



COMPETITION APPEAL TRIBUNAL



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# ANNUAL REVIEW AND ACCOUNTS

2010/2011





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# INTRODUCTION

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

## Principal functions of the Tribunal

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

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

In the last year the Tribunal has been given two additional functions. Under the Energy Act 2010 (and when the relevant provisions come into force) the Tribunal will be able to hear appeals in relation to decisions taken by GEMA in respect of the application of a market power licence condition to particular types of exploitative behaviours in electricity markets. The Postal Services Act 2011 provides for an appeal to the Tribunal in respect of certain decisions taken by OFCOM in relation to the regulation of postal services.

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

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

## Membership of the Tribunal

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

The Tribunal membership in 2010/11 comprised:

### President

The Honourable Mr Justice Barling

### Panel of Chairmen

The Honourable Mr Justice Peter Smith

The Honourable Mr Justice Lewison

The Honourable Mr Justice David Richards

The Honourable Mr Justice Mann

The Honourable Mr Justice Warren

The Honourable Mr Justice Kitchen

The Honourable Mr Justice Briggs

The Honourable Mr Justice Henderson

The Honourable Mr Justice Morgan

The Honourable Mr Justice Norris

The Honourable Mr Justice Floyd

The Honourable Mr Justice Sales

The Honourable Mrs Justice Proudman

The Honourable Mr Justice Arnold

The Honourable Mr Justice Roth

The Honourable Mr Justice Vos

The Honourable Mr Justice Newey

Lord Carlile QC

Vivien Rose

Marcus Smith QC

### Ordinary Members

Professor Andrew Bain OBE

Michael Blair QC

Peter Clayton

Michael Davey

Peter Grant-Hutchison

Professor Peter Grinyer

Sheila Hewitt JP

Ann Kelly

The Honourable Antony Lewis

Graham Mather

Professor John Pickering

Richard Prosser OBE

Dr Arthur Pryor CB

Dr Adam Scott OBE TD

Dr Vindelyn Smith-Hillman

Professor Paul Stoneman

David Summers OBE JP

# INTRODUCTION

## Ordinary Members appointed on 7 January 2011

William Allan  
Professor John Beath  
Timothy Cowen  
Margot Daly  
Dr Clive Elphick  
Dermot Glynn  
Stephen Harrison  
Brian Landers  
Jonathan May  
Professor Colin Mayer  
Clare Potter  
Professor Gavin Reid  
Joanne Stuart  
Professor Stephen Wilks

## Registrar

Charles Dhanowa OBE

## Recruitment

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

## The Competition Service (CS)

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

## Membership and senior staff of the CS

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

## Register of Interests

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

## Premises

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

## Finance and workload

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



# PRESIDENT'S STATEMENT



## Introduction

Having been reappointed as President of the Tribunal for a second term of three years from November 2010, I begin this, my fourth annual statement, with a heartfelt vote of thanks to the outgoing cadre of members, whose terms of appointment are now drawing to an end. They were all appointed at or about the time of the creation of the Tribunal, and have played a pioneering role in its development as an institution. Their dedication, expertise and hard work have firmly established its strong reputation, and they will be very much missed. In January 2011 the appointment of our new members was announced, following a recruitment process that was successful in attracting candidates of the highest calibre. Thanks to a fairly intensive series of induction courses, the appointees have very quickly become familiar with the Tribunal and its operations, and some of them are already sitting on cases. We are delighted to welcome our new members, and I have not the slightest doubt that with their skills and wide range of experience they will make an invaluable contribution to the Tribunal's work.

As well as being a year of change with regard to the membership, the past year has been a particularly busy one, perhaps the busiest in the Tribunal's history. This is due in part to the hearing over the course of last summer of 25 separate appeals against the decision of the Office of Fair Trading (OFT) in relation to the practice of "cover pricing" by over 100 construction firms in England. In addition, a further three appeals relating to the OFT's Construction Recruitment Forum decision were heard at about the same time by a panel chaired by Mr Justice Roth. I would like to take this opportunity to record my sincere thanks to all concerned, not least the Tribunal's staff, for rising to the logistical challenge posed by the lodging and hearing of so many appeals contemporaneously.

