>



Judgment	Tribunal	Subject matter
<p>23 <b>Wm Morrison Supermarkets Plc v Competition Commission (Interim Relief)</b>  <b>[2009] CAT 33</b>  <b>4-Dec-09</b></p>	<p>The President</p>	<p>Judgment on an urgent ex parte on notice application for interim relief made by Wm Morrison Supermarkets Plc ('Morrison's') pursuant to Rule 61 of the Competition Appeal Tribunal Rules 2003 (SI No.1372) to suspend the decision of the Competition Commission ('CC'), taken pursuant to an order made on 23 April 2009 in accordance with section 84 of the Enterprise Act 2002 ('the Act'), to approve J Sainsbury Plc ('Sainsbury') as the Redevelopment Option Approved Purchaser of the site at 78 Uxbridge Road, Slough, owned by Tesco Plc ('Tesco'). In view of the urgency of the matter, the application was made before the substantive application for review under section 120 of the Act had been lodged. A draft of the proposed application accompanied the interim relief application.</p> <p>After a hearing attended by Morrisons, Sainsbury, Tesco as well as the CC, the President refused to grant the application for interim relief. He held that the grant of interim relief was always a matter of discretion and in the exercise of that discretion the Tribunal must take account of all relevant circumstances, including the urgency of the matter, the effect on the party concerned if relief was not granted, and the effect on competition if the relief was granted.</p> <p>The President considered that the draft application submitted by Morrisons contained arguments which could conceivably have had merit and therefore there was likely to be a ground of challenge to the CC's decision which was properly arguable. He was also mindful that Morrisons was prepared to offer a cross undertaking in damages to Sainsbury and Tesco which would have been likely to have compensated them for losses they might have suffered by the delay in completing the purchase pending the resolution of the proposed substantive application. However, by its delay in seeking interim relief, Morrisons had allowed those companies to alter their position by entering into a legally binding contract for the sale of the site. Morrisons was fully aware that unless Tesco and Sainsbury 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.</p> <p>Accordingly interim relief to suspend the CC's decision was not appropriate and the application was refused. Morrisons was ordered to pay the costs of the other parties.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
24	<b>Fish Holdings Limited v Office of Fair Trading</b> <b>[2009] CAT 34</b> <b>8-Dec-09</b>	The President	<p>Judgment on an application by Fish Holdings Limited ('Fish Holdings') for an extension of time under Rule 8(2) of the Competition Appeal Tribunal Rules 2003 (SI No.1372) until the actual receipt by the Tribunal of a notice of appeal against a decision of the Office of Fair Trading entitled 'Bid rigging in the construction industry in England' ('the Decision'). The last day for lodging an appeal to the Tribunal against the Decision was 23 November 2009, whereas the notice of appeal was received by the Tribunal Registry on 26 November 2009.</p> <p>Fish Holdings relied upon the following combination of circumstances to justify its application: (i) due to an administrative error, the notice of appeal was sent by post to the wrong address, i.e. the Tribunal's previous address in New Court, Carey Street, London, even though Fish Holdings' representatives knew of the Tribunal's correct address; (ii) the recipient of the notice of appeal at Carey Street, rather than informing Royal Mail that the Tribunal was no longer at that address and refusing to accept the package, apparently took it on themselves to accept delivery of the package and forward it by post to the Tribunal's current address at Victoria House, Bloomsbury Place, London.</p> <p>The President refused the application for an extension of time as there were no circumstances which could be regarded as exceptional within the meaning of Rule 8(2). The Tribunal had been based at its current address since 2003 and its website recorded the current address, as did the front page of its judgments and the <i>Guide to Proceedings</i>. Moreover, experience showed that in circumstances where the time remaining for lodging documents was very short the only way to be sure that an important document reached the Tribunal in time was to arrange for personal delivery. It was the sole responsibility of the parties and their legal representatives to ensure that the time limits for filing court documents were complied with.</p>



Judgment	Tribunal	Subject matter
<p>25 <b>BAA Limited v Competition Commission</b>  <b>[2009] CAT 35</b>  <b>21-Dec-09</b></p>	<p>The President                      Lord Carlile QC                      Sheila Hewitt</p>	<p>Judgment of the Tribunal on an application by BAA Limited ('BAA') for a review under section 179 of the Enterprise Act 2002 ('the Act') of the decision of the Competition Commission ('CC') contained in a report entitled 'BAA airports markets investigation: A report on the supply of airport services by BAA in the UK' dated 19 March 2009 ('the Report'). In the Report the CC found that BAA's common ownership of airports in southeast England and lowland Scotland gave rise to adverse effects on competition ('AECs') within the meaning of section 134(2) of the Act in connection with the supply of airport services by BAA. In order to remedy the AECs, the CC concluded, inter alia, that BAA should divest both Gatwick airport and Stansted airport and also one of either Edinburgh airport or Glasgow airport.</p> <p>BAA applied to the Tribunal for a review of the Report pursuant to section 179 of the Act, relying on two grounds of challenge: apparent bias and proportionality. In relation to the first ground, BAA submitted that the participation of Professor Peter Moizer as a member of the group within the CC who conducted the investigation was subject to apparent bias by reason of his role as a long-standing, fee-paid advisor to the Greater Manchester Pension Fund ('the Fund'). The Fund sat within the ten local authorities of Greater Manchester and was administered by one of those authorities. The same authorities held 100 per cent of the shares in the Manchester Airport Group ('MAG') and played an active role in its business strategy. MAG was a potential purchaser of the airport assets to be divested by BAA and participated in the CC's investigation. In relation to the second ground, BAA submitted that, in assessing the proportionality of the divestiture remedies, and in particular with regard to the timetable for sale, the CC failed to take account of material considerations relating to the impact of the divestiture on BAA.</p> <p>On the first ground, apparent bias, the Tribunal unanimously concluded that in the light of the material facts a fair-minded and informed observer would conclude that there was a real possibility of bias affecting the deliberations, thinking and ultimate outcome of the investigation. The Tribunal also concluded that BAA had not waived its right to object to the apparent bias. The Tribunal indicated that it would hear further argument from the parties on the form of relief in relation to the first ground, unless the parties were able to reach agreement on it.</p> <p>On the second ground, proportionality, the Tribunal unanimously concluded that the challenge on that ground failed. BAA had not demonstrated that the CC had failed to take account of relevant considerations when deciding upon the timescale for the divestments in question.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
26	<p><b>Enron Coal Services Limited (in liquidation) v English Welsh &amp; Scottish Railway Limited</b></p> <p><b>[2009] CAT 36</b></p> <p><b>21-Dec-09</b></p>	<p>Lord Carlile QC</p> <p>Graham Mather</p> <p>Richard Prosser</p> <p>OBE</p>	<p>Judgment of the Tribunal on a claim for damages brought by Enron Coal Services Limited (in liquidation) ('ECSL') against English Welsh &amp; Scottish Railway Limited ('EWS') under section 47A of the Competition Act 1998. The claim was based on a finding by the Office of Rail Regulation ('ORR') that EWS had infringed Article 82 of the EC Treaty and the Chapter II prohibition of the Competition Act 1998. The ORR had found that EWS had pursued, without objective justification, selective and discriminatory pricing practices that placed ECSL at a competitive disadvantage.</p> <p>EWS provided coal haulage services to ECSL. ECSL alleged that EWS' infringement caused ECSL to lose a tender for the haulage of coal by rail to power stations operated by Edison Mission Energy Limited ('EME') and also a real or substantial chance of securing a four year 'end-to-end' ('E2E') contract to supply coal to one of those power stations, Ferrybridge C.</p> <p>This was the first follow-on claim for damages to proceed to trial in the Tribunal. The issue of causation was at the centre of the litigation. In evaluating ECSL's loss of chance, the Tribunal regarded the case as one of those where the loss depended not only on ECSL's own behaviour but also on the hypothetical action of a third party, EME. Accordingly the Tribunal held that two main questions fell to be decided: (i) whether it was more likely than not that ECSL would have sought to negotiate with EME for a four year E2E contract to supply coal to the Ferrybridge C power station; and (ii) whether there was a real or substantial chance that negotiations between EME and ECSL would have led to the award of a four year E2E contract to supply coal to the Ferrybridge C power station.</p> <p>With regard to point (i) above, the Tribunal unanimously concluded that ECSL had not proven that it was more likely than not that ECSL would have sought to negotiate with EME for a four year E2E contract to supply coal to Ferrybridge C.</p> <p>With regard to point (ii) above, the Tribunal unanimously concluded that ECSL had no real or substantial prospect of supplying coal to EME on an E2E basis; instead this was a speculative prospect. There was ample evidence about the unwillingness of EME to enter into a long-term coal supply contract.</p> <p>The Tribunal unanimously held that ECSL had thus failed to prove that the breach of statutory duty by EWS caused any claimed loss.</p>

