

**ANNUAL
REPORT OF THE
DIRECTOR GENERAL
OF FAIR TRADING**

1991

ANNUAL REPORT OF THE DIRECTOR GENERAL OF FAIR TRADING

for January to December 1991
to the Secretary of State for
Trade and Industry

*Presented to Parliament
in pursuance of section 125(3) of the Fair Trading Act 1973*

Ordered by the House of Commons to be printed 2nd June 1992

LONDON : HMSO



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From the Director General of Fair Trading
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Secretary of State for Trade and Industry
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15 April 1992

Dear *Secretary of State,*

I am required by section 125 of the Fair Trading Act 1973 to make to you an annual report of my activities and those of the Monopolies and Mergers Commission. The accompanying report, my last as Director General of Fair Trading, covers the calendar year 1991.

Part 1 is a personal reflection on the 16 years I have spent in office: it recalls the changes I have seen during that period, and points to some of the achievements and frustrations of those years. Part 2 considers the more significant developments of 1991, while Parts 3 and 4 provide a detailed account of the work undertaken during the year by the Consumer Affairs and Competition Policy Divisions of my Office.

Part 4 also examines those aspects of the work of the Monopolies and Mergers Commission which directly relate to the activities of the Competition Policy Division. Those that do not are reviewed in Part 5.

Yours sincerely

Gordon Borrie

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1 Reflections of a retiring Director General

This is my last annual report. Inevitably it is reflective, for when I leave office in June 1992 I shall have been Director General of Fair Trading for 16 years. When I began my first five-year term in 1976, I never imagined I would stay so long. But then I did not know what a fascinating range of activities I would be engaged in nor how many new powers and duties would be given to the Office of Fair Trading, tempting me to undertake further terms of office. Sometimes the same industry or even the same company has come round the track for a second or third time (used cars, breweries and ready-mixed concrete come to mind) but I have rarely had any bored feeling of *déjà vu*.

The groundwork

When I started, my predecessor (the first Director General of Fair Trading, Sir John Methven) had laid firm foundations for the Office which had been set up by the Fair Trading Act 1973 both to promote competition and to advance the interests of private consumers.

On the competition side, he had taken over the functions of the Registrar of Restrictive Trading Agreements and absorbed into the Office the multi-talented staff of the retired Registrar (Sir Rupert Sich) but he also took over the Secretary of State's function of initiating monopoly investigations by the Monopolies and Mergers Commission and acquired the role of advising the Secretary of State whether to refer to the Commission mergers and takeovers of companies.

The consumer side of the Office exercised a range of new powers, for example, proposing the creation of new regulatory offences to control trade practices that adversely affected consumers' economic interests (Part II of the Fair Trading Act) and seeking assurances and court orders from traders who had persistently broken the law contrary to the interests of consumers (Part III of the Fair Trading Act). Then there were important powers tucked away in section 124 of the Act – one was a duty to encourage trade association codes of practice and another to publish information and advice for consumers. Booklets and leaflets, produced by the Office and distributed to shoppers via local authority Trading Standards Departments, Citizens Advice Bureaux, public libraries and elsewhere were already catching the public eye in 1976. Their subjects ranged from doorstep selling to electrical servicing, from package holidays abroad to buying a used car in Scotland. Based on the success of these early beginnings, we are now able to concentrate on the marketing of our materials, ensuring that they are easily accessible to their intended audience. This has led to lively publications like *Moneyfax* and *Square Deal*, linked respectively with BBC Radio 1 and the BBC tv serial *EastEnders*, prepared to the highest professional standard and providing useful information for millions.

The Consumer Credit Act 1974 provided a complex web of protection for consumers against a range of undesirable practices. The bulk of the Act was not in force by the time I arrived at the Office but a great deal of preliminary work had been done in preparation for the introduction of the licensing system in August 1976, especially the creation of our Licensing Branch at Acton. From that date it was an offence for persons carrying on businesses in the first categories for which licences were required – debt collectors, debt adjusters, debt counsellors and credit reference agencies – to do so without a licence from the Office. Since those early days 1,339 licences have been refused or revoked, but this is only the tip of an iceberg whose impact must be measured largely in terms of its deterrent value. Overall, the Consumer Credit Act has proved an invaluable basis for consumer protection, but with the enormous credit explosion of the 1980s it has proved necessary to introduce further measures.

Competition in the service of the consumer

These then were the specific weapons forged in the legislation for use by the Office to promote competition and the interests of consumers. But I have always been glad that section 2 of the Fair Trading Act underpins these specific powers with broadly phrased general duties. Starting with the vital phrase: 'Without prejudice to any other functions...', it imposes a duty on the Director General of Fair Trading 'so far as appears to him to be practicable from time to time' to keep under review commercial activities relating to goods and services which may adversely affect the economic interests of consumers. Similarly, there is a duty to keep under review commercial activities with a view to becoming aware of monopoly situations or uncompetitive practices. The bringing together in one office of pro-competition and pro-consumer activities was deliberate and in my view has been a major success. Adam Smith was right to stress that the sole purpose of production and competitive economic activity among producers is the satisfaction of the consumer and Sir Geoffrey Howe was right when, as Minister for Trade and Consumer Protection, he emphasised the link between competition policy and consumer protection policy in his second reading speech on the Fair Trading Bill, nearly 20 years ago. He said the Bill's two principal purposes were:

First, the promotion of increased economic efficiency and, secondly, the protection of the consumer against unfair trading practices... There should be no misunderstanding about the way in which these two purposes are complementary to each other... Competition provides spurs to efficiency and incentives to seek out and supply the varied wants of the consumer... But... the sovereignty of the consumer, which is the most important element in the operation of the free competitive market, is not to be taken for granted.

Consumer sovereignty requires that the consumer should be adequately protected against unfair or misleading marketing techniques and adequately protected against the abuse of market power or monopoly... It is this integrated view of competition policy that leads to the first

institutional innovation of this Bill – the appointment of a Director General of Fair Trading.

Positive cross-party support

I was fortunate therefore when I came into the Office in June 1976. Not only had my predecessor laid down firm foundations on a firm base of statutory powers, there was an experienced and keen team of officials led by the then Deputy Director General of Fair Trading, Frank Glaves-Smith, a good relationship with Ministers who accepted and appreciated the political independence of the Office and a friendly interest in our activities on the part of the media. The creation of the Office had not been a matter of party political controversy and the changeover from Conservative to Labour government in 1974 had not altered an essentially sound and close relationship. Looking back now, I think the 1970s were the 'golden age' of consumer protection laws to which Governments of different political colours contributed. Of course there were party political differences over public ownership and later over privatisation plans but all the main parties accepted that, wherever in the mixed economy private ownership existed, then competition should prevail and that monopolistic practices and cartels should be combated. The dual functions of the Office therefore have received support and encouragement across the political divide. Our substantial postbag from Members of Parliament and the impressions I have gained giving evidence before Parliamentary Select Committees and answering questions at Party committees are indicative of both interest in and appreciation of our efforts. The attitude of successive Ministers has increasingly been to respond positively to our policy proposals, our recommendations on individual cases (such as merger cases) and to regard us as the appropriate body to take on new statutory responsibilities. In the last year or so, the Control of Misleading Advertisements Regulations 1988, the Companies Act 1989, the Courts and Legal Services Act 1990 and the Broadcasting Act 1990 demonstrate this last point.

Expanding responsibilities

But let me return to the situation in 1976. Two particular additional blocks of work were about to arrive. One, already mentioned in passing, was the start of the immense task of licensing under the Consumer Credit Act 1974 and the gradual implementation of the Act generally – it was to take 11 years in all from the date of the Act. The other was the extension of the restrictive trade practices legislation to services. In the event this led to only one major case before the Restrictive Practices Court – the reciprocal exclusive dealing arrangement of the Association of British Travel Agents known as 'Stabiliser'. But numerous restrictive agreements were dropped or negotiated away by the useful device of section 21(2) of the Restrictive Trade Practices Act 1976 that enabled me to obtain the Secretary of State's consent to drop a case where any remaining restriction was too insignificant to justify court action. For lawyers and others seeking to know how the law is developing and what precedents are being created, there are disadvantages in behind-the-scenes negotiations as distinct from reported court cases, or for that matter published reports of the

Monopolies and Mergers Commission, but I have observed time and again the preference and often keenness of businessmen to put their cards on the table, to negotiate and discuss round the table, to try and find a solution, rather than to undergo the full panoply of more formal hearings, whether adversarial or otherwise.

What has been happening for years in relation to restrictive trading agreements is now happening, in at any rate some cases, in the field of mergers. The Companies Act 1989 has enabled a company, aware perhaps that a merger or takeover proposal may invite the close scrutiny of this Office because of its potential for adverse effects on competition, to offer up parts of one or both companies for divestment. Such an offer may not be practicable. It may not be desired by the parties. But there have been some well-known cases in the last year or so – Rank/Mecca and Redland/Steetley among them – where appropriate negotiated divestments have removed the adverse potential for competition and thereby obviated the need to have a reference to the Commission. It is a matter for consideration whether the Office should do more to make better known the background facts, economic assessments and reasons for coming to certain conclusions about restrictive trading agreements and mergers by way of negotiation rather than through the more formal machinery of the Court or the Commission.

Restrictions in the professions

The extension of the restrictive trade practices legislation to services allowed for certain exceptions for the professions. These exemptions exemplified a traditional velvet glove approach to restrictions in the rules of the professions against competition in general and competition on price or charging in particular that was no longer accepted for the world of commerce. Yet in 1976 and 1977 the Commission – following up a general report on the professions in 1970 – published reports extremely critical of the restrictions on advertising imposed by rules of the accountancy and solicitors' professions and on the requirements for scale fees in the professions of architects and surveyors. The Commission's recommendations (accepted by the Government) to relax these restrictions met with a great deal of opposition. The then President of the Law Society would have nothing to do with proposals that now seem so modest. He set about rallying the other professions in case they might display some more amenable attitude to change. My Office held many discussion meetings that got nowhere. The time was not ripe. But those reports from the Commission in the 1970s were valuable – they articulated a reasonable and moderate view that came to be accepted in the 1980s as the norm. Why should the professions be exempt and protected from the efficiency objectives that competition can help provide for the benefit of customers and clients of all services? Why could not the vital standards of professional ethics and quality be combined with the professions being more commercially minded? Freedom to publicise the services (or goods) you have to offer, coupled with stronger laws to combat misleading advertising, are both desirable in the interests of customers and of efficient providers, whether those providers are members of professions or not. Our 1982 report on opticians, a group that straddles the provision of

professional services and the sale of goods was speedily accepted by the Government and I now see that report as marking a major turning point in attitudes towards the professions and indeed in the attitude of the professions and their leaders as well. Advertising is no longer widely regarded within the professions as incompatible with professional status and the opening up to competition of services formerly the preserve of one professional group is one of the key features of the Courts and Legal Services Act 1990. Rights of audience in the courts, who may provide conveyancing services and the possibilities of multi-disciplinary practices are all given a measure of stimulus. Insufficient interest on the part of banks and building societies to enter the conveyancing market at a time of falling demand caused the Lord Chancellor in March 1992 to shelve implementation of provisions designed to enable 'authorised practitioners' to engage in conveyancing. But the threat and possibility in the future of such competition has already helped to reduce conveyancing charges imposed by solicitors. Much remains to be done in the way of detailed regulation and the Office is given what has, since the Financial Services Act 1986, become its familiar role of looking at existing rules and regulatory proposals and reporting whether they significantly restrict competition. The climate is very different from that of 1976.

Malpractices in the marketplace

In recent years the Government has responded positively and promptly to many of the calls we have made, based on careful research and consultation, for legislative change to take account of new developments in malpractices adversely affecting the consumer. Not surprisingly this has been particularly so where our studies have been made at the Government's request. I am thinking of our reports on *Estate Agency* (1990), *Timeshare* (1990) and *Unjust Credit Transactions* (1991). New regulations under the Estate Agents Act 1979 strengthening our powers to prohibit rogue agents from engaging in estate agency work are already in place. Government proposals to the European Commission on timeshare and Government support for the Timeshare Act 1992, providing for a cooling-off period, followed our report on this subject. Firm undertakings have been given for legislative change to the extortionate credit bargain provisions of the Consumer Credit Act. I look forward to seeing early implementation of our more general report on *Trading Malpractices* (1990), designed to streamline the arrangements in Part III of the Fair Trading Act for dealing with traders who persistently break the law, and to extend the scope of these arrangements so that they can be used against malpractices that are clearly objectionable but which may not be currently unlawful.

Early demise of the Consumer Protection Advisory Committee

There have of course been disappointments over the years, although I cannot say that I was particularly unhappy about the early collapse into desuetude of Part II of the Fair Trading Act. In the year immediately following the Fair Trading Act 1973 and before becoming Director General of Fair Trading, I was a member of the Consumer Protection Advisory Committee to which body

the Office put proposals for new regulatory criminal offences. It was a matter of pleasure and pride for us on the Committee and for the Office that the use of void exemption clauses in consumer sale contracts was made a criminal offence. This was a useful deterrent to rogue traders who, particularly at sales time, put up notices reading 'No money refunded'. A handful of other useful regulations were made but the tight constraints and limited value of Part II of the Act soon became apparent and my one and only attempt to use the provisions (in 1977) ended in failure.

Delays in law reform

I have been more concerned that one of my predecessor's notable legacies – a report on the Trade Descriptions Act – was left unimplemented despite the fact that Ministers had specifically asked him to review the working of the Act. It is hardly to the credit of Government that one major part of that report, proposing that misdescriptions of property be a criminal offence, is now law. It is thanks to a Private Member's Bill that the Property Misdescriptions Act 1991 is on the statute book. My greatest disappointment with lack of legislative follow-up to an evident and widely accepted case for change is the failure of Government to strengthen the law on cartels and other restrictive trading agreements.

In more than one of my early speeches as Director General, I called for a strengthening of our investigatory powers to discover the existence of covert cartels. During the 1980s the value of such powers exercised by European Commission officials when cartels affected inter-state trade and therefore Article 85 of the Treaty of Rome was brought into play became increasingly evident. ICI and other companies became painfully aware of the heavy fines that might be imposed upon them. In 1989 the Government published a White Paper (Cm 727) which I warmly welcomed. It proposed a radical overhaul of United Kingdom law, including prohibition of cartels on the lines of Article 85, increased investigatory powers for this Office and heavy sanctions for breach. Despite the substantial evidence of secret cartel arrangements, particularly in the construction materials industry, no legislation has followed. Within its existing powers my Office has done its best to bring such agreements to light and to invoke the powers of the Restrictive Practices Court, such as they are. We received a serious (though not fatal) setback when in 1991 the Court of Appeal held, in the context of agreements in contempt of court, that if an employee of a company acts outside the scope of his authority (albeit within the scope of his employment) his actions do not bind his employer. It followed that a company which was subject to an earlier court order not to be a party to an agreement registrable under the Restrictive Trade Practices Act was not liable in contempt of court when a manager in its employment joined in such an agreement with representatives of other companies contrary to instructions from his employer. This decision underlines, if such underlining were needed, the urgency of the case for reform of the law.

The European dimension

There is little doubt that one of the biggest changes during my period of office

has been the increasingly international and particularly European dimension to our work. Useful initiatives in the form of European Community directives to enhance consumer protection in such fields as product liability, misleading advertising, and doorstep selling have been implemented by the United Kingdom Government. The promotion of competition policy at the Community level has grown in importance in the build-up to the creation of the Single Market, and this Office, together with the Department of Trade and Industry, has played a significant role in the Advisory Committee on which all Member States are represented. The Community Merger Regulation which came into force in 1990 has transferred jurisdiction over major mergers with a European dimension to the Commission. I have publicly expressed concern as to whether enforcement of the Regulation by the Commission is strong enough and whether (in the light of internal disagreement in the case of Aerospatiale Alenia) the Commissioners can effectively and routinely apply the competition test that is embodied in the Regulation. Member States may be unwilling to allow the envisaged further extension of Community jurisdiction over mergers to take place unless Commissioners demonstrate very clearly that they will do that.

Towards the future

I shall watch future developments with the greatest of interest. My successor, Sir Bryan Carsberg, inherits an Office of experienced and dedicated officials who have displayed conscientiousness and energy in pursuing the great variety of work that is now expected of this Office. They will meet fresh challenges with their customary adaptability.

2 Highlights of 1991

The Office's Consumer Strategy

The activities of the Office's Consumer Affairs Division are directed at achieving a marketplace in which well-informed consumers are protected from unlawful, deceptive, misleading or otherwise objectionable practices. To that end, 1991 saw the adoption of a new Consumer Strategy.

In January, a document setting out the Division's overall aims and objectives was widely circulated – both inside and outside the Office. This explained the underlying principles that would guide the Division's activities, how results were to be achieved and where changes – or shifts in emphasis – could be expected. As the foundation for developing and implementing the Division's work, it serves to define directions and values.

The Strategy is designed to harness the Director General's statutory powers, and the influence which goes with them, towards the fundamental aim of promoting and safeguarding consumers' economic interests. That means using such tools positively, and taking a purposeful, imaginative and sometimes adventurous approach to create and exploit opportunities for achieving worthwhile results. Instead of tackling the Division's various responsibilities on a statute-by-statute basis, the Strategy divides them into three broad groups – Regulatory, Policy and Information.

Regulatory

Under its regulatory responsibilities, the Office acts against businesses which cause problems for consumers.

The organisation of this work was completely overhauled in 1991. In place of sections that dealt separately with credit licensing, Part III of the Fair Trading Act and the Control of Misleading Advertisements Regulations, new 'regional' teams were established, each responsible for a specific part of the United Kingdom. This establishes a single liaison point for Trading Standards Departments and other local contacts and provides for an optimum approach to each particular problem. As the new arrangements settled in, new proactive regulatory techniques were adopted. Undesirable business practices were identified, and targeted with warning letters, formal enforcement action and publicity. Examples include the exploitation of the ignorance and vulnerability of financially hard-pressed car buyers by vehicle-transfer agencies, the irresponsible marketing of credit (especially to people already in debt), and malpractices in the leasing of photocopiers.

A concerted campaign against deceptive home-working

schemes also paid dividends. New ground was broken when a High Court injunction was obtained to restrain a leading organiser of such schemes from any form of misleading advertising to promote them. With the co-operation of the trading standards community and the Advertising Standards Authority, the Office subsequently secured widespread publicity to warn people about the illusory prospects held out by many home-working advertisements, and developed a comprehensive pack for dealing with further cases.

Credit licensing remained the backbone of the Office's regulatory work, however. Starting mid-year, the licence renewal programme went smoothly thanks largely to good preparation – effective computer systems, well-trained staff, new 'plain English' forms, a new guide to licensing requirements and co-operation with outside bodies. In 1991, the licence period was reduced to five years – a move that the Office welcomed.

Policy

Policy work involves proposing and promoting changes in law and practice where the interests of consumers are being harmed. In order to identify conduct that may be detrimental to consumers' interests, the Division monitors trends in the market through surveys, the analysis of complaints statistics and convictions, and regular contact with grass-roots organisations. In addition, selected issues are examined in considerable detail.

In 1991, there was an in-depth review of the Consumer Credit Act's so-called 'extortionate' credit bargain provisions. This involved extensive consultations. In its subsequent report, *Unjust Credit Transactions*, the Office recommended that this aspect of the law, directed at socially harmful credit arrangements, should be entirely recast. Within three months of the report's publication, Ministers announced their intention to implement the bulk of its proposals.

Two other successes, where Office proposals on policy are being implemented, were achieved on estate agency and timeshare.

At the beginning of July, legislation came into effect elaborating the scope of the Estate Agents Act 1979 in line with Office recommendations. This imposes new demands on estate agents to avoid unacceptable practices and makes it easier to act against those who transgress. In parallel with these developments, the Property Misdescriptions Act reached the statute book.

On timeshare, the Government pressed for a European Community Directive to regulate selling practices (described by the Director General as 'wholly unacceptable') and supported a private member's Bill, which subsequently passed into the statute book as the Timeshare Act 1992, to establish the 14-day cooling-off period the Office proposed in its 1990 report.

The Office was also closely involved in discussions on the Code of Banking Practice. Finally published at the end of 1991, the code is a useful step forward on such issues as confidentiality, restraints on marketing and limitations on customers' liabilities for plastic card losses. But it is not the end of the road towards achieving complete fairness and transparency between banks and building societies and their customers. Much will depend upon a positive commitment to the underlying principles of fair and reasonable dealing, and on a willingness to improve the code as the need arises.

One of the Office's central guiding principles is the promotion of redress schemes for consumers, so that when things do go wrong remedial action can be taken as swiftly, effectively and cheaply as possible. In January, a major conference was organised to review the principal schemes – small claims courts, conciliation, arbitration and ombudsmen. This was followed up with a substantial report later in the year. Another conference was organised to promote and refine the Office's trading malpractices proposals with a view to early implementation. Alongside these major events, the Office organised two seminars with a European flavour: on misleading advertising, at the Consumer Congress in Belfast; and on credit, at the Institute of Trading Standards Administration conference in Rotterdam.

At the Rotterdam conference, the Minister for Consumer Affairs, Edward Leigh, announced a major package of legislative proposals largely in line with those advocated by the Office over the years. They include support for the draft European Directive on Unfair Contract Terms, making manufacturers equally liable with retailers for the quality of goods, the reform of sale of goods legislation and the improvement of enforcement powers against rogue traders.

Information

The central purpose of the Office's information work is to help consumers make sensible choices and resolve any problems they encounter by equipping them with the knowledge and advice they need.

The Office has a high reputation for the accuracy, style and presentation of its publications. Drawing on research into consumers' information needs, the Consumer Strategy places deliberate emphasis on:

targeting each initiative; and

collaborating with the media and other organisations best placed to communicate directly with consumers.

The results achieved in 1991 served as a highly visible indicator of this new approach. *Bon Voyage* – produced in conjunction with Thames Television's *Wish You Were Here?*

programme – gave advice on travel and holidays in a colourful lively style familiar to its intended audience. With *Square Deal* the Office teamed up with the BBC tv *EastEnders* programme. The use of widely-recognised actors and fictional characters demonstrated how it is possible to get serious and credible messages across by adopting a 'popular' approach. And *Moneyfax 2*, a collaboration with BBC Radio 1, drove home important guidance on credit and debt to young people. These publications, and such other well-established materials as *CreditWise*, *Debt: a survival guide* and *No Credit?*, were supported by extensive editorial coverage, paid and public-service advertising and local radio tapes.

Detecting secret cartels

A continuing priority for the Office's Competition Policy Division in 1991 was to uncover secret – and therefore unlawful – price-fixing and otherwise blatantly anti-competitive agreements.

'Cartels inflate prices to the disadvantage of customers; they inflate business costs so that companies lose their competitive edge'. That was the basic message of a new Office publication, *Cartels: detection and remedies*, copies of which were sent to some 10,000 public and private sector organisations. This was part of a campaign to make purchasing officers more aware of the law on restrictive practices, and of the possibility for firms damaged by the operation of a cartel to take action through the courts.

For its part, the Office investigated twice as many suspected cartels as in 1990, although fewer cases were referred to the Restrictive Practices Court. The court did, however, strike down a market-sharing and pricing agreement in steel roofing purlins as well as a price-fixing agreement between two Leicestershire bus operators. Details of a number of other price-fixing agreements – previously unnotified to the Office – were placed on the public register preparatory to court action. Among them were yet more market-sharing and price-fixing agreements between suppliers of ready-mixed concrete – a market in which the Director General had taken much-publicised court action in 1990.

The Court of Appeal and the 'Bicester agreement'

In July, a Court of Appeal judgment in the case of *Director General of Fair Trading v Smiths Concrete Ltd* had damaging implications for the Office's ability to investigate secret cartels, refer them to the Restrictive Practices Court and seek fines for contempt where an injunction had been granted against an earlier unlawful agreement. The main issue the Appeal Court considered was whether Smiths was party to a price-fixing and market-sharing agreement affecting the supply of ready-mixed concrete in the Bicester area. The agreement had been made, and subsequently monitored, at

meetings attended by one of Smiths' managers. In September 1990, the Restrictive Practices Court had ruled that Smiths *had* been a party to the Bicester agreement, and that the company was therefore in contempt of court for having breached an order made against it after participating in an earlier unlawful agreement. Smiths had been fined £25,000, and its employee £1,000. But the Court of Appeal ruled that Smiths had not been party to the Bicester agreement: the company had taken all reasonable steps to prevent its employees from making such unlawful agreements, and its local manager had acted outside the scope of his authority. In November, the House of Lords refused the Director General leave to appeal against this judgment.

Consequently, as things now stand, the law has the effect of requiring the Office to establish not only that individual employees have participated in a registrable agreement – often difficult enough in itself – but also that, in so doing, they were acting within the scope of their authority. That is bound to depend largely on what arrangements a company makes to ensure compliance with the Restrictive Trade Practices Act 1976.

The judgment makes even more urgent the need to reform and strengthen United Kingdom restrictive practices legislation.

Monopolies and other anti-competitive behaviour

There were fewer references of monopoly situations to the Monopolies and Mergers Commission and no new formal Competition Act investigations in 1991. But these publicised actions can be likened to the tip of an iceberg, and the bulk of the Division's work is routinely concerned with enquiries – sometimes of a confidential nature – into alleged anti-competitive behaviour or other abuses of market power, and with the on-going monitoring of markets that have been the subject of earlier investigations. Three cases that were examined, but did not lead to formal action, can be highlighted: enquiries into complaints by small businesses against the lending policies of banks; follow-up activity to the Commission's 1989 report on the supply of beer; and the review of the contract gas market.

The lending policy of banks

Having considered both a Treasury report on the policies of the eight clearing banks most actively involved in the small business sector and many individual complaints from businesses, the Office concluded that there were no grounds for action under competition law. Nevertheless, the Director General expressed concern about hidden or opaque charging and 'insensitive or high-handed behaviour' by the banks. He therefore welcomed the Chancellor of the Exchequer's sug-

gestion that the banks should adopt codes of practice to govern dealings with small business customers. The first codes were published before the end of the year.

The supply of beer

The Office was heavily involved in the aftermath of the Commission's 1989 report on beer and the subsequent Beer Orders which aimed to relax the restrictions inherent in the tied-house system. The major brewers have responded in various ways, but the many structural changes in train in the brewing industry and the licensed trade have prompted many complaints to the Office: about beer price changes; about revised terms of leases; and about the consequences of mergers and long-term supply agreements. While it would, of course, be premature to judge the effectiveness of the Beer Orders themselves (they do not come fully into effect until November 1992), the Office felt it necessary towards the end of 1991 to initiate a limited enquiry to assess the complaints it had received and whether they justified further action.

The contract gas market

In October, the Office issued an abridged report of its review of the contract gas market. This was concerned with the effectiveness of steps taken since 1989 to stimulate competition with British Gas. Although the company was found to have complied with undertakings it had given following an earlier report from the Commission, the review concluded that effective competition had not developed. The Director General felt that he would be justified in making a further reference to the Commission, but agreed to see if further measures to stimulate competition sufficient to make such a reference unnecessary could be agreed with British Gas. The basis of an acceptable settlement was reached in December. This involved the progressive reduction of the British Gas share of the contract gas market from its current 90-95 per cent to 40 per cent in 1995, and the operation of its transportation and storage business as a separate unit (at arm's length from its other activities), subject to regulation by the Director General of Gas Supply. Detailed undertakings on these moves were expected to be concluded early in 1992.

Mergers

Fewer mergers were scrutinised in 1991 than in 1990 (see page 33), and there was a sharp drop in the number of cases referred to the Commission. This does not, however, denote any change in policy or in the criteria the Office applied in its examination of qualifying mergers; rather it reflects changes in merger activity in the economy.

But while fewer mergers raised competition concerns sufficient to justify a reference to the Commission, there was an increase in the number of cases where the parties were pre-

pared to undertake to divest themselves of parts of the merging businesses in order to make a reference unnecessary. This relatively new 'fix it first' approach to merger control (for which provision was made in the Companies Act 1989) is an important development. While extending the Office's role in merger control, it can simplify and speed up the process – thereby reducing the costs imposed by the system.

European Community merger control

1991 was the first full year of operation of the European Communities' (EC) merger control regulation. Sixty-one mergers with a 'Community dimension' were notified to the European Commission under this regulation during the year. Had there been no such regulation, only a few of these would have fallen within the United Kingdom rules. Nevertheless the policy has been for the Office to analyse every EC case against the criteria of the regulation and pass the United Kingdom's views to Brussels. As in the longer-established areas of Community competition law, liaison with Commission officials has worked well, and the Office has been generally satisfied with the way the regulation has been enforced.

Other work on competition

The annual report for 1990 detailed a number of statutes under which the Office has to scrutinise rules, practices or arrangements in specific sectors other than under the 'ordi-

nary' competition legislation: they include the Financial Services Act 1986, the Companies Act 1989 (for auditors' rules), the Court and Legal Services Act 1990, and the Broadcasting Act 1990. This clutch of recent legislation represents a significant widening of the Director General's responsibilities. Much of the Competition Policy Division's work under these statutes in 1991 was essentially 'behind the scenes'. But the year did see the start of the Office's involvement, under the Broadcasting Act 1990, in the evaluation of the new Channel 3 licensees' proposed networking arrangements.