As well as dealing with these cases, the Tribunal was, at the same time, arranging for the hearing of two sets of multiple appeals involving the pay television and tobacco industries. These major appeals are likely to be the longest and some of the most complex ever heard by the Tribunal, being set down for nine and 12 weeks respectively.

Over the course of this reporting period the Tribunal has also been engaged in responding to a number of consultation exercises by the government. These have involved, amongst other things: the future landscape of the UK's competition regime; the electronic communications regulatory system; and the government's review of public bodies. In each of these matters the Tribunal's participation has been focussed on issues relating to its functions,

procedures and administration, but even so this has placed a substantial additional burden on the Tribunal's time and limited resources, given the overriding need to ensure that appeals and other proceedings are handled fairly, efficiently and expeditiously.

## Chairmen

As ever, I am sincerely grateful to the Tribunal's panel of fee-paid Chairmen, Lord Carlile QC, Vivien Rose and Marcus Smith QC, who despite their busy professional lives outside the Tribunal are always unstinting in the invaluable assistance they provide to me and to the Tribunal generally. In my last annual statement I congratulated Mr Justice Vos, Mr Justice Roth and Mr Justice Newey on their appointment to the Chancery Division of the High Court, and more particularly as Chairmen of the Tribunal. In the past year Mr Justice Vos chaired a panel that heard an appeal brought under the Communications Act 2003 (*Telefónica O2 UK Limited v Office of Communications*), and Mr Justice Roth chaired a panel that heard the three separate appeals brought against the OFT's 'Construction Recruitment Forum' decision (*Eden Brown Limited & Others v Office of Fair Trading*), to which I referred earlier. We are extremely grateful to them for their contribution to the Tribunal's work.

We still lack a practical mechanism for enabling judges from Scotland and Northern Ireland to sit as Chairmen of the Tribunal, which has a UK-wide jurisdiction. I have mentioned this matter in past reviews and it is an anomaly which needs to be remedied as soon as possible. Progress has been difficult to achieve while the government's attention has been focussed on reviewing public bodies in general and the competition system in particular. However, over the next year, I will be consulting with heads of the national judiciaries in the UK and with the responsible government departments in order to identify the best means of achieving a workable solution to the issue.

## Members

As I mentioned in my introduction, on 7 January 2011, the Minister for Competition, Edward Davey MP, announced the appointment of 14 new Tribunal members. These are: William Allan; Professor John Beath; Timothy Cowen; Margot Daly; Dr Clive Elphick; Dermot Glynn; Stephen Harrison; Brian Landers; Jonathan May; Professor Colin Mayer; Clare Potter; Professor Gavin Reid; Joanne Stuart; and Professor Stephen Wilks. Their biographical details can be found later in this review, and it can be seen that they bring to the Tribunal considerable expertise in a wide range of fields, including business, economics, accountancy, law and communications.

# PRESIDENT'S STATEMENT

The arrival of new Tribunal members from diverse backgrounds brings with it the particular challenge of preparing an in-depth programme of training. I am indebted to Dr Adam Scott OBE TD, who chairs the Tribunal's Training Committee, for his hard work in devising an intensive programme of internal seminars, with a view to introducing the new members to the broad range of matters falling within the Tribunal's jurisdiction.

I am happy to say that we are not entirely losing the benefit of the well-honed skills of the existing membership. Some of our existing cadre of members will continue to sit on cases which were still in progress when their original appointments expired on 31 March 2011. Pursuant to the relevant legislation the terms of appointment of these members have therefore been extended to enable them to continue to sit on these cases.

Whilst on the subject of the Tribunal's membership I would like to thank our non-executive member, Janet Rubin, for chairing the Board meetings of the Competition Service as well as the Audit Committee. More particularly I would like to express once more my appreciation for all the advice and support on administrative matters which she has provided to the Tribunal and to me over the course of the last year. We are very lucky to have her with us.