<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
<p>27 <b>The Carphone Warehouse Group Plc v Office of Communications (Local Loop Unbundling)</b> [2009] CAT 37 29-Dec-09</p>	<p>Vivien Rose The Honourable Antony Lewis Dr Arthur Pryor CB</p>	<p>Ruling on an application by The Carphone Warehouse Group Plc ('CPW') for disclosure of the financial business model created by the Office of Communications ('OFCOM') during the course of its review of the charge controls imposed on Openreach in relation to unbundled local loops and related services. CPW applied for disclosure of the model to the Executive Director, Strategy and Regulation at TalkTalk Group. The model was based on, and incorporated, a large amount of information provided to OFCOM by British Telecommunications Plc ('BT'). The application for disclosure was opposed by BT.</p> <p>The Tribunal considered two main questions: (i) whether the information in the relevant parts of the model (in connection with which disclosure was sought by CPW) was confidential and; (ii) whether the information should be disclosed to the TalkTalk Group executive.</p> <p>On the first question of confidentiality, the Tribunal concluded that the relevant parts of the OFCOM model contained confidential and commercially sensitive information which must normally be protected from disclosure. The Tribunal noted that the interest in protecting this information from disclosure was not simply the commercial interest of BT, but also a wider public interest in the maintenance of the competitive process which requires that detailed information about the breakdown of a company's costs, the volumes supplied, its profit and loss forecasts and other forecasts for its business over coming years is not disclosed to its actual or potential competitors.</p> <p>On the second question of whether the information should be disclosed to the identified executive, the Tribunal held that CPW needed to show good reason why the executive needed to see this information. Ultimately, it is for the Tribunal to balance CPW's need to be able properly to conduct its appeal against the need to protect confidential information in the particular context of these proceedings. The Tribunal held that CPW had not put forward any convincing reasons why it could not properly conduct its case without the executive seeing this information. The Tribunal therefore unanimously dismissed the application.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
28	<p><b>Stagecoach Group Plc v Competition Commission</b></p> <p>[2010] CAT 1</p> <p>22-Jan-10</p>	<p>Vivien Rose</p> <p>Professor Andrew Bain OBE</p> <p>Michael Blair QC</p>	<p>Ruling of the Tribunal on an application by the Competition Commission ('CC') to reject, in whole or in part, the notice of application filed by Stagecoach Group Plc ('Stagecoach'). By its notice of application dated 8 December 2009 Stagecoach applied to the Tribunal for a review under section 120 of the Enterprise Act ('the Act') of the decision of the CC dated 11 November 2009 contained in a report entitled 'Stagecoach Group Plc/Preston Bus Limited Merger Inquiry'.</p> <p>The CC primarily argued that because Stagecoach had made it clear that it intended to sell the acquired business for its own commercial reasons, it made no difference how the Tribunal determined the grounds set out in Stagecoach's notice of application. The appeal was therefore 'moot' or hypothetical. Because of this, Stagecoach was not 'a person aggrieved' by a decision of the CC within the meaning of the legislation.</p> <p>The Tribunal unanimously dismissed the CC's application to reject the notice of application.</p> <p>The Tribunal concluded that Stagecoach was a person aggrieved by the CC's decision. The Tribunal held that it was difficult to conceive of a situation where the parties to a merger which the CC has decided results in an anti-competitive outcome would not be persons aggrieved by that decision. The Tribunal further held that a party to a merger which has been the subject of an adverse report under the Act does not lose its right to apply for a review simply because it is prepared, pending the determination of that application, to abide by the interim undertakings to which it remains subject and to cooperate with all or part of the post-decision process envisaged by the relevant provisions of the Act. Furthermore, the Tribunal accepted Stagecoach's submission that it was a person aggrieved because the terms upon which it negotiated the sale of the acquired business were different depending on whether the divestment took place against the background of the CC's findings or not.</p>
29	<p><b>(1) Kier Group Plc (2) Kier Regional Limited v Office of Fair Trading</b></p> <p>[2010] CAT 2</p> <p>25-Jan-10</p>	<p>The President</p> <p>Lord Carlile QC</p> <p>Vivien Rose</p>	<p>Ruling of the Tribunal in relation to case management issues. This ruling also applied to 24 other cases constituting appeals against an infringement decision by the Office of Fair Trading dated 21 September 2009 concerning the construction sector.</p>
30	<p><b>VIP Communications Limited (in administration) v Office of Communications</b></p> <p>[2010] CAT 3</p> <p>2-Feb-10</p>	<p>Vivien Rose</p> <p>Michael Davey</p> <p>Sheila Hewitt</p>	<p>Ruling of the Tribunal on applications by the Office of Communications ('OFCOM') and T-Mobile (UK) Limited ('T-Mobile') for their costs in respect of an appeal brought by VIP Communications Limited (in administration) ('VIP'). The Tribunal considered that the costs of the proceedings fell into two categories: first, costs incurred by OFCOM and T-Mobile in defending an unsuccessful application for interim relief made by VIP part way through the proceedings in 2006; and second, the costs of the substantive proceedings. In relation to the first category, the Tribunal ruled that the suspension imposed by the Tribunal in April 2007 pending resolution of the appeal should be lifted and that the obligation to pay those costs should come into effect upon the terms ordered. In relation to the second category, the Tribunal held that VIP should pay OFCOM's reasonable costs and that there should be no further order for costs as between T-Mobile and VIP.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
31	<b>Enron Coal Services Limited (in liquidation) v English Welsh &amp; Scottish Railway Limited</b> [2010] CAT 4 9-Feb-10	Lord Carlile QC Graham Mather Richard Prosser OBE	Ruling of the Tribunal refusing Enron Coal Services Limited's ('ECSL') request for permission to appeal from the Tribunal's judgment of 21 December 2009 (see [2009] CAT 36).  ECSL's proposed grounds of appeal concerned the Tribunal's finding that ECSL had failed to prove that the breach of section 18 of the Competition Act 1998 by English Welsh & Scottish Railway Limited caused any claimed loss.  The Tribunal refused permission to appeal on the basis that the proposed grounds of appeal had no real prospect of success and there were no other compelling reasons to allow an appeal to the Court of Appeal.
32.	<b>BCL Old Co Limited and Others v BASF SE and Others</b> [2010] CAT 5 12-Feb-10	Viven Rose The Honourable Antony Lewis Dr Arthur Pryor CB	Ruling of the Tribunal on an application by BCL Old Co Limited and Others ('the Claimants') for permission to appeal the Tribunal's judgment refusing applications to extend time to lodge proceedings seeking damages pursuant to section 47A of the Competition Act 1998.  The Tribunal held that the Claimants' grounds had no real prospect of success. On the question whether rule 19 of the Competition Appeal Tribunal Rules 2003 (SI No.1372) allowed for an extension of time for lodging a claim brought under section 47A, the Tribunal concluded that although this was a point of law which may have had some chance of success, it should exercise its discretion to refuse permission.
33	<b>BCL Old Co Limited and Others v BASF SE and Others</b> <b>Grampian Country Food Group Limited and Others v Sanofi-Aventis SA and Others</b> [2010] CAT 6 12-Feb-10	Viven Rose The Honourable Antony Lewis Dr Arthur Pryor CB	Ruling of the Tribunal following applications by BASF SE and Others and Sanofi-Aventis SA and Others for their costs in the proceedings. In relation to the costs incurred in successfully defending the applications to extend time in both the BCL and Grampian Claims, the Tribunal concluded that the defendants should be awarded their reasonable costs, such costs to be the subject of detailed assessment if not agreed. The Tribunal's conclusion in relation to the costs incurred in arguing the preliminary issue before the Tribunal was that the just result was for each side to bear their own costs as the proceedings clarified an important issue regarding the proper construction of section 47A of the Competition Act 1998 and rule 31(2) of the Competition Appeal Tribunal Rules 2003 (SI No.1372). Finally, the Tribunal held that each party should bear their own costs of the initial stages of the proceedings.
34	<b>CTS Eventim AG v Competition Commission</b> [2010] CAT 7 11-Feb-10	Lord Carlile QC Marcus Smith QC Professor Andrew Bain OBE	Ruling of the Tribunal providing reasons for the Order adopting the agreed proposal of the Competition Commission ('CC') and CTS Eventim AG to quash the Report of the CC into the merger of Live Nation, Inc and Ticketmaster Entertainment, Inc, and remit the matter to the CC for reconsideration.
35	<b>CTS Eventim AG v Competition Commission</b> [2010] CAT 8 18-Feb-10	Lord Carlile QC Marcus Smith QC Professor Andrew Bain OBE	Ruling of the Tribunal on an application by CTS Eventim AG ('Eventim') for an order that the Competition Commission ('CC') pay its costs. The Tribunal considered that, as Eventim was the successful party, the starting point should be that it was entitled to its costs. However the Tribunal concluded that Eventim should be only entitled to recover 75 per cent of its costs, to be assessed if not agreed, as the work done by Eventim in compiling its notice of application would be useful in making submissions to the CC in respect of the new decision.

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject matter</b>
36	<p><b>BAA Limited v Competition Commission</b></p> <p><b>[2010] CAT 9</b></p> <p><b>25-Feb-10</b></p>	<p>The President</p> <p>Lord Carlile QC</p> <p>Sheila Hewitt</p>	<p>Judgment on relief and permission to appeal in BAA Limited's ('BAA') application for review pursuant to section 179 of the Enterprise Act 2002.</p> <p>By its judgment of 21 December 2009 (see [2009] CAT 35) ('the Main Judgment') the Tribunal upheld BAA's application for review of the Report of the Competition Commission ('CC') on the ground of apparent bias, whilst rejecting BAA's second ground of challenge, which alleged that the CC had not complied with the requirements of proportionality in certain respects. The Tribunal left over the question of relief to be determined following further argument, in the absence of agreement between the parties.</p> <p>In relation to the question of relief, the Tribunal approved the substance of the parties' agreement to quash certain parts of the Report of the CC, and remit the matter to the CC for reconsideration, but rejected Ryanair Limited's ('Ryanair') proposed directions requiring the CC to take specified steps in relation to the conduct of that reconsideration.</p> <p>Separately, the judgment also sets out the Tribunal's reasons for refusing the CC's and Ryanair's requests for permission to appeal from the Main Judgment. Both the CC's and Ryanair's applications were refused on the basis that the grounds of appeal raised had no real prospect of success and there were no other compelling reasons to allow the appeals to go forward. The applications were able to be renewed to the Court of Appeal itself.</p>
37	<p><b>The Carphone Warehouse Group Plc v Office of Communications (Local Loop Unbundling)</b></p> <p><b>[2010] CAT 10</b></p> <p><b>17-Mar-10</b></p>	<p>Vivien Rose</p> <p>The Honourable Antony Lewis</p> <p>Dr Arthur Pryor</p> <p>CB</p>	<p>Reasoned Order of the Chairman directing: (i) that BT disclose unredacted versions of certain documents, which had previously been produced to Carphone Warehouse in redacted form, to the Competition Commission ('CC'); and (ii) that the CC write to the Tribunal indicating whether the documents are relevant and whether in its view they should be disclosed to the confidentiality ring.</p>

Judgment	Tribunal	Subject matter
<p>38 <b>BAA Limited v Competition Commission</b>  <b>[2010] CAT 11</b>  <b>30-Mar-10</b></p>	<p>The President                      Lord Carlile QC                      Sheila Hewitt</p>	<p>Ruling of the Tribunal in relation to an application by BAA Limited ('BAA') for costs against the Competition Commission ('CC').</p> <p>The Tribunal considered that in establishing that the Report was affected by apparent bias and in overcoming the CC's contentions (made as alternatives to the denial of apparent bias) that any such apparent bias had been waived by BAA or was not such as to 'taint' the other decision-makers, BAA had succeeded in its challenge (see [2009] CAT 35). The principles set out by the Tribunal in <i>Tesco Plc v Competition Commission (costs)</i> (see [2009] CAT 26) indicated therefore that an award of costs in favour of BAA was likely to be appropriate as a starting point. The Tribunal did not consider that the fact that BAA failed on the proportionality ground meant that the Tribunal should make no order as to costs, as such an order would not reflect the real outcome of the proceedings and it was clear that the allegation of apparent bias was the major ground of BAA's application.</p> <p>However the Tribunal considered that the CC's success on the proportionality ground, being a discrete and important point, albeit somewhat less substantial, needed to be fairly reflected in the costs award. In all the circumstances, the Tribunal decided that BAA should receive 75 per cent of its reasonable and proportionate costs incurred in arguing the apparent bias ground, such costs to include the post-judgment costs relating to relief, permission to appeal and costs. The Tribunal considered that the costs should be subject to detailed assessment on the standard basis by a costs officer of the Senior Courts Costs Office pursuant to rule 55(3) of the Competition Appeal Tribunal Rules 2003 (SI No.1372) if not agreed. The difficulties of apportionment which can arise in relation to an issues-based order would be avoided here as different solicitors had been instructed by BAA for the apparent bias issue, and so far as counsel's fees were concerned the assessment should be on the basis that 60 per cent of those fees were in respect of that issue.</p> <p>Finally, the Tribunal refused to order that any payment of costs be stayed pending the CC's renewed application for permission to appeal the Main Judgment to the Court of Appeal or any subsequent appeal.</p>



## Activity by Case within the period 1 April 2009 to 31 March 2010

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2010	Notes	
<b>Wanadoo UK Plc (formerly Freeserve.com Plc) v Office of Communications</b>  Case No. 1026/2/3/04 20 January 2004	03-04	1	1						Adjourned generally at the request of the parties on 14 June 2005 pending a new decision by OFCOM.	
	04-05		5		4					
	05-06		1		1					
	06-07									
	07-08									
	08-09									
	09-10							Stayed		
<b>VIP Communications Limited (in administration) v Office of Communications</b>  Case No. 1027/2/3/04 20 February 2004	03-04								Prior to 06-07 this case was heard concurrently with Floe Telecom Limited (case: 1024/2/3/04). Proceedings in this appeal were stayed between September 2005 and September 2006 and again between June 2007 and March 2009 pending determination of the proceedings in Floe. In previous years the date of the judgment of 22 January 2007 was shown as 22 January 2006.	
	04-05									
	05-06									
	06-07		1	2	2	3	22 Jan 2007	35.5		
	07-08					2		1		
	09-10		1			3	19 Nov 2009	69		Closed



Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2010	Notes	
<b>Albion Water Limited v Water Services Regulation Authority (formerly the Director General of Water Services) (Interim Relief)</b> Case No. 1034/2/4/04 (IR) 28 May 2004	04-05	2	1						The Interim Relief case was kept open pending the determination of the appeal in Albion Water Limited & Albion Water Group Limited (case: 1046/2/4/04).	
	05-06				1	11 May 2005	11.5			
	06-07				1	20 Nov 2006	30			
	07-08									
	08-09									
	09-10							Closed		
<b>Albion Water Limited &amp; Albion Water Group Limited v Water Services Regulation Authority (formerly the Director General of Water Services) (Dŵr Cymru / Shotton Paper)</b> Case No. 1046/2/4/04 23 July 2004	04-05	3	2						Following the judgment in the previous year, activity in this case in 2009-2010 was limited to dealing with ancillary issues.	
	05-06		2	1	3	2	21 Dec 2005	17		
							6 Oct 2006	26.5		
	06-07		2	3	8	5	18 Dec 2006	29		1
	07-08		1	1	2	1				
	08-09			1	1	1	7 Nov 2008	51.5		
	09-10					1				Closed
<b>Emerson Electric Co and Others v Morgan Crucible Company Plc</b> Case No. 1077/5/7/07 9 February 2007	06-07								This case was stayed from April to December 2009 pending judgment of the European Court of Justice.	
	07-08		1	3	4	2				
	08-09					2				
	09-10									Ongoing
<b>Hutchison 3G UK Limited v Office of Communications (Mobile Call Termination)</b> Case No. 1083/3/3/07 23 May 2007	07-08	5	4	2	9	5		1	Following the judgment in the previous year, activity in this case in 2009-2010 was limited to dealing with ancillary issues.	
	08-09		2	1	1	4	20 May 2008	11.9		1
	09-10					2				Closed

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Status at 31 March 2010	Notes	
<b>British Telecommunications Plc v Office of Communications (Mobile Call Termination)</b> Case No. 1085/3/3/07 29 May 2007	07-08	5			1			This case proceeded concurrently with Hutchison 3G UK Limited (case: 1083/3/3/07). Activity which relates only to this case is recorded here.	
	08-09		1	1	1	22 Jan 2009	19.8		
	09-10								Closed
<b>T-Mobile (UK) Limited v Office of Communications (Termination Rate Dispute)</b> Case No. 1089/3/3/07 7 September 2007	07-08	5	2		1			The main issues in this case (and the other related Termination Rate Dispute cases: British Telecommunications Plc (case: 1090/3/3/07), Hutchison 3G UK Limited (case: 1091/3/3/07) and Cable & Wireless (case: 1092/3/3/07)) were heard at the same time as the main issues in the Mobile Call Termination cases (cases: 1083/3/3/07 and 1085/3/3/07).	
	08-09				4	20 May 2008	8.4		1
						15 Aug 2008	11.3		
09-10								Closed	
<b>British Telecommunications Plc v Office of Communications (Termination Rate Dispute)</b> Case No. 1090/3/3/07 7 September 2007	07-08	5						This case was heard at the same time as the other Termination Rate Dispute Cases (T-Mobile (UK) Limited (case: 1089/3/3/07), Hutchison 3G UK Limited (case: 1091/3/3/07) and Cable & Wireless (case: 1092/3/3/07)).	
	08-09								
	09-10								Closed

Notes	Status at 31 March 2010	Requests for permission to appeal	Date of judgment(s) on the main issues (and months from registration to judgment)	Judgments (including interlocutory rulings and final judgments)	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Case management conferences	Applications to intervene	Year (1 April to 31 March)	Case name, number and date registered
This case was heard at the same time as the other Termination Rate Dispute Cases (T-Mobile (UK) Limited (case: 1089/3/3/07), British Telecommunications Plc (case: 1090/3/3/07) and Cable & Wireless (case: 1092/3/3/07)).							5	07-08	<b>Hutchison 3G UK Limited v Office of Communications (Termination Rate Dispute)</b> Case No. 1091/3/3/07 7 September 2007
								08-09	
	Closed							09-10	
This case was heard at the same time as the other Termination Rate Dispute Cases (T-Mobile (UK) Limited (case: 1089/3/3/07), British Telecommunications Plc (case: 1090/3/3/07) and Hutchison 3G UK Limited (case: 1091/3/3/07)).							5	07-08	<b>Cable &amp; Wireless and Others v Office of Communications (Termination Rate Dispute)</b> Case No. 1092/3/3/07 7 September 2007
								08-09	
	Closed							09-10	
				1			1	07-08	<b>T-Mobile (UK) Limited v Office of Communications (Donor Conveyance Charge)</b> Case No. 1093/3/3/07 17 October 2007
							1	08-09	
	Ongoing							09-10	

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences		Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2010	Notes
<b>British Sky Broadcasting Group Plc v (1) Competition Commission (2) Secretary of State for Business, Enterprise and Regulatory Reform</b> Case No. 1095/4/8/08 22 February 2008	07-08	1	1			1				Following the judgment in the previous year, activity in this case in 2009-2010 was limited to dealing with costs issues.
	08-09		1	2	4	4	29 Sept 2008	7.2	1	
	09-10					1			Closed	
<b>Virgin Media Inc. v (1) Competition Commission (2) Secretary of State for Business, Enterprise and Regulatory Reform</b> Case No. 1096/4/8/08 25 February 2008	07-08	1								This case was heard concurrently with British Sky Broadcasting Group Plc (case: 1095/4/8/08). Only activity which relates solely to this case is shown here.
	08-09					1	30 Oct 2008	8.2	1	
	09-10								Closed	
<b>National Grid Plc v Gas and Electricity Markets Authority (Interim Relief)</b> Case No. 1097/1/2/08 (IR) 5 March 2008	07-08									The Interim Relief case was dealt with by way of an agreed order in March 2008 but was kept open pending the conclusion of the proceedings in National Grid Plc (case: 1099/1/2/08).
	08-09									
	09-10								Closed	
<b>(1) BCL Old Co Limited and Others v BASF AG and Others</b> Case No. 1098/5/7/08 13 March 2008	07-08									This case was stayed between January and May 2009 pending the outcome of an appeal on a preliminary point to the Court of Appeal.
	08-09			1	1	2	25 Sept 2008	6.4	1	
	09-10			1	1	3	19 Nov 2009	20.2		

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences			Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2010	Notes
<b>National Grid Plc v Gas and Electricity Markets Authority</b> Case No. 1099/1/2/08 21 April 2008	08-09		3	1	11	2					
	09-10					3	29 Apr 2009	12.3	1	Closed	
<b>Grampian Country Food Group Limited and Others v Sanofi-Aventis SA and Others</b> Case No. 1101/5/7/08 14 May 2008	08-09								1		This case was stayed between January and May 2009 pending the outcome of a preliminary point raised in BCL Old Co Ltd and Others (case: 1098/5/7/08) before the Court of Appeal.
	09-10				1	1	19 Nov 2009	18.2		Closed	
<b>T-Mobile (UK) Limited v Office of Communications (Sequencing Decision)</b> Case No. 1102/3/3/08 16 May 2008	08-09	1	1	1	2	2	10 Jul 2008	1.8	1		
	09-10									Closed	
<b>Telefónica O2 UK Limited v Office of Communications</b> Case No. 1103/3/3/08 3 June 2008	08-09	1									This case was heard concurrently with T-Mobile (UK) Limited (Sequencing Decision) (case: 1102/3/3/08).
	09-10								1	Closed	
<b>Tesco Plc v Competition Commission</b> Case No. 1104/6/8/08 2 July 2008	08-09	4	1	2	4	2	4 Mar 2009	8.1			Following the judgment in the previous year, activity in this case in 2009-2010 was limited to dealing with relief and other ancillary issues.
	09-10			1	1	3	3 Apr 2009	9	1	Closed	

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)			Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2010	Notes
				1	2	3					
<b>Enron Coal Services Limited (in liquidation) v English Welsh &amp; Scottish Railway Limited</b>  Case No. 1106/5/7/08 7 November 2008	08-09		1	1	1	2			2		
	09-10			1	5	3	21 Dec 2009	13.5	1	Ongoing	
<b>Merger Action Group v Secretary of State for Business, Enterprise and Regulatory Reform</b>  Case No. 1107/4/10/08 28 November 2008	08-09	3	1	1	2	4	10 Dec 2008	0.4	2		Following the judgment in the previous year, activity in this case in 2009-2010 was limited to dealing with costs.
	09-10					1				Closed	
<b>Barclays Bank Plc v Competition Commission</b>  Case No. 1109/6/8/09 30 March 2009	08-09										
	09-10	4	1	1	5	3	16 Oct 2009	6.5		Closed	
<b>BAA Limited v Competition Commission</b>  Case No. 1110/6/8/09 18 May 2009	09-10	1	1	1	4	4	21 Dec 2009	7.1	2	Closed	
<b>The Carphone Warehouse Group Plc v Office of Communications (Local Loop Unbundling)</b>  Case No. 1111/3/3/09 22 July 2009	09-10	2	2	3	3	4				Ongoing	The remaining issues for determination are specified price control matters which were referred to the Competition Commission on 27 November 2009.

Notes	Status at 31 March 2010	Requests for permission to appeal	Date of judgment(s) on the main issues (and months from registration to judgment)	Judgments (including interlocutory rulings and final judgments)	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Case management conferences	Applications to intervene	Year (1 April to 31 March)	Case name, number and date registered
	Ongoing					1	2	09-10	<b>Cable &amp; Wireless UK v Office of Communications (Leased Lines Charge Control)</b> Case No. 1112/3/3/09 2 September 2009
	Ongoing						1	09-10	<b>Cable &amp; Wireless UK &amp; Others v Office of Communications (Carrier Pre-Selection Charges)</b> Case No. 1113/3/3/09 4 September 2009
	Ongoing			1		1		09-10	<b>(1) Kier Group Plc (2) Kier Regional Limited v Office of Fair Trading</b> Case No. 1114/1/1/09 10 November 2009
	Ongoing							09-10	<b>Crest Nicholson Plc v Office of Fair Trading</b> Case No. 1115/1/1/09 18 November 2009
	Closed		14 Dec 2009	1	1	1	2	09-10	<b>Sports Direct International Plc v Competition Commission</b> Case No. 1116/4/8/09 19 November 2009



Notes	Status at 31 March 2010	Requests for permission to appeal	Date of judgment(s) on the main issues (and months from registration to judgment)	Judgments (including interlocutory rulings and final judgments)	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Case management conferences	Applications to intervene	Year (1 April to 31 March)	Case name, number and date registered
	Ongoing							09-10	<b>(1) G F Tomlinson Building Limited (2) G F Tomlinson Group Limited v Office of Fair Trading</b> Case No. 1117/1/1/09 18 November 2009
	Ongoing							09-10	<b>(1) GMI Construction Holdings Plc (2) GMI Construction Group Plc v Office of Fair Trading</b> Case No. 1118/1/1/09 20 November 2009
	Ongoing							09-10	<b>Ballast Nedam N.V v Office of Fair Trading</b> Case No. 1119/1/1/09 20 November 2009
	Ongoing							09-10	<b>(1) Quarmbly Construction Company Limited (2) St James Securities Holdings Limited v Office of Fair Trading</b> Case No. 1120/1/1/09 20 November 2009
	Ongoing							09-10	<b>(1) Durkan Holdings Limited (2) Durkan Limited (3) Concentra Limited (formerly known as Durkan Pudelek Limited) v Office of Fair Trading</b> Case No. 1121/1/1/09 20 November 2009