Channel 3 networking arrangements

The Director General gave his views to the Independent Television Commission (ITC) on their guidance to prospective licensees on the kind of proposals they would find satisfactory, his main concern being to ensure direct access to the system by independent programme producers.

The major task will arise in 1992. This is to consider and report on the effects on competition of the networking arrangements finally submitted to him by the ITC. Consideration must be given to whether the arrangements prevent, restrict or distort competition in any United Kingdom business activity and, if so, whether they are nevertheless acceptable in contributing to an improvement in production or distribution or technical or economic progress in any activity – a test modelled on Article 85 of the Treaty of Rome.

3 Consumer affairs

The Office's Consumer Affairs Division is responsible for three main types of activity:

regulatory – credit licensing and taking warning or enforcement action against businesses that cause problems for consumers;

consumer policy – proposing and promoting changes in law and practice where the interests of consumers are being harmed;

information – equipping consumers with the information and advice they need.

The Director General's consumer responsibilities are set out in the Fair Trading Act 1973, the Consumer Credit Act 1974, the Estate Agents Act 1979, and the Control of Misleading Advertisements Regulations 1988.

The various functions share the fundamental aim of promoting and safeguarding the interests of consumers. The Director General's powers are directed at achieving a marketplace where consumers are well-informed, confident and protected from unlawful, deceptive, misleading or otherwise objectionable practices. Thus the efforts of the Consumer Affairs Division are largely concerned with preventing problems and improving the trading environment.

Misleading advertisements

Complaints received

In 1991, the Office received 282 complaints under the Control of Misleading Advertisements Regulations 1988 – 225 from consumers, 23 from businesses, trade associations and similar bodies, 17 from local authority Trading Standards Departments and 17 from a variety of other sources. Advertisements for timeshare generated the most complaints (103), followed by those for holidays, travel and leisure (40) and home-working schemes (37). The remaining complaints covered advertisements for a wide range of goods and services.

Direct mail brochures produced more complaints than any other advertising medium (99), followed by newspapers (60), point of sale material (20) and magazines and periodicals (12). Other complaints were spread across a variety of printed and electronic media. The most frequent objections to advertisements centred on availability, selling methods and the omission of facts.

Complaints referred to other bodies

In line with the Director General's role under the regulations of supporting and reinforcing existing advertising controls, the Office referred 158 complaints to the established means of control. Of these, 100 were referred to the Advertising Standards Authority (ASA), 53 to Trading Standards Departments and five to various other bodies. A number of complaints, including those received from Trading Standards Departments, and particularly those about the advertising of home-working schemes, were considered by the Office to assess whether court action was appropriate. A small number of complaints did not fall within the Director General's remit under the regulations and were passed on to other administrative authorities. In some other cases complainants had already contacted the appropriate bodies, or the complaints did not warrant further action. The remaining complaints received were still under consideration at the end of the year.

Court cases

In November the High Court granted the Director General an injunction making permanent an interlocutory injunction obtained in November 1989 against Alan Richard Blinkhorn and a company associated with his operation, Addrush Ltd. The interlocutory injunction restrained the publication of misleading advertisements about home-working schemes. The terms of the permanent injunction were wider and apply, significantly, to any other advertisement likely to convey a similar false impression about certain claims relating to the same or other schemes. Following this case, the Office prepared feature articles to warn the public about home-working schemes: these obtained very extensive coverage in national and local newspapers, and in other publications.

Undertakings in lieu of court action

In 1990, the Director General had informed Greenhill Marketing Ltd that he intended to take legal action under the regulations after the Office had received a number of complaints about the misleading nature of the company's mailshots, which turned out to be promoting timeshare. Court action was averted after he received three undertakings. The first was given by the company itself, on 20 November 1990; this was followed by individual undertakings given by two directors, on 1 August and 6 November 1991. The undertakings were all in similar terms and materially the same as those given by Incorporated Management and Finance Ltd, trading as Holiday Ownership Exchange, on 21 June 1990. The Director General took the view that the Greenhill Marketing and Holiday Ownership Exchange advertisements exhibited similar characteristics.

Misleading pricing

The Office is represented on the committee set up by the Department of Trade and Industry (DTI) to monitor the workings of Part III of the Consumer Protection Act 1987, and its associated code of practice for traders on misleading price indications. The committee met several times in 1991 and considered a report on the enforcement experiences of local authority Trading Standards Departments and a research report on traders' awareness of requirements on price indications.

In December, a report of the monitoring committee was presented to DTI ministers. A clear majority of the committee believed that there were significant problems with the current regime and recommended that regulations should be made to cover: the 28-day rule (for quoting previous higher prices); recommended retail prices; introductory offers; 'worth' and 'value' claims; and 'substantiation' or 'justification' of bargain offers. In addition, ministers were asked to examine the case for requiring the face value of theatre and other tickets to be disclosed to purchasers. The committee also recommended that the code of practice on price indications should be revised and undertook to consider further the issue of service charges.

The consumer market

Code of Banking Practice

During 1991 the Office participated in the consultation process leading to the formulation of the Code of Banking Practice. The Review Committee on Banking Services, Law and Practice (The Jack Committee) reported in February 1989: among other things it recommended that banks and building societies should draw up a code of practice governing their relationship with their customers. The Government endorsed this recommendation and a working party, representing the British Bankers Association, the Building Societies Association and the Association for Payment and Clearing Services, issued a first draft of the code in December 1990. A revised draft was circulated during 1991. Following consultations with the Office and other consumer protection organisations, the final version of the code was launched on 12 December.

The Director General welcomed the code as a good start but warned that there was still further ground to be covered before the objectives of fairness and transparency for personal customers were fully achieved. He welcomed the governing principle that banks would act fairly and reasonably in all their dealings. Fundamental duties of confidentiality are reinforced, together with desirable restraints on marketing, as are provisions for customers to be notified of their rights of access to their personal records. 'Health warnings' for guarantors are required, and customers' liabilities for card losses have been

significantly limited. The Director General was also pleased to see that a lay-dominated review committee is to be established to monitor the code, to publish an annual report, and to undertake a review at least once every two years.

He nevertheless considered that success would depend on a commitment to the code's spirit as well as to its letter. It does not stipulate, for instance, when written terms and conditions are to be used and to be given to customers. While obliging banks and building societies to provide their customers with information, it does not always specify how this is to be supplied. It refers to the publication of tariffs for 'basic account services', but does not define what those services are. A case can also be made for clearer itemisation of charges when they are imposed, and for customers to be told of charges before they are deducted. This may be achieved through competitive pressures, but the question should in any case be addressed when the code is reviewed in two years' time.

Another area where the code may need further development concerns the treatment of existing deposit and savings account customers who see new customers enticed with more attractive interest rates. During the course of the year a number of criticisms were made on this score. In order to retain their existing customers' trust and confidence, the banks and building societies might have to consider amending the code to cover a requirement to tell customers about new products.

Federation of Engine Remanufacturers Code of Practice

Discussions were completed during the year with the Federation of Engine Remanufacturers on the detail of its code of practice.

For some years, there has been a proliferation of trade descriptions for renovated engines – 'rebuilt', 'reconditioned', 'renewed', 'overhauled' and so on. The code now lays down specifications and requirements for renovating vehicle engines to give a performance and service life comparable to that of a new engine. Such 'remanufactured engines' (as they are to be known) carry a written guarantee, the terms of which are laid down in the code. In addition, the code embodies consumer protection requirements on the form of contracts, delivery times, and complaint conciliation and arbitration procedures. It is a welcome addition to the other codes of practice in the motor vehicle sector.

Timeshare

While acknowledging that most timeshare owners were satisfied with their purchases, the Director General's July 1990 report commented that there was nevertheless a great deal of evidence to suggest that all too often timeshare was not sold in a healthy market where well-informed consumers dealt with responsible traders. Besides suggesting ways in which the

industry could improve its relations with customers, the report also made a number of recommendations to Government for new legislation.

Responding to the report in February 1991, Edward Leigh, Consumer Affairs Minister, accepted its key recommendations and said that he would seek action to implement them through the European Community. Mr Leigh told the House of Commons that most timeshare properties purchased by United Kingdom residents were in developments abroad. United Kingdom legislation could not on its own provide effective protection, hence the need for the issue to be dealt with on a Community-wide basis. Mr Leigh subsequently approached the European Commission to urge the introduction of an EC Directive incorporating the three key elements of the Director General's recommendations:

- a prospectus containing minimum information about the timeshare to be provided before any contract is signed;
- a cooling-off period in which to cancel without penalty; and
- protection of deposit monies through bond or escrow.

Mr Leigh also accepted the Director General's recommendations that the Trade Descriptions Act should be amended to tighten controls on statements about services and to bring 'award' schemes, extensively used to advertise timeshare, within the Act's powers. These would be dealt with as part of the Government's ongoing general review of the Act.

Within the United Kingdom, the Timeshare Act 1992 (passed in March) will provide for a 14-day cooling-off period for timeshare contracts – and for credit contracts that finance them. This legislation had been introduced as a private member's Bill, but had received Government support.

Redress

In January the Office hosted a major conference on consumer redress. Its purpose was to consider what consumers needed from redress (in the way, for example, of mechanisms to resolve disputes – such as small claims procedures, arbitration, or ombudsmen), whether that need was being met, and what improvements might be necessary. Participants represented a wide range of consumer organisations, the courts, private and public redress schemes, the universities, and central and local government. The main presentation was made by the Lord Chancellor, who outlined planned reforms in the small claims procedures.

The conference raised many issues and, in November, the Director General published a follow-up report: *Consumer Redress Mechanisms*. This was not intended as an account of the conference itself but sought to take stock of the current situation in the United Kingdom – looking at the state of redress, redress procedures, their strengths and weaknesses,

the demand for redress and consumer attitudes.

Reviewing previous Office research, the report concluded that 40 per cent of the adult population had had cause for complaint and that around three-quarters of those who had such cause took up their complaints with suppliers. One-third of those consumers who complained about goods and two-thirds who complained about services were, however, dissatisfied with the outcome. Of those who remained dissatisfied, fewer than half of one per cent took their case to court or referred it to one of the alternative redress schemes available.

Underlying this were findings that consumers' awareness of their rights and of redress schemes generally was limited. The Office is concerned that so few consumers used the procedures open to them. Besides helping to resolve complaints, increased use of redress schemes could have a positive influence on the behaviour of traders. Consequently the report made a number of recommendations aimed at improving consumers' knowledge of the existing schemes and at making their operation more user-friendly and effective.

It was, for example, suggested that, where appropriate, the courts should make greater use of alternative forms of resolving disputes, and that there should be training for judges on small claims, experiments with evening hearings and easier enforcement of awards. Among the recommendations to ombudsmen was one that a clearing house should be set up to ensure that complaints about financial services reached the right person and another that minimum standards should be established for their profession. Public utility regulators were urged to develop and take a common approach to problems whenever possible.

For its part, the Office undertook to publish basic information on redress (see the Office publication *Square Deal*), to carry out further research on the subject and to look into the possibility of consumer organisations undertaking representative action on behalf of consumers – a principle the Office had previously supported in its reports on trading malpractices (July 1990) and unjust credit transactions (September 1991 – see page 41).

Trading malpractices

In October, the Office held a conference to discuss the proposals contained in the Director General's July 1990 report, *Trading Malpractices*. Participants were drawn mainly from those organisations and individuals who had provided written comments on the report's proposals to tackle objectionable trading practices. They included representatives of trade associations, consumer organisations, enforcement authorities, government departments and academics. The conference's main aims were to focus attention on Office proposals to amend Part III of the Fair Trading Act 1973, consider key issues raised by the proposals and, where necessary, refine the

proposals to ensure their implementation. The primary issues which had emerged during the consultation stage were:

the proposal for procedural reforms under which officers of local Trading Standards Departments would share with the Director General the power to take action under Part III of the Act; and

the proposal to widen the scope for action beyond unlawful conduct to 'misleading, deceptive and unconscionable practices'.

The combination of these two major legislative reforms provoked the most comment. In general, responses received by the Office and comments made at the conference supported the underlying objectives and the thrust of the proposals, but some reservations were expressed about the scope for subjectivity in interpretation, a possible lack of uniformity in enforcement and uncertainty on the part of traders.

At the end of the year, revised proposals that took account of views expressed at the conference were being prepared.

Home improvements

During the course of 1991 the Office consulted interested parties on the second draft of a model 'fair deal' contract. As in the first consultation exercise, undertaken in 1990, support was expressed for the general concept, but considerable differences of opinion remained on the content of the contract itself. The main points which emerged were that:

the draft model contract and the accompanying guidance were too bulky and detailed (eight and 11 pages respectively) to encourage widespread use by either consumers or building contractors; and

trade representatives thought the model contract was weighted too far in favour of customers. Examples quoted to support this view were that:

it ignored the fact that pursuit of defaulting customers can be costly and time-consuming for contractors; and

the suggested final stage payment of 25 per cent designed to give consumers a reasonably strong bargaining position was too high.

In the circumstances the Office has concluded that the original aim of producing an all-purpose model contract that would be perceived by consumers and contractors as clear, comprehensive, fair and balanced, and which would be widely used, is unattainable. It has therefore decided to abandon work on the projected contract in favour of an alternative strategy to address the problems consumers experience

in the field of home-improvement work. Plans were put in hand to launch a major publicity campaign in the early summer of 1992. To help target the campaign, the Office commissioned research to provide a detailed insight into how major problems arise.

Furniture and carpets

Since the Furniture and Carpets Action Group submitted its interim response to the Director General's report *Furniture and Carpets*, it has been working steadily to refine and flesh out its proposals.

The Group submitted its final response to the Director General's report in September. At the same time it consulted companies in the furniture and carpets industry to seek their co-operation in implementing the report's recommendations. The Group has since met representatives of consumer protection organisations to discuss amendments to its proposed regime to protect consumers.

The regime, to be known as 'Qualitas', is to be launched in the spring of 1992. It consists of:

a charter – a mission statement for the industry;

a code of practice – to replace the existing code of practice for furniture;

a new independently constituted conciliation service;

and

a new labelling regime for furniture and carpets.

The hope is that the Qualitas mark will assert furnishing standards and provide an assurance of quality and service in relation to the product, the way it is sold and the way customer after-care and service requests are handled.

Ever since the Action Group's inception, the Director General has regarded its formation as a very encouraging development. Acknowledging its final response, he said he hoped that the commitment to Qualitas would be demonstrated by most, if not all, those involved in the industry. He thought that Qualitas represented a solid foundation on which the industry could build.

At the same time, the Director General was disappointed that the Group had not yet secured agreement to any form of voluntary protection of consumer deposits. He noted, however, the real progress made in addressing the other major problems identified in his report – such as delivery delays, difficulties in obtaining redress and inadequate information for consumers. He welcomed in particular the efforts the Group had made to give consumers a voice in the operation of Qualitas through consumer protection organisations which had been invited to be represented on the management board and council.

Informing the public

Consumer Information Strategy

In his report for 1990, the Director General briefly referred to research that had been undertaken during the year to underpin the Office's evolving Consumer Information Strategy. In February 1991, the Office published the results of that research and set out its future strategy in a short report entitled *Consumers' Information Needs*. The research confirmed that Office publications were well received but that there was a need to ensure that the information got through to the people who most needed and wanted it.

In future, there is to be a deliberate emphasis on targeting each initiative, especially on those members of the public who are least well-educated, least well-informed and least articulate. This will involve collaborating with various organisations best placed to communicate with consumers and diversifying beyond booklets and leaflets. To maximise limited resources, the Office plans to concentrate its consumer information efforts on strong promotions around general flagship materials, a strictly limited programme of specific events and a consumer education programme aimed at young people. This does not mean that it will neglect such traditional outlets as Citizens Advice Bureaux and consumer advice centres, but its major effort will be a continuous marketing programme to promote, reinforce and develop the messages contained in its publications.

One of the aims of the new strategy is to rationalise the Office's general publicity materials down to two core flagship publications at any one time – a general guide to avoiding, and resolving, problems with goods and services and a guide to handling credit successfully. These were launched in 1991 as *Square Deal* and *Moneyfax* respectively.

Square Deal

As the year's major initiative, the Office produced *Square Deal*, a 32-page magazine-style publication with information on consumer rights and shopping problems, plus consumer-oriented quizzes, games and interviews featuring the characters of the BBC television programme *EastEnders*. The *EastEnders* cast also discuss their real-life shopping problems and how and what they have learned from them. The publication gives a list of useful addresses for further advice if things do go wrong and there are some hints on how to write letters of complaint. It has been widely distributed and promoted – with video promotion in post offices and magazine advertising, for example.

Moneyfax

The second major project undertaken by the Office in 1991 was the preparation and launch of a completely revised edition of its booklet *Moneyfax*, giving basic advice on credit

and broadly aimed at 16-35 year-olds. The new version had an initial print run of 1.5 million copies. The booklet explains the different types of credit available and their sources, explores the advantages and disadvantages of credit, and looks into the problems of debt. It also offers advice on how to deal with debt and gives details about sources of help and advice.

In line with the Office's policy of working with the media and other organisations, *Moneyfax* was published in co-operation with BBC Radio 1. The booklet was launched on Radio 1 in late November, supported by three days of broadcast advice and material on credit and debt and by a heavily used telephone helpline. *Moneyfax* was sent to everyone who contacted Radio 1 as well as to libraries, advisory bodies and a range of youth organisations.

Consumer education

Following the success of its *Can't Buy Me Love* video and VFM booklet, the Office maintained its programme of producing materials for schools aimed at assisting young people to acquire the skills and knowledge necessary to become mature consumers.

As part of the wider distribution of the new edition of the *Moneyfax* booklet, giving basic advice on credit (see preceding section), a major mailing exercise to schools started in January 1992. This mailing is being supported by teachers' notes giving advice and suggestions on using the material in *Moneyfax* in various parts of the school curriculum.

The Office began work in 1991 on three more in its series of factsheets for teachers. The first of them, an update of the factsheet on misleading advertising first published in 1989, was issued early in 1992. Others on consumer safety and the law on prices will be available later.

Also during 1991 the Office put in hand the development of a board game for schools designed to test consumer knowledge. This is to be marketed under the title *Shopping Spree*. Promotional material about the game was circulated to schools early in 1992 in conjunction with the mailing of *Moneyfax*. The game itself will be available, free of charge, from the Office.

Meeting of consumer advisers

In February 1991, in support of its Consumer Information Strategy, the Office arranged a second meeting of consumer advisers as part of a continuing programme to find out, from people who have to deal with complaints, what they currently see as the principal problems experienced by consumers. Twenty-four representatives of Trading Standards Departments with consumer advice centres, Citizens Advice Bureaux and other consumer advice organisations were invited to take part in group discussions at the Office. They were asked not only to talk about those consumer problems of

which they had had first-hand experience, but to suggest ways in which the Office might be able to tackle such problems, whether by changing its methods or by new initiatives. The debate ranged over such topics as codes of practice, 'unsolicited visits' under the Consumer Credit Act, deposits and prepayments, the inclusion of small businesses within the scope of consumer protection legislation, motor insurance, franchises, and selling techniques.

While the advisers commented freely on the content of existing Office publications, there was a clear consensus about their overall usefulness. Delegates also spoke about the subjects they would like to see covered in new publications and what other publicity initiatives they felt the Office should undertake. Among the consumer information and education aids it was suggested might be considered were: an adult consumer education video; an audio-cassette on consumer rights (particularly for the blind); and leaflets in languages other than English for the benefit of ethnic minorities.

In March, an audio-cassette dealing with consumer rights and aspects of consumer credit was produced on behalf of the Office by Master Transcriptions, a firm that specialises in advisory tapes for the blind and partially sighted. Based on existing Office publications, the tape was widely promoted through organisations and magazines concerned with the welfare of people with disabilities. Some 20,000 copies had been distributed by the end of the year.

Although financial considerations do not allow all the proposals to be taken forward, the views expressed by consumer advisers at the meeting in February have been taken into account in putting the Office's new Consumer Information Strategy into effect.

Consumer research

Health insurance

The Office commissioned an initial study on private health insurance (PHI), following extensive critical press comment and an influx of complaints after tax relief on premiums had been introduced for the over-60s.

The study showed that many of the complaints that had been received were about increases made in premium charges following the introduction of tax relief. In addition, premiums were much higher for the over-60s and many people could not afford to continue to pay the higher rates after they had retired.

Many PHI schemes lacked clarity and were short on detail the study concluded. It suggested the need for greater transparency, both in the content of policies and the true cost of medical treatment, and recommended that every insurer should provide access to an arbitration/redress scheme. It also recommended that a further and more definitive study should be undertaken, preferably to include the commissioning of a

survey, so that consumer guidance could be prepared.

As an interim step the Office plans to produce a leaflet, targeted mainly at older people, giving advice on what to look out for when obtaining PHI cover. This should be available during 1992.

Annual consumer dissatisfaction survey

As part of its regular complaints monitoring procedure the Office commissions an annual sample survey of adults (aged 16 years and over) throughout the United Kingdom. The latest survey for which full results are available was carried out in November 1990, when there were 2,026 respondents. Preliminary findings from the November 1991 survey are also now available.

The 1990 survey found that 42 per cent of adults questioned had had cause for complaint about goods or services during the preceding 12 months; the figure in 1991 was 43 per cent. This compares with 46 per cent in the 1989 survey. It would be unwise at this stage, however, to conclude that the apparent reduction in complaints is a consequence of an improvement in the quality of goods and services: changes in consumer purchasing patterns during the period of recession may well have produced fewer opportunities for dissatisfaction. Sampling error may also have had a part to play.

Detailed results from the 1990 survey showed a slight drop in the percentages of respondents who had cause for complaint about goods, 26 per cent compared with 30 per cent in 1989, and about services, 28 per cent compared with 31 per cent. The figures for 1991 were a little higher than those for 1990 – 27 per cent for goods and 30 per cent for services – but did not reach the 1989 level.

The categories with the highest percentages of respondents who had cause for complaint in 1990 were:

about goods	
food or drink	8 per cent
household appliances	6 per cent
about services	
post or telephone services	6 per cent
professional services	5 per cent
building work	5 per cent

Some people had more than one cause for complaint about a particular category of goods or services. There were 664 causes for complaint about goods per thousand respondents and 765 per thousand about services.

Dissatisfied consumers took action to gain redress in respect of 77 per cent of complaints about goods and 72 per cent about services. These percentages were higher than in 1989 (76 per cent and 61 per cent respectively).

In the 1990 survey, 26 per cent of actions taken about goods had an unsatisfactory outcome, compared with 47 per

cent of actions taken about services. These figures also show an improvement on those for 1989, when the equivalent proportions were 33 per cent for goods and 51 per cent for services.

If the movement in the figures continues in the same direction, it would suggest that consumers are becoming more willing to take action when they have cause for complaint, and are more likely to obtain a satisfactory outcome when they do take action.

The most common first action taken was to contact the shop or seller: 76 per cent of those taking a first action in the case of goods and 44 per cent in the case of services.

Of those consumers who experienced an unsatisfactory outcome following the first action, 33 per cent took a second action in the case of goods and 29 per cent in the case of services. Roughly three-quarters in the case of goods and half in the case of services simply repeated their first action. Less than one per cent sought third-party advice and fewer than one person in a thousand took a complaint to a small claims court, arbitration or an ombudsman.

Credit and debt

Financial support for money advice services

Early in 1991, Sir George Blunden, chairman of the Money Advice Trust, invited banks, building societies, retail credit firms and other credit suppliers to support the Trust with financial contributions. This call was backed by the Director General: addressing its annual conference in May, he urged the Building Societies Association to support the work of the Trust and to encourage its members to respond favourably to the appeal for funding for the independent money advice services.

PSI survey on credit and debt in Britain

At the end of the year, publication was awaited of the full report of the survey of the Policy Studies Institute (PSI) into the uses of credit and the problems of debt. The Office had acted as co-sponsor of this survey.

Credit assessment

In the course of 1991, the Data Protection Tribunal heard appeals by the four largest credit reference agencies against enforcement notices issued by the Data Protection Registrar under the Data Protection Act 1984. The Tribunal agreed with the Registrar that the use of information about third parties (such as people with the same name as, or an address similar to that of, an applicant for credit) was unfair, but considered that certain types of third-party information could continue to be used. In one case the Tribunal settled the wording of a revised enforcement notice, but both the Registrar and the credit reference agency subsequently

appealed to the High Court. These appeals had not been heard before the end of the year.

In the other three cases the Tribunal reserved the wording of revised enforcement notices pending further discussions between the Registrar and the agencies. This matter too remained unresolved at the year's end.

Report on Unjust Credit Transactions

In September, the Director General published *Unjust Credit Transactions*, a report on the review the Minister for Consumer Affairs had asked him to undertake of the provisions of the Consumer Credit Act for dealing with extortionate credit terms. The report concluded that the Act's provisions had not effectively dealt with the problems to which they had been addressed. It recommended that:

the court's power to reopen an agreement should be on the basis of an 'unjust credit transaction' rather than an 'extortionate credit bargain';

a finding that a transaction involved excessive – rather than 'grossly exorbitant' – payments should be a factor in determining whether the transaction was unjust;

a further factor should be whether the transaction involved business activity which was deceitful or oppressive or otherwise unfair or improper (whether unlawful or not);

the other factors for determining whether a credit transaction was unjust should remain as in the existing legislation, but with one addition – the lender's care and responsibility in making the loan, including steps taken to find out and check the borrower's creditworthiness and ability to meet the full terms of the agreement;

the court should be empowered to reopen a credit transaction of its own motion – without the need for an application by the debtor – in both defended and undefended cases;

the court should be required to notify the Director General of each case where it has found a credit transaction to be unjust;

in cases involving the public interest, the Director General and local authority Trading Standards Officers should be empowered to apply to the court for a declaration that a particular credit transaction or any particular aspect of it shall be deemed unjust; and

tougher penalties should be introduced for unlicensed (and therefore illegal) provision of credit.

Welcoming the report, the Minister for Consumer Affairs said in December that, when Parliamentary time permitted, he proposed to introduce legislation to amend the Act broadly along the lines the Director General had recommended.

Action under the Consumer Credit Act 1974

Implementation

Three new statutory instruments were made during the year (see Appendix B.2). One, the Consumer Credit (Period of Standard Licence) (Amendment) Regulations, reduces the period during which a consumer credit licence has effect from 15 years to five. The other two amend the Consumer Credit (Exempt Agreements) Order 1989; their purpose is to clarify a provision in the 1989 order and to add to the list of exempt bodies contained in its schedule.

There were 13,000 enquiries about the Act and its regulations during the year – 3,200 more than in 1990. The Office continued to participate in conferences and seminars on consumer credit matters.

Exemptions

Three applications were received for the Director General to exercise his powers under section 101(8) to direct that a consumer's right to terminate a hire agreement should not apply to such agreements made by the applicant. One was withdrawn and the other two were still under consideration at the end of the year, as was one application made in 1990.

Powers of entry and inspection

Seven applications were received from local authority enforcement officers for the Director General's authorisation under section 162(5) to use powers of entry and inspection. Six were granted.

Credit reference agencies

Seventy-eight applications (more than twice the number in 1990) were made for the Director General to exercise his powers under section 159(5) to arbitrate between a consumer and a credit reference agency about information held on a credit reference file. Fifty-three were resolved by negotiation, without the Director General having to make an order, as were the 17 applications outstanding at the end of 1990. Twenty-five applications were outstanding at the year's end.

Credit marketing

In December, the DTI issued a further consultation document on the marketing of credit, revising proposals made in a similar document published in December 1990. The Office's response was under consideration at the end of the year.

No Credit?

In April, the Office published an updated version of *No Credit?*, a booklet giving advice to consumers on what to do if they have been refused credit.

The new edition runs through the procedure that people should follow to find out what details are held on them by credit reference agencies – firms which provide lenders such as banks, finance houses and retailers with information to help them assess would-be borrowers' creditworthiness. It explains how to correct the details if necessary and contains sample letters that can be used as models.

The booklet was promoted through local radio and press. It is available from Trading Standards Departments, Consumer Advice Centres and Citizens Advice Bureaux, and is also being distributed by two of the largest credit reference agencies.

Rebates on early settlement

The survey commissioned by the Office in 1990 did not provide sufficient evidence of the need for changes to the Act's existing provisions on early settlement of credit deals. Nevertheless, the Office continues to receive consumer enquiries about these provisions, mainly concerning the level of rebate obtained on early settlement. It is therefore proposing to amend its consumer guidance material to point out the consequences of early settlement and to advise consumers that they should avoid entering into credit agreements for periods longer than they really need.

Credit scoring

The Office last reported on credit scoring in 1984. It then concluded that credit scoring was a legitimate method of assessing applicants for credit provided that the systems used were based on adequate statistical analysis and contained no bias against particular classes of applicant. Since that report was published, credit scoring systems have become more sophisticated and there has been a significant increase in their use by the credit industry. Because of this, and in the light of the continuing public interest in methods of credit assessment, the Office considered that a fresh look at the subject was needed.