## Cases

A total of 29 new cases were registered during the period covered by this review. These included four appeals against OFCOM's decision to vary the conditions of British Sky Broadcasting Limited's licences under the Broadcasting Act 1990 to require the wholesale supply of certain Sky Sports pay television channels upon terms (the Pay TV statement) together with a further two related appeals. They also included six appeals against the OFT's decision finding that certain manufacturers and retailers of tobacco products had infringed the prohibition in Chapter I of the Competition Act 1998 (the Tobacco decision). As I have said, these two sets of appeals will be the longest and some of the most complex in the Tribunal's history. They are likely to consume a large part of the Tribunal's resources over the coming year.

The Tribunal has also seen a notable increase in the number of follow-on claims for damages under section 47A of the Competition Act 1998, with seven new claims registered, compared with just one in the previous period. In December 2010 claims for damages were filed on behalf of 31 companies against six defendants identified in the European Commission's Electrical and Mechanical Carbon and Graphite Products decision (*Deutsche Bahn*

*AG & Others v Morgan Crucible Company Plc & Others*). This is the second damages action arising out of that infringement decision to have been brought in the Tribunal (the other being *Emerson Electric Co & Others v Morgan Crucible Company Plc & Others*). In January 2011, claims for damages were also filed by the liquidator and three individual shareholders of 2 Travel Group Plc ("*2 Travel*") against Cardiff City Transport Services Limited (trading as Cardiff Bus) (*D H Francis & Others v Cardiff City Transport Services Limited*). These claims follow on from the OFT's decision in November 2008 that the defendant had infringed the Chapter II prohibition by engaging in predatory conduct against 2 Travel.

A notable trend has been an increase in the amount of time devoted to hearings. The increase was due, in large part, to the hearings in the 25 appeals against the OFT's Construction decision in the summer of 2010. These were dealt with by eight differently constituted Tribunal panels. The trend for longer hearings is likely to continue, at least in the immediate future, given the substantial and complex nature of the multiple appeals against the Pay TV statement and the Tobacco decision.

Turning to decided cases, the Tribunal handed down 26 judgments or rulings in the period under review. A few of the more notable decisions are identified at the end of my statement.

## Relations with central government

As mentioned in my introduction, this year has seen a number of exercises conducted by central government which concerned or affected the work and administration of the Tribunal. The need to engage with these issues has inevitably placed significant extra demands upon us.

## Tribunal Service

Potentially the most immediate and significant impact on the Tribunal arose out of the Government's intention to carry out a general reform (and reduction in the number) of public bodies, culminating in the Public Bodies Bill presented to Parliament. As part of that initiative our sponsor department, BIS, established a joint working group made up of representatives of the Ministry of Justice, the Treasury, the Tribunal Service and the Tribunal itself, to examine whether the Tribunal's administration, which is currently carried out by its alter ego the Competition Service, should be transferred to the Tribunal Service (which has now been merged with the Court Service of England & Wales). Having considered the matter in depth over several months, the working group recommended to Ministers that there should be no change



## PRESIDENT'S STATEMENT

to the Tribunal's current administrative arrangements, there being no significant savings or efficiencies to be gained by the proposed change. I understand that Ministers have accepted this recommendation.

The maintenance of the Tribunal's existing administration will in no way affect the already well-established working arrangements between the Tribunal and the Tribunal Service. I continue to attend the routine meetings of Chambers' Presidents, chaired by the Senior President of Tribunals, Sir Robert Carnwath. In addition we will continue to make our facilities and court rooms available to the Tribunal Service for events and case hearings whenever possible, consistent with our own requirements. This facility is now being used on a regular basis for formal hearings and in February 2011 we were delighted to host a seminar of members and chairmen of the Tribunal Service which included an address by Lord Justice Sedley.