Notes	Status at 31 March 2010	Requests for permission to appeal	Date of judgment(s) on the main issues (and months from registration to judgment)	Judgments (including interlocutory rulings and final judgments)	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Case management conferences	Applications to intervene	Year (1 April to 31 March)	Case name, number and date registered
	Ongoing							09-10	<b>A.H Willis &amp; Sons Limited v Office of Fair Trading</b> Case No. 1122/1/1/09 23 November 2009
	Ongoing							09-10	<b>(1) Sol Construction Limited (2) Barkbury Limited v Office of Fair Trading</b> Case No. 1123/1/1/09 23 November 2009
	Ongoing							09-10	<b>North Midland Construction Plc v Office of Fair Trading</b> Case No. 1124/1/1/09 23 November 2009
	Ongoing							09-10	<b>(1) Barrett Estate Services Limited (2) Francis Construction Limited v Office of Fair Trading</b> Case No. 1125/1/1/09 23 November 2009
	Ongoing							09-10	<b>ISG Pearce Limited v Office of Fair Trading</b> Case No. 1126/1/1/09 23 November 2009
	Ongoing							09-10	<b>(1) Bowmer and Kirkland Limited (2) B&amp;K Property Services Limited v Office of Fair Trading</b> Case No. 1127/1/1/09 23 November 2009

Notes	Status at 31 March 2010	Requests for permission to appeal	Date of judgment(s) on the main issues (and months from registration to judgment)	Judgments (including interlocutory rulings and final judgments)	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Case management conferences	Applications to intervene	Year (1 April to 31 March)	Case name, number and date registered
	Ongoing							09-10	<b>(1) GAJ Construction Limited (2) GAJ (Holdings) Limited v Office of Fair Trading</b> Case No. 1128/1/1/09 23 November 2009
	Ongoing							09-10	<b>Corringway Conclusions Plc (in liquidation) v Office of Fair Trading</b> Case No. 1129/1/1/09 23 November 2009
	Ongoing							09-10	<b>(1) Renew Holdings PLC (2) Allenbuild Limited v Office of Fair Trading</b> Case No. 1130/1/1/09 23 November 2009
	Ongoing							09-10	<b>(1) Robert Woodhead (Holdings) Limited (2) Robert Woodhead Limited v Office of Fair Trading</b> Case No. 1131/1/1/09 23 November 2009
	Ongoing							09-10	<b>(1) Thomas Vale Holdings Limited (2) Thomas Vale Construction Plc v Office of Fair Trading</b> Case No. 1132/1/1/09 23 November 2009

Notes	Status at 31 March 2010	Requests for permission to appeal	Date of judgment(s) on the main issues (and months from registration to judgment)	Judgments (including interlocutory rulings and final judgments)	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Case management conferences	Applications to intervene	Year (1 April to 31 March)	Case name, number and date registered
	Ongoing							09-10	<b>(1) John Sisk &amp; Son Limited (2) Sicon Limited v Office of Fair Trading</b> Case No. 1133/1/1/09 23 November 2009
	Ongoing							09-10	<b>(1) G&amp;J Seddon Limited (2) Seddon Group Limited v Office of Fair Trading</b> Case No. 1134/1/1/09 23 November 2009
	Ongoing							09-10	<b>(1) Interclass Holdings Limited (2) Interclass Plc v Office of Fair Trading</b> Case No. 1135/1/1/09 23 November 2009
	Ongoing							09-10	<b>(1) J H Hallam (R&amp;J) Limited (2) J H Hallam (Contracts) Limited v Office of Fair Trading</b> Case No. 1136/1/1/09 23 November 2009
	Ongoing							09-10	<b>Hobson and Porter Limited v Office of Fair Trading</b> Case No. 1137/1/1/09 23 November 2009
	Ongoing							09-10	<b>Apollo Property Services Group Limited v Office of Fair Trading</b> Case No. 1138/1/1/09 23 November 2009

Notes	Status at 31 March 2010	Requests for permission to appeal	Date of judgment(s) on the main issues (and months from registration to judgment)	Judgments (including interlocutory rulings and final judgments)	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Case management conferences	Applications to intervene	Year (1 April to 31 March)	Case name, number and date registered
	Ongoing							09-10	<b>Galliford Try Plc v Office of Fair Trading</b> Case No. 1139/1/1/09 23 November 2009
	Ongoing				1			09-10	<b>Eden Brown Limited v Office of Fair Trading</b> Case No. 1140/1/1/09 30 November 2009
	Ongoing							09-10	<b>(1) CDI AndersElite Limited (2) CDI Corp v Office of Fair Trading</b> Case No. 1141/1/1/09 30 November 2009
	Ongoing							09-10	<b>(1) Hays Plc (2) Hays Specialist Recruitment Limited (3) Hays Specialist Recruitment (Holdings) Limited v Office of Fair Trading</b> Case No. 1142/1/1/09 30 November 2009

Notes	Status at 31 March 2010	Requests for permission to appeal	Date of judgment(s) on the main issues (and months from registration to judgment)	Judgments (including interlocutory rulings and final judgments)	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Case management conferences	Applications to intervene	Year (1 April to 31 March)	Case name, number and date registered
	Closed		8 Dec 2009	1	1	1		09-10	<b>Fish Holdings Limited v Office of Fair Trading</b> Case No. 1143/1/1/09 1 December 2009
	Closed		4 Dec 2009	1	2	1		09-10	<b>Wm Morrison Supermarkets Plc v Competition Commission (Interim Relief)</b> Case No. 1144/4/8/09 (IR) 2 December 2009
	Ongoing			1	2	1		09-10	<b>Stagecoach Group Plc v Competition Commission</b> Case No. 1145/4/8/09 8 December 2009
	Ongoing					1	5	09-10	<b>British Telecommunications Plc v Office of Communications (Partial Private Circuits)</b> Case No. 1146/3/3/09 14 December 2009
	Stayed							09-10	<b>(1) Moy Park Limited (2) Faccenda Group Limited (3) GW Padley Poultry Limited v (1) Evonik Degussa GmbH (2) Degussa Limited</b> Case No: 1147/5/7/09 22 December 2009

<b>Notes</b>	<b>Status at 31 March 2010</b>	<b>Requests for permission to appeal</b>	<b>Date of judgment(s) on the main issues</b> (and months from registration to judgment)		<b>Judgments (including interlocutory rulings and final judgments)</b>	<b>Hearings</b> (and sitting days – excluding days limited to formal handing down of judgments)	<b>Case management conferences</b>	<b>Applications to intervene</b>	<b>Year (1 April to 31 March)</b>	<b>Case name, number and date registered</b>
	Stayed								09-10	<b>The Campaign for Real Ale v Office of Fair Trading</b> Case No. 1148/6/1/09 22 December 2009
This case primarily concerns specified price control matters which were referred to the Competition Commission on 18 February 2010.	Ongoing							2	09-10	<b>The Carphone Warehouse Group Plc v Office of Communications (Wholesale Line Rental)</b> Case No. 1149/3/3/09 24 December 2009
This matter was remitted to the Competition Commission for further consideration on 11 February 2010.	Ongoing		1	11 Feb 2010	2	1	1	1	09-10	<b>CTS Eventim AG v Competition Commission</b> Case No. 1150/4/8/10 19 January 2010
		<b>6</b>			<b>38</b>	<b>27</b>	<b>14</b>	<b>10</b>	<b>09-10</b>	<b>TOTAL</b>



## Activity by Case within the period 1 April 2009 to 31 March 2010

	2009-2010	2008-2009	2007- 2008
<b>Appeals, applications and claims received of which</b>	41	11	19
Section 46 Competition Act 1998 <sup>1</sup>	29	1	0
Section 47 Competition Act 1998 <sup>2</sup>	0	0	1
Section 47A Competition Act 1998 <sup>3</sup>	1	4	2
Section 47B Competition Act 1998 <sup>4</sup>	0	0	0
Section 120 Enterprise Act 2002 <sup>5</sup>	3	1	4
Section 179 Enterprise Act 2002 <sup>6</sup>	2	2	0
Section 192 Communication Act 2003 <sup>7</sup>	5	3	11
Applications for interim relief	1	0	1
<b>Applications to intervene</b>	20	10	52
<b>Case management conferences held</b>	10	13	21
<b>Hearings held (sitting days)</b>	14 (27)	16 (36)	13 (24)
<b>Judgments handed down</b>	38	42	26
Of which			
Judgments disposing of main issue or issues	4	11	6
Judgment on procedural and interlocutory matters	14	11	15
Judgments on ancillary matters (eg. Costs)	20	20	5
<b>Orders made</b>	123	184	139

- 1 An appeal by a party to an agreement or conduct in respect of which the Office of Fair Trading (or one of the other regulators with concurrent powers to apply the Competition Act 1998 ('the Competition Act')) has made an 'appealable decision'. During the period to 31 March 2010 appealable decisions included a decision as to whether the Chapter I prohibition or Chapter II prohibition of the Competition Act had been infringed, as to whether Articles 101 or 102 of the Treaty on the functioning of the European Union (formerly Articles 81 and 82 of the EC Treaty) had been infringed and the imposition of a penalty for infringement of those provisions or as to the amount of such penalty.
- 2 An appeal against an 'appealable decision' made by the Office of Fair Trading or other regulator with concurrent powers to apply the Competition Act and made by a third party with a sufficient interest in the decision not otherwise entitled to appeal the decision pursuant to section 46 of the Competition Act.
- 3 A claim for damages or other claim for a sum of money by a person who has suffered loss or damage as a result of the infringement of the Competition Act or of European competition law.
- 4 A claim for damages or other claim for a sum of money brought by 'a specified body' on behalf of two or more consumers.
- 5 An application by 'any person aggrieved' by a decision of the Office of Fair Trading, the Competition Commission or the Secretary of State in connection with a reference or possible reference in relation to a relevant merger situation or special merger situation under the Enterprise Act 2002.
- 6 An application by 'any person aggrieved' by a decision of the Office of Fair Trading, the Competition Commission or the Secretary of State in connection with a market investigation reference or possible market investigation reference.
- 7 An appeal by 'a person affected' by a decision of the Office of Communications or of the Secretary of State in relation to certain specified communications matters set out in that section.

## Accounts

### Management Commentary in respect of the Tribunal and the Service for the year ended 31 March 2010

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

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

#### Accounts direction

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

The accounts are prepared so as to give a true and fair view of the state of affairs of the Tribunal and CS at the year end and provide disclosures and notes to the accounts in compliance with the accounting principles and disclosure requirements of the edition of the Government Financial Reporting Manual (FrM) issued by HM Treasury in force for the current financial year 2009-2010.

#### Financial performance

The programme funding allocation from BIS for 2009-2010 was £4,253,000 for resource expenditure (net of any income from other sources) and £79,000 for capital expenditure. The capital expenditure allocation is for the CS only.

#### Actual resource expenditure for the year was £3,829,000 and capital expenditure was £55,000

The actual expenditure for the Tribunal reduced from £746,000 in 2008-2009 to £583,000. Towards the end of the year 41 new cases were received. The main hearings for those cases are listed in the next financial year. The reduction in expenditure is mainly due to lower levels of case activity earlier in the financial year and a shortening of the members' training programme.

The actual expenditure for the CS, before notional cost of capital, reduced from £3,470,000 in 2008-2009 to £3,246,000. During the year HR consultancy and IT consultancy costs reduced by £92,000 and other administrative expenses (which includes transcripts, staff training and recruitment costs) reduced by £70,000. Administrative costs also include a £38,000 credit for notional cost of capital. This charge is normally a cost, but it is a credit as there are net liabilities.

The CS obtained approval in 2008-2009 from BIS for a two-year staff pay proposal. During 2009-2010 the CS received confirmation from BIS that this proposal could continue to be implemented in its second year. The CS's pay remit, whilst remaining within Treasury limits, is intended to reward performance and attract and retain suitably qualified staff. The total pay bill for staff (excluding the Registrar whose pay is determined by the Secretary of State and is mentioned in the remuneration report) reduced by 1.4 per cent in 2009-2010 with an average staff pay increase of 3.53 per cent. The savings on salary costs are mainly due to staff leaving and not being replaced or not being replaced immediately.