During 1991 a wide-ranging consultation exercise, seeking the views of the credit industry, consumer bodies, and other interested parties was undertaken. A report is to be published in 1992.

Debt collection

The Credit Services Association, the trade body representing debt-collecting agencies, introduced a code of practice for its

members in the spring of 1991. The code, which is supported by the Office, supplements consumer credit legislation by setting out guidelines of good business conduct in the collection of debts. In welcoming the code, the Director General noted that it could not lay down detailed rules of behaviour to cover every conceivable occasion: its effectiveness would depend on the observance of its provisions in spirit as well as in the letter.

Advertisements and quotation regulations

In his report for 1990, the Director General said that the Office would be considering the results of its further monitoring exercise on credit advertisements in the national press, carried out in December of that year. The results showed that there had been an improvement in compliance with the advertisements regulations, particularly in the requirements to display, and to give the required degree of prominence to, the annual percentage rate of charge (APR) and the prescribed statements in secured loans, and in the availability of written quotations.

In conjunction with local authority Trading Standards Departments, the Office continues to keep the overall standard of compliance with the regulations under review.

Progress on credit licensing

The reductions achieved in 1990 in the times required to process licence applications and the notification of changes were maintained during 1991. But, given that Trading Standards Officers need to be given adequate time in which to consider notifications of new applications from their areas, there is now little scope for any further reduction.

At 24,785, the number of standard applications received in 1991 once more marked a slight fall (3.7 per cent) on the total for the preceding year. The number of licences issued in 1991 was 24,136. (See Diagram 1, page 27.)

The number of notifications of changes in particulars continued to rise substantially: the total of 39,668 was nearly 35 per cent up on that for 1990 and again set a new record high. Applications to vary the terms of a standard licence also rose, by almost 13 per cent, to 7,782. The number of applications dealt with during the year was 6,703.

The first renewal of standard licences began in 1991: 4,922 applications to renew were made and 3,268 renewal licences issued. The number of licences that lapsed was 7,914.

General enquiries about licensing, mainly from traders, fell slightly, to 63,166. Of these, written enquiries, at 8,321, showed a 29 per cent increase while telephone enquiries dropped by nearly six per cent, to 54,845. Public register enquiries by personal callers were down slightly, to 936, although this was more than made up for by a rise in both telephone and written enquiries.

Considering fitness for a licence

In 1991, 220 notices were served on applicants or licensees about their fitness to be granted, or to retain, a licence. A statistical analysis of fitness notices in relation to various business and trade sectors since 1977 is shown in Appendices B.7 and B.8. Local authority enforcement officers play an essential role in this area, both by providing information about applicants and licensees and by assisting in subsequent investigations. The total of 220 notices, compared with 267 in 1990, reflects a continuing shift to the use of warning letters instead of notices and a temporary reduction in output following a major reorganisation of the Office's regulatory work.

The notices served during the year included 111 where the Director General was 'minded to refuse' applications for licences, 101 where he was 'minded to revoke' existing licences, plus six where he was 'minded to grant the application but in terms different from those applied for' and two where he was 'minded to refuse to vary' a licence. Anybody who receives a notice is given the opportunity to make written and/or oral representations against the proposed course of action. In recent years, there has been a noticeable increase in the number of applicants and licensees exercising this right: of the 163 cases determined in 1991, a total of 115 traders made such representations (69.5 per cent, compared with 38 per cent in 1983), and nearly 85 per cent of these included a personal hearing. The number of cases cleared during the year was 218: 163 by way of determination; 37 by withdrawal of the application; and 18 by surrender of the licence. Of all cases, 72 (33 per cent) were favourable after representations (including, in many cases, formal assurances about future conduct), and 91 (42 per cent) were adverse (35 refusals, 55 revocations, and one adverse determination 'minded to grant in different terms'). Surrenders and withdrawals accounted for the remaining 55 cases (25 per cent).

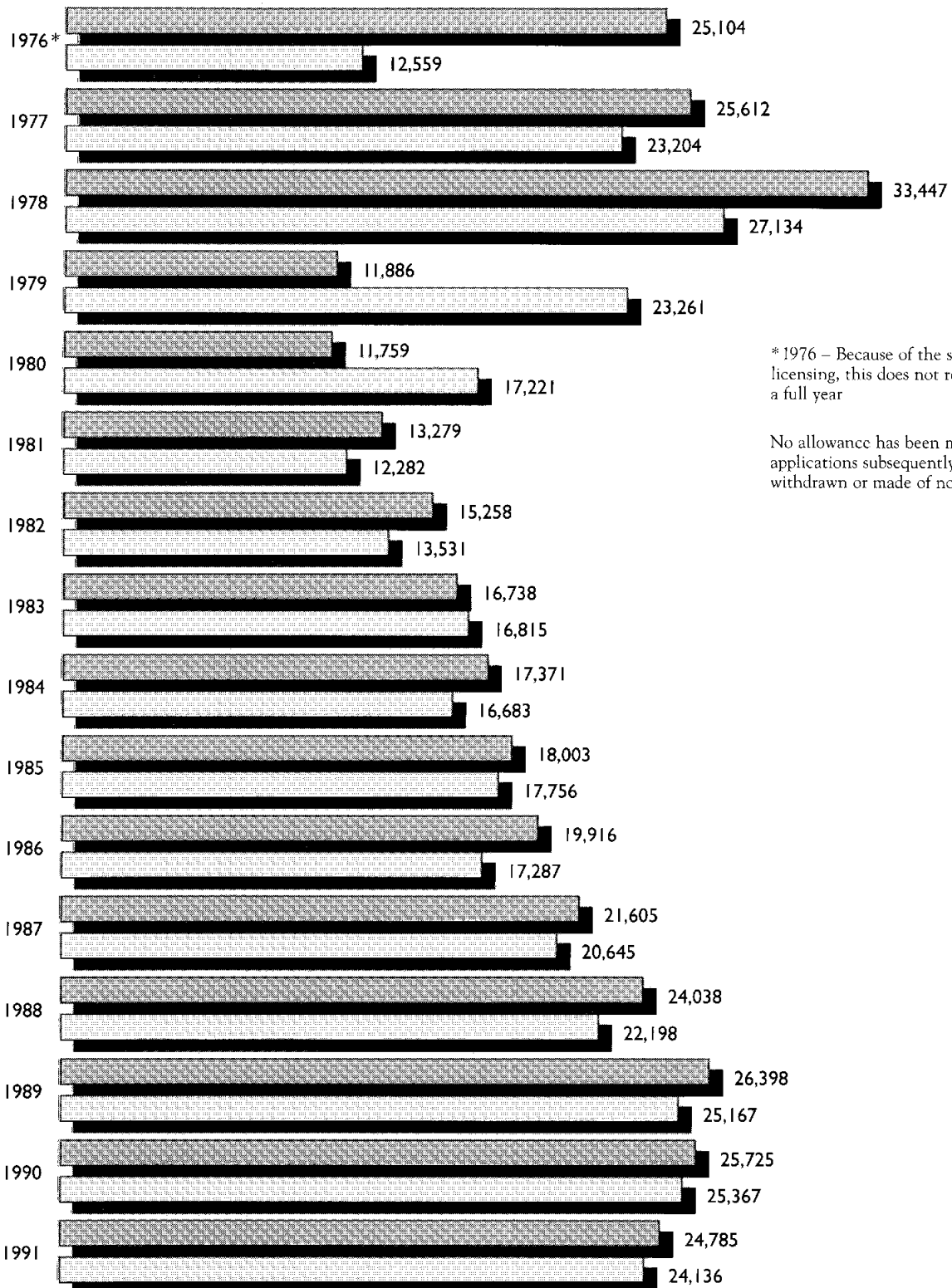
Ten appeals to the Secretary of State were dismissed in 1991, five were abandoned by the appellants and three were upheld. On 31 December, 11 appeals remained outstanding.

Licences refused, revoked, suspended or granted in different terms, and decisions subject to appeal are listed in Appendix B.3, while Appendix B.9 gives a statistical record of licensing decisions and appeals each year since 1989.

As in previous years, licensing action was based on specific breaches of the law, or on the use of business practices that appeared to the Director General to be deceitful or oppressive, or otherwise unfair or improper (whether unlawful or not). It was apparent that some traders were not conforming to, or not making themselves aware of, their obligations to consumers under the law.

Finance companies and money lenders accounted for the largest number of notices issued in any particular sector, but were close-run by motor traders. Motor traders topped the

1 – Consumer credit licensing applications received and licences issued 1976-91.



*1976 – Because of the staging of licensing, this does not represent a full year

No allowance has been made for applications subsequently withdrawn or made of no effect

Number of applications received

 Number of licences issued

count of adverse determinations.

The number of notices issued to estate, insurance and mortgage agents was 22. Fourteen of these traders had their licences revoked and four their applications refused. In almost two-thirds of these cases, parallel action was taken under the Estate Agents Act 1979, leading – in some instances – to the issue of total prohibition orders banning such agents from doing estate agency work. Of all notices of proposal issued to estate agents and dealt with in 1991, 49 per cent resulted in total prohibition.

Unlicensed trading

The Director General received 20 applications for validation orders to make enforceable agreements that had been made while a trader was unlicensed. As a rule, in considering such applications, he expects to have specific information about each of the agreements they cover. When an application does not contain such details, he formally notifies the applicant that he is prepared to grant orders for specific agreements only. Nine applicants were notified that the Director General was either 'minded to refuse' the application or 'minded to grant it in different terms' from those applied for or 'minded to grant it subject to conditions'.

Twenty-one applications for validation orders were either withdrawn or made of no effect. Six were granted as requested (in terms of specific agreements), five were granted in terms different from those requested and one order was refused. Ten applications remained outstanding at the end of the year.

Warning to vehicle transfer agencies

The Office was concerned about the emergence of a new debt adjusting activity. Vehicle transfer agencies have been encouraging people who have difficulties making repayments on leased or hire-purchase cars to transfer their vehicles to third parties – through the agencies. There were allegations of deceitful, unfair and improper behaviour. The Office sent licensees letters listing examples of the practices alleged and pointing out that those who engaged in such practices risked losing their licences.

Action under the Estate Agents Act 1979

The grounds on which the Director General can issue a prohibition or warning order to an estate agent, and the procedures to be followed, were outlined in the annual report for 1982. Essentially they remain unchanged, although recent statutory instruments under the Estate Agents Act have expanded the grounds on which action can be taken (see 'New obligations for estate agents').

In 1991, 46 individuals and firms received notices that the Director General was considering the issue of a prohibition or warning order under the Act. A further nine were warned that no action was to be taken against them at present, but that further complaints could trigger a notice. During the year 32 notices for total prohibition, and one for partial prohibition, were made. There was also one warning order. At the end of the year two appeals against decisions by the Director General were awaiting a ruling by the Secretary of State; another appeal was abandoned earlier in the year.

Up to 31 December, 150 people had been banned entirely, a further nine had been allowed to carry on estate agency work in a limited manner only, and nine warning orders had been made.

Enforcement

Responsibility for the operation of the Act lies with the Director General; enforcement is shared with local authority Trading Standards Departments and, in Northern Ireland, the Department for Economic Development.

During the year convictions were secured by a local enforcement authority for three offences of failing to provide the latest auditor's report relating to client accounts, following a demand by an authorised officer of the enforcement authority. The company involved was fined £1,750, and its two directors were fined £1,750 and £1,000 respectively.

Powers of entry and inspection

No requests were made by local authority enforcement officers for the Director General's authorisation to use powers of entry and inspection in 1991.

New obligations for estate agents

Following consultation by the DTI on orders and regulations to implement recommendations made by the Director General, the Consumer Affairs Minister made three statutory instruments under the Act (see Appendix C.2).

The Estate Agents (Specified Offences) (No 2) Order 1991, which came into force in June, specifies certain offences which can trigger the Director General's powers to prohibit someone from doing estate agency work. The Estate Agents (Provision of Information) Regulations 1991 and the Estate Agents (Undesirable Practices) (No 2) Order 1991 came into force at the end of July; together they lay down new requirements for estate agents to provide written information to clients on fees, terms of business, personal interests and offers received for properties. They also include provisions to prevent estate agents from pressurising prospective purchasers into taking services from them, to prevent discrimination against prospective purchasers who refuse such services and to prevent misrepresentations about the exist-

tence or status of potential purchasers or bids for a property.

In July, to promote awareness of the new legislation, the Director General published *The Estate Agency Guide*, a guidance booklet for estate agents on their statutory obligations. This was distributed widely throughout the estate agency world. In September, it was followed by *Buying and Selling a Home*, a guide for the general public on dealing with an estate agent, which was publicised in a joint promotion with BBC Radio 2.

Property misdescriptions

In the light of the Director General's recommendation that the Trade Descriptions Act should be extended to property, ministers supported a private member's Bill, introduced by John Butcher MP, and subsequently sponsored by Anthony Coombs MP. This received Royal Assent in June as the Property Misdescriptions Act 1991. The Act prohibits false or misleading statements of prescribed matters relating to land by estate agents and others and will come into force with the making of an order specifying the prescribed matters. The DTI began consultations on the contents of the order in December.

Action under Part III of the Fair Trading Act 1973

Assurances and legal action

Traders who persistently disregard their obligations under civil or criminal law, in a way which is detrimental to consumers, can be asked to give assurances on their future good conduct. If an assurance is refused, or is given and then broken, the Director General can bring proceedings to obtain a court order, breach of which may result in action for contempt of court. The success of Part III of the Fair Trading Act depends considerably on the co-operation of local authority Trading Standards Officers and Environmental Health Officers to whom the Director General is indebted for assistance.

During 1991, seven assurances were given by traders who had persistently broken their obligations. In addition, five

court orders were made against traders who had breached assurances they had previously given. In another case where there had been such a breach, the court accepted undertakings from a company and its director. The traders affected are listed in Appendix A.2.

Since the introduction of the sanction a total of 732 assurances, court undertakings and orders (including nine for contempt of court) had been obtained by the end of 1991. The following businesses or traders were involved:

cars and motoring	177
electrical	117
home improvements	102
mail order	84
food and catering	48
carpets and furniture	65
one-day and doorstep sales	26
animals	14
other	99

Sources of information

The Office relies on a large number of organisations and individuals to provide information about consumer problems and this significantly assists the execution of consumer policy and regulatory duties. Particular thanks are expressed to Trading Standards and Consumer Protection Departments, Environmental Health Departments, Citizens Advice Bureaux and their National Association, and other advice organisations which supplied complaints and conviction information on consumer matters as a matter of course. Analyses of consumer complaints and convictions notified by local sources are given in Appendices D.1 to D.9.

As is its custom, the Office itself disseminated information to government bodies, both local and national, and to consumer organisations. *BeeLine*, the quarterly Office consumer affairs publication which incorporates a digest of current developments affecting consumers, statistical analyses of complaints and full details of assurances, undertakings and court orders given further to the Director General's regulatory responsibilities, was circulated to enforcement and advice agencies, and to many consumer organisations and interested individuals.

4 Competition policy

The Competition Policy Division administers the Director General's responsibilities for United Kingdom competition policy under the Fair Trading Act 1973, the Resale Prices Act 1976, the Restrictive Trade Practices Acts 1976 and 1977, and the Competition Act 1980. It also deals with his specific responsibilities under the Financial Services Act 1986, the Gas Act 1986, the Channel Tunnel Act 1987, the Companies Act 1989, the Electricity Act 1989, the Water Act 1989, the Broadcasting Act 1990, the Courts and Legal Services Act 1990 and the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

In addition, the Division liaises with the Commission of the European Communities on the enforcement of Community competition rules, and represents the United Kingdom on competition policy matters at the Organisation for Economic Co-operation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD).

Action on complaints and allegations

The Office examines all the complaints it receives about competition issues. Where necessary it seeks additional information to allow the Director General to decide whether he would be justified in taking further action under competition law.

In 1991, a total of 1,690 complaints were recorded about anti-competitive practices, monopolies, and attempts to enforce resale prices (compared with 1,514 in 1990). In some cases the complaints proved to be unfounded or did not come within the scope of competition legislation; in others the companies or organisations about which complaints were made were able to satisfy the Office without the need for further investigation. Action that was taken is described in the following sections.

Monopolies

Section 2 of the Fair Trading Act 1973 requires the Director General to keep commercial activities under review in order to detect monopoly situations (as defined in sections 6-11) and uncompetitive practices.

The Office carries out this function in two ways. First, it monitors the economic performance of industries to identify areas where there may be monopolies and abuses of monopoly situations. It pays particular attention to the economic performance of firms with large market shares, taking account of the degree of import penetration and information on price

levels and movements, profits and market behaviour. Secondly, it takes note of complaints and other representations received from industry and the public. Even when no immediate action is taken, such representations contribute to the monitoring function.

Where a monopoly situation appears to exist, the Director General can refer it to the Monopolies and Mergers Commission for investigation. There is no presumption that, when found, a possible monopoly situation should always be referred or that a monopoly, as such, is against the public interest. Whether it operates, or may be expected to operate, against the public interest is for the Commission to determine when a reference is made.

References to the Commission

The Director General made three references in 1991:

17 April	Cross-Solent ferry services
21 May	The supply of matches and disposable cigarette lighters
23 May	The promotion of television companies' products

Reports from the Commission

Five reports by the Commission were published in 1991:

6 March	Structural warranties for new homes
8 March	The supply of soluble coffee for retail sale
21 March	Razors and razor blades
15 August	The supply of carbonated drinks
30 October	The supply of indirect electrostatic photocopiers

Structural warranties for new homes – The Commission found that a scale monopoly existed in favour of the National House Building Council (NHBC), in that it provided structural warranty cover for more than 90 per cent of new private-sector homes under its 'Buildmark' scheme. They concluded that the NHBC's Rule 12 – which required any NHBC members wanting to use another warranty scheme to use the Buildmark scheme as well – operated against the public interest by restricting its members' ability to use services provided by its competitors. They further concluded that aspects of the NHBC rules on the withdrawal and re-entry of members also operated against the public interest by discouraging builders from seeking to cancel their membership in order to transfer to another scheme.

The Commission recommended that the NHBC rules should be amended to remedy these adverse effects. The changes proposed aimed to permit NHBC members to place

new homes with other schemes broadly comparable with Buildmark; to confirm their right to withdraw voluntarily from the NHBC; and to clarify their rights and obligations on withdrawal and re-entry.

When the report was published, the Secretary of State said that he saw difficulty in determining what might constitute 'a comparable scheme'. He had therefore decided to invite comments on possible alternative ways to remove the restrictive effects of Rule 12 – either by its abolition, or by modification to enable members to obtain cover in other ways without being required to be covered by the NHBC scheme as well. The exception to Rule 12 could apply either to new homes covered by any form of insurance against the cost of remedying structural defects, or only to those covered by another integrated structural warranty scheme with specified characteristics.

The Secretary of State said that he would also be inviting comments on other changes to NHBC rules proposed by the Commission, in particular those dealing with the voluntary cancellation of membership.

In the light of the responses he subsequently received and after further discussions with interested parties, the Secretary of State was, at the end of the year, considering the most appropriate means to implement the Commission's report and to remedy the adverse effects on the public interest it had found.

The supply of soluble coffee for retail sale – The Commission found that a monopoly situation existing in favour of Nestlé in the supply of soluble coffee did not, and might not be expected to, operate against the public interest. They considered that Nestlé had achieved its high market share – almost 50 per cent by volume – by successfully developing products and brands that customers regarded as good value for money, in a market characterised by a wide degree of consumer choice, and by competition both from other brands of soluble coffee and retailers' own-label coffee. Nestlé's high profitability on coffee was a reflection of that success.

Razors and razor blades – In this monopoly inquiry, the specific matter that the Commission were asked to consider was the effect on the public interest of the financial and other arrangements for the buy-out of assets of Stora Kopparbergs Bergslags AB (including the Wilkinson Sword businesses) by Swedish Match AB, which had been assisted and provided with finance by the Gillette group. (A concurrent merger reference arising out of the same transaction was made by the Secretary of State – see page 34.)

The Commission concluded that a scale monopoly situation existed in favour of Gillette UK Ltd, Gillette Industries Ltd and the Gillette Company. The effect of the group's involvement in the transaction was to weaken the competitiveness of its main competitor in the United Kingdom and

strengthen its own position, and to reduce potential competition in the supply of razors and razor blades. This might be expected to operate against the public interest. The Commission recommended that Gillette should divest its equity and creditor interest in Swedish Match and, pending divestment, should waive its pre-emption and conversion rights and options acquired under the financial and other arrangements for the buy-out.

The supply of carbonated soft drinks – The Commission found that a scale monopoly existed in favour of Coca-Cola and Schweppes Beverages Ltd (CCSB), the Coca-Cola Company, Cadbury Schweppes plc and Amalgamated Beverages (Great Britain) Ltd. They also found that there was a complex monopoly in favour of CCSB, Britvic Soft Drinks Ltd, Coca-Cola Bottlers (Ulster) Ltd (CCBU), Coca-Cola, Cadbury Schweppes, Amalgamated Beverages, Pepsico Inc (Pepsi) and Bass plc.

The Director General made the reference to the Commission in view of the trend towards increasing concentration in the market with indications that smaller local and regional suppliers were being squeezed out.

The Commission identified several factors operating against the public interest in the way manufacturers dealt with customers in the 'leisure' trade, but they concluded that competition was generally effective in sales to the 'take-home' trade.

The 13-month-long study found that:

80 per cent of the market, worth £1,300 million in 1989, was supplied to 'take-home' outlets such as grocers and off-licences;

competition in supplies to these outlets was generally effective, with a wide choice of branded and own-label products and a range of package types;

CCSB and Britvic provided around 90 per cent of supplies to the leisure trade, including pubs, clubs, leisure centres and fast-food restaurants;

restrictions imposed by CCSB on certain distributors (about whom they could supply, the range they should carry, and the sale of competing products) were anti-competitive and likely to lead to higher prices and reduced choice;

CCSB's strategy of acquiring dispense businesses (11 acquired in 1987-89) was designed to sustain its monopoly situation (in 1989 CCSB had a 41 per cent market share in this sector);

CCSB's, Britvic's and CCBU's exclusive supply agreements prevented buyers from purchasing carbonated drinks from other or particular suppliers, restricted access by competitors and were likely to restrict choice, leading in time to higher prices;

there was no evidence that the benefits of the more favourable terms offered by manufacturers for exclusivity were being passed to consumers;

it was acceptable for manufacturers to require the exclusive use of their own products in dispense machines they supplied free-on-loan, and to restrict which brands could be sold in can-vending machines bearing the drink supplier's logo; and

agreements to prevent the installation of competitors' can-vending machines on a site would be anti-competitive.

To remedy the adverse effects identified, the Commission recommended that:

in agreements with its distributors, CCSB should undertake not to include provisions on resale to other wholesalers or distributors stocking specified ranges, or on exclusivity;

unless the Office of Fair Trading had been notified and had said that it saw no objections on competition grounds, CCSB should undertake not to acquire further dispense operations; and

in their supply agreements, CCSB, Britvic and CCBU should undertake not to include any provision to prevent the purchase of any carbonated drink from any other supplier or to prevent outlets from having additional dispense or can-vending machines if they chose to do so.

The Secretary of State decided to take no action on the recommendations about the restrictions in the various suppliers' distribution and exclusive supply agreements until he had consulted interested parties, including customers, on the effect of the agreements and the proposed remedies. These consultations were still in progress at the end of 1991.

He endorsed the Commission's expression of concern about CCSB's practice of acquiring dispense operations, however. He asked the Director General to obtain undertakings from the company that, in future, it would not acquire any such businesses or their assets without the Secretary of State's prior approval, and that it would use the established pre-notification procedure to tell the Office about any proposed acquisitions. But action by the Office on this request must await the outcome of the consultation exercise.

The supply of indirect electrostatic photocopiers – The Commission found that a scale monopoly existed in favour of Rank Xerox. A number of companies were also found to have been involved in three separate complex monopoly situations, because of restrictions suppliers had placed on dealers and on the supply of toner, other consumables and spare parts

(the issue that prompted the Director General to make the reference). But the Commission concluded that none of the monopoly situations acted against the public interest. They also concluded that Rank Xerox should be released from undertakings given after their 1976 report, which required the company to give customers the option of buying toner separately from photocopying machines. Rank Xerox was formally released from these undertakings on 20 December.

Action on earlier reports

The supply of gas – The Director General's annual report for 1989 recorded that the Government had set a target for 10 per cent of gas from new gas fields to be provided to the industrial and commercial market by suppliers other than British Gas. On 1 February 1990, British Gas gave the Secretary of State undertakings that it would actively facilitate efforts by gas producers to meet the target, in particular by agreeing to carry gas from competing suppliers. British Gas' authorisation as a public gas supplier was also amended and price schedules for firm and interruptible contract customers were put in place to prevent the company from deterring new entry into the market by discriminatory pricing.

The Office reviewed these arrangements in 1991, and the Director General reported the findings to the Secretary of State in October. The review indicated that, although British Gas had complied with its undertakings, the arrangements had been ineffective in encouraging self-sustaining competition to the company in the general industrial and commercial sector (which excludes gas supplies to power generation projects). The Director General concluded that, for stronger competition to develop, further remedies would be required. He considered that a reference to the Commission would be justified, but action should be delayed until early 1992 to see whether British Gas would voluntarily negotiate changes to foster competition in the contract gas market.

At the year's end it was still unclear whether British Gas could offer undertakings sufficient to make a reference unnecessary. The Office saw a need for change in several areas which it was discussing with the company. They were: the release by British Gas of substantial quantities of gas to competing suppliers; a revision of the company's undertaking not to bid for more than 90 per cent of new gas supplies; and the establishment of a separate subsidiary to operate its onshore transmission and storage system on a non-discriminatory basis, fully at arm's length from British Gas and with regulation of charges by the Director General of Gas Supply.

In line with recommendations by the Director General of Fair Trading, the Government included in the Competition and Service (Utilities) Bill (published on 8 November) powers to enable it to end the British Gas monopoly of gas supplies to householders and small firms

using under 25,000 therms a year. The Government was also considering changes to put British Gas and its competitors on an equal footing in relation to pipeline planning applications; and the introduction of legislation providing for the Director General of Gas Supply's prior agreement to changes by British Gas to its long-term interruptible price schedules.

Mergers

Under the provisions of the Fair Trading Act 1973, the Office examined 285 merger cases in 1991, compared with 369 in 1990. Some proposals were found on examination not to give rise to merger situations qualifying for investigation (102 cases). The Director General made recommendations to the Secretary of State for Trade and Industry on a total of 183 qualifying cases: 168 mergers, merger proposals, or shareholding transactions; and 15 requests for confidential guidance. Thirty-six cases were still under consideration at the end of the year.

The figure of 183 excludes proposals which were abandoned before the Director General had made a recommendation. It also excludes newspaper mergers, for which there is a special procedure (see page 45). Mergers of water enterprises are separately considered under the provisions of the Water Act 1989 – now consolidated into the Water Industry Act 1991. No references under this head were made in 1991.

The Office's assessment identifies the main issues in each merger which affect competition and, to a lesser extent, other relevant public interest considerations.

Of the confidential guidance requests considered, 11 received favourable and three unfavourable guidance. In the remaining case no guidance was given because it was felt that there was insufficient information on which to offer a considered view of the likely outcome, as to reference or non-reference, in the event of a merger taking place.

The value of assets of all target companies involved in the 183 qualifying merger situations examined by the Office in 1991 was £87 billion. Of these cases, 41 per cent fell within five broad sectors of industry:

chemicals and man-made fibres	18 cases
food, drink and tobacco	15 cases
distribution	18 cases
banking and finance	12 cases
other business services	12 cases

'Horizontal' mergers, where the largest and second largest activities of the companies overlap, accounted for 87 per cent of the total in 1991 (75 per cent in 1990). A more detailed statistical analysis of mergers that fell within the provisions of the Act is given in Appendix E.