### Consultation on reform of competition regime

Another major exercise requiring our detailed consideration throughout the review period (and continuing) has been the BIS consultation on reform of the competition regime. This primarily involves the possible merger of the OFT and the Competition Commission. However some of the issues relating to such a merger would have an impact on the Tribunal and its work. This is particularly the case in relation to the way infringement proceedings under the Competition Act 1998 would be handled in a reformed system, depending upon which of the various options for reform is adopted.

In addition to these possible changes, BIS acceded to our request that the consultation should touch on the subject of private enforcement and in particular the possibility of remedying the current anomaly in the Tribunal's jurisdiction in damages claims. As the Court of Appeal underlined in the recent *Enron* decision (see below), it is less than optimal that the specialist tribunal is not permitted to decide the basic issue of whether an infringement has been established and is instead confined to deciding issues of causation and quantification of loss in the context of a follow-on action. Yet the same tribunal can and does decide the basic infringement issue in the context of an appeal against the competition authority's determination. It is widely acknowledged that this anomaly is rendering the Tribunal's damages jurisdiction much less effective than it should be. The remedy is a simple one: to give claimants for damages the same choice in standalone actions as they have in follow-on actions, namely the choice to begin proceedings either in the Tribunal or in the High Court as they see fit.

Since the consultation exercise was announced in March 2011, the Registrar and I have participated in numerous meetings and exchanges of views with BIS and other interested parties, and have contributed to a number of discussion papers. This process is still very much in train. The Registrar will be responding formally during the course of the consultation.

### Appeals under Communications Act 2003

In addition to the above, in September 2010 BIS initiated a consultation on implementing changes to the EU Electronic Communications Framework, raising issues as to the nature of the right of appeal under the Communications Act 2003. The Registrar responded formally to this consultation.

### New functions

In the past year the Tribunal has been given an appeal function in respect of decisions taken by the Gas and Electricity Markets Authority pursuant to the Energy Act 2010 in respect of a "market power licence condition" aimed at particular types of exploitative behaviour in electricity markets.

Further, the Postal Services Act 2011 provides for an appeal to the Tribunal in respect of certain decisions taken by OFCOM in relation to the regulation of postal services.

### Other activities

It is part of the role of the Tribunal to assist in familiarising judges, lawyers and others with the content of competition law and procedure and also to inform interested parties outside the UK of the Tribunal's functions. In the period under review I have had the opportunity to address a number of conferences and seminars organised by distinguished academic and professional bodies. These included speeches at the Blackstone Chambers Regulation Conference and the Global Competition Review (GCR) Anti-Trust Litigation Conference. More recently, I spoke at a seminar on the reform of the competition regime at All Souls College, Oxford, and I presented a paper on reform of the preliminary ruling system at a meeting in the course of the first official visit by members of the Court of Justice of the European Union to the United Kingdom. I also participated in the 2010 International Federation for European Law Congress in Madrid.

As before, speaking activities have also been undertaken by others in the Tribunal. Amongst her engagements both in this country and abroad, Vivien Rose, one of our Chairmen, spoke at a conference on "Public and Private Enforcement of Competition Law" organised by the Mannheim Competition Policy Forum, at a training workshop for



# PRESIDENT'S STATEMENT

Caricom Competition Commissioners and Judges of the Caribbean Court of Justice, and at the Jevons Institute "Round Table" on institutional reform. David Bailey and George Lusty, two of the Tribunal's *Référendaires*, spoke at the Fifth Junior Competition Practitioners Conference, which was hosted by the Tribunal in December 2010. David and George also addressed a number of students from the College of Law, Moorgate, on the UK competition law regime, and David has addressed other competition law seminars, including the Regional Centre for Competition in Budapest organised by the Organisation for Economic Co-operation and Development and the Hungarian Competition Authority. The Registrar, together with David Bailey, spoke on the subject of specialist courts at a conference organised by the College of Europe Global Competition Law Centre in Brussels.