A staff absence rate of 2.1 per cent was achieved for 2009-2010 against the target rate of 3 per cent.

## Financing of activities

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

## Statement of financial position

The Tribunal's statement of financial position shows only those liabilities at 31 March 2010 that are directly attributable to the Tribunal. There is a receivables balance of an equal amount representing the amount that the CS shall transfer to meet those liabilities. The liabilities in the CS's statement of financial position therefore include the liabilities of the Tribunal.

The book value of the CS's non current assets fell from £221,000 to £162,000, as most of the assets are low value with a short life of three or five years. Most of the assets are fully depreciated or are in the last year of their useful economic life. Capital expenditure during the year amounted to £55,000 which was lower than incurred in 2008-2009. The CS invested in upgrading the Sun Accounting System. Other capital expenditure included a mobile asset tracking system, an audio/video entry phone system and a new server for the accounting system upgrade.

Total assets increased by £102,000 to £810,000. Closing cash balances were £573,000 (2008-2009: £408,000).

In 2009-2010, the CS's general fund (which represents the total assets less liabilities of the CS to the extent that the total is not represented by other reserves and financing items) reduced by £130,000.

## Pension liabilities

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

## Social, economic and environmental issues

The Tribunal is part of the UK justice system and also forms part of the UK's competition regime.

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

## Risks and uncertainties

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

The following are some of the main risks and the arrangements in place to manage the risks.

There is a risk that expenditure limits imposed by BIS will compromise the ability of the Tribunal to function effectively especially when carrying a heavy caseload. The CS reports on a monthly basis to BIS who will fund additional expenditure if the caseload rises beyond the predicted level. The CS meets BIS at quarterly intervals to discuss funding and workload.

There is a risk that, if the President or the Registrar was to be absent for a prolonged period of time that would result in the Tribunal being unable to function. There are three members of the panel of chairmen to share the workload of the President. If the Registrar is away then the referendaires working under the direction of the President will cover the Registrar's supervision of cases before the Tribunal. The administrative tasks of the Registrar will be covered by the Director, Operations.

There is a risk that if the Accounting Officer or the Finance Manager was to be unavailable for a prolonged period of time it would result in disruption to the finance function, failure to pay staff and members, and failure to obtain funding from BIS. Financial authority is delegated to key staff principally the Director, Operations. The Director, Operations also has delegated authority to make salary payments when the Registrar is unavailable for a period of time.

The Tribunal's premises were affected by a flood on 14 April 2010 caused by a pipe bursting. There is a risk that, due to possible design defects in the air conditioning system, further incidents of flooding may occur. If any such incident occurs in either of the two courts, then hearings would have to take place at a temporary venue which would thus cause significant disruption to the work of the Tribunal. Information updates would be published on the Tribunal's website.

## Future developments

For the 2010-2011 resource request, the CS has continued to restrict expenditure and make savings wherever it is prudent to do so without impairing the Tribunal's and the CS's abilities to carry out their respective statutory functions.

The budget proposal for 2010-2011 was submitted to BIS in February 2010. For 2010-2011, the Tribunal and the CS requested a combined Resource Departmental Expenditure Limit (RDEL) of £4,239,000 and a further £70,000 for the capital expenditure programme. The RDEL is currently subject to final approval by BIS.

Resource costs for the CS are budgeted to rise by £206,000 when compared with the 2009-2010 outturn.

This increase can be attributed to two specific areas

- The CS payroll costs include costs for some staff being in post for the full year in comparison with 2009-2010 when these staff were only in post for part of that year. Also unpaid annual leave has been included as required by the adoption of IFRS standard IAS 19 – Employee Benefits.
- Case variable costs will be higher as a larger number of significant hearings will take place in the year 2010-2011.

The remuneration for Ordinary Members will increase as the Tribunal has a higher caseload. The CS, as the support organisation for the Tribunal, must ensure that the required resources are made available to meet the needs of the Tribunal.

## Remuneration Report for the Tribunal and the CS for the year ended 31 March 2010

### Remuneration policy

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

In determining the President's salary for 2009-2010, the recommendations of the Senior Salaries Review Body (which makes recommendations about the pay of the senior civil service, senior military personnel and the judiciary) were considered. The President's salary is paid by the Ministry of Justice and invoiced to the CS.

The salary of the Registrar is linked with the judicial salaries. For 2009-2010, the Secretary of State determined that the salary of the Registrar should be increased by 1.9 per cent.

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

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

### Remuneration Committee

The CS's remuneration committee which last met in 2005 comprised Janet Rubin and a former Tribunal member, Professor Graham Zellick CBE.

There has been no change in the relevant remuneration arrangements for the financial year 2009-2010.

### CS contract, salary and pension entitlements

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

#### CS contracts

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

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

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

The non-executive member of the CS is appointed by the Secretary of State under Schedule 3 of the Enterprise Act 2002. The term of appointment, which was due to expire in September 2007, was, with the approval of the Secretary of State, extended for a further four years and now expires in September 2011. The appointment carries no right of pension, gratuity or allowance on its termination.

## Remuneration

The following part of the Remuneration Report has been audited.

	2009-2010 Salary £'000	2009-2010 Benefits in kind (to nearest £100)	2008-2009 Salary £'000	2008-2009 Benefits in kind (to nearest £100)
President	170-175	0	170-175	0
	<b>2009-2010 Salary £'000</b>	<b>2009-2010 Benefits in kind (to nearest £100)</b>	2008-2009 Salary £'000	2008-2009 Benefits in kind (to nearest £100)
Registrar	<b>95-100</b>	<b>0</b>	90-95	0

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

The non-executive member of the CS is remunerated at a rate of £350 per day (2008-2009: £350 per day). Total remuneration payable in 2009-2010 was £4,550 (2008-2009: £5,250).

## Benefits in kind

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

## Untaken leave

The work of the Tribunal involves the conduct within demanding timescales of urgent, complex and novel cases of great importance to the parties concerned and the public interest. The ethos of the Tribunal and the CS is to require its very small complement of staff to meet the demands of the work with efficiency and dedication. This can though result from time to time in the unavoidable accumulation of untaken leave.

	<b>Total as at 2009-2010 £'000</b>	Movement in liability £'000	Total as at 2008-2009 £'000
Registrar	<b>24</b>	0	24

The Registrar's untaken leave liability accrual becomes payable by the CS if he leaves and the movement in this liability is reflected in the Net Expenditure Account and affects the Reserves.

## Pension benefits (a)

	Accrued pension at age 60 as at 31 March 2010 and related lump sum £'000	Real increase in pension and related lump sum at age 60 £'000	CETV* at 31 March 2010 £'000	CETV at 31 March 2009 £'000	Employee contributions and transfers in £'000	Real increase in CETV £'000
President	5-10 20-25	2.5-5 7.5-10	177	98	2	72

\*Cash Equivalent Transfer Value

## Judicial pensions

The President is a member of the Judicial Pension Scheme (JPS). For 2009-2010, employer contributions of £56,000 were payable to the JPS at a rate of 32.15 per cent of pensionable pay.

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

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

The contribution rate required from the judicial appointing or administering bodies to meet the cost of benefits accruing in the year 2009-2010 has been assessed as 32.15 per cent of the relevant judicial salary. This includes an element of 0.25 per cent as a contribution towards the administration costs of the scheme.

Details of the Resource Accounts of the Ministry of Justice: Judicial Pensions Scheme can be found on the Ministry of Justice website [www.justice.gov.uk](http://www.justice.gov.uk).

### *Pension benefits (b)*

	Accrued pension at age 60 as at 31 March 2010 and related lump sum £'000	Real increase in pension and related lump sum at age 60 £'000	CETV at 31 March 2010 £'000	CETV at 31 March 2009 £'000	Employee contributions and transfers in £'000	Real increase in CETV £'000
Registrar	20-25 65-70	0-2.5 5-7.5	387	326	15	25

## Civil Service pensions

The Registrar's pension benefits are provided through the Civil Service Pension arrangements. For 2009-2010, employer contributions of £24,000 (2008-2009: £24,000) were payable to the Principal Civil Service Pension Scheme (PCSPS) scheme at a rate of 25.5 per cent (2008-2009: 25.5 per cent) of pensionable pay.

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 1 October 2002 may opt for either the appropriate defined benefit arrangement or a 'money purchase' stakeholder pension with an employer contribution (partnership pension account).

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



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

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

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

Further information regarding the PCSPS is included in note 6 of the CS's accounts.

### **Cash Equivalent Transfer Values**

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

The figures include the value of any pension benefit in another scheme or arrangement which the member has transferred to the Civil Service pension arrangements. They also include any additional pension benefit accrued to the member as a result of their buying additional pension benefits at their own cost. CETVs are worked out within the guidelines and framework prescribed by the Institute and Faculty of Actuaries and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

### **Real increase in CETV**

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

*Charles Dhanowa OBE*  
Registrar and Accounting Officer  
Competition Service

18 June 2010

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

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

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

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

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

## Statement on Internal Control

### Scope of responsibility

As Accounting Officer, I have responsibility for maintaining a sound System of Internal Control (SIC) that supports the achievement of the Tribunal's and the CS's policies, aims and objectives, whilst safeguarding the public funds and departmental assets for which I am personally responsible, in accordance with the responsibilities assigned to me in Managing Public Money. I am assisted in this by the CS's Audit Committee to which reports are regularly made. In addition, our internal auditors provide advice and guidance on risk management, governance and accountability issues. They work in conjunction with our external auditors, National Audit Office (NAO), to ensure that the CS uses the finances provided for the purposes intended by Parliament. Further advice and guidance is available from our sponsors' BIS. In my role as Accounting Officer I am directly responsible to the Accounting Officer of BIS and ultimately to Parliament.

The CS is the body that supports the Tribunal by providing the personnel, finance, accommodation and facilities which the Tribunal needs to carry out its statutory functions.

### The purpose of the System of Internal Control

The SIC is intended to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable and not absolute assurance of effectiveness. The SIC is based on a continuous process designed to identify and prioritise the risks to the achievement of policies, aims and objectives, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically. The SIC has been in place in the Tribunal and the CS for the year ended 31 March 2010 (and up to the date of approval of the annual report) and accounts, and accords with Treasury guidance.

### Capacity to handle risk

A risk register is compiled by the CS's Finance Manager, who discusses each risk with the risk owner. Risks are rated according to impact and likelihood. The register is reviewed by the Finance Committee, of which I am chairman, and four times a year by the Audit Committee, who frequently offer detailed comments and suggestions.

The CS is committed to promoting a strong understanding of risk throughout the organisation and for Tribunal members and CS staff to have a full awareness of risk considerations in the achievement of objectives. All staff have now received information risk awareness training.

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

### Data handling

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

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

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

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

## The risk and control framework

The CS uses BIS Internal Audit as its internal auditors. They make recommendations to the senior management, who undertake to respond within agreed timescales. In the financial year ended 31 March 2010, Internal Audit reviewed the CS's financial and new accounting systems and carried out a follow up review of data security. Findings were reported to the Accounting Officer and the Audit Committee.

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

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

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

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

## Review of effectiveness

As Accounting Officer, I have responsibility for reviewing the effectiveness of the SIC. My review is informed by the work of the internal auditors and the managers within the CS who have responsibility for the development and maintenance of the internal control framework, and comments made by the external auditors in their reports. I am advised on the implications of the result of my review of the effectiveness of the SIC by the Audit Committee and the membership of the CS and weaknesses are addressed quickly in order to ensure continuous improvement of the system.