References to the Commission

The Secretary of State made seven references to the Commission in 1991 (compared with the record number of 25 references in 1990). All the references were in accordance with the Director General's advice and all were based on competition grounds:

13 March	Prosper de Mulder Ltd/ Croda International plc
20 March	Enterprises of Alan J Lewis/ Jarman and Son Ltd
3 July	Havas SA/Brunton Curtis Outdoor Advertising Ltd
5 August	Hamamatsu Photonics KK/ Thorn EMI Electron Tubes Ltd (reference laid aside on 11 September)
5 September	Unichem plc/MacCarthy plc
8 October	Lloyds Chemists plc/MacCarthy plc
21 November	AAH Holdings plc/ enterprises of Medicopharma NV

Reports from the Commission

Thirteen merger reports were published in 1991. In six cases the Commission found that the proposed mergers might be expected not to operate against the public interest. The Secretary of State has no powers to take any further action in such circumstances:

23 January	Credit Lyonnais SA/ Woodchester Investments plc
30 January	British Aerospace plc/ Thomson CSF-SA
26 February	Sligos SA/Signet Ltd
3 May	Société Nationale Elf Aquitaine/ Amoco Corporation
29 May	The Morgan Crucible Company plc/ Manville Corporation
1 August	Prosper de Mulder Ltd/ Croda International plc

In the remaining seven cases there was an adverse public interest finding:

9 January	Valhi Inc/Akzo NV
23 January	Kemira Oy/ Imperial Chemical Industries plc

30 January	Caldaire Holdings Ltd/ Bluebird Securities Ltd
6 February	Tate and Lyle plc/British Sugar plc
20 March	Swedish Match NV and The Gillette Company/ Stora Kopparbergs Bergslags AB
13 August	Enterprises of Alan J Lewis/ Jarman and Son Ltd
20 November	Havas SA/Brunton Curtis Outdoor Advertising Ltd

Valhi Inc/Akzo NV – The inquiry examined the proposed acquisition by Rheox International Inc, a subsidiary of Valhi Inc, of the organoclays business of Akzo Chemicals Ltd, a subsidiary of Akzo NV. Organoclays modify the viscosity and flow properties of paints (and other solvent-based systems), and are also added to oil-based drilling muds used in oil and gas extraction. The Commission concluded that the merger could significantly reduce competition in both markets and should not be permitted. The Secretary of State accepted these conclusions and asked the Director General to seek undertakings from Valhi not to proceed with the acquisition, and from Akzo not to dispose of its organoclays, organics and organic pastes business to Valhi or any of its subsidiaries.

Kemira Oy/Imperial Chemical Industries plc (ICI) – The Commission concluded that the proposed acquisition by Kemira Oy, a state-owned Finnish company, of ICI's nitrogenous fertilizer business would lead to a significant reduction in competition in the United Kingdom market. Only two manufacturers would remain holding some two-thirds of the market between them. The Commission also believed that the state ownership of Kemira could, to some extent, exacerbate the detrimental effects of the merger. The Secretary of State accepted these conclusions and asked the Director General to seek undertakings from Kemira not to proceed with the acquisition.

Caldaire Holdings Ltd/Bluebird Securities Ltd – The Commission concluded that the merger of the two bus operators might be expected to lead to the removal of competition for commercial services, less choice, higher fares, and lower standards, quality and frequency of service on routes serving the Trimdon area of South-East Durham. In the reference area as a whole (the counties of Durham and Cleveland), Caldaire's market share had risen from around 38 per cent to 49 per cent in terms of registered bus-miles. The Commission recommended that Caldaire should be required to provide undertakings to improve accountability, to restrict its ability to raise fares or use fares and service frequency in a predatory way, and to prenotify future acquisitions in the reference area.

The Secretary of State was not, however, persuaded that these remedies would adequately deal with the consequences of loss of actual and potential competition. Consequently he asked the Director General to explore, with Caldaire, the possibility of the company divesting part of the combined business to maintain competition in the Trimdon area.

Tate and Lyle plc/British Sugar plc – The Commission recognised that the European Community sugar regime severely constrained competition in the United Kingdom sugar market where, between them, the two companies account for more than 90 per cent of consumption. Production quotas limited the extent to which they could take market share from each other. But – within the regime's constraints – there was competition on price and service to secure attractive contracts, the Commission concluded. They did not accept that imports would act as a check on prices, which would be likely to rise in the United Kingdom were the merger to go ahead. The Secretary of State accepted the Commission's conclusion that it should not be allowed to proceed. He confirmed that undertakings given by Tate and Lyle in 1987, following an earlier adverse Commission report on its bid for Berisford International, then British Sugar's parent company, would remain in force.

Swedish Match NV and The Gillette Company/Stora Kopparbergs Bergslags AB – The Commission found that a leveraged buy-out of assets of Stora Kopparbergs Bergslags AB had resulted in Gillette becoming a significant shareholder in Swedish Match, the parent of the Wilkinson Sword Company, Gillette's only substantial competitor in the wet-shaving razor and razor-blade market in the United Kingdom. (A concurrent monopoly reference was made by the Director General – see page 30.) Gillette was also a major creditor of Swedish Match and had acquired important pre-emption and conversion rights in the company. The Commission considered that Gillette's involvement would weaken Wilkinson Sword's competitive position, while strengthening its own. They did not think that this would be checked by the development of other suppliers or the entry of new suppliers, nor could they see any offsetting benefits arising from the transaction. They therefore recommended that Gillette should divest its equity and creditor interest in Swedish Match. The Secretary of State asked the Director General to seek undertakings from Gillette to dispose of its interests in the company. In the meantime, he issued an order under section 89 of the Fair Trading Act, to prevent Gillette recreating the financial links outside United Kingdom jurisdiction.

Enterprises of Alan J Lewis/Jarman and Son Ltd – The inquiry arose from the acquisition of Jarman, the largest supplier of wool scouring services to third parties, by Justrong Ltd, a company controlled by Mr Lewis. The Commission

found that the merger had produced a marked increase in concentration, since Mr Lewis also controlled the third-largest scourer, trading under the name of Alston Scouring Company. Consequently there had been a significant loss of competition and reduction in choice in the commission scouring services market. The Commission recommended that three Alston scouring lines, including one transferred to Jarman, should be sold at public auction within six months, that Jarman should not replace the transferred line for 12 months after the sale, and that no merchant controlled by the British Wool Marketing Board should be constrained to place its scouring business with a scourer controlled by Mr Lewis. The Secretary of State broadly accepted these recommendations. Instead of requiring sale by auction, however, he stipulated that the assets should be sold to a purchaser approved by the Director General.

Havas SA/Brunton Curtis Outdoor Advertising Ltd – The Commission found that the acquisition of Brunton Curtis by Havas SA, through Avenir Havas Media SA and its British subsidiary, Mills and Allen Ltd, increased Mills and Allen's nationwide share of 48-sheet and larger roadside poster panels to 33.8 per cent – with a more pronounced effect in some regions. This would reduce competition and might be expected, in time, to lead to higher prices for such sites. It was recommended that Avenir and Mills and Allen should be required to divest themselves of the panels formerly owned or controlled by Brunton Curtis. The Secretary of State accepted this recommendation, except that – in line with the Director General's advice – he considered that Avenir's and Mills and Allen's ultimate parent, Havas SA, should also be included in the divestment requirement and that the buyers should be approved by the Director General. He asked the Director General to obtain appropriate undertakings from Havas SA, Avenir, and Mills and Allen.

Undertakings in lieu of reference

In 1991, in accordance with the advice of the Director General, the Secretary of State accepted undertakings to divest assets to remedy the adverse effects likely to arise from mergers in three cases:

9 July	International Marine Holdings Inc/ Benjamin Priest Group plc
9 August	Trafalgar House plc/Davy Corporation
4 December	Williams Holdings plc/ Racal Electronics plc

International Marine Holdings Inc/Benjamin Priest Group plc – The acquirer, International Marine, undertook to dispose of the sheet-winch manufacturing business of its subsidiary Combi Marine Inc.

Trafalgar House plc/Davy Corporation – Trafalgar House undertook to sell Davy's subsidiary The Expanded Piling Co Ltd.

Williams Holdings plc/Racal Electronics plc – Williams undertook to sell the Racal's locks and safes business. Williams' bid was unsuccessful and consequently the undertakings were not enforced.

Prenotification

In 1991 the Office received and dealt with 38 prenotified cases. In 24 of them a decision was reached within the initial consideration period of 20 working days, a further eight required one extension of 10 working days, and five a second extension of 15 working days. Two prenotified mergers were referred to the Commission for investigation: **Hamamatsu Photonics KK/Thorn EMI Electron Tubes Ltd**, and **Unichem plc/Macarthy plc**.

Charging

As recorded in the annual report for 1990, charging was introduced for the first time on 1 October of that year. The three charging bands and the level of fees remained unchanged throughout 1991, and during the course of the year fees exceeding £1 million were received.

Competition Act investigations

The Competition Act 1980 provides an alternative way of investigating anti-competitive practices to a monopoly reference to the Monopolies and Mergers Commission. It is concerned with courses of business conduct that may adversely affect the process of competition in any market in the United Kingdom. Many of the complaints the Office looks into are dealt with through informal enquiries. In some cases, however, these lead on to what the Act calls a 'preliminary investigation'; 'preliminary' because, if his published report establishes that the course of conduct examined amounts to an anti-competitive practice, the Director General must further state whether he considers reference to the Monopolies and Mergers Commission would be appropriate. Instead of making such a reference he may accept, from the persons who have been pursuing the practice, an undertaking which would remedy the anti-competitive effects of their behaviour.

Reports by the Director General

The Director General published two reports in 1991:

7 March	Wales Tourist Board
9 October	British Coal Corporation

Wales Tourist Board – The investigation looked at the exclusion from publicity outlets controlled by the Wales Tourist Board of any advertisements by agents whose books included properties not verified under a scheme set up by the Board. It concluded that the Board's promotion policies were not anti-competitive.

British Coal Corporation – The investigation was concerned with the Corporation's scheme to give discounts to coal merchants if they restricted their purchases of certain imported coal. The report concluded that, although the scheme was intended to restrict competition from imports, it did not, in fact, do so to any significant extent.

Informal enquiries into other competition issues

In some cases examined, companies were able to satisfy the Office without the need for a preliminary investigation under the Competition Act or a monopoly reference under the Fair Trading Act. The more significant cases are described in the following paragraphs.

Banks and small businesses – The Director General issued a statement about his findings on banks and their treatment of small businesses on 24 October. He concluded that there were no grounds to justify further action under competition legislation, although he remained concerned about the banks' insensitive and high-handed behaviour.

The statement followed consideration of a report by the Chancellor of the Exchequer and the Bank of England on their earlier joint enquiry, the results of which were announced by the Chancellor in July. The report passed to the Office was an analysis of the responses from the eight major clearing banks most actively involved in the small business sector to questionnaires issued jointly by the Treasury and the Bank of England. In addition to the report the Director General also considered more than 350 letters from small businesses received directly by his Office or from other sources.

Ventilation equipment – Following an informal enquiry by the Office after a complaint had been received from a distributor of ventilation equipment, the Roof Units Group Ltd (a major manufacturer of such equipment) gave the Director General assurances that it would not refuse to supply distributors solely because they had sold, were selling, or were going to sell competing manufacturers' products (see Appendix A.3). In view of these assurances, the Director General decided not to proceed with a formal investigation of the company's distribution policy under the Competition Act. The company subsequently produced a new document setting out both its own and its distributors' rights and duties to

reflect the terms of the assurances. This will form the basis of future distribution agreements.

Scotsman Communications Ltd – The company gave an assurance that it would not offer advertisers discounts off advertising rates in return for exclusive advertising contracts in its publications (see Appendix A.3).

Resale prices

Under the Resale Prices Act 1976 it is unlawful for suppliers of goods to impose minimum resale prices on dealers, or to compel them to charge those prices by threatening to withhold supplies or some other penalty. There was a slight decrease in 1991 in the number of complaints received alleging contravention of the Act: 34 complaints were received, compared with 39 in 1990. In four cases the Director General obtained written assurances from suppliers that they would not seek to impose minimum prices at which dealers could resell their goods. The companies which gave assurances are listed in Appendix A.4.

Restrictive trade practices

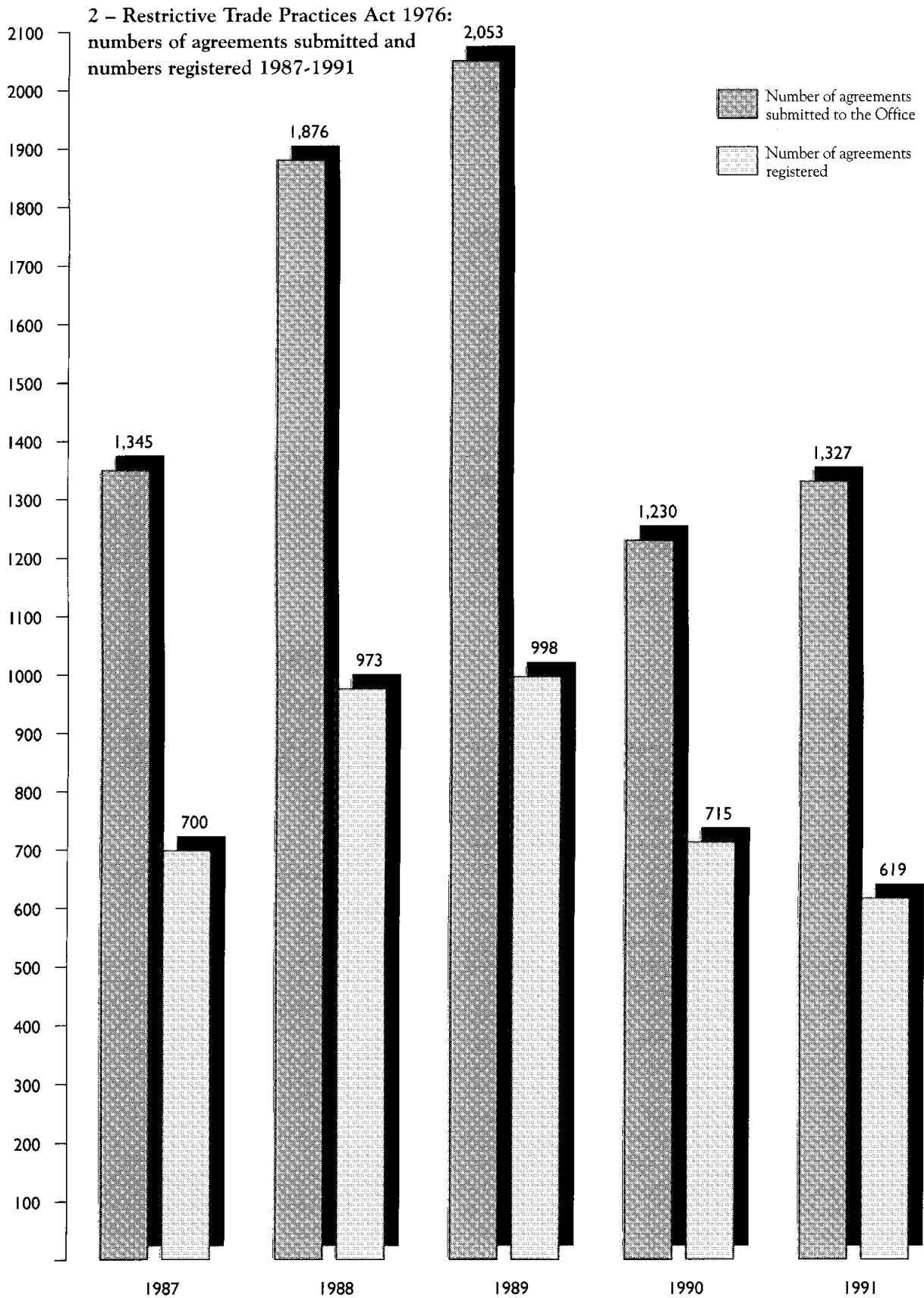
The Restrictive Trade Practices Acts of 1976 and 1977 provide the means to evaluate the effect on competition of certain commercial agreements and to prevent the operation of arrangements that are significantly anti-competitive. Details of all relevant agreements must be sent to the Office to be entered on the public register it maintains – the Register of Restrictive Trading Agreements (see Appendix J.3).

The Office has two main responsibilities under the 1976 Act. First, it appraises agreements whose details have been sent for registration at the proper time and, if necessary, refers them to the Restrictive Practices Court. Such agreements are lawful unless and until the court strikes them down. Secondly, it seeks out, investigates and evaluates agreements that have been made secretly and whose operation is unlawful, and refers them to the court.

New registered agreements

Details of 1,327 agreements were sent to the Office in 1991, an eight per cent increase on the total for 1990, when 1,230 agreements were submitted. Not all agreements prove to be registrable. In 1991, 619 agreements were added to the register, bringing the total number entered since 1956 to almost 10,000. Diagram 2 shows the number of agreements submitted to the Office and the number placed on the public register each year since 1987 (see page 37).

The steady rise in the number of agreements submitted annually over recent years was interrupted only in 1990, after certain sale and purchase and share subscription agreements



had been exempted from registration. Notwithstanding these specific exemptions, however, it is noteworthy that details of many such agreements are still being supplied (no doubt on a 'fail-safe' basis), forming a large proportion of those that prove not to be registrable.

Lawful restrictions

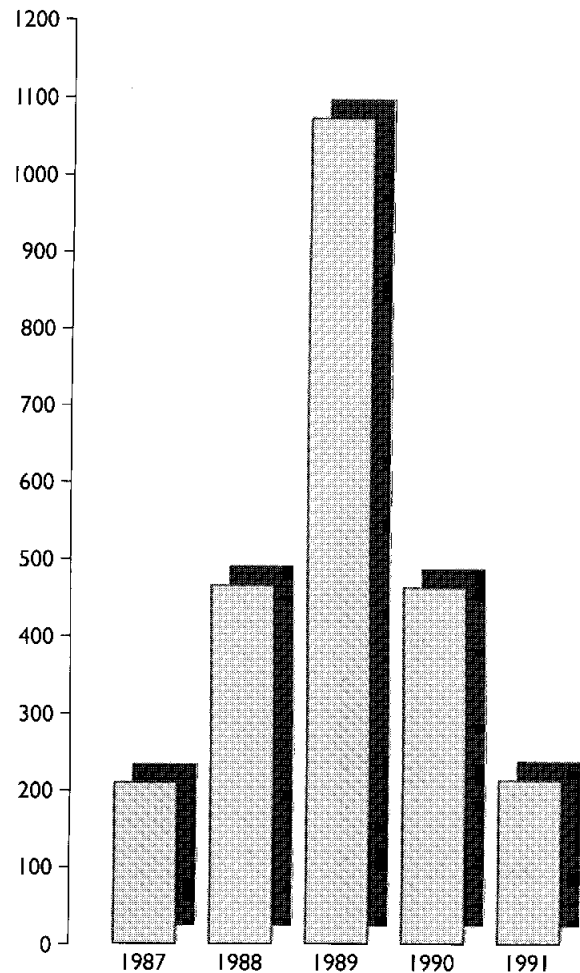
Most agreements placed on the public register do not contain restrictions of such significance from a competition point of view that they call for investigation by the court. In some other instances the Office is able to negotiate amendments to agreements as submitted to remove the anti-competitive effect of any restrictions. In these circumstances – under section 21(2) of the 1976 Act – the Secretary of State can, on the Director General's advice, direct that reference to the court is not required. In 1991, the Director General was able to advise the Secretary of State that 321 agreements did not contain significant restrictions on competition. Diagram 3 shows the number of directions made by the Secretary of State each year since 1987. In a number of other cases, the Director General was able to exercise his discretion – under section 21(1) of the 1976 Act – not to refer to the court agreements which had ended or from which all restrictions had been removed.

Unlawful restrictions

Although large numbers of agreements containing restrictions are submitted for registration as the 1976 Act requires, the Office continues to discover agreements which, sometimes by accident and sometimes by design, have not been notified. When the Director General has reasonable cause to believe that persons may be party to an undisclosed but registrable agreement, he can – under section 36 of the Act – issue a statutory notice requiring them to provide details. There was a marked increase in this activity in 1991: 62 new investigations were started, 71 section 36 notices were issued and a number of less formal letters of enquiry were also sent.

The Director General almost invariably refers to the court any unlawful agreement which he thinks was kept secret deliberately. Under section 35, the court can then make orders requiring the parties not to enforce restrictions in the agreement and not to make other registrable agreements without first sending them to the Office. The Director General may also ask the court to make orders, under section 2, requiring the parties not to make any similar restrictive arrangements. Breaches of orders, or of undertakings given in lieu of orders, are contempt of court and may lead to fines. For individuals found guilty of contempt there is also the possibility of imprisonment.

3 – Restrictive Trade Practices Act 1976: directions issued under section 21(2) 1987-91



New Office guidance material

In February, the Office published *Cartels: detection and remedies*, a guidance booklet for local authority purchasing officers. The guide had two main aims: to help its readers identify and combat secret cartels by describing some of the tell-tale signs; and to point out the remedies that were open to them in law, in particular the right to sue for damages for breach of the statutory duty to register. The Office subsequently held seminars – in Edinburgh and in London – for local authorities on the detection of cartels.

The booklet was well received and it was followed in July by a revised version for wider distribution. This was sent to almost 10,000 purchasing departments in the private and public sectors of industry, higher educational establishments, regional health authorities and government departments.

In July the Office issued a new guide on the working of the Restrictive Trade Practices Act 1976 aimed specifically at

the bus industry. Until deregulation of the industry in 1986, the Act did not generally apply to agreements between bus operators. Besides explaining the basic requirements of the Act, the new guide draws on the Office's experience since deregulation to set out the view the Director General is likely to take of the effect on competition of the sort of arrangements which bus operators most often want to make with each other.

Copies of these publications can be obtained from the Office free of charge.

Court cases heard in 1991

Bus operators in Leicestershire – In a hearing before the Restrictive Practices Court on 20 May, two operators, G K Kinch and Midland Fox Ltd, admitted to an agreement covering the fixing of fares and the rerouting of certain bus services in parts of Leicestershire. Midland Fox gave undertakings that it would not continue the agreement or enter into any other such agreement in the future. G K Kinch consented to orders in the same terms.

North Eastern fuel oil cartel – Also on 20 May, 17 suppliers of various fuel oils in the North East of England admitted in court to having made agreements under which they had fixed the prices of domestic fuel oils. The agreements had begun in August 1989 and ended in December of the same year, after the Office had started enquiries into allegations of a cartel. The agreements had not been submitted to the Office and the restrictions in them were therefore void and unenforceable, leaving the parties vulnerable to action by anyone suffering as a result of their operation. The parties, listed in Appendix F.1, gave undertakings to the court not to give effect to the agreements nor enter any similar agreements.

These agreements came to light following a complaint from a customer, who subsequently sued his supplier for breach of statutory duty to register the agreements and claimed for damages. The claim was settled out of court, the customer also being reimbursed for his costs in making the claim, an outcome which invests the case with particular interest and significance.

Steel roofing purlins – In another hearing on 20 May, three leading United Kingdom manufacturers of steel purlins, used in roofing, gave undertakings. They admitted operating a market-sharing and pricing agreement over a period of seven years from 1983 to 1990. The Office uncovered the agreement following investigations prompted by a complaint from a manufacturer seeking to establish himself in the market. Throughout the seven-year life of the agreement, the three companies' senior representatives met regularly to allocate among themselves the major customers for purlins. They agreed not to compete actively with each other for those customers' business and also had an understanding about the

recovery of increases in the price of raw materials. The names of the parties are listed in Appendix F.1.

Ready-mixed concrete – On 11 July the Court of Appeal allowed an appeal by Smiths Concrete Ltd against the Restrictive Practices Court's judgment, on 24 September 1990, that the company had been in contempt of court for carrying on (with three other companies) an unlawful price-fixing and market-sharing agreement in the Bicester area of Oxfordshire, in breach of earlier court orders.

The Court of Appeal ruled that Smiths had not been party to the Bicester agreement, having expressly forbidden its employees to enter into restrictive agreements and having put in place adequate measures to ensure compliance with that instruction. Consequently, Mr Hayter, the Smiths' employee who had taken part in the Bicester arrangements, had acted outside the scope of his authority. The company was not liable for his actions and was, therefore, not in contempt.

A petition from the Director General for leave to appeal to the House of Lords against the Court of Appeal's decision was refused on 11 November.

The Association of Newspaper and Magazine Wholesalers – On 5 December, the Restrictive Practices Court granted leave for the discontinuance of proceedings initiated by the Director General in 1989 against the Association and certain magazine publishers, and for the removal from the public register of relevant particulars of the agreement – about the supply of magazines to ANMW members.

The Institute of Insurance Brokers – Also on 5 December, the court made an order under section 2 of the Act restraining the Institute and its members from enforcing an agreement to boycott General Accident Insurance Group and from making any similar agreement. This order was made following an interim order (the first made under the Act) at the end of 1990.

Court cases in preparation

Sugar – In June, the Director General announced his intention to refer to the Restrictive Practices Court an agreement between British Sugar plc and Tate and Lyle Sugars, a division of Tate and Lyle Industries Ltd. The parties had admitted to participating in arrangements on prices and market sharing in the retail sugar market between June 1986 and July 1990.

Televising of horse-racing to betting shops – Following the Director General's reference to the court in 1990 of an agreement between Satellite Information Services Ltd (SIS) and the Racecourse Association Ltd and its members, preparations have been made for the court hearing. This will be the

first defended case for many years. SIS's statement of case was received at the end of July and the Director General's response was being prepared at the end of the year.

Thermal insulation – Preparations were nearly complete for court proceedings against 18 distributors of thermal insulation materials about their involvement in alleged covert price-fixing agreements. At the end of the year all but one of the companies had indicated to the Director General a willingness to consent to court orders.

Buses – Preparations continued for court proceedings against the agreement between Plymouth Citybus Ltd and Western National Ltd about the supply of bus services in the Plymouth area. It is expected that the case will be heard in 1992.

Financial services

The Financial Services Act 1986 requires the Director General to consider the implications for competition of the rules of bodies seeking recognition as self-regulating organisations, investment exchanges and clearing houses. It also requires him to consider the implications of amendments or additions to the rule books of bodies already recognised and of the Securities and Investments Board (SIB), and to monitor the operation of their rules and their practices. He must report his view of the implications for competition of the rules of new applicants for recognition, or where he identifies a significant anti-competitive effect arising from rule changes or as a result of his monitoring of recognised bodies. The Act also allows him discretion to report in other circumstances.

Throughout 1991 regulatory bodies continued to make many rule changes – which included amendments made by the SIB to the Client Money Regulations and to the Core Conduct of Business Rules. Again, however, it was the recognised investment exchanges that made the largest number of rule changes during the year. In addition, the SIB, the self-regulating organisations, and the London Stock Exchange (the Exchange) issued numerous consultation documents – such as that on the SIB's proposed new regulations and guidance for the investment and borrowing powers of collective investment schemes, which subsequently led to new rules.

The Office examined all the formal rule changes that were made. In some cases it undertook a more detailed analysis which may form the basis of future reports. In continuing close contacts with the regulatory bodies, it counselled them on the view the Director General was likely to take on particular issues.

The Securities and Investments Board

The Director General's report *Disclosure of Information about Life Insurance Products and Commissions* (April 1990) took the

view that the SIB's disclosure rules were likely to restrict or distort competition to a significant extent. In accepting this finding, the Secretary of State had asked the SIB to propose changes to lessen such effects. Subsequently, however, the SIB's work on this was subsumed within its Retail Regulation Review, announced on 22 April.

This review is the first major reappraisal of financial regulation of retail investments the SIB has undertaken. Its main purpose is to consider how far existing arrangements meet the needs of investor protection on a cost-effective basis. The Office has been considering the likely competition implications of various proposals which have come out of the review so far.

The review has four main components.

The first relates to the Investors' Compensation Scheme. An initial discussion paper was circulated about the temporary provisions (due to end in April 1992) under which the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO) has been giving financial support to the scheme.

Secondly, on 4 October, the SIB announced that it had invited Sir Kenneth Clucas to undertake an enquiry into the existing structure of self-regulation. In particular, he had been asked to examine whether the regulation of retail investment products could be carried out more effectively and efficiently by a new self-regulating organisation.

Thirdly, in September, the SIB published a wide-ranging discussion paper, on *Polarisation*. This envisaged retaining the existing division between tied agents and independent intermediaries, but with some modifications – such as permitting a life office to complete its product range by adopting the product of another provider. The paper discussed how investors should be advised and whether polarisation should any longer apply to unit trusts and investment trust savings schemes.

Fourthly, in October, the SIB published a further consultation paper, on *Disclosure* (and a companion paper on the same subject was published by LAUTRO). This discussed the arrangements on the disclosure of intermediaries' status and of information about products, including charges and expenses and the implications of early surrender in the case of life insurance policies.

London Stock Exchange

Arrangements for disseminating company news – In October, the Minister for Corporate Affairs announced that he accepted the Director General's conclusion (contained in a report published in June 1990) that the arrangements for disseminating company news significantly restricted competition in the market for company news. He considered that the anti-competitive effects of these arrangements went further than was necessary for investor protection. He was nevertheless satisfied that changes the Exchange subsequently made, in the introduction of its Regulatory News Services

(RNS), avoided the anti-competitive effects of the previous arrangements.

The Secretary of State also considered a complaint by Reuters that the arrangements for disseminating company news since the introduction of the RNS constituted an abuse of a dominant position contrary to Article 86 of the Treaty of Rome. He concluded that these arrangements did constitute such an abuse which would be remedied if companies were free to pass announcements to other news vendors at the same time as they were given to the Exchange's company announcements office. The Exchange subsequently introduced changes to this effect.

Proposals to restructure the London Stock Exchange – As requested by the Secretary of State in 1990, the Office has kept the rules of the Exchange on trade publication and price transparency under review. In October, however, the Exchange announced that it was considering major changes to trading systems, which themselves might lead to changes in the transparency and trade publication rules. It is proposed to establish a new European equities market for professional and institutional investors for the trading of all the most important United Kingdom and European securities. At the same time the Exchange also said that it was considering proposals to improve the market for rarely traded stocks. The Office is considering the proposals as they develop.