The Tribunal continues to act as the Secretariat for the Association of European Competition Law Judges (AECLJ) and, in collaboration with our colleagues in the Greek judiciary, organised the Annual Conference of the AECLJ in Athens during May 2010 on the subject of cartels. It is difficult to exaggerate the unique and important role played by the AECLJ in enabling members of the judiciary throughout Europe who specialise in competition law and related areas to come together to learn and share experience. No other body fulfills this function.

## Visitors to the Tribunal

As last year, the Tribunal has once more had the privilege of hosting several visits by foreign judges, lawyers and competition enforcement officials. Amongst those whom we have been able to welcome to the Tribunal were: Her Excellency Marija Efremova, the Ambassador of the Republic of Macedonia in London; Professor Dr Yoshio Ohara, Toh Han Li of the Singapore Competition Commission; Donald Baker of Baker & Miller; and a group of law students from City University.

## User group

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

## Concluding remarks

Finally I would like to express – as ever – my sincere thanks and appreciation for the hard work and dedication of the Registrar and all the Tribunal's staff, who over the past year have coped cheerfully and skillfully with an unprecedented series of challenges. Many of these have required our staff to multi-task as well as working for long hours and at unsociable times, to enable the Tribunal to discharge its responsibilities. The Tribunal could simply not function without their skill and commitment.

### Sir Gerald Barling

President

Competition Appeal Tribunal

6 July 2011



## PRESIDENT'S STATEMENT

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

### **Competition Act 1998**

#### *Appeals against the Construction decision (Kier Group Plc & Others v Office of Fair Trading)*

Between March and April 2011, the Tribunal handed down nine judgments disposing of the 25 appeals against the OFT's Construction decision. Of these, six liability appeals were disposed of by the Tribunal in separate judgments, but the Tribunal handed down composite judgments in respect of the 19 penalty-only appeals. In each case (save in those cases where the appeal on liability was successful) the Tribunal substantially reduced the penalties imposed by the OFT in the decision.

#### *Eden Brown Limited & Others v Office of Fair Trading*

Immediately following the hearing of the multiple appeals against the OFT's Construction decision, the Tribunal, chaired by Mr Justice Roth, heard a further three appeals against the OFT's Construction Recruitment Forum decision. Each of the appellants challenged common elements of the OFT's penalty calculation, in particular the measure of turnover used as the starting point for determining the penalty and, as in the Construction appeals, the application of a "Minimum Deterrence Threshold". In its composite judgment handed down in early April 2011, immediately after the period under review, the Tribunal allowed the appeals in part and reduced the penalties imposed by the OFT.

### **Communications Act 2003**

#### *British Telecommunications Plc v Office of Communications (Partial Private Circuits)*

In March 2011 the Tribunal rejected an appeal by BT against OFCOM's determination of a dispute between BT and certain communications providers in respect of BT's charges for partial private circuits. The Tribunal concluded that OFCOM had correctly used the dispute resolution process in sections 185 to 191 of the Communications Act 2003 in this case and had applied the cost orientation obligation (imposed on BT in 2004) in accordance with its true construction.

#### *British Telecommunications Plc v Office of Communications (Termination Charge: 080 calls)*

The Tribunal handed down its judgment in July 2010 in relation to a preliminary issue arising out of BT's appeal against OFCOM's determination of a dispute relating to BT's termination charges for 080 calls. The Tribunal rejected an application by OFCOM to exclude certain of the evidence relied upon by BT in support of its notice of appeal. In March 2011, the Court of Appeal upheld the Tribunal's judgment. The main hearing in these and other related proceedings took place in April 2011, after the period under review, and judgment is pending.

#### *Telefónica O2 UK Limited v Office of Communications (900 MHz Band)*

In October 2010, the Tribunal dismissed, by a majority, O2's appeal against OFCOM's failure to grant its application for a variation of its licence so as to allow it to use Universal Mobile Telecommunications System ("UMTS") technology in the 900 and 1800 MHz frequency bands. This was only the third occasion on which a Tribunal member has dissented from the conclusions of the majority. An appeal to the Court of Appeal was subsequently withdrawn.