The following processes are in place to further maintain and review the effectiveness of the SIC

- 1 The President and the Registrar of the Tribunal and a non-executive member (currently Janet Rubin) make up the CS Board, which meets four times a year to discuss the strategic direction of the organisation. Reports on workload, on financial and administrative matters and from the Audit Committee are standing agenda items for Board meetings. The Director, Operations acts as secretary to the Board.
- 2 The non-executive member of the Board chairs the Audit Committee, which also comprises two members of the Tribunal with considerable financial and business experience. Meetings of the Audit Committee are attended by representatives of both our internal and external auditors and often by a representative of our sponsoring department. The Audit Committee reviews the financial performance of the organisation and examines the Annual Report prior to publication. The CS's risk register is a standing agenda item for Committee meetings. At each meeting, the auditors and the committee members are offered the opportunity of a private meeting without members of the CS being present so that management performance can be discussed. The Director, Operations is also secretary to the Audit Committee.
- 3 The internal audit function is carried out by the Internal Audit Directorate of BIS, who operate according to government audit standards. Audit work during the year included reviews of data handling and the upgraded accounting system as well as the usual finance and accounting audit.
- 4 As part of BIS's group corporate governance assessment process, CS personnel complete an annual governance return based on an evaluation of risk management processes currently in place and the measures taken to promote awareness and understanding of governance issues under specific headings.

*Charles Dhanowa OBE*  
Registrar and Accounting Officer  
Competition Service

18 June 2010

# Competition Appeal Tribunal

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

I certify that I have audited the financial statements of the Competition Appeal Tribunal for the year ended 31 March 2010 under the Enterprise Act 2002. 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 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 Appeal Tribunal's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Competition Appeal Tribunal; 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 Appeal Tribunal'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 Enterprise Act 2002 and the Secretary of State for Business, Innovation and Skills' 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 for Business, Innovation and Skills' directions issued under the Enterprise Act 2002; and
- the information given in the Introduction, Registrar's Statement and Management Commentary for the financial year for which the financial statements are prepared is consistent with the financial statements.

### **Matters on which I report by exception**

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

- adequate accounting records have not been kept; or
- 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

23 June 2010

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

# Competition Appeal Tribunal

## Net Expenditure Account for the year ended 31 March 2010

	Note	2009-2010 £'000	2008-2009 £'000
<b>Expenditure</b>			
Members' remuneration costs	4d	(532)	(668)
Other operating charges	5a	<u>(51)</u>	<u>(78)</u>
<b>Total Expenditure</b>		<u><b>(583)</b></u>	<u><b>(746)</b></u>
<b>Income</b>		<b>0</b>	<b>0</b>
<b>Net Expenditure for the financial year</b>		<u><b>(583)</b></u>	<u><b>(746)</b></u>

*The notes on pages 69 to 72 form part of these accounts.*



# Competition Appeal Tribunal

## Statement of Financial Position as at 31 March 2010

	Note	31 March 2010 £'000	31 March 2010 £'000	31 March 2009 £'000	31 March 2009 £'000	1 April 2008 £'000
<b>Current assets</b>						
Trade receivables and other receivables	6a	<u>101</u>		<u>113</u>		<u>152</u>
Cash and cash equivalents		<u>0</u>		<u>0</u>		<u>0</u>
<b>Total current assets</b>			<b>101</b>		113	152
<b>Current liabilities</b>						
Trade payables and other payables	7a	<b>(89)</b>		(106)		(150)
<b>Total current liabilities</b>			<b>(89)</b>		(106)	(150)
<b>Non current assets plus/less net current assets /liabilities</b>			<u><b>12</b></u>		<u>7</u>	<u>2</u>
<b>Non Current liabilities</b>						
Other financial liabilities			<b>0</b>		0	0
Provisions	8		<u>(12)</u>		<u>(7)</u>	<u>(2)</u>
<b>Total non current liabilities</b>			<u><b>(12)</b></u>		<u>(7)</u>	<u>(2)</u>
<b>Assets less liabilities</b>			<u><b>0</b></u>		<u>0</u>	<u>0</u>
<b>Taxpayer's equity</b>						
General fund			<u>0</u>		<u>0</u>	<u>0</u>
<b>Total taxpayer's equity</b>			<u><b>0</b></u>		<u>0</u>	<u>0</u>

Charles Dhanowa OBE  
Registrar and Accounting Officer  
Competition Appeal Tribunal

18 June 2010

The notes on pages 69 to 72 form part of these accounts.

# Competition Appeal Tribunal

## Statement of Cash Flows for the year ended 31 March 2010

	Note	2009-2010 £'000	2008-2009 £'000
<b>Cash flows from operating activities</b>			
Net operating cost		<u>(583)</u>	<u>(746)</u>
Decrease/(Increase) in receivables		12	39
(Decrease)/Increase in payables		(17)	(44)
Use of provisions		0	0
Increase in provisions		5	5
Net cash (outflow) from operating activities		<b>(583)</b>	(746)
<b>Cash flows from financing activities</b>			
Grant-in-aid from the CS	3	<u>583</u>	<u>746</u>
<b>Increase/(decrease) in cash in the period</b>		<b><u>0</u></b>	<b><u>0</u></b>

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

*The notes on pages 69 to 72 form part of these accounts.*

## Competition Appeal Tribunal

### Statement of Changes in Taxpayers' Equity for the year ended 31 March 2010

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

*The notes on pages 69 to 72 form part of these accounts.*

# Competition Appeal Tribunal

## Notes to the accounts

### 1 Statement of accounting policies

These financial statements have been prepared in accordance with the 2009-2010 Government Financial Reporting Manual (FReM). The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector and these statements have been prepared to show the effect of the first-time adoption of IFRS. The accounting policies contained in the FReM follow International Accounting standards to the extent that it is meaningful and appropriate to the public sector.

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

#### *a Accounting convention*

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

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

There is a statutory requirement for the CS to produce separate accounts for the Tribunal and the CS. The accounts of the Tribunal include only the direct costs specifically attributable to the Tribunal. In accordance with accounts directions issued by the Secretary of State with the approval of the Treasury, the Tribunal and the CS have prepared a joint Statement of Accounting Officer's Responsibilities and Statement on Internal Control.

#### *c Pensions*

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

#### *d Going concern*

The accounts have been prepared on a going concern basis.

### 2 First-time adoption of IFRS

There have been no changes on the Tribunal's statements due to adoption of IFRS.

### 3 Grant-in-aid

	<b>2009-2010</b> <b>£'000</b>	2008-2009 £'000
Allocated by the CS	<b>583</b>	746
<b>Total grant-in-aid</b>	<b>583</b>	746

### 4 Members' remuneration

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

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

	<b>2009-2010</b>	2008-2009
	£	£
Marion Simmons QC (deceased)	<b>0</b>	1,200
Marcus Smith QC	<b>3,300</b>	0
Lord Carlile QC	<b>41,229</b>	55,800
Vivien Rose	<b>49,038</b>	80,529

Marcus Smith QC, Lord Carlile QC and Vivien Rose were remunerated on a per diem basis at a rate of £600 per day (2008-2009: £600 per day). Their remuneration costs are included in note 4d.

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

c The Ordinary Members are remunerated at a rate of £350 per day (2008-2009: £350 per day). The total remuneration payable to Ordinary Members of £166,508 (2008-2009: £247,574) is included in note 4d.

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

	<b>2009-2010</b>	2008-2009
	£'000	£'000
Members' remuneration (including the President, Chairmen and Ordinary Members)	<b>433</b>	555
Social security costs	<b>43</b>	58
Pension contributions for the President	<b>56</b>	55
<b>Total members' remuneration</b>	<b>532</b>	668

## 5 Other operating charges

a

	<b>2009-2010</b>	2008-2009
	£'000	£'000
Members' travel and subsistence	<b>25</b>	38
Members' PAYE and National Insurance on travel and subsistence expenses	<b>10</b>	22
Members' training	<b>4</b>	7
Long service award	<b>5</b>	5
Audit fees*	<b>7</b>	6
<b>Total other operating charges</b>	<b>51</b>	78

\*Audit fees related only to statutory audit work.

b The long service award relates to a provision of £5,000 for the President in his capacity as a judge of the High Court. The value of the award was calculated by the Government Actuary's Department and reflects the President's length of service and judicial grade.

## 6 Trade receivables and other receivables

### a Analysis by type

	<b>31 March 2010 £'000</b>	31 March 2009 £'000	1 April 2008 £'000
<b>Amounts falling due within one year</b>			
Trade receivables and other receivables with the CS	<b>89</b>	106	150
<b>Amounts falling due after more than one year</b>			
Trade receivables and other receivables with the CS	<b>12</b>	7	2

The trade receivables and other receivables balance represent the total liabilities outstanding at the balance sheet date that are directly attributable to the activities of the Tribunal. The liabilities of the Tribunal are settled by the CS.

### b Intra-government balances

	<b>Amounts falling due within one year</b>			<b>Amounts falling due after more than one year</b>		
	<b>31 March 2010 £'000</b>	31 March 2009 £'000	1 April 2008 £'000	<b>31 March 2010 £'000</b>	31 March 2009 £'000	1 April 2008 £'000
Balances with other central government bodies	<b>89</b>	106	150	<b>12</b>	7	2
Balances with bodies external to government	<b>0</b>	0	0	<b>0</b>	0	0
<b>Total trade receivables and other receivables</b>	<b><u>89</u></b>	<u>106</u>	<u>150</u>	<b><u>12</u></b>	<u>7</u>	<u>2</u>

## 7 Trade payables and other payables

### (a) Analysis by type

	<b>31 March 2010 £'000</b>	31 March 2009 £'000	1 April 2008 £'000
<b>Amounts falling due within one year</b>			
Taxation and social security	<b>12</b>	37	24
Trade payables	<b>5</b>	1	2
Accruals	<b>72</b>	68	124
<b>Total trade payables and other payables</b>	<b><u>89</u></b>	<u>106</u>	<u>150</u>

### (b) Intra-government balances

	<b>Amounts falling due within one year</b>			<b>Amounts falling due after more than one year</b>		
	<b>31 March 2010 £'000</b>	31 March 2009 £'000	1 April 2008 £'000	<b>31 March 2010 £'000</b>	31 March 2009 £'000	1 April 2008 £'000
Balances with other central government bodies	<b>44</b>	58	74	0	0	0
Balances with bodies external to government	<b>45</b>	48	76	0	0	0
<b>Total trade payables and other payables</b>	<b><u>89</u></b>	<u>106</u>	<u>150</u>	<b><u>0</u></b>	<u>0</u>	<u>0</u>

## 8 Provisions for liabilities and charges

	Long service award costs £'000
Balance at 1 April 2008	2
Provided in the year	5
Provisions utilised in the year	0
<b>Balance at 31 March 2009</b>	<u>7</u>
Provided in the year	5
Provisions utilised in the year	0
<b>Balance at 31 March 2010</b>	<u>12</u>

The provision made in the year relates to the expected cost of the President's long service award which shall become payable in his final month of service on retirement. The liability was calculated by the Government Actuary's Department and is based on his judicial grade and length of service.

## 9 Related party transactions

All expenses of the Tribunal are paid by the CS.

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

## 10 Events after the reporting period

There were no events after the reporting period to report.

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

## Competition Service

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

I certify that I have audited the financial statements of the Competition Service for the year ended 31 March 2010 under the Enterprise Act 2002. 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 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 Service's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Competition Service; 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 Service'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 Enterprise Act 2002 and the Secretary of State for Business, Innovation and Skills' 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 for Business, Innovation and Skills' directions issued under the Enterprise Act 2002; and
- the information given in the Introduction, Registrar's Statement and Management Commentary for the financial year for which the financial statements are prepared is consistent with the financial statements.