Dematerialisation of share transactions – In December, regulations were laid under the Companies Act 1989 to enable the Exchange to operate its proposed dematerialised share transfer system – TAURUS. The Director General has a duty to keep under review both the TAURUS system itself and the Exchange's performance of its functions, as operator of the system, under the regulations. He also has a duty to report to the Secretary of State if he considers that either of those matters or any fee charged has, or is intended to have, or is likely to have, the effect of restricting, distorting or preventing competition to any significant extent.

Broadcasting

The Broadcasting Act 1990 created a new regulatory framework for television, radio and cable, and gave the Director General two new statutory responsibilities. The first relates to networking arrangements to be made by the new Channel 3 licensees; the second to the requirement, from 1 January 1993, that the BBC broadcasts a prescribed percentage of independently made productions.

Networking

From January 1993 the Independent Television Broadcasting Service (ITV) is to be replaced by a new Channel 3 service, under the overall supervision of the Independent Television

Commission (ITC). 'Networking' – that is the co-operative commissioning, scheduling and showing of programmes by the 15 regional Channel 3 licensees – will continue to be a feature of the service. Section 39 of the Act requires a networking arrangement to be established among the regional Channel 3 licensees so that (taken as a whole) there will be a nationwide system able to compete effectively with other television services in the United Kingdom.

Section 39 and Schedule 4 also require the Director General to examine these networking arrangements for their implications for competition. If he concludes that the arrangements do not satisfy the competition test (set out in Schedule 4) he must specify the modifications that would enable them to do so. Subject to any appeal to the Monopolies and Mergers Commission, the licensees are required to make these modifications. Similar arrangements will apply to any subsequent changes made to the networking arrangements. The Director General may also review and report on the arrangements at any time.

The competition test the Director General must apply falls into two parts. He must first consider whether the arrangements have, or are intended or are likely to have, the effect of restricting, distorting or preventing competition in connection with any business activity in the United Kingdom. If he concludes that they do, he must then consider whether they would satisfy the criteria set out in paragraph 3 of Article 85 of the Treaty of Rome (agreements contributing to improving production or distribution of goods or to promoting technical or economic progress) if that paragraph were to be construed as relating only to effects within the United Kingdom.

As required under the Broadcasting Act, during 1991 the Director General was consulted on the contents of the guidance subsequently issued by the ITC to applicants for Channel 3 licences on working arrangements. Throughout the year the Office continued to seek views and information on the operation of the then current ITV networking arrangements and on the applicants' proposals, in preparation for the Director General's statutory task.

Independent production of programmes for the BBC

Section 186 of the Act requires the BBC to secure that, from 1 January 1993, it allocates a prescribed percentage of the time given to particular programme categories in its television schedules to a range of independent productions. The Director General will be required to report periodically to the Secretary of State on the extent to which, in his view, the BBC has performed its duties. His report may include observations on competition in connection with the production of television programmes for broadcasting by the BBC or on matters that appear to him to arise or to be conducive to such competition.

Although he has no formal responsibilities in this area before 1993, the Director General has, at the suggestion of the Secretary of State, been conducting a similar but informal monitoring exercise in relation to both the BBC and ITV under his general Fair Trading Act duties to keep commercial activities under review. From 1993, the responsibility for monitoring independent productions on Channel 3 will pass to the ITC.

Other United Kingdom competition matters

Electricity

Following the passing of the Electricity Act 1989 and the reorganisation of the electricity supply industry, the Director General reached agreement in 1991 with the Director General of Electricity Supply on how they would divide responsibility for exercising their concurrent functions in respect of competition in electricity and related markets.

Regulation of auditors

Under provisions of the Companies Act 1989 on the regulation of auditors, the Director General made a number of reports to the Secretary of State for Trade and Industry on applications for supervisory or qualifying body status, as required under Part 1 of Schedule 14 to the Act.

Courts and legal services

Under new duties laid on him by the Courts and Legal Services Act 1990, the Director General made one report to the Lord Chancellor on the competition effects of the rules and guidance about the exercise of rights of audience and litigation.

European Community competition rules

The European Community's competition regime is founded on Articles 85 and 86 of the Treaty of Rome and various implementing regulations. Article 85 prohibits agreements or concerted practices which prevent, restrict or distort competition within the common market, insofar as they may affect trade between Member States. Article 86 prohibits abuse of a dominant position. Provision is made for 'competent authorities' to assist the European Commission with the application of the rules in each Member State: the Director General is a competent authority for the United Kingdom.

In this role, Office staff represented the United Kingdom at meetings of the Community's competition advisory committees and the Working Group of Government Competition Experts; assistance was also given to Commission officials on visits to companies and organisations in the United Kingdom.

Together with the representatives of other Member States, staff from the Office attended hearings in Brussels when companies alleged to have infringed the Community's competition rules gave oral evidence to the European Commission. In addition, there were a number of more informal contacts between members of the Office and Commission officials. Discussions about progress on important cases and new policy developments provided a useful exchange of experience between competition authorities.

Sixty-one notifications were received under Council Regulation (EEC) No 4064/89 on the Control of Mergers – or 'Concentrations' in Community parlance. Forty-six were cleared at the first stage, five were found not to qualify under the regulation, and six proceeded to a full investigation, including two notified in 1990. Four of the cases that went to full proceedings were allowed to go ahead – in three of them after agreement was reached on certain divestments – but in one other case the merger was prohibited. At the end of the year one second-stage investigation was still in progress and six decisions at the first stage of notification were awaited.

Decisions

In addition to decisions on merger cases under Regulation 4064/89, the Commission adopted 11 decisions under Article 85 in 1991, one under Article 86, one under Article 15(6) of Regulation 17, and one under Article 16 of Regulation 17. Five of the decisions found infringements of Article 85, and two of these were sufficiently serious for the Commission to impose substantial fines on the parties involved. In five cases, the Commission granted an exemption under the provisions of Article 85(3), and refused it in another.

One important case was *Ecosystem/Peugeot*, in which the Commission had already taken an interim measures decision. The case concerned Ecosystem, a professional intermediary in France, which helps consumers to buy cars in countries where prices are lower (such as Belgium). Peugeot had instructed its dealers not to supply vehicles to Ecosystem, claiming that the organisation was carrying on activity equivalent to that of a re-seller, in competition with Peugeot's own dealer system. In its final decision, the Commission found that Peugeot's action infringed Article 85(1), but it did not impose any fine. (The Commission also issued a notice to clarify the role of professional intermediaries under Regulation 123/85.)

The Commission imposed against *Tetra Pak* the highest fine (75 million ECU) ever levied. Tetra Pak was found to have abused its dominant position in the market for machines and cartons for the 'aseptic' packaging of liquid foods, by a number of practices aimed to remove competition and maximise company profits. The practices included: compartmentalising the market; using restrictive contract clauses; charging discriminatory prices for cartons and machines; and

attempting to eliminate competing firms and technology from the market.

In two other cases, fines were imposed for attempts to prevent parallel trade. In the *Viho/Toshiba* case, Toshiba, a manufacturer of photocopiers and other office equipment, included an export prohibition in its agreements with its European distributors. In the *Gosme/Martell* case, Martell was found to have attempted to prevent exports by withholding discounts, and imposing an export prohibition.

Two cases, one involving a British company, concerned the supply of electricity. An exemption of 15 years was granted to an agreement between *Scottish Nuclear Ltd* and the two privatised Scottish power companies which regulates the relationship between them following privatisation. In the *Ijsselcentrale* case, the Dutch electricity generating companies were found to have infringed Article 85(1) by restricting the import and export of power supplies.

Another case involving British companies was the *Screensport/EBU* case, where members of the Eurosport consortium were found to have infringed Article 85(1) by restricting access to broadcast sport.

The Commission took a decision under the rarely-used provision of Article 15(6) of Regulation 17. This involved the French perfume and cosmetics manufacturer, *Vichy*. After preliminary examination, the Commission found that the company's exclusive distribution of its products through pharmacies was contrary to the provisions of Article 85(1) and exemption under Article 85(3) could not be justified. The effect of such a decision is to suspend the immunity from fines which is normally obtained by notifying an agreement to the Commission.

A second perfume manufacturer, *Yves-Saint Laurent*, was given an exemption under Article 85(3) for its standard-form agreement with its specialised retailers.

European court cases

Important European Court of Justice cases during the year included the *Akzo* case, which clarified the law on predatory pricing. The court confirmed an earlier Commission decision against the Dutch chemical company, *Akzo NV*, which had abused its market position by attempting to drive a small rival company out of business by predatory pricing.

In the *Delimitis* case, referred from a German court, the European Court ruled on the criteria to be considered when deciding whether or not a beer supply agreement is enforceable under the competition rules, and gave guidance to national courts on the treatment of cases brought under Article 85, but where the European Commission has not yet come to a decision on the issues involved.

The court also clarified the relationship between national intellectual property law, and Community law. It confirmed a decision by the Commission which found

that *Independent Television Publications Ltd*, the *British Broadcasting Corporation* and *BBC Enterprises Ltd*, and *Radio Telefis Eireann* had abused their dominant position by their refusal to allow other publications to publish comprehensive television listings. Thus the refusal to license copyright material may result in an abuse of a dominant position, and the Community competition rules take precedence over the national intellectual property law.

Organisation for Economic Co-operation and Development

The Office represents the United Kingdom at meetings of the OECD Committee on Competition Law and Policy and its working parties. There were two meetings of the Committee and seven meetings of working parties in 1991. The OECD has been active in providing assistance to Eastern European competition authorities in conjunction with the Member Countries, including representatives from the Office.

Officials attended seminars on competition policy in Russia, Poland and Czechoslovakia. Other work to assist the development of competition laws and privatisation in Eastern European economies was also undertaken.

United Nations Conference on Trade and Development

Members of the United Nations Conference on Trade and Development (UNCTAD) work to the set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (the Set). An Intergovernmental Group of Competition Experts (IGE) meets each year to work on competition issues and to exchange experiences. An official from the Office represented the United Kingdom at the IGE in 1991 and acted as spokesman for the developed countries (Group B). A future work programme for the Secretariat was unanimously agreed.

Other international liaison

The Office had a number of bilateral meetings with other competition authorities and interested third parties from abroad. Visits to the United Kingdom were made by representatives of the Australian Attorney General's Office, the Australian Government Solicitor, the Australian House of Representatives Standing Committee on Finance and Public Administration, the Australian Trade Practices Commission, the Canadian Competition Tribunal, Investment Canada, the Czechoslovak Competition Authority, the Slovak Anti-Monopoly Department, the European Commission, the Confederation of Finnish Industry, the German Bundeskartellamt, the Government of Kerala State (India), the Confederation of Irish Industry, the Jamaican Prices

Commission, the Japanese Fair Trade Commission, the Japanese Institute for Social and Economic Affairs, the Japanese Federation of Bar Associations, the Netherlands Ministry of Economic Affairs, the New Zealand Commerce Commission, the Russian State Committee for Antimonopoly Policy and Promotion of New Economic Structures, the South African Financial Services Board, the Tunisian

Ministry of the Economy, and UNCTAD. An official from the Kenyan Ministry of Finance was also seconded to the Office for nine weeks.

Representatives from the Office visited Czechoslovakia, France, Jamaica, the Netherlands, Russia and the United States.

5 Monopolies and Mergers Commission

An account of the Commission's work, under the terms of the Fair Trading Act 1973, on monopoly references made by the Director General of Fair Trading, and merger references made by the Secretary of State for Trade and Industry (after considering advice from the Director General), is given in Part 4 of this report, which also summarises any subsequent action taken on the Commission's recommendations.

This part of the report records work undertaken and reports published by the Commission in 1991 on other references it received – from various sources – under aspects of commercial and competition law where the Director General has no direct statutory role.

The Commission have also published their own *1991 Review*, a separate record of their activities during the year. This includes a personal report by the Chairman, Sir Sydney Lipworth, and gives brief biographical details of the Commission's members.

Newspaper transfers and mergers

The transfer of the ownership of newspapers can raise issues that touch on the accurate presentation of news and the free expression of opinion. Consequently, newspaper transfers and mergers are treated differently from other company mergers (see page 33). The Fair Trading Act 1973 retained a special procedure originally introduced under the Monopolies and Mergers Act 1965, and now administered by the Secretary of State for Trade and Industry.

In some circumstances the Secretary of State's consent is required before newspapers can change hands. Unless the proposed transfer meets particular conditions, he cannot give that consent until the Commission have reported. When he does refer a newspaper merger, he can appoint additional members of the Commission from the panel maintained for that purpose (see Appendix K.2).

References to the Commission

In 1991 the Secretary of State made separate references to the Commission when each of five companies sought to acquire a controlling interest in Southern Newspapers plc:

24 July	EMAP plc/Southern Newspapers plc
24 July	Pearson plc/Southern Newspapers plc
24 July	Reed International plc/ Southern Newspapers plc

24 July	Trinity International Holdings plc/ Southern Newspapers plc
24 July	Thomson Regional Newspapers Ltd/ Southern Newspapers plc (reference laid aside on 26 July)

The Commission's joint report on all four remaining references was published on 27 November.

Acquisition of Southern Newspapers plc – the Commission concluded unanimously that the transfer of a controlling interest to any of Trinity, EMAP or Reed might be expected not to operate against the public interest. The majority came to the same conclusion in respect of Pearson with one member dissenting. The Secretary of State accordingly gave his consent to the transfers on 27 November.

Transfers not referred to the Commission

The Secretary of State announced his consent to the following transactions without requiring the Commission to report:

28 February	Lancashire Publications Ltd/ <i>Leigh Reporter</i> and <i>Golborne Star</i>
13 March	Scottish and Universal Newspapers Ltd/ <i>Strathearn Herald</i>
16 May	United Provincial Newspapers Ltd/ Independent Media Ltd
27 September	Hull and Grimsby Newspapers Ltd/ <i>Axholme Herald</i>
9 October	Thomson Regional Newspapers Ltd/ <i>Gateshead Post</i> , <i>Gateshead Times</i> , <i>Hartlepool Times</i> , <i>Peterlee Times</i> , <i>Newcastle Times</i> , <i>Seaham and Houghton Times</i> , <i>South Tyneside Times</i> , <i>Sunderland and Washington Times</i> , and <i>Tyne Valley Times</i>

Public sector efficiency audit references

Under the Competition Act 1980, the Secretary of State for Trade and Industry can refer nationalised industries and other public bodies to the Commission for investigation into the efficiency of aspects of their operation.

References to the Commission

In 1991, the Secretary of State made two efficiency audit references to the Commission:

30 July	United Kingdom Atomic Energy Authority
13 November	Commonwealth Development Corporation

Reports by the Commission

One report from the Commission was published in 1991:

5 June London Underground Ltd

London Underground Ltd (LUL) – the Commission were asked to look into aspects of the efficiency of costs of, and the service provided by, LUL in supplying passenger and other services. They found that the public's perception of an erratic, overcrowded and poorly maintained service in many areas was broadly correct. For the most part, the deficiencies in the levels of service were the result of chronic underinvestment in both new capacity and the replacement and renewal of existing assets, an unforeseen dramatic growth in traffic, and the disruption arising from radically improved safety provisions following the King's Cross fire. But, while recognising substantial achievements by LUL over recent years in such areas as safety management and physical management of investment projects, the Commission made it clear that there were still serious failings.

Reflecting the breadth of the inquiry, the Commission made more than 100 recommendations aimed at assisting LUL to improve its performance, giving particular priority collectively to six matters: control of cash against external financing limits set by the Government; management information systems; utilisation of manpower; fares policy and levels; management of the investment programme and projects; and renewal and maintenance of the network.

Investigations of privatised industries

Under various Acts of Parliament, bodies that monitor the working of industries and other organisations that have been privatised can refer aspects of those industries' operation to the Commission for detailed investigation.

References to the Commission

In 1991, the Civil Aviation Authority made one reference to the Commission:

9 December Manchester Airport plc

Reports by the Commission

One report from the Commission was published in 1991:

9 July BAA plc: South East Airports

BAA plc: South East Airports – the Civil Aviation Authority had asked the Commission, among other matters, to recommend the maximum levels of airport charges at Heathrow Airport Ltd, Gatwick Airport Ltd, and Stansted Airport Ltd for the five-year period beginning on 1 April 1992. Since 1986, charges have been controlled through an RPI-X type formula.

The Commission found that airport charges accounted for only about 40 per cent of the three airports' income, but – in considering maximum charges – they took into account BAA's projections of income from its other, commercial activities. They believed that it would be reasonable for BAA to earn a current-cost rate of return of about eight per cent. This would be achieved by requiring revenue per passenger from airport charges at Heathrow, Gatwick, and the three airports taken together, to increase by no more than four percentage points.

The Commission also recommended that, provided work started on the new Terminal 5 at Heathrow in 1995/96, the formula should be eased to RPI+1 at Heathrow and RPI-1 for South East airports as a whole.

A Assurances, undertakings and court orders

A.1 Control of Misleading Advertisements Regulations 1988

Court orders

19 November Alan Richard Blinkhorn
Addrush Ltd

See also page 18. Full details of this court order were given in an OFT press notice. Copies are available from the OFT.

A.2 Fair Trading Act 1973 (Part III)

Assurances given by traders persistently in breach of their obligations

30 January	Harry Gretton, trading as John Todd Electricals
30 January	Michael Reginald Fear, trading as London Road Motors
16 May	Colin Campbell Harrison
1 July	John McLeod Black, a partner in the firm trading as Pennywise Self-Drive
4 July	Helena Elisabeth Pannell and Kenneth Ivon Pannell, trading as Fourways Home Improvements
17 July	Theodora Giorgou trading as Amber Green Driving School (previously known as A & T Driving School, A & J Driving School and the Theodora Driving School)

The assurances obtained on 4 July cover two persons. In all, seven assurances were obtained.

Undertaking to the courts

■ Macclesfield County Court
3 April Ronald Sydney Aylward

Court orders

■ Great Malvern County Court
25 June Colin Kemp and Dorothy Ann Kemp, trading as Sit-Right Chairs, Sit-Right UK Sales, Backcare Chairs of Malvern and County Recliners of Malvern

■ Southend County Court
30 July David John Carlton

See also page 29. Full details of all these assurances, undertakings to the court and court orders were given in the OFT's quarterly journal *Beeline*. Copies are available from the OFT.

A.3 Competition Act 1980

Undertakings given following informal enquiries

7 November	Roof Unit Group Ltd
20 December	The Scotsman Communications Ltd

See also page 36. Full details of these undertakings were given in OFT press notices. Copies are available from the OFT.

A.4 Resale Prices Act 1976

Undertakings

15 March	Thomas Cork SM Ltd
24 May	Silver Knitting Machines Ltd
21 June	C Shippam Ltd
5 July	T Grocock and Company

See also page 36. Full details of these undertakings were given in OFT press notices. Copies are available from the OFT.

B Action under the Consumer Credit Act 1974

B.1 General notices

The following notices by the Director General were advertised in the *London, Edinburgh and Belfast Gazettes*. Copies are available (free of charge) from the OFT.

No	Date issued	Subject
■ Group licence issue		
1035	27 March	Scottish Enterprise
1036	27 March	Highlands and Islands Enterprise
1042	13 September	Institute of Business Counsellors
1043	19 December	Variation to Law Society Group Licence
■ Group licence renewals		
1037	27 July	Law Society
1038	31 July	Law Society of Scotland
1039	31 July	Law Society of Northern Ireland
1040	31 July	National Association of Citizens Advice Bureaux
1041	31 July	Age Concern England
■ Consumer credit licensing		
35	10 April	Consumer credit fees
36	13 March	Refunds in respect of licence application
37	10 April	Consumer credit fees
38	10 April	Renewal of standard licence
39	10 April	Form of application for a standard licence
40	10 April	Form of application to vary a standard licence
41	10 April	Application forms for S.40(2) and 149(2)
42	12 November	Period for, and form of, application for renewal of standard licence
■ Consumer Credit Public Register		
26J	16 December	Closure over Christmas and New Year period

B.2 Regulations and orders

The Secretary of State for Trade and Industry made the following regulations and orders in 1991. Copies can be purchased from Her Majesty's Stationery Office.

The Consumer Credit (Period of Standard Licence) (Amendment) Regulations 1991: SI 1991/817 – These regulations vary the Consumer Credit (Period of Standard Licence) Regulations 1975, as amended, by reducing the period during

which a standard licence, as defined in section 22(1)(a) of the Consumer Credit Act 1974, is to have effect from fifteen years to five years.

The Consumer Credit (Exempt Agreements) (Amendment) Order 1991: SI 1991/1393 – This order provides for further miscellaneous amendments to the Consumer Credit (Exempt Agreements) Order 1989.

It clarifies the provision made by article 4(2)(b) of that order in relation to agreements which will not be exempted from regulation under the Consumer Credit Act 1974 if they permit creditors to increase certain amounts charged for credit, but altering a reference to the Consumer Credit (Total Charge for Credit) Regulations 1980 – SI 1980/5.

It also exempts, in a manner consistent with existing exemptions conferred on electricity and water suppliers, consumer hire agreements relating to meters and metering equipment where the owner is a body corporate authorised to supply gas.

The order makes provision for exemption for certain consumer credit agreements where the creditor is a body specified in Schedule 1 to the order by adding one insurance company and one charity to the list in Part I, and eight bodies to the list in Part III, of that Schedule.

The Consumer Credit (Exempt Agreements) (Amendment) (No 2) Order 1991: SI 1991/1949 – This order amends the Consumer Credit (Exempt Agreements) order 1989 by making different provision for the exemption of certain consumer credit agreements secured on land where the creditor is either the Agricultural Mortgage Corporation plc or the Scottish Agricultural Securities Corporation plc.

It also removes from that order references to agreements made by those corporations described by reference to certain provisions of the Agricultural Credits Act 1928 and the Agricultural Credits (Scotland) Act 1929 since these provisions have been repealed by the Agriculture and Forestry (Financial Provisions) Act 1991.

B.3 Licensing decisions

Determinations to refuse an application for a standard licence (35)

■ Determinations against which there was no appeal (28)

2 January	Keith Springer
8 January	Jason Allen Hunt, trading as Sharpframe, and Hunts of Oxford
17 January	Karen Joanne Laws, trading as KJL Sales
13 February	Brindley Macro Financial Services
13 March	Gary James Whittaker, trading as Abbey Estates Financial Services
13 March	Associated Finance Ltd
12 April	Danca Promotions Ltd
18 April	Robert Charles Dando, trading as Bath Auto Car Sales
2 May	Sangrove Investments Ltd
2 May	Robert André Jones, trading as JPR Autosales
2 May	Selitar Ltd, trading as Hillcrest Motor Company
22 May	Crystal Clear Windows, trading as A S Mottram and B Mottram

30 May	MC Marketing	18 January	Modern Power Systems
3 June	Elton Brooks Services Ltd, trading as Mortgagelink	24 January	Simon Burrows, trading as Simon Burrows Mortgage Life and Pensions
5 June	Mark Richards, trading as Nationwide Alarms	29 January	Wellingborough Truck Centre Ltd
25 June	Nigel Bennett, trading as Bennett Business Services and Sales	29 January	N P and C H Jenner, trading as Autoservices
26 June	Frank David Myers and Rowena Gwendolyn Myers	29 January	Nicholas Philip Jenner
3 July	Martin Philip Mulready, trading as Classic Stone Financial Services	30 January	Anthony Mark Roe, trading as AMR Car Sales
9 July	Geoffrey Neil Whiteside, trading as Arden Furniture Company	1 February	Horace Van Lee and Christopher Brown, trading as Brent Car Sales
12 August	Paul Ryde-Rogers	22 February	Routledge and Cooper (Sawbridgeworth)
13 September	Raven Corporation Ltd, trading as Industrial and Commercial Investigations	22 February	Owen James Financial Services
13 September	Fact Communications Ltd	22 February	Clifford Victor Element and Andrew James Halls
17 September	Lorraine Denise Higgins	1 March	Frank Pisciotto, trading as Frank Pisciotto Car Sales
24 September	Tiger Cars (Beverley) Ltd	8 March	Christopher John Lee
4 October	Kevin Stephen Darby	13 March	T W Mallett (Insurance Consultants)
4 November	John Brannigan	18 March	John Healey Motors Ltd
4 November	Nigel Jackson Guest, trading as The Tyre Shop	18 March	Stephen Simon Nicholson, trading as Laurels Management Financial Services, and Charmworth Properties
13 November	Nationwide Investments Ltd	20 March	Darch Richards and Company, trading as DPR Associates
■ Determinations where no appeal had been lodged by 31 December but the appeal period had not expired (3)		20 March	Timothy Paul Anderson, trading as Home Services
3 December	Clayworth Ltd, trading as Yorkshire 2950 Centre	20 March	Discount Furniture Warehouse
5 December	James Andrew Hill, trading as James Hill	20 March	Marlene Field, trading as Discount Furniture Warehouse
6 December	Kenneth Sommerville	21 March	John Alan Babbage
■ Determinations where an appeal was pending on 31 December (3)		26 March	Gerard Hackett and James Ansell, trading as AH Cars (Coventry) Ltd
6 Aug 1990	Slatcher Rhodes and Key Ltd	11 April	Smith and Swain Car Sales
15 July	Ullswater Road Body Repairs Ltd	11 April	Banbury Road Garage
12 November	Home and Business Advertiser	17 April	MJK Communications
■ Determinations where an appeal was abandoned (4)		17 April	Kevan Mark Wimborne, trading as Wimborne Estates
26 June 1990	Pittodrie Car Stadium Ltd	25 April	Ecosphere Ltd
3 Aug 1990	Italia Ltd	25 April	John Mallender
19 Nov 1990	Oswestry Computer Centre Ltd	30 April	Paul Austin
14 March	Mrs E M F Robertson, trading as Carela Cars	8 May	Fourways Home Improvements
■ Determinations where an appeal was dismissed (4)		10 May	Clearview Video Leasing
14 Nov 1989	Swift Financial Services Ltd	14 June	Simon Ward, Michael Archer and John Wigby, trading as John Francis Automobiles
21 Sept 1990	Expert Information Systems Holdings plc	26 June	William John Dennis, trading as Lanesend Motor Company, and London Road Car Sales
13 Dec 1990	Brian Dean Palmer, trading as Foremost Vehicle Sales	17 July	Philip Leslie Simonds
29 January	Key Communication Services Ltd	17 July	Barbara Joy Simonds, trading as Bushey Car Sales
<i>Determinations to revoke a standard licence (55)</i>		29 July	Francis Joseph Duffy, trading as Money Shop
■ Determinations against which there was no appeal (47)		2 August	Gail Maria Brunsdan, trading as Gales Sales
10 January	Paul Gaughran, trading as P Gaughran, Gaughran Mortgage and Financial Planning, and Crystal Services of Bristol	9 August	C Daniel Ltd, trading as Chris Daniel Financial Services
		9 August	Westex Insurance Services Ltd
		9 August	Christopher Daniel, trading as Westex the Mortgage and Money Centre
		9 August	High Street Finance
		27 August	St Philips Service Station
		5 September	Bondwise Ltd
		23 September	Paul McCleave, trading as Craftsmen

7 October	Keith William Rooker, trading as Pensilva Car Sales	12 November	Stanley Firth, trading as House and Business Advertiser
25 October	Charles Edward Callandar, trading as Stoneymeadow Cars	3 December	Neal White, trading as Whites Specialised Vehicles
13 November	Shield Insurance Services		
■ Determinations where no appeal had been lodged by 31 December but the appeal period had not expired (2)			
6 December	David Hunt, trading as The Complete Angler	26 June	Rowena Gwendolyn Myers
17 December	Nicholas Joseph Abbott, trading as Centurions	■ Determinations where an appeal was upheld (3)	
		6 Aug 1990	Springfield Mortgage Services
		29 Oct 1990	Carrox Ltd
		6 Nov 1990	Messrs Kyranides and Bacheta, trading as Park Lane Motor Company
■ Determinations where an appeal was pending on 31 December (8)			
13 July 1990	Credit Default Register Ltd	■ Determinations where an appeal was dismissed (6)	
13 July 1990	Walter John Holmes	3 Aug 1989	Pamela May Jarvis
6 Aug 1990	T A Barlow Ltd	23 Nov 1989	Liam Tickle
30 April	Javed Hussain	5 Dec 1989	Lancelot O'Regan, trading as The Pawn Shop
10 May	Fantana Finance Ltd	2 Aug 1990	Kevin Warwick Hallam
11 September	David Gwyn Jackson, trading as Jackson Motors	3 Aug 1990	Sidney Howard and Elizabeth Julie Howard, trading as Inter UK Exhibitions
		6 Nov 1990	Fatehjeet Singh, trading as Bavarian Cars

B.4 New standard licences

	1991	1976-91
Applications received	24,785	330,924
Licences issued	24,136	315,228
Applications under consideration	1,925 ¹	n/a

Source: Office of Fair Trading

¹ The figure for 1990 was 2,242

B.5 Analysis of licences issued by category of business¹

	1991	1976-91
A: Consumer credit	7,276	91,275
B: Consumer hire	4,053	53,305
C: Credit brokerage	22,913	273,963
D: Debt adjusting and debt counselling	13,202	107,611
E: Debt collecting	3,013	28,450
F: Credit reference agency	1,887	12,262
— With the right to canvass off trade premises debtor-creditor-supplier agreements or regulated consumer hire agreements	8,894	106,375

Source: Office of Fair Trading

¹ In total, these figures exceed the number of licences issued because a single licence can cover more than one category of business

B.6 Existing licences – action instigated by licensees: 1991

<i>Renewal of the licence:</i>	
Applications received	4,922
Renewal licences issued	3,268
Applications under consideration	1,162
Licences allowed to lapse	7,914
<i>Variations of the terms of the licence:</i>	
Applications received	7,782
Variations granted	6,703
Applications under consideration	581
<i>Changes in particulars concerning the licensee:</i>	
Notifications received	39,668
<i>Voluntary surrender of licences:</i>	
Notices of surrender received	1,774

Source: Office of Fair Trading

B.7 Licence applications the Director General was minded to refuse, to grant in different terms, or to refuse to vary: 1977-91

Year	<i>Numbers by business and trades affected</i>					
	<i>Motor dealers</i>	<i>Debt collectors and investigators</i>	<i>Estate, insurance and mortgage agents</i>	<i>Finance companies</i>	<i>Retail trades and commercial leasing</i>	<i>Building and home improvements</i>
1977	2	12	1	—	—	—
1978	27	3	1	11	57	2
1979	92	1	6	15	32	4
1980	74	1	6	7	17	8
1981	29	1	1	2	12	6
1982	39	—	3	7	30	13
1983	41	3	3	12	21	16
1984	40	5	15	10	28	9
1985	32	5	9	6	30	10
1986	36	1	14	9	16	7
1987	33	—	14	3	25	4
1988	25	—	11	12	14	3
1989	43	2	3	33	15	7
1990	46	2	15	23	30	6
1991	37	2	19	52	13	4
Totals	596	38	111	202	340	99

Source: Office of Fair Trading

B.8 Licences the Director General was minded to revoke, suspend, or vary compulsorily: 1977-91

Year	Numbers by business and trades affected					
	Motor dealers	Debt collectors and investigators	Estate, insurance and mortgage agents	Finance companies	Retail trades and commercial leasing	Building and home improvements
1977	—	—	—	—	—	—
1978	1	—	1	—	—	—
1979	37	3	3	14	6	1
1980	39	1	6	7	7	5
1981	30	—	5	6	7	8
1982	58	5	6	21	16	4
1983	82	3	11	38	15	5
1984	80	12	20	41	32	21
1985	89	4	9	20	44	12
1986	74	3	24	34	41	11
1987	73	6	20	10	18	11
1988	41	7	17	45	11	10
1989	48	6	29	41	23	11
1990	54	4	25	38	20	4
1991	26	—	13	31	30	3
Totals	732	54	189	346	280	106

Source: Office of Fair Trading

B.9 Licensing decisions and appeals: 1988-91¹

	1989		1990		1991	
Notices served on applicants and licensees regarding fitness:						
number served	261		267		220	
not determined in previous year	82		97		100	
total MTRs withdrawn, plus Supplementary notices issued prior to 1982 ²	39	382	39	403	39	359
Cases concluded as follows:						
favourable determination	96		91		72	
adverse determination	120		124		91	
application withdrawn	11		15		37	
licence relinquished	19		34		18	
still under consideration on 31 December	97		100		102	
total MTRs withdrawn, plus Supplementary notices issued prior to 1982 ²	39	382	39	403	39	359
Appeals to the Secretary of State:						
lodged	27		20		11	
brought forward from earlier years	10	37	7	27	18	29
Disposed of as follows:						
upheld	4		3		3	
dismissed	4		3		10	
abandoned	19		3		5	
terminated	3		—		—	
still under consideration on 31 December	7	37	18	27	11	29

Source: Office of Fair Trading

¹ These statistics cover all decisions where an adverse fitness notice has been issued, including licence and other applications and the variation or revocation of existing licences. Adverse determinations and appeal decisions are listed in Appendix B.3.