#### *British Sky Broadcasting Limited v Office of Communications (Interim Relief)*

Over several days in April 2010 the Tribunal heard an application for interim relief by British Sky Broadcasting Limited (Sky) in connection with OFCOM's Pay TV Statement which, inter alia, requires Sky to wholesale its premium sports channels to retail competitors at regulated prices. An agreed order for interim relief was made at the conclusion of the hearing, suspending the effect of OFCOM's decision save as agreed between Sky, OFCOM, British Telecommunications Plc, Virgin Media, Inc. and Top-Up TV Europe Limited. In November 2010, the Tribunal granted an application by Real Digital EPG Services Limited to vary the interim relief order so as to include that company within the scope of it. As already noted, the main hearing in connection with the four separate appeals against the Pay TV statement is due to begin in May this year and to continue until mid-July.

# PRESIDENT'S STATEMENT

## Enterprise Act 2002

### *Stagecoach Group Plc v Competition Commission*

In May 2010 the Tribunal upheld, in part, an application by Stagecoach for review of the Competition Commission's report on the Stagecoach/Preston Bus merger, finding that the Competition Commission had not taken a consistent approach to choosing the appropriate counterfactual, and that it had not clearly explained the principles on which it based its approach in that regard.

### Claims for damages

#### *Emerson Electric Co & Others v Morgan Crucible Company Plc & Others*

In March this year the Tribunal granted an application by Mersen UK Portslade Limited to strike out certain follow-on damages claims against that company on the ground that there was no infringement decision against it within the meaning of section 47A of the Competition Act 1998. The claims against the other defendants continue before the Tribunal.

#### *Albion Water Limited v Dŵr Cymru Cyfyngedig*

In December 2010 the Tribunal handed down a judgment on an application by the Defendant to strike out parts of the claim brought by Albion Water against Dŵr Cymru arising from the Tribunal's earlier judgments under the Competition Act 1998 in *Albion Water Ltd v Water Services Regulatory Authority*. Albion Water subsequently applied for and was granted, permission to amend its claim form.

The Court of Appeal has also given a number of judgments in the field of damages actions over the past year on appeal from the Tribunal:

#### *BCL Old Co Ltd & Others v BASF SE & Others / Grampian Country Food Group Ltd & Others v Sanofi-Aventis SA & Others*

In November 2010, the Court of Appeal handed down a judgment on the power of the Tribunal to extend the deadline for bringing damages actions under section 47A of the Competition Act 1998. The Court upheld the Tribunal's decision to refuse an extension of time and to dismiss the claims for damages brought by BCL and others against BASF. The Court stated that the Tribunal does not have the power to extend the time for bringing monetary claims. The case is now on appeal to the Supreme Court.

#### *Enron Coal Services Limited v English Welsh & Scottish Railway Limited*

In January 2011 the Court of Appeal dismissed an appeal by Enron against the Tribunal's decision holding that Enron had failed to establish that English Welsh & Scottish Railway's unlawful conduct had caused the loss Enron claimed. The judgment of the Court of Appeal provides guidance on the approach to be adopted by the Tribunal under section 58 of the Competition Act 1998, which provides that OFT findings of fact made in respect of infringements of competition law are binding on parties in subsequent litigation. The Court also pointed to the anomaly in the Tribunal's damages jurisdiction that "the specialist tribunal is entrusted with the decision as to infringement or no on an appeal from a regulator, but is not allowed to touch that question in a claim for damages" (Lloyd LJ at paragraph 143).



# REGISTRAR'S STATEMENT



## The Competition Service (CS)

The CS is the body that supports the Tribunal: its functions and responsibilities are more fully described in the Introduction to this Review. The President of the Tribunal (Sir Gerald Barling), Janet Rubin and I formally constitute the membership of the CS, which meets four times a year and is supported by Jeremy Straker, the CS's Director, Operations, who acts as secretary to the meetings.