### **Matters on which I report by exception**

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

- adequate accounting records have not been kept; or
- 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

23 June 2010

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

## Competition Service

### Net Expenditure Account for the year ended 31 March 2010

	Note	2009-2010 £'000	Restated 2008-2009 £'000
<b>Expenditure</b>			
Funding the activities of the Tribunal		(583)	(746)
The CS and Audit Committee Members' remuneration	4a	(11)	(12)
Staff salary costs	5a	(866)	(875)
Services and supplies	7a	(1,991)	(2,102)
Depreciation	7b	(115)	(154)
Other administrative expenses	7c	(225)	(295)
<b>Total expenditure</b>		<b>(3,791)</b>	<b>(4,184)</b>
<b>Other income</b>			
Courtroom rental income	8b	1	40
Website service income	8c	4	5
<b>Total other income</b>		<b>5</b>	<b>45</b>
<b>Net expenditure</b>		<b>(3,786)</b>	<b>(4,139)</b>
Reversal of notional credit of capital included above	7c	(38)	(32)
<b>Finance cost</b>			
Interest received	8a	3	24
<b>Net expenditure on ordinary activities after cost of capital charge and interest</b>		<b>(3,821)</b>	<b>(4,147)</b>
Taxation	9	(0)	(5)
<b>Net expenditure on ordinary activities after taxation</b>		<b>(3,821)</b>	<b>(4,152)</b>

All activities were continuing during the year.

*The notes on pages 79 to 90 form part of these accounts.*

# Competition Service

## Statement of Financial Position as at 31 March 2010

	Note	31 March 2010 £'000	31 March 2010 £'000	Restated 31 March 2009 £'000	Restated 31 March 2009 £'000	Restated 1 April 2008 £'000
<b>Non current assets</b>						
Property, plant & equipment	10	104		163		211
Intangible assets	11	58		58		93
<b>Total non current assets</b>			<u>162</u>		<u>221</u>	<u>304</u>
<b>Current assets</b>						
Trade receivables and other receivables	12a	75		79		70
Cash and cash equivalents	13	573		408		488
<b>Total current assets</b>			<u>648</u>		<u>487</u>	<u>558</u>
<b>Total assets</b>			<u>810</u>		<u>708</u>	<u>862</u>
<b>Current liabilities</b>						
Trade payables and other payables	14a	(432)		(290)		(308)
<b>Total current liabilities</b>			<u>(432)</u>		<u>(290)</u>	<u>(308)</u>
<b>Non current assets plus/less net current assets/liabilities</b>			<u>378</u>		<u>418</u>	<u>554</u>
<b>Non current liabilities</b>						
Other financial liabilities	14a	(1,540)		(1,453)		(1,318)
Provisions	15	(12)		(7)		(2)
<b>Total non current liabilities</b>			<u>(1,552)</u>		<u>(1,460)</u>	<u>(1,320)</u>
<b>Assets less liabilities</b>			<u>(1,174)</u>		<u>(1,042)</u>	<u>(766)</u>
<b>Taxpayer's equity</b>						
General fund			(1,178)		(1,048)	(774)
Revaluation reserve			4		6	8
<b>Total taxpayer's equity</b>			<u>(1,174)</u>		<u>(1,042)</u>	<u>(766)</u>

Charles Dhanowa OBE  
Registrar and Accounting Officer  
Competition Service

18 June 2010

The notes on pages 79 to 90 form part of these accounts.

## Competition Service

### Statement of Cash Flows for the year ending 31 March 2010

	Note	2009-2010 £'000	Restated 2008-2009 £'000
<b>Cash flows from operating activities</b>			
<b>Net deficit/ surplus after cost of capital and interest</b>		<b>(3,821)</b>	(4,147)
Adjustments for non-cash transactions	7b&c	<b>115</b>	155
Decrease/(Increase) in receivables		<b>4</b>	(9)
Increase in payables		<b>233</b>	121
Investment income	8a	<b>(3)</b>	(24)
Use of provisions	15	<b>0</b>	0
Increase in provisions	15	<b>5</b>	5
<b>Net cash (outflow) from operating activities</b>		<b><u>(3,467)</u></b>	<u>(3,899)</u>
<b>Cash flows from investing activities</b>			
Interest received	8a	<b>3</b>	24
Taxation	9	<b>(5)</b>	(9)
Property, plant and equipment purchases	10	<b>(12)</b>	(56)
Intangible asset purchases	11	<b>(43)</b>	(16)
Proceeds of disposal of non current assets		<b>0</b>	0
<b>Net cash generated from/(used in) investing activities</b>		<b><u>(57)</u></b>	<u>(57)</u>
<b>Cash flows from financing activities</b>			
Grant-in-aid from BIS	3	<b>3,689</b>	3,876
<b>Net cash generated from/(used in) financing activities</b>		<b><u>3,689</u></b>	<u>3,876</u>
<b>Net (Decrease)/Increase in cash and cash equivalents in the period</b>	13	<b><u>165</u></b>	<u>(80)</u>
<b>Cash and cash equivalents at the beginning of the period</b>	13	<b>408</b>	488
<b>Cash and cash equivalents at the end of the period</b>	13	<b>573</b>	408

The purchase of assets represents the cash paid in year.

The payables amount is net of non-operating expenses relating to corporation tax accrued at 31 March 2010.

*The notes on pages 79 to 90 form part of these accounts.*

## Competition Service

### Statement of Changes in Taxpayers' Equity for the year ending 31 March 2010

	<b>General Fund</b> £'000	<b>Revaluation</b> <b>Reserve</b> £'000	<b>Total</b> £'000
Balance at 31 March 2008 UK GAAP	309	8	<b>317</b>
IFRS Adjustments for the year	(1,083)	0	<b>(1,083)</b>
Balance at 1 April 2008 IFRS	(774)	8	<b>(766)</b>
Net operating cost for 2008-2009	(4,152)	0	<b>(4,152)</b>
Transferred to general fund in respect of realised element of revaluation reserve	2	(2)	<b>0</b>
Net financing from BIS for 2008-2009	3,876	0	<b>3,876</b>
Balance at 31 March 2009	(1,048)	6	<b>(1,042)</b>
Net operating cost for 2009-2010	(3,821)	0	<b>(3,821)</b>
Transferred to general fund in respect of realised element of revaluation reserve	2	(2)	<b>0</b>
Net financing from BIS for 2009-2010	3,689	0	<b>3,689</b>
<b>Balance at 31 March 2010</b>	<b>(1,178)</b>	<b>4</b>	<b>(1,174)</b>

*The notes on pages 79 to 90 form part of these accounts.*

# Competition Service

## Notes to the accounts

### 1 Statement of accounting policies

These financial statements have been prepared in accordance with the 2009-2010 Government Financial Reporting Manual (FReM). The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector and these statements have been prepared to show the effect of the first-time adoption of IFRS. The accounting policies contained in the FReM follow International Accounting standards to the extent that it is meaningful and appropriate to the public sector.

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

#### *a Accounting convention*

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

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

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

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

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

#### *c Grant-in-aid*

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

Grant-in-aid is treated as financing and is credited to the general reserve as it is regarded as contributions from a sponsor body.

#### *d Non current assets*

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

#### *e Depreciation*

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

Property, plant and equipment assets

**Information Technology**

- Desktop and laptop computers and printers 3 years
- Servers and audio visual equipment 5 years

**Office equipment** 5 years

**Furniture** 7 years

Intangible non current assets

**Information Technology**

- Software licences 1 to 3 years

*f Cost of capital*

In accordance with Treasury requirements, a charge reflecting the cost of capital utilised by the CS is included in operating costs. The charge is calculated at the Government's standard rate of 3.5 per cent (2008-2009: 3.5 per cent) on the average value of items comprising capital employed over the year. If there are net liabilities, this charge is not a cost but a credit.

*g Taxation*

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

*h Pension costs*

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

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

*i Income*

The main source of income is from the rental of courtrooms and website service income. The income is recognised when the service is provided.

*j Operating leases*

Rentals payable under operating leases are charged to the income and expenditure account on a straight line basis over the 20 year term of the lease. Operating lease estimates are based on VAT remaining at 17.5 per cent for the remaining term of the lease.

*k Financial instruments*

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

## Financial assets

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

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

## Financial liabilities

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

### *l Reserves*

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

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

### *m Going concern*

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

The statement of financial position indicates a negative balance because of timing differences between consumption and payment. The CS draws grant-in-aid to cover its cash requirements and not to represent income.

### *n Provisions*

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

Specific assumptions are given in Note 15.

## 2 First-time adoption of IFRS

Reconciliation of taxpayers' equity under UK GAAP to taxpayers' equity under IFRS

	<b>General Fund £'000</b>	<b>Revaluation Reserve £'000</b>	<b>Total £'000</b>
Total taxpayer's equity at 31 March 2008 under UK GAAP	309	8	<b>317</b>
IFRS Adjustment for IAS 19 Employee Benefits for the CS	(44)	0	<b>(44)</b>
IFRS Adjustment for IAS 17 Leases	(1,039)	0	<b>(1,039)</b>
Total taxpayer's equity at 1 April 2008 under IFRS	(774)	8	<b>(766)</b>
Net operating cost for the year under UK GAAP	(3,999)	0	<b>(3,999)</b>
IFRS Adjustment for IAS 19 Employee Benefits for the CS	2	0	<b>2</b>
IFRS Adjustment for IAS 17 Leases	(155)	0	<b>(155)</b>
Transferred to general fund in respect of realised element of revaluation reserve	2	(2)	<b>0</b>
Net financing from BIS	3,876	0	<b>3,876</b>
Total taxpayer's equity at 31 March 2009 under IFRS	<u>(1,048)</u>	<u>6</u>	<b><u>(1,042)</u></b>



Reconciliation of net expenditure under UK GAAP to net expenditure under IFRS

2008-2009  
£'000

Net expenditure under UK GAAP	3,999
IFRS Adjustment for IAS 19 Employee Benefits for the CS	(2)
IFRS Adjustment for IAS 17 Leases	155
Net expenditure under IFRS	<u>4,152</u>

The adjustment for IAS 19 employee benefits is for untaken leave accrual. This leave accrual was £44,000 for the CS as at 1 April 2008. This was taken through the reserves as a prior year adjustment. The leave accrual as at 31 March 2009 was £42,000 for the CS. The change in accruals of £2,000 can be seen in the Net Expenditure Accounts and affects the reserves as at 31 March 2009.

The IAS 17 adjustment relates to the Victoria House operating lease, which has an agreed rent increase every five years. Under IFRS, increases in rent amounts were accounted for as the increases occurred, instead of on a straight line basis. This was permitted as being an acceptable alternative systematic and rational basis per SSAP 21. IAS 17 is more explicit in its requirement that any alternative systematic basis must be 'representative of the time pattern of the user's benefit'. Since the CS has full use of Victoria House for the lease term and that benefit does not change with time, operating lease payments are now recognised on a straight line basis over the lease term.

**3 Government grant-in-aid**

	<b>2009-2010</b> £'000	2008-2009 £'000
Allocated by BIS	<b>4,253</b>	4,119
Resource	<b>3,634</b>	3,804
Capital	<b>55</b>	72
<b>Total drawn down</b>	<b><u>3,689</u></b>	<u>3,876</u>

**4 The CS and Audit Committee Members' remuneration**

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

	<b>2009-2010</b> £'000	2008-2009 £'000
CS and Audit Committee Members' remuneration	<b>10</b>	11
Social security costs	<b>1</b>	1
<b>Total CS and Audit Committee Members' remuneration</b>	<b><u>11</u></b>	<u>12</u>

b The President's salary costs are included in note 4d of the Tribunal's accounts. The Registrar is a member of the CS. His salary costs are included in note 5a below.

Mrs Janet Rubin is a non-executive member of the CS. Mrs Rubin is also Chairman of the CS's Audit Committee and a member of the CS's Remuneration Committee. Mrs Rubin's appointment runs for four years until September 2011. Her appointment is not pensionable. Mrs Rubin is remunerated at a rate of £350 per day. Her remuneration of £4,550 in the year (2008-2009: £5,250) is included in note 4a above.