² These figures include the total of MTRs ('Minded to Refuse' determinations) withdrawn by the Office, plus Supplementary notices issued as MTRs prior to 1982.

B.10 Unlicensed trading – validation orders sought: 1991

Cases decided	Orders made	Applications withdrawn or made of no effect	Orders refused	Orders granted in different terms	Outstanding cases
Section 40(2): 6	regulated credit or hire agreements made by an unlicensed trader 3	–	–	3	1
Section 148(2): 1	agreements for the services of an unlicensed trader carrying on an ancillary credit business 1	–	–	–	–
Section 149(2): 5	regulated credit or hire agreements made by trader with consumers introduced to him by an unlicensed credit broker 2	–	1	2	2

Source: Office of Fair Trading

B.11 Group licences in effect on 31 December 1991

Organisation	Categories of business	Persons and organisations covered
Law Society	A, C, D, E	57,475 members
Law Society of Scotland	A, C, D, G	7,332 members
Law Society of Northern Ireland	A, C, D, E	1,300 members
National Association of Citizens Advice Bureaux	D	712 bureaux
Age Concern England	D	280 Age Concern organisations
Chartered Association of Certified Accountants	A, C, D	2,645 members
Institute of Chartered Accountants in England and Wales	A, C, D	25,762 members
Institute of Chartered Accountants in Ireland	A, C, D	425 members
Institute of Chartered Accountants of Scotland	A, C, D	1,959 members
Citizens Advice Scotland	D	65 bureaux
Local Enterprise Agencies	C, D	431 agencies
Small Firms Service	C, D	400 agencies
Federation of Independent Advice Centres	D	617 members
Higher Education Institutions	C	522 educational establishments
Scottish Enterprise	A, B, C, D	13 local enterprise companies
Highlands and Islands Enterprise	A, B, C, D	10 local enterprise companies
Institute of Business Counsellors	D	960 members

Source: Office of Fair Trading

C Action under the Estate Agents Act 1979

C.1 General notice

The following notice by the Director General was advertised in the *London*, *Edinburgh* and *Belfast Gazettes*. Copies are available (free of charge) from the OFT.

No	Date issued	Subject
14	9 December	Estate Agents Act Public Register – closure over Christmas and New Year period

C.2 Regulations and orders

The Parliamentary Under Secretary of State for Trade and Industry made the following regulations and orders in 1991. Copies can be purchased from Her Majesty's Stationery Office.

The Estate Agents (Provision of Information) Regulations 1991: SI 1991/859 – These regulations specify what information an estate agent must give about the services being offered to prospective purchasers. They also prescribe that a client must be given this information – in writing – together with information about remuneration, before the client becomes committed to the estate agent. In addition, they set out requirements about the form in which certain terms used by estate agents in connection with their entitlement to remuneration are explained, and about the prominence and legibility of these terms.

The Estate Agents (Undesirable Practices) (No 2) Order 1991: SI 1991/1032 – This order declares certain practices by an estate agent to be undesirable. They are: failure to disclose specific interests promptly and in writing; discriminatory conduct against purchasers who are not accepting services from the agent or from certain other persons; failure to keep a client informed about such services that prospective purchasers have applied for; the making of misrepresentations; and failure to forward to a client promptly and in writing details of offers received.

The Estate Agents (Specified Offences) (No 2) Order 1991: SI 1991/1091 – This order adds to the list of offences that provide grounds on which the Director General can make orders to prohibit unfit persons from engaging in estate agency work.

C.3 Prohibition and warning orders

Prohibition orders against which there was no appeal

Order came into force	Name
30 January	David Kuevi
1 February	Jeremy Carton
6 February	Robert Owen Young
7 February	Paul Gaughran
15 February	Michael Relton
22 March	Andrew James Halls
10 April	John Sinclair
11 April	Graham Young
15 April	Stephen Nicholson
18 April	John Alan Babbage
23 April	Brian Michael Melody
7 May	David John Futcher
21 May	Michael Donald Nicholson
23 May	Dominic Kilroy-Silk
23 May	John Mallender
29 May	Andrew Helliwell
5 June	Christopher Louis St John Farrow
13 June	Malcolm Kakol
2 July	Stephen Maloy
16 July	Brian Victor MacDonald
13 August	Jerard Phillips
29 August	Kevin Paul Oliver
29 August	Sri Lal Hemantha Rajakaruna
29 August	Melville Perera
29 August	Suzanne Maria Naa-Oyoe Quartey
29 August	Daniel Yaw Nti
29 August	Douglas Jay
29 August	Christopher Daniel
12 September	Kenneth Alexander Mowbray Robinson
21 October	Paul McCleave
15 November	Satish Topiwala

Partial prohibition order against which there was no appeal

Order came into force	Name
28 October	David Brian Yeo

Warning order against which there was no appeal

Order came into force	Name
2 July	Gloria Andre

Prohibition orders subject to appeal at 31 December

Order made	Name
2 October	Samuel Thomas Antonelli
12 November	Malcolm Steele

Complaints reported by	Goods and services: Group						Totals
	A	B	C	D	E	F	
Citizens Advice Bureaux	17,122	4,572	11,363	11,500	7,078	3,221	54,856
Local authorities	218,519	79,723	143,903	41,863	121,696	70,775	676,479
Other	960	573	680	538	591	317	3,659
Totals	236,601	84,868	155,946	53,901	129,365	74,313	734,994

Source: Office of Fair Trading, based on figures reported by local authority Trading Standards Departments, Citizens Advice Bureaux and other advice agencies

¹ Trading practices:

- 1 Defective goods or substandard service
- 2 Non-delivery of goods and delay or non-completion of services
- 3 Selling techniques; misleading claims, representations or advertisements (price, quality etc); presentation of goods or services (availability, labelling, packaging); lack of information
- 4 Difficulty in getting faults put right
- 5 Credit practices
- 6 Unfair terms and conditions including attempts to restrict liability
- 7 Price complaints not falling in 3 or 4 and complaints about 'value' not falling in 1 or 3
- 8 Health or safety
- 9 Mail order/prepayments

D.3 Consumer complaints reported by Environmental Health Departments

Group	Trading practices ¹									Totals	Group totals
	1	2	3	4	5	6	7	8	9		
Group A: House fittings and appliances											
AB Home maintenance, repairs, improvements	56	0	0	2	0	0	0	90	0	148	
AH Major appliances	12	0	0	0	0	0	0	1	0	13	
											161
Group B: Other household requirements											
BA Food and drink	5,936	30	137	2	0	0	56	7,875	0	14,036	
BE Water	139	0	28	77	0	0	0	241	0	485	
BK Textiles and soft furnishings	0	0	0	0	0	0	0	2	0	2	
BL Other household goods and services	2	0	0	0	0	0	0	0	0	2	
											14,525
Group C: Personal goods and services											
CB Footwear	1	0	0	0	0	0	0	0	0	1	
CG Prams and other nursery furniture	14	0	0	0	0	0	0	0	0	14	
CJ Other personal goods and services	1	0	0	0	0	0	0	1	0	2	
											17
Group E: Transport											
EC Other public transport (incl taxis and ferries)	11	59	0	0	0	0	0	0	0	70	
EF Car repairs and servicing	0	0	1	0	0	0	0	0	0	1	
EH Bicycles and bicycle repairs	5	0	0	0	0	0	0	1	0	6	
EL Other vehicle running costs	0	0	0	0	0	0	0	1	0	1	
											78
Group F: Leisure											
FD Holiday caravan renting and caravan sites	8	0	0	0	0	0	0	28	0	36	
FF Sports goods, toys, games and camping equipment	17	0	0	0	0	0	0	8	0	25	
FH Entertainment, catering and accommodation	1,063	0	9	0	0	0	2	1,860	0	2,934	
FJ Other recreational goods and services	5	0	0	0	0	0	0	4	0	9	
											3,004

Source: Office of Fair Trading, based on figures reported by local authority Environmental Health Departments

¹ Trading practices: see footnotes to Appendix D.2.

D.4 Consumer complaints and expenditure

	Complaints			Complaints per £m 1990/91
	1989/90	1990/91	% change	
<i>Group A: House fittings and appliances</i>	237,843	236,762	-0.5	6
AA House construction	3,050	3,092	1.4	n/a
AB Home maintenance, repairs, improvements	43,336	42,306	-2.4	3
AC Double glazing products and installation	21,534	22,242	3.3	n/a
AD Furniture, pictures, etc (not upholstery)	22,276	20,185	-9.4	} 9
AE Upholstered furniture	23,613	23,238	-1.6	
AF Carpets and other floor coverings	15,641	14,594	-6.7	
AG Radio, TV and other electrical goods and hire	54,078	55,221	2.1	12
AH Major appliances	44,103	45,476	3.1	5
AJ Repairs to domestic appliances, equipment	10,212	10,408	1.9	14
<i>Group B: Other household requirements</i>	99,956	99,393	-0.6	1
BA Food and drink	53,357	50,145	-6.0	1
BB Domestic solid and liquid fuel	1,522	1,900	24.8	1
BC Gas	2,198	2,533	15.2	0
BD Electricity	2,594	3,312	27.7	0
BE Water	1,456	1,870	28.4	1
BF Postal services	692	777	12.3	1
BG Telecommunications	4,550	5,328	17.1	1
BH Laundry and dry cleaning	6,364	6,357	-0.1	18
BJ DIY materials and tools	4,853	5,012	3.3	1
BK Textiles and soft furnishings	6,252	6,656	6.5	3
BL Other household goods and services	16,118	15,503	-3.8	2
<i>Group C: Personal goods and services</i>	127,353	155,963	22.5	3
CA Clothing and clothing fabrics	45,715	49,882	9.1	3
CB Footwear	15,064	17,266	14.6	5
CC Footwear repairs	612	641	4.7	7
CD Pharmaceutical products, medical services, etc	5,503	6,182	12.3	2
CE Toilet articles, perfumery, hairdressing	4,807	4,905	2.0	1
CF Jewellery, silverware, clocks and watches	13,329	15,752	18.2	7
CG Prams and other nursery furniture	7,201	9,004	25.0	n/a
CH Tobacco and smokers' requisites	1,063	2,501	135.3	0
CJ Other personal goods and services	34,059	49,830	46.3	4
<i>Group D: Other services</i>	39,765	53,901	35.5	1
DA Banking	2,478	4,048	63.4	1
DB Hire and credit – unsecured	12,293	16,646	35.4	n/a
DC Credit secured by a first mortgage	1,147	1,860	62.2	n/a
DD Other secured credit	1,957	2,315	18.3	n/a
DE Ancillary credit business	6,550	8,105	23.7	n/a
DF Life insurance	1,168	1,605	37.4	0
DG Non-life insurance (incl holiday insurance)	9,328	11,736	25.8	5
DH Other financial services	1,821	3,228	77.3	n/a
DJ Legal services	1,452	1,881	29.5	n/a
DK Estate agency	1,571	2,477	57.7	n/a

	Complaints			Complaints per £m 1990/91
	1989/90	1990/91	% change	
<i>Group E: Transport</i>	120,040	129,443	7.8	3
EA Rail (incl underground), bus and coach travel	1,298	1,370	5.5	0
EB Air travel	1,007	1,403	39.3	0
EC Other public transport (incl taxis and ferries)	1,032	1,362	32.0	0
ED New motor cars	9,409	8,616	-8.4	} 5
EE Secondhand cars	64,727	69,704	7.7	
EG Motorcycles and motorcycle repairs	4,153	4,405	6.1	
EF Car repairs and servicing	16,795	19,263	14.7	3
EH Bicycles and bicycle repairs	3,726	3,902	4.7	16
EJ Other vehicles and repairs	3,489	3,606	3.4	2
EK Petrol and oil	4,468	4,614	3.3	0
EL Other vehicle running costs	9,936	11,198	12.7	3
<i>Group F: Leisure</i>	70,977	77,317	8.9	1
FA Package holidays in UK (incl travel)	2,007	2,764	37.7	5
FB Package holidays overseas (incl travel)	7,781	8,899	14.4	2
FC Travel agents	1,358	1,615	18.9	n/a
FD Holiday caravan renting and caravan sites	1,688	1,887	11.8	n/a
FE Timesharing in the UK and overseas	8,516	11,399	33.9	n/a
FF Sports goods, toys, games and camping equipment	13,713	13,725	0.1	4
FG Books, newspapers and magazines	4,372	4,440	1.6	1
FH Entertainment, catering and accommodation	9,989	9,867	-1.2	0
FJ Other recreational goods and services	21,553	22,721	5.4	3
<i>Totals</i>	695,934	752,779	8.2	
<i>Total goods</i>	486,737	509,408	4.7	
<i>Total services</i>	209,197	243,371	16.3	

Source: Office of Fair Trading, based on figures supplied by Trading Standards Departments, advice agencies and Environmental Health Departments

D.5 Trends in consumer complaints

The Office was notified of three-quarters of a million complaints made to Trading Standards Departments, Citizens Advice Bureaux and Environmental Health Departments in the 12 months ended 30 September 1991. The overall total of 752,779 complaints recorded in 1990/91 represented an 8.2 per cent increase over the figure for 1989/90. Nine out of every ten complaints reported to the Office were raised with Local Authority Trading Standards Departments, but it was those made to Citizens Advice Bureaux that showed the largest proportional increase over the year – growing by almost 70 per cent.

Within the overall 8.2 per cent increase in reported complaints, the number about services grew more rapidly (a rise of 16.3 per cent) than those about goods (up by 4.7 per cent). Despite this differential increase, complaints about goods still accounted for more than two-thirds of all complaints in 1990/91.

The six main groups of complaints

Between 1989/90 and 1990/91 there was a slight change in emphasis between, on the one hand, complaints in Groups A and B 'House fittings and appliances' and 'Other household requirements' respectively and, on the other, Groups C and D 'Personal goods and services' and 'Other services' respectively. In groups A and B there were small percentage decreases in the numbers of complaints (-0.5 and -0.6 per cent respectively), while in groups C and D there were large percentage increases (+22.5 and +35.5 per cent respectively). As a result, the share of total complaints

within groups A and B fell from 48.5 per cent to 44.7 per cent and increased in groups C and D from 24 to 27.9 per cent. Numbers of complaints in groups E and F, 'Transport' and 'Leisure' respectively, rose roughly in line with the overall 8.2 per cent rise in complaints.

Detailed categories

Categories in which there were more than 40,000 complaints in the year ending 30 September 1991 included: second-hand cars (69,700); radio, television and other electrical goods (55,200); food and drink (50,100); clothing and clothing fabrics (49,900); other personal goods and services (49,800); major appliances (45,500); and home maintenance, repairs and improvements (42,300). Of these categories, only food and drink (-6 per cent, following a 3.8 per cent fall reported in 1989/90) and home maintenance, repairs and improvements (-2.4 per cent) showed a decrease compared with the numbers of complaints reported in the preceding year. At the other end of the scale, complaints about other personal goods and services, in particular, rose sharply (up by 15,800, or 46 per cent – following a rise of 19.5 per cent reported in 1989/90).

Although they generally involved much smaller numbers of complaints, several other categories showed large percentage increases in 1990/91 compared with 1989/90. These increases may indicate an area of concern for the future and will be closely monitored. Most of the largest percentage increases were in the 'Other services' group. They include: banking (up 63 per cent);

credit secured by a first mortgage (up 62 per cent); estate agency (up 58 per cent); and other financial services (up 77 per cent). The largest percentage increase was in complaints about tobacco and other smokers' requisites (up 135.5 per cent). Other notable percentage increases were recorded in the areas of insurance, credit, public utilities, holidays in the United Kingdom, air travel and timesharing.

Complaints per £million spent give an indication of the balance between the number of complaints and the value and frequency of purchase. In terms of the ratio of the numbers of complaints per £million spent, laundry and dry cleaning, bicycles and bicycle repairs, repairs to domestic appliances and equipment, and radio, television and other electrical goods remain at the top of the list.

D.6 Convictions under the Trade Descriptions Acts

Reported cases 1990/91	False description of goods			False price claimed			False statements about services		
	Numbers	Fines £	Compensation £	Numbers	Fines £	Compensation £	Numbers	Fines £	Compensation £
<i>Group A: House fittings and appliances</i>									
AA House construction	3	1,350.00	—	—	—	—	—	—	—
AB Home maintenance, repairs, improvements	23	15,350.00	552.00	—	—	—	46	14,445.00	2,316.80
AC Double glazing products and installation	3	3,500.00	17.00	—	—	—	6	3,300.00	604.00
AD Furniture, pictures, etc (not upholstery)	20	13,300.00	500.00	—	—	—	1	200.00	—
AE Upholstered furniture	7	3,475.00	1,775.00	—	—	—	1	100.00	—
AF Carpets and other floor coverings	21	20,085.00	—	—	—	—	1	120.00	—
AG Radio, TV, other electrical goods and hire	8	5,750.00	—	—	—	—	3	925.00	—
AH Major appliances	19	12,555.00	376.13	—	—	—	6	2,100.00	—
AJ Repairs to domestic appliances, equipment	2	4,400.00	—	—	—	—	8	2,200.00	115.00
<i>Totals</i>	106	79,765.00	3,220.13	—	—	—	72	23,390.00	3,035.80
<i>Group B: Other household requirements</i>									
BA Food and drink	72	27,075.00	250.00	—	—	—	1	2,800.00	—
BB Domestic solid and liquid fuel	15	4,130.00	430.46	—	—	—	—	—	—
BC Gas	—	—	—	—	—	—	3	1,150.00	—
BD Electricity	—	—	—	—	—	—	1	300.00	—
BE Water	1	300.00	—	—	—	—	1	300.00	—
BG Telecommunications	5	1,100.00	—	—	—	—	1	1,000.00	—
BH Laundry and dry cleaning	—	—	—	—	—	—	1	450.00	—
BJ DIY materials and tools	14	5,225.00	—	3	3,400.00	—	1	100.00	—
BK Textiles and soft furnishings	17	6,120.00	—	—	—	—	1	800.00	—
BL Other household goods and services	13	16,000.00	1,925.00	—	—	—	1	200.00	—
<i>Totals</i>	137	59,950.00	2,605.46	3	3,400.00	—	11	7,100.00	—
<i>Group C: Personal goods and services</i>									
CA Clothing and clothing fabrics	154	68,735.00	303.50	2	2,300.00	—	—	—	—
CB Footwear	6	3,150.00	—	—	—	—	—	—	—
CC Footwear repairs	3	460.00	—	—	—	—	—	—	—
CD Pharmaceutical products, medical services	3	3,200.00	—	—	—	—	—	—	—
CE Toilet articles, perfumery, hairdressing	19	6,880.00	—	—	—	—	—	—	—
CF Jewellery, silverware, clocks and watches	33	13,745.00	35.90	—	—	—	3	5,020.00	200.00
CG Prams, and other nursery furniture	2	4,200.00	33.99	—	—	—	—	—	—
CJ Other personal goods and services	14	7,740.00	1,597.50	—	—	—	8	13,230.00	100.00
<i>Totals</i>	234	108,110.00	1,970.89	2	2,300.00	—	11	18,250.00	300.00

Reported cases 1990/91	False description of goods			False price claimed			False statements about services		
	Num- bers	Fines £	Compen- sation £	Num- bers	Fines £	Compen- sation £	Num- bers	Fines £	Compen- sation £
<i>Group D: Other services</i>									
DB Hire and credit – unsecured	–	–	–	–	–	–	1	600.00	–
DD Other secured credit	–	–	–	–	–	–	1	150.00	–
DJ Legal services	–	–	–	–	–	–	1	500.00	–
<i>Totals</i>	–	–	–	–	–	–	3	1,250.00	–
<i>Group E: Transport</i>									
EA Rail (incl underground), bus and coach travel	2	1,050.00	–	–	–	–	–	–	–
Air travel	1	200.00	–	–	–	–	2	250.00	–
EC Other public transport (incl taxis, ferries)	–	–	–	–	–	–	2	250.00	–
EE Secondhand cars	429	291,250.00	70,125.01	–	–	–	20	8,600.00	1,926.45
EF Car repairs and servicing	6	3,600.00	463.00	–	–	–	25	11,910.00	3,184.38
EG Motorcycles and motorcycle repairs	4	575.00	300.00	–	–	–	2	1,250.00	–
EH Bicycles and bicycle repairs	2	900.00	–	–	–	–	–	–	–
EJ Others vehicles and repairs	3	450.00	330.00	–	–	–	3	500.00	–
EK Petrol and oil	4	2,450.00	–	–	–	–	–	–	–
EL Other vehicle running costs	15	9,750.00	566.16	–	–	–	5	5,100.00	–
<i>Totals</i>	469	313,025.00	71,784.17	–	–	–	58	27,810.00	5,110.83
<i>Group F: Leisure</i>									
FA Package holidays in UK (incl travel)	1	3,000.00	–	–	–	–	1	300.00	–
FB Package holidays overseas (incl travel)	2	1,000.00	–	–	–	–	9	12,200.00	2,100.00
FC Travel agents	1	150.00	–	–	–	–	1	800.00	–
FD Holiday caravan renting and caravan sites	1	1,000.00	–	–	–	–	–	–	–
FE Timesharing in UK and overseas	–	–	–	–	–	–	1	550.00	–
FF Sports goods, toys, games, camping equip	20	12,125.00	–	–	–	–	1	75.00	–
FH Entertainment, catering and accommodation	1	2,000.00	–	–	–	–	18	9,050.00	595.50
FJ Other recreational goods and services	138	73,245.00	803.19	–	–	–	3	750.00	42.78
<i>Totals</i>	164	92,520.00	803.19	–	–	–	34	23,725.00	2,738.28
<i>Grand totals</i>	1,110	654,170.00	80,383.84	5	5,700.00	–	189	101,825.00	11,184.91

Source: Office of Fair Trading, based on figures supplied by local authority Trading Standards and Environmental Health Departments

In addition to the fines shown above:

98 defendants were conditionally discharged

16 defendants were discharged absolutely

43 defendants received prison sentences

2 defendants were admonished

5 defendants were required to undertake community service of 60, 80, 100, 130 and 240 hours respectively.

D.7 Convictions under the Fair Trading Act 1973

Reported cases 1990/91	Restriction on Statements Order			Business Advertisements Disclosure Order		
	Numbers	Fines £	Compensation £	Numbers	Fines £	Compensation £
<i>Group A: House fittings and appliances</i>						
AD Furniture, pictures, etc (not upholstery)	3	1,900.00	—	2	350.00	—
AH Major appliances	2	1,300.00	—	3	760.00	—
<i>Totals</i>	5	3,200.00	—	5	1,110.00	—
<i>Group C: Personal goods and services</i>						
CA Clothing and clothing fabrics	2	400.00	27.50	—	—	—
CF Jewellery, silverware, clocks and watches	1	70.00	—	—	—	—
<i>Totals</i>	3	470.00	27.50	—	—	—
<i>Group E: Transport</i>						
EE Secondhand cars	26	5,825.00	1,120.76	53	23,035.00	2,866.60
EH Bicycles and bicycle repairs	1	100.00	165.00	—	—	—
EL Other vehicle running costs	1	25.00	—	—	—	—
<i>Totals</i>	27	5,850.00	1,120.76	54	23,135.00	3,031.60
<i>Group F: Leisure</i>						
FJ Other recreational goods and services	3	200.00	—	2	100.00	—
<i>Totals</i>	3	200.00	—	2	100.00	—
<i>Grand totals</i>	38	9,720.00	1,148.26	61	24,345.00	3,031.60

Source: Office of Fair Trading, based on figures supplied by local authority Trading Standards and Environmental Health Departments

In addition to the fines shown above:

12 defendants were conditionally discharged

D.8 Convictions in reported cases under other consumer legislation

	Numbers	Fines £	Compensation £
<i>Consumer Credit Act 1974</i>	156	155,030.00	600.00
<i>Weights and Measures Acts:</i>			
False or unjust equipment	54	15,840.00	–
Short weight or measure	143	57,020.00	1,081.00
Average weight and quantity offences	54	9,350.00	–
Packaged goods	66	76,520.00	–
Other offences	36	8,320.00	7.51
<i>Food and Drugs Acts:</i>			
Not of nature, substance or quality demanded	809	371,765.00	230.00
Unfit food	95	35,145.00	–
Labelling regulations and others	486	638,530.00	–
<i>Food Safety Act 1990</i>	61	31,485.00	–
<i>Hallmarking Act 1973</i>	12	2,025.00	–
<i>Consumer Protection Act 1987, Part II</i>	327	197,220.00	1,127.02
<i>Shops Act 1950</i>	47	27,525.00	–
<i>Road Traffic Act 1972¹</i>	416	95,903.00	42,593.76
<i>Other legislation enforced by Trading Standards and Environmental Health Departments</i>	1,016	467,541.21	7,213.50
<i>Estate Agents Act 1979</i>	1	450.00	–
<i>Consumer Protection Act 1987, Part III</i>	276	236,340.00	2,585.51

Source: Office of Fair Trading, based on figures supplied by local authority Trading Standards and Environmental Health Departments

¹ Cases under this heading concern unroadworthy vehicles.