## Resources

The running costs of the CS and Tribunal for 2010/11 were £4.19m, which is similar to those of 2008/09 but more than in 2009/10. The reason for this increase is the steep rise in accommodation related costs, notably the building service charge, rates and two VAT increases. These increases were, to some extent, offset by savings on staff payroll, case variable costs, training, consultancy and recruitment. In accordance with government austerity measures no consultants were used in the year and no recruitment was undertaken post the new government guidelines. In addition, staff pay was frozen, as it will be again in 2011/12. The final outturn was £176,000 under budget.

We, of course, continue to seek ways of making savings wherever we can without jeopardising the efficient working of the organisation, but we are ever mindful of the fact that our working practices are dictated by the specialised judicial functions of the Tribunal and the particular demands of hearing complex competition and economic regulatory cases and we have no control over the receipt of new cases.

During the year a water leak from Sport England's premises on the floor above the Tribunal's premises caused significant damage to court 2 and surrounding areas. The damaged areas were out of action for several months whilst drying out and restoration work took place. We are in discussions with Sport England as to how the cost of restoration should be met. Needless to say this placed yet another strain on our budget for the year.

## Public Bodies Bill

During 2010 the CS and the Tribunal were both listed in the government's Public Bodies Bill, which aimed to give Ministers the power to abolish, merge or modify a number of public bodies listed in the various schedules to the Bill. The CS and the Tribunal were mentioned in different schedules of the Bill. During the passage of the Bill through Parliament reference to the Tribunal and a number of other Tribunals was dropped but the CS remained. In this context, ministers asked that a working group be set up

to investigate whether the CS should be abolished and its functions taken over by the Tribunal Service (TS). The working group comprised representatives of the CS, the TS, HM Treasury and our sponsoring department BIS. The group's conclusion was that since the Tribunal and the CS are effectively a single organisation, no significant savings were likely to be made at the present time. That conclusion, combined with the fact that transfer of the CS's functions could cause complications with regard to the Tribunal's functions in respect of Scotland and Northern Ireland, and that there are uncertainties surrounding the future shape of the UK's competition regime, led the group to recommend that the proposal for abolition of the CS should not be taken further.

Following working group discussions and in order to achieve a greater degree of utilisation of our courtrooms, we have agreed that, in order to make maximum use of our facilities, the TS can have access to our courtroom 2 on a cost free basis as often as they wish assuming that the room is not in use for any Tribunal cases.

## Members

The Ordinary Members who have been with us from the beginning of the Tribunal have now come to the end of their terms of office and will be leaving when the cases they are working on are concluded. Like the President, I would like to record my heartfelt thanks and appreciation for the hard work and dedication of the retiring members. Their efforts have contributed significantly to the success and high standing of the Tribunal. They will be missed very much by me and the staff since we have all enjoyed working with them.

It has of course been necessary to find new members to replace those leaving and during the year, BIS ran a recruitment exercise aimed at finding a modest number of highly skilled and experienced people who would be able to carry on the work of the original cadre of members. I am glad to say that this aim has been realised and 14 new members were appointed to the Tribunal in January. A programme of training is underway and some of the new recruits have already been allocated cases. I look forward to working closely with our new colleagues over the next few years.

# REGISTRAR'S STATEMENT

## Staff

Staff turnover this year has been very low: in fact only one member of staff, Sophie Jenkins, HR and Events Officer, left us. However, in such a small organisation even that constitutes a significant percentage change. Sophie has taken up an HR post in a leading British firm in the film world and we wish her well for the future. In the interests of maximising savings wherever we can, we have managed to rearrange responsibilities so that all functions are still covered. The only other staff change during the year was the return, on a part time basis, of Julie Hamilton, Operations Manager, from maternity leave.