## 5 Staff related costs and numbers

### a Staff costs comprise

	<b>Total 2009-2010 £'000</b>	Total 2008-2009 £'000
Wages and salaries	<b>670</b>	679
Social security costs	<b>59</b>	54
Other pension costs	<b>137</b>	142
<b>Total employee costs</b>	<b>866</b>	875

The staff costs include the change in untaken leave accrual, giving rise to expenditure of £7,000 in 2009-2010 and an income in 2008-2009.

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

	<b>Total 2009-2010</b>	Total 2008-2009
<b>Whole-time staff</b>	<b>16</b>	18

The CS employed no temporary staff.

## 6 Pension costs

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

For 2009-2010, employer contributions of £136,000 (2008-2009: £143,000) were payable to the PCSPS at one of four rates in the range 16.7 to 24.3 per cent (2008-2009: 17.1 to 25.5 per cent) of pensionable pay, based on salary bands. The Scheme's Actuary reviews employer contributions every four years following a full scheme valuation. The salary bands and contribution rates were revised for 2009-2010. The contribution rates reflect benefits as they are accrued, not when the costs are actually incurred, and reflect past experience of the scheme.

## 7a Services and supplies

	<b>2009-2010 £'000</b>	Restated 2008-2009 £'000
Hire of plant and machinery	<b>19</b>	14
Other operating leases	<b>1,225</b>	1,225
Consultants fees – not case related	<b>18</b>	42
Consultants fees – IT	<b>103</b>	171
Accommodation and utilities	<b>584</b>	598
Travel, subsistence and hospitality	<b>18</b>	28
Audit fees	<b>24</b>	24
<b>Total services and supplies costs</b>	<b>1,991</b>	2,102

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

Audit fees related only to statutory audit work.

### 7b Depreciation

	<b>2009-2010</b> <b>£'000</b>	2008-2009 £'000
Depreciation	<b>115</b>	154

### 7c Other administration expenses

	<b>2009-2010</b> <b>£'000</b>	2008-2009 £'000
Other administration including case related expenditure	<b>263</b>	326
Non cash items		
Loss on disposal of non current assets	<b>0</b>	1
Notional credit of capital	<b>(38)</b>	(32)
Total non cash	<b>(38)</b>	(31)
<b>Total other administration expenses</b>	<b><u>225</u></b>	<b><u>295</u></b>

In accordance with Treasury guidelines, notional interest payable on capital employed was calculated at 3.5 per cent on the average capital employed by the CS for the year (2008-2009: 3.5 per cent). If there are net liabilities, this charge is not a cost, but a credit.

### 8a Interest

	<b>2009-2010</b> <b>£'000</b>	2008-2009 £'000
Gross interest received	<b>3</b>	24

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

### 8b Courtroom rental income

	<b>2009-2010</b> <b>£'000</b>	2008-2009 £'000
Courtroom rental income	<b>1</b>	40

Courtroom rental income was particularly low compared to last year due to the adverse economic climate and a decline in bookings.

### 8c Website service income

	<b>2009-2010</b> <b>£'000</b>	2008-2009 £'000
Website service income	<b>4</b>	5

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

**9 Taxation**

	<b>2009-2010</b> <b>£'000</b>	2008-2009 £'000
Corporation tax payable	<b>0</b>	5

Corporation tax payable is based on 21 per cent of gross interest receivable (2008-2009: 21 per cent).

**10 Property, plant and equipment**

	<b>Information Technology £'000</b>	<b>Furniture and Fittings £'000</b>	<b>Office Machinery £'000</b>	<b>Total £'000</b>
<b>Cost or valuation</b>				
<b>At 1 April 2008</b>	<b>307</b>	<b>313</b>	<b>7</b>	<b>627</b>
Additions	47	5	4	<b>56</b>
Disposals	(1)	(2)	(1)	<b>(4)</b>
<b>At 31 March 2009</b>	<b>353</b>	<b>316</b>	<b>10</b>	<b>679</b>
Additions	6	2	4	<b>12</b>
Disposals	(2)	0	0	<b>(2)</b>
<b>At 31 March 2010</b>	<b>357</b>	<b>318</b>	<b>14</b>	<b>689</b>
<b>Depreciation</b>				
<b>At 1 April 2008</b>	<b>238</b>	<b>173</b>	<b>5</b>	<b>416</b>
Charged in year	56	45	2	<b>103</b>
Disposals	(1)	(1)	(1)	<b>(3)</b>
<b>At 31 March 2009</b>	<b>293</b>	<b>217</b>	<b>6</b>	<b>516</b>
Charged in year	25	45	1	<b>71</b>
Disposals	(2)	0	0	<b>(2)</b>
<b>At 31 March 2010</b>	<b>316</b>	<b>262</b>	<b>7</b>	<b>585</b>
<b>Net book value at 1 April 2008</b>	<b>69</b>	<b>140</b>	<b>2</b>	<b>211</b>
<b>Net book value at 31 March 2009</b>	<b>60</b>	<b>99</b>	<b>4</b>	<b>163</b>
<b>Asset financing</b>				
Owned	60	99	4	163
<b>Net book value at 31 March 2010</b>	<b>41</b>	<b>56</b>	<b>7</b>	<b>104</b>
<b>Asset financing</b>				
Owned	41	56	7	104

## 11 Intangible assets

	<b>Purchased software licences £'000</b>
<b>Cost or valuation</b>	
<b>At 1 April 2008</b>	<b>154</b>
Additions	<b>16</b>
Disposals	<b>0</b>
<b>At 31 March 2009</b>	<b>170</b>
Additions	<b>43</b>
Disposals	<b>0</b>
<b>At 31 March 2010</b>	<b>213</b>
<b>Amortisation</b>	
<b>At 1 April 2008</b>	<b>61</b>
Charged in the year	<b>51</b>
Disposals	<b>0</b>
<b>At 31 March 2009</b>	<b>112</b>
Charged in the year	<b>43</b>
Disposals	<b>0</b>
<b>At 31 March 2010</b>	<b>155</b>
<b>Net book value at 1 April 2008</b>	<b>93</b>
<b>Net book value at 31 March 2009</b>	<b>58</b>
<b>Net book value at 31 March 2010</b>	<b>58</b>

## 12 Trade and other receivables

(a) *Analysis by type*

	<b>31 March 2010 £'000</b>	<b>31 March 2009 £'000</b>	<b>1 April 2008 £'000</b>
<b>Amounts falling due within one year</b>			
Deposits and advances	<b>8</b>	9	5
Other receivables	<b>4</b>	19	3
Prepayments and accrued income	<b>63</b>	51	62
<b>Total trade receivables and other receivables</b>	<b>75</b>	79	70

*b Intra-government balances*

	Amounts falling due within one year			Amounts falling due after more than one year		
	31 March 2010 £'000	31 March 2009 £'000	1 April 2008 £'000	31 March 2010 £'000	31 March 2009 £'000	1 April 2008 £'000
Balances with other central government bodies	0	13	12	0	0	0
Balances with bodies external to government	75	66	58	0	0	0
<b>Total trade and other receivables</b>	<u>75</u>	<u>79</u>	<u>70</u>	<u>0</u>	<u>0</u>	<u>0</u>

**13 Cash and cash equivalents**

	2009-2010 £'000	2008-2009 £'000
Balance at 1 April	408	488
Net change in cash balances	165	(80)
<b>Balance at 31 March</b>	<u>573</u>	<u>408</u>

The following balances at 31 March were held at:

	2009-2010 £'000	2008-2009 £'000
Commercial banks and cash in hand	573	408
<b>Balance at 31 March</b>	<u>573</u>	<u>408</u>

**14 Trade payables and other current/non-current liabilities***(a) Analysis by type*

	31 March 2010 £'000	Restated 31 March 2009 £'000	Restated 1 April 2008 £'000
<b>Amounts falling due within one year</b>			
Payables of the Tribunal at 31 March	89	106	150
Taxation and social security	19	25	27
Trade payables	23	10	4
Accruals	64	85	62
Untaken leave accrual	49	42	44
BIS grant-in-aid payable	165	0	0
Deferred income rent free	23	22	21
<b>Total amounts falling due within one year</b>	<u>432</u>	<u>290</u>	<u>308</u>
<b>Amounts falling due after more than one year</b>			
Deferred income rent free	284	307	330
Operating lease liability	1,256	1,146	988
<b>Total amounts falling due after more than one year</b>	<u>1,540</u>	<u>1,453</u>	<u>1,318</u>

(b) *Intra-government balances*

	Amounts falling due within one year			Amounts falling due after more than one year		
	31 March 2010 £'000	Restated 31 March 2009 £'000	Restated 1 April 2008 £'000	31 March 2010 £'000	Restated 31 March 2009 £'000	Restated 1 April 2008 £'000
Balances with other central government bodies	286	223	249	1,540	1,453	1,318
Balances with bodies external to government	146	67	59	0	0	0
<b>Total trade and other payables</b>	<b>432</b>	<b>290</b>	<b>308</b>	<b>1,540</b>	<b>1,453</b>	<b>1,318</b>

c The deferred income in note 14a represents the value of the rent-free period for Victoria House.

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

The operating lease liability in note 14a represents obligations under operating leases which includes an increase of 2.5 per cent compounded over every five years equating to 13 per cent applied from September 2008 for land and buildings. The full cost of the operating lease has been spread on a straight line basis over the 20 year term of the lease.

The footnote to note 7a gives further details of the lease arrangements in respect of land and buildings.

**15 Provisions for liabilities and charges**

	Tribunal's long service award costs £'000
<b>Balance at 1 April 2008</b>	<b>2</b>
Provided in the year	5
Provisions utilised in the year	0
<b>Balance at 31 March 2009</b>	<b>7</b>
Provided in the year	5
Provisions utilised in the year	0
<b>Balance at 31 March 2010</b>	<b>12</b>

The provision made in the year relates to the Tribunal's expected cost of the President's long service award which becomes payable in his final month of service on retirement. The CS will provide the finances to settle the Tribunal's liability. The liability was calculated by the Government Actuary's Department and is based on his judicial grade and length of service.

## 16 Commitments under operating leases

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

	<b>31 March 2010 £'000</b>	Restated 31 March 2009 £'000	Restated 1 April 2008 £'000
<b>Obligations under operating leases comprise</b>			
<i>Buildings</i>			
Not later than one year	<b>1,163</b>	1,138	1,089
Later than one year and not later than five years	<b>4,881</b>	4,728	4,627
Later than five years	<b>12,043</b>	13,359	14,598
<i>Other</i>			
Not later than one year	<b>21</b>	19	13
Later than one year and not later than five years	<b>55</b>	66	6
Later than five years	<b>2</b>	0	0
<b>Total obligations under operating leases</b>	<b><u>18,165</u></b>	<u>19,310</u>	<u>20,333</u>

The obligations under operating leases include an increase of 2.5 per cent compounded over every five years equating to 13 per cent applied from September 2008 for land and buildings. Note 7a gives further details of the lease arrangements in respect of land and buildings.

## 17 Financial instruments

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

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

Set out below is a comparison by category of book values and fair values of the CS's financial assets as at 31 March 2010.

	<b>Book value £'000</b>	Fair value £'000
<b>Cash at the bank</b>	<b>573</b>	573



## **18 Related party transactions**

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

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

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

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

## **19 Contingent liability**

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

## **20 Events after the reporting period**

There was an incident of flooding on 14 April 2010 which was caused by a pipe bursting and not due to the defective valves in the air conditioning system. The repairs are estimated to cost £10,000.

There were no other post balance sheet events to report.

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

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