In addition to the fines shown above:

13 defendants received prison sentences

185 defendants were conditionally discharged

61 defendants were discharged absolutely

4 defendants were required to undertake community service of 120, 120, 150 and 200 hours respectively

4 defendants were bound over

9 defendants were admonished

D.9 Prosecutions brought to court under the Consumer Credit Act 1974

The following summary does not include five cases not proceeded with and four that were withdrawn. There were 147 reported cases in total, although a number of them involved offences under more than one section. There were 168 defendants in all, although 10 of them had committed offences under two headings and are consequently mentioned twice.

Giving false information to the Director General (section 7) – The only case which came to court resulted in a fine of £200. The defendant was also fined under other sections of the Act.

Unlicensed trading (section 39(1)) – The 26 cases that came to court involved 29 defendants. Four defendants were conditionally discharged for a year, three were conditionally discharged for two years, one was absolutely discharged and one was admonished. Nineteen defendants were fined amounts rang-

ing between £300 and £8,000, with one also having to pay £600 compensation. The remaining defendant was given a community service order of 200 hours.

Trading under a name not specified in the licence (section 39(2)) – Four cases came to court: two defendants were fined £250 and £100; and the other two defendants were conditionally discharged.

Failure to notify the Director General of changes in particulars in the public register (section 39(3)) – Two cases came to court: the defendants were fined £250 and £120.

Breaches of regulations and other provisions concerning credit advertisements and quotations – A total of 124 cases came to court, involving 141 defendants. Five defendants were conditionally discharged, seven were found not guilty, the cases against two were dismissed and the case against one other was adjourned *sine die*. All the remaining 126 defendants were fined amounts ranging between £40 and £7,000.

Failure of owner under consumer hire agreement to supply copies of documents, etc (section 79(3)) – In the only case which came to court the defendant was fined £125.

E Merger activity

E.1 Introduction to the statistical analyses

In 1991, the Office considered 285 mergers and merger proposals under the Fair Trading Act 1973 (see **Appendix E.2**). This was lower than the number considered in 1990 – indeed, the annual total has declined in every year since 1986. Of these 285 cases, 38 were considered under the prenotification procedure, compared with 51 in 1990. Similarly, there was a fall in the number of proposals qualifying for consideration for reference to the Monopolies and Mergers Commission – from 261 to 183.

The Office also considers mergers notified under the European Community Merger Regulation. See Part 4 for further details of action under this head.

Appendix E.2 shows that in 1991 the Secretary of State referred seven cases to the Commission, all of them in accordance with the Director General's recommendation. One case recommended for reference by the Director General was not referred.

Appendix E.5 analyses the Commission's findings on the seven cases referred in 1991 (although, in one case, they had not yet reported by the end of the year), and the criteria on which the mergers qualified under the Fair Trading Act. It does not include the two cases referred in 1990 but reported on in 1991.

As a proportion of qualifying mergers, the number of references made in 1991 was in line with the years before 1990. Mergers referred in one year will not necessarily be of cases recorded in that year because of the lag between the opening of a file on a case and the Secretary of State's decision on whether to make a reference.

To qualify for examination a merger must involve the acquisition of gross (fixed and current) assets of £30 million or more, or lead to the creation or enhancement of a market share of 25 per cent or more. The market-share criterion has remained unchanged throughout the last 10 years, but the gross assets test has been revised once. In July 1984 the limit was raised from £15 million to £30 million (and, before that, the limit had been raised from £5 million to £15 million in April 1980). Adjusted figures in brackets are given in **Appendix E.2** in order to provide some measure of comparison with years before the revision was made. **Appendix E.6** shows the number of mergers that qualified under each criterion for each industrial category.

The statistics reflect the work of the Office in examining mergers within the context of the Fair Trading Act and do not represent an estimate of total merger activity in the United Kingdom. The following points need to be borne in mind:

the figures relate to merger proposals, in addition to completed mergers – there may be more than one proposal for a given target and each one is included;

the figures include only those proposals that qualify for investigation under the Fair Trading Act – newspaper mergers (subject to a special procedure operated by the Department of Trade and Industry) are excluded, as are mergers considered under the Water Act 1989;

the figures include requests for confidential guidance as well as publicly announced mergers, although a confidential guidance case that subsequently becomes public is not included twice.

Statistics collected by the Central Statistical Office and published in the *Business Bulletin: Acquisitions and Mergers* provide a better indicator of overall merger activity and are also included in **Appendix E.2** although these figures exclude mergers in the financial sector.

The value of assets bid for in all qualifying cases in 1991 fell, reflecting the large fall in the number of qualifying cases (see **Appendices E.2** and **E.3**).

The series for the value of assets acquired (see **Appendix E.4**) has been deflated by the price deflator for gross domestic product to give some indication of the real value of assets involved in merger cases after allowing for inflation. This shows an even larger decline in the value of assets bid for at constant prices than at current prices.

Looking at a longer period of time the tables show that the number of qualifying mergers reached a peak in 1987, with modest declines in the three following years. The decline in 1991 is more dramatic, and represents the lowest number of qualifying mergers since 1981. The values of assets acquired, whether in current or constant prices, peaked in 1986. The constant price values for 1991 are below typical figures in the early 1980s. The asset values are sensitive to particular, large acquisitions.

The total numbers of qualifying mergers considered has been declining since 1987. Before 1991, however, the annual numbers considered were much higher than in the early 1980s.

Between 1981 and 1991 the value of assets involved in qualifying merger situations doubled in current prices, but rose by only 13 per cent in constant prices.

The *Business Bulletin* figures (see **Appendix E.2**) show that the total number of industrial and commercial mergers in 1991 was 36.0 per cent lower than in 1990, a larger fall than that in the number of qualifying industrial and commercial cases considered by the Office. This series suggests that the total number of acquisitions of industrial and commercial companies in 1991 was only slightly higher than the number recorded in the early 1980s.

From 1989 to 1991, the numbers of qualifying industrial and commercial cases considered by the Office were about a third of all mergers and acquisitions identified by the Central Statistical Office. This proportion is similar to that of the early 1980s, but lower than in the mid-1980s, the decline in the proportion being because the number of qualifying mergers did not increase nearly as sharply as the number recorded by the Central Statistical Office. Similarly, the rise in 1991 occurred because the number of qualifying mergers fell less sharply than the total number.

The values of assets bid for are always likely to be influenced by a small number of very large cases. In 1991 three cases were considered with bids for assets of £3,000 million or more; these three cases were 1.6 per cent of the total number, but accounted for 50.5 per cent of all assets bid for. The three cases were:

Chemical Banking Corporation/Manufacturers Hanover
– £35,000 million;

GPT Sales and Service/Siemens Communications
– £6,000 million;

Hanson plc/Beazer plc
– £3,100 million.

The value of assets involved in mergers is often particularly large in the financial sector. The distribution of mergers by size of the target company's assets is shown in **Appendix E.7**. This shows that there were 14 cases where the assets bid for were of £1,000 million and upwards.

Analyses by size of target companies' gross assets

The time series for acquisitions by size of net assets is shown in **Appendices E.8** and **E.9**, together with the percentages. To a considerable extent, the changes in the proportion of cases in the different asset groups must reflect the impact of inflation. But the decline between 1981 and 1985 in the proportion with assets below £25 million must be mainly due to the increase in 1984 in the value of gross assets qualifying for examination. The rise and subsequent decline in the group with £25 million but below £50 million probably largely reflects the impact of inflation, as also do the proportions in the groups with £50 million to £250 million. The proportion of cases in the groups with the larger values of assets remain small, though with some general signs of increase.

When values of assets in the various size groups are examined (see **Appendix E.9**), the largest size group clearly dominates, though it fluctuates considerably from year to year, reflecting the numbers and values of very large mergers.

Analyses by target companies' activities

An industrial classification of target companies in the merger proposals examined by the Office is given in **Appendix E.10**. This table is better considered in the context of the past series and the percentages of all cases shown in **Appendices E.11** and **E.12**. (These series go back only as far as 1983 because of the change in industrial classification introduced then.) There are no obvious and unambiguous trends in the proportions of cases in different industries.

In recent years the largest proportions of the numbers of mergers have been in: distribution; other business services; mechanical engineering; food, drink and tobacco; electrical engineering; and banking and finance. Since 1990 there has also been a strong increase in the number of mergers involving chemical companies and in transport and communication, but the number in mechanical engineering, and paper, printing and publishing has declined sharply.

The figures for assets bid for (see **Appendix E.12**) show much

sharper fluctuations because of the impact of the very large cases, and trends are even harder to spot. In 1991 the highest percentages were in banking and finance (due to the exceptionally large merger involving the Chemical Banking Corporation and Manufacturers Hanover), and in electrical engineering, where there were three cases which involved assets greater than £1,000 million. The food, drink and tobacco sector saw a large fall, with the lowest share in asset terms since the series started.

The series for foreign companies involved in mergers is shown in **Appendix E.13**. Surprisingly perhaps, there have not been any major changes in the proportions of mergers involving foreign companies over the period covered, high proportions in the early years being followed by lower proportions for both bidders and targets in the 1984-86 period before rising again. There is some sign that the proportion of mergers with foreign bidders has increased relative to that with foreign targets over the period.

Analyses by types of merger

A breakdown of mergers into 'horizontal', 'vertical' and 'diversifying' is shown in **Appendix E.14**. Horizontal mergers are those where the largest and/or second-largest of the activities of the enterprises overlap. Vertical mergers are those where either the largest or second-largest activities are at different stages in the production or distribution of the same product. Mergers which are not horizontal or vertical are classified as diversifying. Between 1970 and 1989 the broad pattern of distribution of mergers between these categories has not changed a great deal. Following the sharp rise in 1990, the proportion of horizontal mergers continued to increase in 1991, both by number and by value, to historically very high figures. With little change in vertical mergers, the proportion of diversifying mergers fell correspondingly. **Appendix E.15** shows the distribution of merger types across the industrial activity of the target company, while **Appendix E.16** shows the distribution of merger types across the asset size of the target company.

Analyses of numbers and values of cases by size of assets

Appendices E.17 and **E.18** respectively show the number of target companies and the value of target assets of the bidder. As might be expected, nearly half of all mergers are undertaken by bidding companies with assets in excess of £1,000 million. These companies also account for more than 80 per cent of mergers in terms of the value of assets acquired.

E.2 Merger activity: 1981-91

Year	Proposals qualifying under the Fair Trading Act			Business Bulletin	Fair Trading Act cases as percentage of industrial and commercial cases ²
	All cases		Industrial and commercial ¹	Industrial and commercial	
	Numbers ²	Assets bid for: £m ²	Numbers ²	Numbers	
1981	164 (105)	43,597 (42,537)	126 (79)	452	27.9 (17.5)
1982	190 (122)	25,939 (24,494)	144 (93)	463	31.1 (20.1)
1983	192 (129)	45,495 (44,275)	143 (104)	447	32.0 (23.3)
1984	259 (223)	80,688 (79,957)	200 (165)	568	35.2 (29.0)
1985	192	57,488	144	474	30.4
1986	313	123,331	238	842	28.3
1987	321	121,911	279	1,527	18.3
1988	306	98,902	276	1,499	18.4
1989	281	96,109	258	1,077	24.0
1990	261	100,043	227	778	29.1
1991	183	87,333	158	498	31.7

Sources: Office of Fair Trading and Central Statistical Office's Business Bulletin: Acquisitions and Mergers

¹ The industrial and commercial category is all cases, excluding SIC categories 8100-8339.

² Figures in brackets show the outcome had a £30 million assets criterion been in operation throughout 1981-84. The assets criterion was previously raised from £5 million to £15 million on 10 April 1980.

E.3 Supplementary data on numbers of mergers examined and references to the Commission: 1981-91

Year	Total numbers of cases examined	Found not to qualify and proposal abandoned	Qualifying cases		Confidential guidance cases	Pre-notified cases ¹	Qualifying cases less confidential guidance cases	References to the Commission			Total references as % of		
			Nos	% change				Recom-mended by Director General	Recom-mended but not made	Made but not recom-mended	Total refer-ences	Quali-fying cases	Qualifying cases less confidential guidance cases
1981	n/a	n/a	164	- 9.9	15	-	149	8	-	-	8	4.9	5.4
1982	n/a	n/a	190	+15.9	32	-	158	9	-	1	10	5.3	6.3
1983	n/a	n/a	192	+ 1.1	37	-	155	10	2	1	9	4.7	5.8
1984	n/a	n/a	259	+34.9	43	-	216	5	1	-	4	1.5	1.9
1985	n/a	n/a	192	-25.9	34	-	158	6	-	-	6	1.9	2.1
1986	524	211	313	+63.0	55	-	258	15	2	-	13	4.2	5.0
1987	478	157	321	+ 2.5	40	-	281	6	-	-	6	3.1	3.8
1988	456	150	306	- 4.7	45	-	261	11	-	-	11	3.6	4.2
1989	427	146	281	- 8.2	32	-	249	14	-	-	14	5.0	5.6
1990	369	108	261	- 7.1	22	51	239	21	-	4	25 ²	10.3	11.3
1991	285	102	183	-29.9	15	38	168	8	1	-	7 ³	3.8	4.2

Source: Office of Fair Trading

¹ The prenotification procedure was introduced under provisions of the Companies Act 1989.

² This figure counts the four acquisitions by South Yorkshire Transport Ltd as one reference, and excludes divestments in lieu of reference: 1, Rank/Mecca; and 2, Hilldown Holdings/Strong and Fisher.

³ This figure excludes divestments in lieu of reference: 1, International Marine Holdings Inc/Benjamin Priest Group plc; 2, Trafalgar House plc/The Davy Corporation; and 3, Williams Holdings plc/Racal Electronics plc.

E.4 Value of assets bid for in merger proposals qualifying under the Fair Trading Act at current and at constant prices: 1981-91

Year	<i>All cases: assets bid for</i>			
	£m	% change	£m 1985 prices	% change
1981	43,597	+ 95.6	54,632	+ 75.7
1982	25,939	- 40.5	30,197	- 44.7
1983	45,495	+ 75.4	50,326	+ 66.7
1984	80,688	+ 77.4	85,294	+ 69.5
1985	57,488	- 28.8	57,488	- 32.6
1986	123,331	+114.5	119,160	+107.3
1987	121,911	- 1.2	112,154	- 5.9
1988	98,902	- 18.9	85,260	- 24.0
1989	96,109	- 2.8	77,570	- 9.0
1990	100,043	+ 4.1	75,848	- 2.2
1991	87,333	- 12.7	61,938	- 18.3

Sources: Office of Fair Trading and Central Statistical Office

The deflator used is for gross domestic product at market prices (expenditure based). A nominal figure was calculated for the 4th quarter of 1991, assuming that the increase was the same as that in the first three quarters over the same period of the previous year.

E.5 References to the Monopolies and Mergers Commission under the Fair Trading Act: 1991

Findings of the Commission	<i>Qualification criteria under the Fair Trading Act 1973</i>			Totals
	Market share in excess of 25 per cent	Assets in excess of £30 million	Both criteria	
Not against the public interest	1	1	1	3
Against the public interest	2	-	-	2
Proposal abandoned	1	-	-	1
Decision awaited	-	-	1	1
<i>Totals</i>	4	1	2	7
as % of all qualifying mergers in this category	9.5	0.8	15.4	3.8

Source: Office of Fair Trading

E.6 Analysis by main activity and qualification criteria: 1991

Industry	Numbers of cases		
	Market share in excess of 25 per cent	Assets in excess of £30 million	Both criteria
Agriculture, forestry and fishing	—	—	—
Coal, oil and natural gas	1	8	—
Electricity, gas and water	—	2	—
Metal processing and manufacturing	1	4	—
Mineral processing and manufacturing	5	4	—
Chemicals and man-made fibres	2	12	4
Metal goods (not elsewhere specified)	—	2	—
Mechanical engineering	2	5	—
Electrical engineering	6	5	2
Vehicles	—	3	—
Instrument engineering	1	—	—
Food, drink and tobacco	5	9	1
Textiles	1	1	1
Leather goods and clothing	—	2	—
Timber and wooden furniture	1	—	—
Paper, printing and publishing	1	4	—
Other manufacturing industries	4	2	1
Construction	—	3	—
Distribution	4	13	1
Hotels, catering and repairs	—	2	—
Transport and communication	3	10	—
Banking and finance	2	9	1
Insurance	—	11	2
Ancillary financial services	—	2	—
Other business services	1	11	—
Other services	2	4	—
<i>Totals</i>	42	128	13

Source: Office of Fair Trading

E.7 Analysis by size of gross assets of target companies: 1991

Size of assets: £m	Numbers	Total assets: £m	Average assets: £m
0-24.9	39	209	5.4
25-49.9	28	1,116	39.9
50-99.9	38	2,795	73.5
100-249.9	36	5,478	152.2
250-499.9	17	6,300	370.6
500-999.9	11	7,368	669.8
1,000 and over	14	64,067	4,576.2
Totals	183	87,333	477

Source: Office of Fair Trading

E.8 Analysis by size of gross assets of target companies – numbers and percentages of totals: 1981-91

Numbers	Gross assets of target companies: £m							Totals
	0-24.9	25-49.9	50-99.9	100-249.9	250-499.9	500-999.9	1,000 and over	
1981	69	35	20	19	8	3	10	164
1982	73	46	24	27	8	7	5	190
1983	78	40	27	21	11	2	13	192
1984	70	64	47	35	15	14	14	259
1985	30	49	31	39	22	11	10	192
1986	48	63	49	74	31	19	29	313
1987	78	66	76	49	24	12	15	321
1988	59	55	75	59	19	20	19	306
1989	56	52	63	48	25	15	22	281
1990	48	51	50	44	23	25	20	261
1991	39	28	38	36	17	11	14	183
Percentages of totals								
1981	42.1	21.3	12.2	11.6	4.9	1.8	6.1	100.0
1982	38.4	24.2	12.6	14.2	4.2	3.7	2.6	100.0
1983	40.6	20.8	14.1	10.9	5.7	1.0	6.8	100.0
1984	27.0	24.7	18.1	13.5	5.8	5.4	5.4	100.0
1985	15.6	25.5	16.1	20.3	11.5	5.7	5.2	100.0
1986	15.3	20.0	15.6	23.6	9.9	6.1	9.3	100.0
1987	24.3	20.6	23.7	15.3	7.5	3.7	4.7	100.0
1988	19.3	18.0	24.5	19.3	6.2	6.5	6.2	100.0
1989	19.9	18.5	22.4	17.1	8.9	5.3	7.8	100.0
1990	18.4	19.5	19.2	16.9	8.8	9.6	7.7	100.0
1991	21.3	15.3	20.8	19.7	9.3	6.0	7.6	100.0

Source: Office of Fair Trading

E.9 Analysis by size of gross assets of target companies – values of assets and percentages of totals: 1981-91

Total assets	Gross assets of target companies: £m							Totals	(average assets)
	0-24.9	25-49.9	50-99.9	100-249.9	250-499.9	500-999.9	1,000 and over		
1981	964	1,299	1,396	3,320	3,460	2,323	30,835	43,597	(266)
1982	1,115	1,530	1,609	4,647	3,175	4,765	9,097	25,939	(137)
1983	1,027	1,391	1,877	2,839	3,863	1,273	33,224	45,495	(237)
1984	925	2,369	3,122	5,861	5,441	9,152	53,818	80,688	(311)
1985	220	1,798	2,004	6,085	7,675	7,617	32,089	57,488	(299)
1986	460	2,339	3,466	11,811	10,723	13,974	80,588	123,331	(394)
1987	491	2,518	5,220	7,577	8,596	8,389	89,121	121,911	(380)
1988	510	2,046	5,507	9,657	6,367	14,406	60,409	98,902	(323)
1989	345	2,042	4,366	7,200	8,619	10,477	63,058	96,109	(342)
1990	257	1,845	3,519	6,757	7,742	18,262	61,662	100,043	(383)
1991	209	1,116	2,795	5,478	6,300	7,368	64,067	87,333	(477)
<i>Percentages of totals</i>									
1981	2.2	3.0	3.2	7.6	7.9	5.3	70.7	100.0	
1982	4.3	5.9	6.2	17.9	12.2	18.4	35.1	100.0	
1983	2.3	3.1	4.1	6.2	8.5	2.8	73.0	100.0	
1984	1.1	2.9	3.9	7.3	6.7	11.3	66.7	100.0	
1985	0.4	3.1	3.5	10.6	13.4	13.2	55.8	100.0	
1986	0.4	1.9	2.8	9.6	8.7	11.3	65.3	100.0	
1987	0.4	2.1	4.3	6.3	7.1	6.9	73.1	100.0	
1988	0.5	2.1	5.6	9.8	6.4	14.6	61.1	100.0	
1989	0.4	2.1	4.5	7.5	9.0	10.9	65.6	100.0	
1990	0.2	1.8	3.5	6.8	7.7	18.3	61.7	100.0	
1991	0.2	1.3	3.2	6.3	7.2	8.4	73.4	100.0	

Source: Office of Fair Trading

E.10 Analysis by main activity, number, assets size and nationality of target companies: 1991

Industry	Numbers	Assets: £m	Average assets: £m	Foreign companies	
				Target: numbers	Bidding: numbers
Agriculture, forestry and fishing	—	—	—	—	—
Coal, oil and natural gas	9	3,807	423	4	5
Electricity, gas and water	2	189	95	1	—
Metal processing and manufacturing	5	2,752	550	2	—
Mineral processing and manufacturing	9	441	49	—	4
Chemicals and man-made fibres	18	4,483	249	9	9
Metal goods (not elsewhere specified)	2	198	99	1	2
Mechanical engineering	7	384	55	2	2
Electrical engineering	13	10,778	829	2	5
Vehicles	3	341	114	1	2
Instrument engineering	1	109	109	1	1
Food, drink and tobacco	15	1,189	79	—	4
Textiles	3	502	167	—	1
Leather goods and clothing	2	283	142	—	2
Timber and wooden furniture	1	51	51	—	—
Paper, printing and publishing	5	2,703	541	1	3
Other manufacturing industries	7	630	90	2	5
Construction	3	3,753	1,251	—	—
Distribution	18	4,498	250	2	6
Hotels, catering and repairs	2	115	58	—	—
Transport and communication	13	2,235	172	2	3
Banking and finance	12	39,223	3,269	4	7
Insurance	13	4,197	323	—	3
Ancillary financial services	2	221	111	—	—
Other business services	12	2,343	195	1	5
Other services	6	1,908	318	1	1
Totals	183	87,333	477	36	70

Source: Office of Fair Trading

E.11 Analysis by activity of target companies – numbers of cases and percentages of totals: 1983-91

Industry	Numbers of cases									Percentages of all cases								
	1983	1984	1985	1986	1987	1988	1989	1990	1991	1983	1984	1985	1986	1987	1988	1989	1990	1991
Agriculture, forestry and fishing	2	–	1	2	4	1	4	1	–	1.0	–	0.5	0.6	1.3	0.3	1.4	0.4	–
Coal, oil and natural gas	8	9	4	7	8	20	9	4	9	4.2	3.5	2.1	2.2	2.6	6.5	3.2	1.5	5.0
Electricity, gas and water	–	–	–	–	–	4	3	1	–	–	–	–	–	–	1.3	1.1	0.4	1.1
Metal processing and manufacturing	6	14	10	3	1	9	6	7	5	3.1	5.4	5.2	1.0	0.3	2.0	2.1	2.7	2.7
Mineral processing and manufacturing	7	11	9	13	10	16	9	9	9	3.6	4.2	4.7	4.2	3.1	5.2	3.2	3.4	5.0
Chemicals and man-made fibres	9	21	6	13	16	13	12	27	18	4.7	8.1	3.1	4.2	5.0	4.2	4.3	10.3	9.8
Metal goods (not elsewhere specified)	3	10	3	6	5	5	11	6	2	1.6	3.9	1.6	1.9	1.6	1.6	3.9	2.3	1.1
Mechanical engineering	15	7	14	20	26	31	27	16	7	7.8	2.7	7.3	6.4	8.1	10.1	9.6	6.1	3.8
Electrical engineering	11	9	3	15	20	20	16	16	13	5.7	3.5	1.6	4.8	6.2	6.5	5.7	6.1	7.1
Vehicles	7	5	3	15	14	11	10	8	3	3.6	1.9	1.6	4.8	4.4	3.6	3.1	1.6	1.6
Instrument engineering	–	2	1	5	4	3	7	2	1	–	0.8	0.5	1.6	1.2	1.0	2.5	0.8	0.5
Food, drink and tobacco	11	13	14	38	21	19	20	24	15	5.7	5.0	7.3	12.1	6.5	6.2	7.1	9.2	8.2
Textiles	1	4	4	3	3	4	3	1	3	0.5	1.5	2.1	1.0	0.9	1.3	1.1	0.4	1.6
Leather goods and clothing	1	3	1	2	6	9	3	3	2	0.5	1.2	0.5	0.6	1.9	2.9	1.1	1.2	1.1
Timber and wooden furniture	–	2	3	–	2	–	2	3	1	–	0.7	1.6	–	0.6	–	0.7	1.2	0.5
Paper, printing and publishing	9	7	8	10	19	23	14	8	5	4.7	2.7	4.2	3.2	5.9	7.5	5.0	3.1	2.7
Other manufacturing industries	7	4	6	5	12	5	6	4	7	3.6	1.5	3.1	1.6	3.7	1.6	2.1	1.5	3.8
Construction	5	3	4	7	6	3	4	3	3	2.6	1.2	2.1	2.2	1.9	1.0	1.4	1.2	1.6
Distribution	28	31	25	30	42	33	27	23	18	14.6	12.0	13.0	9.6	13.1	10.8	9.6	8.8	9.8
Hotels, catering and repairs	5	7	1	2	10	3	7	10	2	2.6	2.7	0.5	0.6	3.1	1.0	2.5	3.8	1.1
Transport and communication	6	16	7	8	9	9	7	18	13	3.1	6.2	3.6	2.6	2.8	2.9	2.5	6.9	7.1
Banking and finance	17	29	21	28	20	13	14	22	12	8.9	11.2	10.9	8.9	6.2	4.2	5.0	8.4	6.6
Insurance	14	7	7	12	15	12	7	11	13	7.3	2.7	3.6	3.8	4.7	3.9	2.5	4.2	7.1
Ancillary financial services	3	23	20	25	6	5	2	3	2	1.6	8.9	10.4	8.0	1.9	1.6	0.7	1.2	1.1
Other business services	9	13	13	26	34	28	33	22	12	4.7	5.0	6.8	8.3	10.6	9.2	11.7	8.4	6.6
Other services	8	9	4	8	7	7	18	9	6	4.2	3.5	2.1	2.6	2.2	2.3	6.4	3.4	3.3
Totals	192	259	192	313	321	306	281	261	183	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Office of Fair Trading

E.12 Analysis by activity of target companies – value of assets and percentages of totals: 1983-91

Industry	Value of assets: £m										Percentages of total asset value									
	1983	1984	1985	1986	1987	1988	1989	1990	1991	1983	1984	1985	1986	1987	1988	1989	1990	1991		
Agriculture, forestry and fishing	54	–	11	37	110	69	209	8	–	0.1	–	(..)	(..)	0.1	0.1	0.2	(..)	–		
Coal, oil and natural gas	388	17,333	137	1,466	2,302	32,921	6,263	1,740	3,807	0.7	21.5	0.2	1.2	1.9	33.3	6.5	1.7	4.4		
Electricity, gas and water	–	–	–	–	–	237	72	39	189	–	–	–	–	–	0.2	0.1	(..)	0.2		
Metal processing and manufacturing	2,114	514	1,668	499	21	2,373	4,595	249	2,752	4.3	0.6	2.9	0.4	(..)	2.4	4.8	0.3	3.2		
Mineral processing and manufacturing	592	52	529	3,190	360	1,115	2,413	6,850	441	1.2	0.6	0.9	2.6	0.3	1.1	2.5	6.9	0.5		
Chemicals and man-made fibres	277	1,651	2,276	2,837	1,378	3,602	4,069	6,437	4,483	0.6	2.0	4.0	2.3	1.1	3.6	4.2	6.5	5.1		
Metal goods (not elsewhere specified)	9	276	3,374	308	284	201	3,848	101	198	(..)	0.3	5.9	0.2	0.2	0.2	4.0	0.1	0.2		
Mechanical engineering	678	2,168	2,739	5,645	10,908	7,324	2,786	2,666	384	1.4	2.7	4.8	4.6	8.9	7.4	2.9	2.7	0.4		
Electrical engineering	314	913	751	2,880	4,260	2,196	6,477	1,834	10,778	0.6	1.1	1.3	2.3	3.5	2.2	1.6	1.9	12.3		
Vehicles	412	196	522	6,614	947	1,275	1,801	3,979	341	0.8	0.2	0.9	5.3	0.8	1.3	1.9	4.0	0.4		
Instrument engineering	–	18	31	257	926	118	1,105	56	109	–	(..)	0.1	0.2	0.8	0.1	1.1	0.1	0.1		
Food, drink and tobacco	1,890	3,005	5,258	23,459	5,133	6,575	14,574	11,462	1,189	3.8	3.7	9.1	19.0	4.2	6.6	15.2	11.4	1.3		
Textiles	70	71	264	67	70	578	444	6	502	0.1	0.1	0.5	0.1	0.1	0.6	0.5	0.4	0.6		
Leather goods and clothing	27	85	43	960	216	350	360	182	283	0.1	0.1	0.1	0.8	0.2	0.4	0.4	0.3	0.3		
Timber and wooden furniture	–	398	137	–	194	–	423	481	51	–	0.5	0.2	–	0.2	–	0.4	0.5	0.1		
Paper, printing and publishing	547	448	1,146	1,016	730	3,676	1,435	2,139	2,703	1.1	0.6	2.0	0.8	0.6	3.7	1.5	2.2	3.1		
Other manufacturing industries	1,802	380	1,446	506	677	439	1,412	173	630	3.6	0.5	2.5	0.4	0.6	0.4	1.5	0.2	0.7		
Construction	233	107	389	1,224	773	140	344	893	3,753	0.5	0.1	0.7	1.0	0.6	0.1	0.4	1.0	4.3		
Distribution	3,428	3,450	3,196	6,960	5,272	4,981	7,374	3,529	4,498	6.9	4.3	5.6	5.6	4.3	5.0	7.7	3.5	5.2		
Hotels, catering and repairs	118	242	35	195	2,337	461	2,016	2,583	115	0.2	0.3	0.1	0.2	1.9	0.5	2.1	2.6	0.1		
Transport and communication	1,944	3,411	246	2,498	2,092	633	2,360	1,737	2,235	3.9	4.2	0.4	2.0	1.7	0.6	2.5	1.7	2.6		
Banking and finance	10,481	29,673	21,467	46,951	65,431	3,304	15,713	39,666	39,223	21.2	36.8	37.3	38.1	53.7	3.3	16.3	39.7	44.9		
Insurance	17,631	6,528	3,609	4,753	5,079	12,378	8,177	3,907	4,197	35.6	8.1	6.3	3.9	4.2	12.5	8.5	3.9	4.8		
Ancillary financial services	1,839	7,398	5,736	6,352	5,430	1,950	100	73	221	3.7	9.2	10.0	5.2	4.5	2.0	0.1	0.1	0.3		
Other business services	281	1,483	2,416	3,086	6,195	6,565	4,680	7,397	2,343	0.6	1.8	4.2	2.5	5.1	6.6	4.9	7.4	2.7		
Other services	366	416	60	1,573	789	441	3,061	1,856	1,908	0.7	0.5	0.1	1.3	0.6	0.4	3.2	1.9	2.2		
Totals	49,495	80,688	57,488	123,331	121,911	98,902	96,109	100,043	87,333	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0		

Source: Office of Fair Trading

(..) Less than 0.5

E.13 Foreign companies involved in merger situations: 1981-91

Year	Targets		Bidders	
	Total numbers	Total as % of all mergers	Total numbers	Total as % of all mergers
1981	44	26.8	48	29.3
1982	55	28.9	58	30.5
1983	52	27.1	64	33.3
1984	39	15.1	49	18.9
1985	32	16.7	37	19.3
1986	45	14.4	64	20.4
1987	78	24.3	74	23.1
1988	63	20.6	78	25.5
1989	64	22.8	82	29.2
1990	61	23.2	92	35.0
1991	36	19.6	70	38.3

Source: Office of Fair Trading

E.14 Percentages of proposed mergers by number and value of assets of target companies classified by type of integration: 1970-91

Year	Horizontal		Vertical		Diversifying	
	by number	by value	by number	by value	by number	by value
1970-74	73	65	5	4	23	27
1975	71	77	5	4	24	19
1976	70	66	8	7	22	27
1977	64	57	11	11	25	32
1978	53	67	13	10	34	23
1979	51	68	7	4	42	28
1980	65	68	4	1	31	31
1981	62	71	6	2	32	27
1982	65	64	5	4	30	32
1983	71	73	4	1	25	26
1984	63	79	4	1	33	20
1985	58	42	4	4	38	54
1986	69	74	2	1	29	25
1987	67	80	3	1	30	19
1988	58	45	1	1	41	54
1989	60	44	2	3	37	53
1990	75	81	5	3	20	16
1991	88	89	5	5	7	6

Source: Office of Fair Trading

E.15 Analysis by main activity, numbers of cases, total value of assets of target companies and type of merger: 1991

Industry	Horizontal		Vertical		Diversifying	
	numbers of cases	value of assets	numbers of cases	value of assets	numbers of cases	value of assets
Agriculture, forestry and fishing	—	—	—	—	—	—
Coal, oil and natural gas	7	3,607	1	148	1	52
Electricity, gas and water	2	189	—	—	—	—
Metal, processing and manufacturing	5	2,752	—	—	—	—
Mineral processing and manufacturing	7	189	—	—	2	522
Chemicals and man-made fibres	15	4,038	1	40	2	405
Metal goods (not elsewhere specified)	2	198	—	—	—	—
Mechanical engineering	6	340	—	—	1	44
Electrical engineering	11	8,552	1	379	1	1,847
Vehicles	3	341	—	—	—	—
Instrument engineering	1	109	—	—	—	—
Food, drink and tobacco	14	1,144	—	—	1	46
Textiles	3	502	—	—	—	—
Leather goods and clothing	2	283	—	—	—	—
Timber and wooden furniture	1	51	—	—	—	—
Paper, printing and publishing	3	423	—	—	2	2,280
Other manufacturing industries	6	589	1	41	—	—
Construction	3	3,753	—	—	—	—
Distribution	14	1,267	4	3,231	—	—
Hotels, catering and repairs	2	155	—	—	—	—
Transport and communication	12	2,122	—	—	1	113
Banking and finance	11	39,021	—	—	1	202
Insurance	13	4,197	—	—	—	—
Ancillary financial services	2	221	—	—	—	—
Other business services	10	2,200	1	113	1	30
Other services	6	1,908	—	—	—	—
Totals	195	78,111	9	3,952	13	5,271

Source: Office of Fair Trading

E.16 Analysis by size of assets of target companies, and type of merger: 1991

Size of assets: £m	Horizontal		Vertical		Diversifying	
	numbers of cases	value of assets	numbers of cases	value of assets	numbers of cases	value of assets
0-24.9	39	209	—	—	—	—
25-49.9	22	866	2	41	4	170
50-99.9	36	2,671	1	172	1	52
100-249.9	29	4,295	2	261	5	922
250-499.9	15	5,441	1	379	1	480
500-999.9	9	6,051	2	1,317	—	—
1,000 and over	11	58,578	1	1,842	2	3,647
Totals	161	78,111	9	3,952	13	5,271

Source: Office of Fair Trading

E.17 Analysis by size of assets of target companies by assets of bidding companies – numbers of cases: 1991¹

Assets of bidders: £m	Assets of targets: £m							Totals
	0–24.9	25–49.9	50–99.9	100–249.9	250–499.9	500–999.9	1,000 and over	
0–24.9	9	3	1	1	–	–	–	14
25–49.9	5	3	1	1	2	–	–	12
50–99.9	4	3	7	5	–	–	1	20
100–249.9	5	2	6	3	1	–	1	18
250–499.9	2	6	3	5	3	–	–	19
500–999.9	4	1	–	1	2	1	–	9
1,000 and over	6	8	12	19	7	8	12	72
Totals	35	26	30	35	15	9	14	164

Source: Office of Fair Trading

¹ This table excludes management buyouts where the assets of the bidding company are recorded as zero. The insurance sector (SIC 8200-8299) is also excluded as the assets of the bidding company are usually unknown.

E.18 Analysis by size of assets of target companies by assets of bidding companies – total values of cases in £m: 1991¹

Assets of bidders: £m	Assets of targets: £m							Totals
	0–24.9	25–49.9	50–99.9	100–249.9	250–499.9	500–999.9	1,000 and over	
0–24.9	47	96	64	101	–	–	–	308
25–49.9	15	115	83	180	857	–	–	1,250
50–99.9	22	128	524	702	–	–	1,400	2,776
100–249.9	37	93	406	467	253	–	1,842	3,098
250–499.9	14	228	209	871	1,112	–	–	2,434
500–999.9	29	42	–	182	644	526	–	1,423
1,000 and over	39	322	947	2,832	2,730	5,576	60,825	73,271
Totals	203	1,024	2,233	5,335	5,596	6,102	64,067	84,560

Source: Office of Fair Trading

¹ This table excludes management buyouts where the assets of the bidding company are recorded as zero. The insurance sector (SIC 8200-8299) is also excluded as the assets of the bidding company are usually unknown.

F Action in the Restrictive Practices Court

F.1 Action on cartels

On 20 May, the undermentioned parties gave undertakings to the court (or consented to orders in the same terms) not to give effect to or enforce the restrictions in the agreements before the court nor enter into any other agreement to the like effect. They also undertook not to enter into or enforce the restrictions in any other registrable agreement of which particulars have not been furnished to the Director General within the period specified in the Restrictive Trade Practices Act 1976.

North Eastern fuel oil suppliers¹

Bayford and Co Ltd
 Brett's Oils Ltd
 British Fuel Co Ltd
 Cory Coal Ltd
 F Peart and Co Ltd
 G & B Fuels Ltd
 JDJ (Creosote) Ltd (formerly James D Johnson and Co Ltd)
 J B Watson (Fuel Distribution) Ltd
 John Hudson (Economac) Ltd

Kettlewell Fuels Ltd
 Noble Fuels Ltd
 Northern Farmers Ltd
 RPD Fuels and Lubricants Ltd
 Thermofuels Ltd
 WCF Ltd
 W Eves and Co (Motor Engineers) Ltd
 Valerie Bowe (trading as W H Bowe)

Manufacturers of steel purlins²

Ayrshire Metal Products (Daventry) Ltd
 Metal Sections Ltd
 Ward Building Systems Ltd

Bus operators in Leicestershire

Midland Fox Ltd²
 G K Kinch³

F.2 Action under section 2 of the 1976 Act

On 5 December, the court made an order under section 2 of the Restrictive Trade Practices Act 1976 to restrain the **Institute of Insurance Brokers** and its members from giving effect to, or enforcing, or purporting to enforce an agreement to boycott General Accident and from making any other agreement or issuing any other recommendations to the like effect and to which the Act applies.

¹ Gave undertakings about the provision of information as well as restrictions.

² Gave undertakings.

³ Consented to orders.

G Action under the Treaty of Rome

G.1 Decisions by the European Commission

<i>Description</i>	<i>Date of Decision</i>	<i>Date published in Official Journal</i>
Vichy	11 January 1991	75 of 21.3.91, p 57
Ijsselcentrale	16 January 1991	28 of 2.2.91, p 32
Screensport/EBU	19 February 1991	63 of 9.3.91, p 32
SIPPA	15 February 1991	60 of 7.3.91, p 19
Baccarat	15 March 1991	Not yet published in <i>Official Journal</i>
Scottish Nuclear	30 April 1991	178 of 6.7.91, p 31
Martell-DMP	15 May 1991	185 of 11.7.91, p 23
Toshiba	5 June 1991	287 of 17.10.91, p 39
Tetra Pak II	24 July 1991	Not yet published in <i>Official Journal</i>
IATA (Passenger Agency Programme)	30 July 1991	258 of 16.9.91, p 18
IATA (Cargo Agency Programme)	30 July 1991	258 of 16.9.91, p 29
Eirpage	18 October 1991	306 of 7.11.91, p 22
Ecosystem/Peugeot	4 December 1991	Not yet published in <i>Official Journal</i>
Yves-Saint Laurent	16 December 1991	12 of 18.1.92, p 24

H Publications

H.1 Published by the Office of Fair Trading

The following publications were produced in 1991. Copies are available (free of charge, unless otherwise indicated) from the addresses shown.

■ Consumer affairs reports

Available from: Office of Fair Trading, Room 726, Chancery House, 53 Chancery Lane, London WC2A 1SP.

Consumer Strategy: Consumer Affairs Division – February 1991

Unjust Credit Transactions – September 1991

Consumer Redress Mechanisms – November 1991

■ Competition policy reports

Available from: Office of Fair Trading, Room 726, Chancery House, Chancery Lane, London WC2A 1SP.

Competition Act – Wales Tourist Board – March 1991

Competition Act – British Coal Corporation – October 1991

The Gas Review: a review by OFT officials in conjunction with OFGAS of the industrial and commercial market for gas and developments since the MMC report: summary version – October 1991

■ Publicity material

Available from: Office of Fair Trading, Room 306, Field House, 15-25 Bream's Buildings, London EC4A 1PR.

Bon Voyage – January 1991

Consumer Protection Agencies (teachers' factsheet) – January 1991

Cartels: detection and remedies – a guide for local authorities – February 1991

Consumer Protection Legislation: a summary (teachers' factsheet) – February 1991

Buying Food (teachers' factsheet) – February 1991

No Credit?: how to find out what credit reference agencies report about you and how you can correct mistakes (revised edition) – March 1991

Mergers: a guide to the procedures under the Fair Trading Act 1973 (revised edition) – April 1991

Do You Need a Credit Licence? – April 1991

The Consumer Credit Public Register (revised edition) – July 1991

Cartels: detection and remedies – a guide for purchasers – July 1991

Restrictive Trade Practices in the Bus Industry – July 1991

The Estate Agency Guide: what you need to know if you are engaged in estate agency work – July 1991

Buying and Selling a Home: working with an estate agent – September 1991

Square Deal – October 1991

MoneyFax: the crucial guide to credit and debt (No 2) – November 1991

Buying by Post (revised edition) – November 1991

■ Audio-tape for the visually handicapped

Available from: Master Transcriptions, PO Box 124, Tunbridge Wells, Kent TN4 8YL.

Consumer Advice Tape – March 1991

H.2 Published by Her Majesty's Stationery Office

The following publications can be purchased from HMSO bookshops or by post from the HMSO Publication Centre, PO Box 275, London SW8 5DT.

■ For the Office of Fair Trading

Annual Report of the Director General of Fair Trading 1990, HC 502 (ISBN 0 10 250291 9) £13.20

■ For the Monopolies and Mergers Commission

Valhi Inc and Akzo NV – January 1991, Cm 1387 (ISBN 0 10 113872 5) £7.30

Kemira Oy and Imperial Chemical Industries plc – January 1991, Cm 1406 (ISBN 0 10 114062 2) £10.50

Credit Lyonnais SA and Woodchester Investments plc – January 1991, Cm 1404 (ISBN 0 10 114042 8) £9.50

Caldaire Holdings Ltd and Bluebird Securities Ltd – January 1991, Cm 1403 (ISBN 0 10 114032 0) £8.75

British Aerospace plc and Thomson-CSF SA – January 1991, Cm 1416 (ISBN 0 10 114162 9) £8.65

Tate & Lyle plc and British Sugar plc – February 1991, Cm 1435 (ISBN 0 10 114352 4) £10.40

Sligos SA and Signet Ltd – February 1991, Cm 1450 (ISBN 0 10 114502 0) £7.90

Structural Warranty Services in Relation to New Homes – March 1991, Cm 1439 (ISBN 0 10 114392 3) £14.80

Soluble Coffee – March 1991, Cm 1459 (ISBN 0 10 1145926) £11.60

Stora Kopparbergs Bergslags AB/Swedish Match NV, and Stora Kopparbergs Bergslags AB/The Gillette Company – March 1991, Cm 1473 (ISBN 0 10 1147325 5) £12.70

Razors and Razor Blades – March 1991, Cm 1472 (ISBN 0 10 1147228) £11.60

Amoco Corporation and Société Nationale Elf Aquitaine – May 1991, Cm 1521 (ISBN 0 10 115212 4) £10.50

Morgan Crucible Company plc and Manville Corporation – May 1991, Cm 1551 (ISBN 0 10 115512 3) £8.15

London Underground Limited – June 1991, Cm 1555 (ISBN 0 10 1155522) £24.00

Prosper De Mulder Limited and Croda International plc – August 1991, Cm 1611 (ISBN 0 10 116112 3) £8.90

The enterprises of Alan J Lewis and Jarman & Son Ltd – August 1991, Cm 1612 (ISBN 0 10 116122 0) £8.90

Carbonated Drinks – August 1991, Cm 1625 (ISBN 0 10 116252 9) £24.00

Indirect Electrostatic Photocopiers – October 1991, Cm 1693 (ISBN 0 10 116932 9) £18.15

Avenir Havas Media SA and Brunton Curtis Outdoor Advertising Ltd – November 1991, Cm 1737 (ISBN 0 10 117372 5) £10.70

Southern Newspapers plc and EMAP plc, Pearson plc, Reed International plc and Trinity International Holdings plc – November 1991, Cm 1772 (ISBN 0 10 117722 4) £11.80

H.3 Published by the Civil Aviation Authority

The following publication is available from CAA Printing and Publications Services, PO Box 41, Cheltenham, Glos GL50 2BN (or, for personal callers only, CAA Central Library, CAA House, 45-49 Kingsway, London WC2).

■ **For the Monopolies and Mergers Commission**

BAA plc: a report on the economic regulation of the South-East airports companies (Heathrow Airport Ltd, Gatwick Airport Ltd and Stansted Airport Ltd) – July 1991 (ISBN 0 86039 476 X)
£10.00 +£1.75 p & p

H.4 Published by the Monopolies and Mergers Commission

Available from: MMC Library, New Court, 48 Carey Street, London WC2A 2JT.

1990 Review – January 1991

Assessing Competition – October 1991

1991 Review – January 1992

I Research

In 1991 the Office sponsored research work on the following subjects.

I.1 Economic research

Statistical analysis of data on business concentration – This research was carried out by the Business Statistics Office.

Functioning of markets initiative – Within the research projects being financed by the Economic and Social Research Council under this initiative, the Office continued to fund two projects with the ESRC:

Strategic behaviour and competition policy – this study was undertaken by Professors Waterson and Utton at the University of Reading, and was designed to investigate the extent and significance of the strategic behaviour of dominant firms and the role of competition policy; and

Regulation of firms with market power – this study was carried out by Professor Vickers and Dr Yarrow of the University of Oxford and was designed to develop the economic analysis of public policies towards firms with market power.

The interaction of trade, competition and technology policy in the single market – This study, jointly financed with the Department of Trade and Industry and the Economic and Social Research Council, is being undertaken by Dr Holmes and Professors Cawson and Smith at the University of Sussex. Via case studies it is designed to examine European Community policy interactions. The project will continue until 1995/96.

Merger assessment by the Monopolies and Mergers Commission – This study was undertaken by Dr Weir at the Robert Gordon Institute of Technology and examined the extent to which pre-merger financial performance is indicative of the views formed by the Commission of post-merger performance.

Market definition – This study is being undertaken by NERA and is designed to overview the literature relating to market definition and to investigate the approach to market definition taken by the Office, the Monopolies and Mergers Commission and the European Commission in competition policy.

Advertising as a barrier to entry – This study is being undertaken by Dr Wilson at the University of Bradford and surveys the literature relating to advertising as a barrier to entry.

Rent seeking and rent dissipation – This study is being undertaken by Dr Allard at Queen Mary College, University of London, and surveys the literature relating to rents and market power.

Bus modelling – This study was undertaken by Dr Dodgson at Liverpool University and involved modelling bus operations and predatory behaviour.

I.2 Consumer affairs research

Annual dissatisfaction omnibus – RSGB Ltd conducted the 1991 survey of consumer dissatisfaction. Results of the 1990 survey were published in *BeeLine* 91/1 (May 1991).

Electrical goods and services – The Office is carrying out a survey, through Trading Standards Departments and Citizens Advice Bureaux, of complaints about different types of electrical goods and services. This disaggregated survey is more detailed than the normal quarterly complaints data reported in *BeeLine*.

Consumer credit in ethnic minority communities – This research is being carried out by Ethnic Response. The study seeks to establish whether there are credit related problems within ethnic minority communities which should be, but are not being, addressed by the statutory system of regulation, and, if so, what is the extent, characteristics and causes of this situation. The Pakistani community in Blackburn is the subject of the research.

Credit scoring – As part of its review of credit scoring, IFF Research Ltd compiled a bibliography of published information on the topic. A report is likely to be published in 1992.

Negative-option and inertia selling – This research was carried out by NOP Market Research Ltd. The objectives of the work were to discover, in the case of selected services: the prevalence of negative-option and inertia selling; the extent to which they result in people paying for a service they do not want; and to determine the outcome of any claims made on insurance policies sold in this way.

Private health insurance – The OFT participated in research commissioned from the Office of Population Censuses and Surveys by the Department of Health. The objectives were to discover the extent of membership of private health insurance schemes; the extent to which such schemes are actually used; and whether members felt there had been any change in coverage of the schemes.

I.3 Competition policy research

Independent television production initiative – Goodall Alexander O'Hare was appointed to monitor television output in support of the informal requirement on the Director General to report on ITV's and BBC's progress towards a 25 per cent share for independent producers. From 1 January 1993 the present informal monitoring requirement will become a formal one under section 186 of the Broadcasting Act 1990.

Securities and Investments Board proposals on retail regulation – As part of the Office's response to the disclosure proposals, London Economics is undertaking research on consumer understanding and the likely impact on the availability of independent advice of additional disclosure.

J Public registers

All three public registers maintained by the Office are kept at its Consumer Credit Licensing Branch, Government Building, Bromyard Avenue, Acton, London W3 7BB.

J.1 The Consumer Credit Public Register

The register is open on Mondays to Fridays between 10 am and 4 pm (between 10 am and 12 noon on Maundy Thursday). It is closed on Saturdays, Sundays, public holidays and the Friday before the Spring Bank Holiday. Personal callers can ask for a search to be made of the index of applicants and licensees, by true name and business name, free of charge, but there is a fee of £3.50 to inspect any individual file on the register itself. Copies of documents on file can be supplied at £1 a sheet (or £2 a sheet for certified copies), and 60p a sheet for each additional copy. Provided that any documents required are clearly identified, copies can also be supplied by post, subject to an additional postal charge of £2.50.

Further information about the register is given in the leaflet *The Consumer Credit Public Register* available, free of charge, from the Consumer Credit Licensing Branch at the address shown above.

J.2 The Estate Agents Act Public Register

The register is open at the same times as the Consumer Credit Public Register (see Appendix J.1). It gives particulars of prohibition and warning orders made under the Estate Agents Act 1979, and of applications for such orders to be varied or revoked. Personal callers can examine an index of names of persons on the register free of charge, but there is a fee of £1 to inspect each file on the register itself. Copies of documents, certified by the Director General, can be obtained by personal callers at a charge of 75p a sheet. Provided that any documents required are clearly identified, copies can also be supplied by post at the following charges: one sheet £2.25; two sheets £3; three sheets £3.75; four sheets £4.50; five sheets £5.25; for the sixth and each additional sheet an extra £1.

J.3 The Register of Restrictive Trading Agreements

Apart from the special section maintained under section 23(3) of the Restrictive Trade Practices Act 1976, the register is open on Mondays to Fridays between 10 am and 4.30 pm (between 10 am and 12.30 pm on Maundy Thursday), and closed on Saturdays, Sundays and public holidays. An index to agreements on the register may be consulted free of charge. The fee to inspect the register itself is £1 a day, or 20p an agreement if fewer than five agreements are inspected in a single day. Copies of agreements or of extracts from agreements, certified by the Director General, can be obtained at a charge of 20p a sheet. Provided that the agreements required are clearly identified, copies can be supplied by post, also at a charge of 20p a sheet.

K Personnel and resources

K.1 Office of Fair Trading

Main office address

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EC4A 1PR

Director General of Fair Trading

Sir Gordon Borrie, QC

Deputy Director General

Jeffrey W Preston, CB

Consumer Affairs Division

Director

Richard Thomas

Assistant Directors

Howard Charman (to 10 June)
John Chapman (from 26 June)
Mark Lanyon
David W Lightfoot

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Anthony Inglese (from 21 October)

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Senior Economic Adviser
David Elliott

Administration Branch

Principal Establishment and
Finance Officer
Miss Caroline Banks

Information Branch

Chief Information Officer
John Stubbs

Like that of other government departments, the Office's financial year runs from April to March for accounting purposes. Where possible, however, the figures shown in this part of the report have been adjusted to cover Office activities for the calendar year, described in detail in Parts 3 and 4.

The Director General has a cash limit of £18.1 million for the financial year ending 31 March 1992. The limit for the preceding year was £14.7 million. The increase took into account the transfer of responsibilities for the payment of court cases from Treasury Solicitors to the Office and the upgrading of the consumer credit licensing computer facility. The increased budget also reflected the growth in responsibilities outlined elsewhere in this report and assumed a steady growth in commercial activity. On average, the Office employed 399 permanent staff in 1991.

The permanent staff was made up as follows:

senior staff	65
executive grades	155
others	179

Included in these figures are the following staff acting specifically as professional advisers:

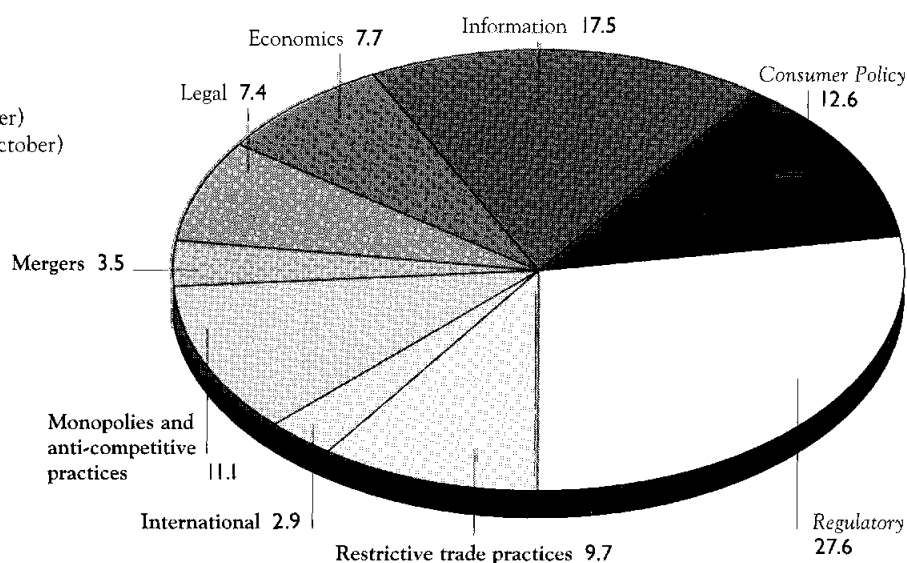
lawyers	11
economists	16
statisticians	4
accountants	2
internal auditors	3 ¹
information officers	11

The accompanying diagram shows broadly how Office resources were allocated in 1991. Overheads and administrative costs have been allocated to the functions shown in the key.

4 - Distribution of resources in 1991

Bold type denotes Competition policy

Italic type denotes Consumer affairs



This diagram excludes the running cost resources for Treasury solicitors and capital expenditure

¹ The internal auditors are shared with other regulatory authorities.

In common with other government departments, the Office has continued to make improvements in the use of resources. Over the year it has expanded its use of computer equipment and staff training. Staff have attended 629 training courses enhancing both personal development and computer awareness. Since the beginning of 1990 personal computer use has increased by 295 per cent. In addition, a number of major computer systems have been installed or upgraded, improving service to the public and internal organisation.

Further savings have been made by rationalising the use of existing Office space – fitting more staff into the same space – and placing more contracts out to open tender. A total of 41 centrally recorded contracts were tendered during the year, representing over £575,000. Approximately £1,593,000 was spent on publications during the period – principally for consumer guidance with the issue of *Moneyfax*, aimed at schools and young people and Square Deal, targeted at the C2-D-E group. The rest of the budget was spent mainly on running costs, including salaries, accommodation and equipment. Salary costs accounted for more than half Office expenditure.

The Office provides common services to the other statutory regulatory bodies: the Office of Telecommunications (OFTTEL); the Office of Gas Supply (OFGAS); the Office of Water Services (OFWAT); and the Office of Electricity Regulation (OFFER). These services cover internal audit, consultation, inspection and review (staff inspection), personnel and payroll services and information technology.

K.2 Monopolies and Mergers Commission

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Peter Dean

Dan Goyder (from 1 May)

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Water panel

Peter Bullock

Sir Trevor Hughes, KCB

David Kinnersley

Graham Sharp

Electricity panel

John Boyd, QC

Prof Anthony Kennerley

Bill Morgan

Prof Colin Robinson

At 31 December 1991, the Commission had 100 full-time and eight part-time staff.

The cost of the Commission is borne on the Department of Trade and Industry vote. The expenditure of the Commission in the 1990/91 financial year, excluding accommodation, was £4.92 million. The estimated outturn for 1991/92 is £4.43 million. Accommodation charges for the two years were £0.81 and £1.68 million respectively. Estimated expenditure for 1991/92, excluding accommodation, broadly breaks down as follows: members and staff costs, £3.27 million; consultants, £0.43 million; other direct expenditure relating to inquiries £0.28 million; and services, equipment and other related costs, £0.45 million.

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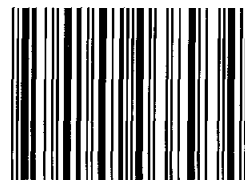
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