The team that continues in place being around 13 people is extremely small, and the necessity for multi-tasking is a daily concern. Moreover, when we are particularly busy, with hearings running in both courtrooms, everyone has to lend a hand regardless of their usual responsibilities or role. We are very lucky in that our members of staff are always willing to step up for any task that needs doing without question. If we did not have this flexibility we would not be able to function effectively. Furthermore, they generally understand that our work requires a high level of accuracy and strive, on a daily basis, to ensure that things are done properly with a high degree of attention to the smallest details.

Once again, the staff absence rate (at about two days per person per year) is far below the average for both the private and public sectors and we gratefully take this as an indicator of the dedication shown by all the staff in the performance of their duties.

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

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

## Information Technology

In accordance with central government requirements, further work has continued this year on implementing Cabinet Office best practice with regard to data security.

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

Regular risk assessment and data handling returns to BIS have also been completed. These returns have provided a high degree of assurance that sufficient processes and systems are in place to ensure that the Tribunal and the CS are able to handle security and information assurance effectively.

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

## Pensions

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

## The CS Audit Committee

The CS Audit Committee meets four times a year under the chairmanship of Janet Rubin, who has held various non-executive director roles in other organisations including having chaired remuneration committees and been a member of several audit committees. The other members of the Audit Committee are: Peter Clayton, who is a Tribunal member as well as being a Chartered Accountant with extensive experience of operating with audit committees of major FTSE 100 companies; and David Summers, also a Tribunal member, who has many years experience of being a board member of several public limited companies. Both Peter and David will be leaving the Tribunal in due course and as a consequence will no longer be members of the Audit Committee. I would like to thank them very much for their professional skill, wise counsel and enthusiastic engagement as Committee members.



# REGISTRAR'S STATEMENT

## Format of accounts

The accounts for the Tribunal and for the CS have been prepared in accordance with the 2010-11 Government Financial Reporting Manual (FReM) and the separate Accounts Directions for the Tribunal and the CS given by the Secretary of State with the consent of the Treasury in accordance with Schedule 3 of the Enterprise Act 2002.

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

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

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

## Auditors

The financial statements of the Tribunal and the CS are audited under Schedule 3 paragraph 12(4) of the Enterprise Act 2002 by the Comptroller and Auditor General. The cost of the external statutory audit was £6,000 for the Tribunal (2009/10: £5,500) and £19,000 for the CS (2009/10: £21,500).

In 2010/11 BIS's Internal Audit Directorate continued to provide internal audit services to the CS. The cost of providing this function was £7,491 (2009/10: £7,990).

## Charitable donations

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

## Payment of creditors

The CS aims to pay all supplier invoices by the due date or within ten working days of receipt if no due date has been agreed. This accords with government guidelines aimed at assisting suppliers with their cashflow. Throughout the year the average payment period was 15 days (2009/10: 11 days) and 99 per cent of (undisputed) invoices were settled within 30 days (2009/10: 99 per cent).

## Disclosure of relevant audit information

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

**Charles Dhanowa OBE**

Registrar and Accounting Officer

Competition Service

6 July 2011



## President

### The Honourable Mr Justice Barling

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

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

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

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

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



Vivien Rose, Lord Carile QC, Marcus Smith QC and the President

## Chairmen

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

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



# MEMBERSHIP

## Chairmen

### Lord Carlile QC

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

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

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

### Vivien Rose

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

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

### Marcus Smith QC

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

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



## Ordinary Members

### William Allan

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

### Professor Andrew Bain OBE

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

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

### Professor John Beath

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

### Michael Blair QC

Michael Blair is a practising barrister with chambers in 3 Verulam Buildings, Gray's Inn, specialising in financial services and financial regulation. He has been in independent practice since 2000. He is also a member of the Board of the Dubai Financial Services Authority and a chairman of the Disciplinary Tribunal for the Bar of England and Wales. He was until 2009 the Chairman of SWX Europe Ltd, the London exchange where the major Swiss equities were traded, and was the Treasurer of his Inn of Court, the Middle Temple, in 2008. Until 2000 he was General Counsel to the Financial Services Authority.

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

### Peter Clayton

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

### Timothy Cowen

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



William Allan



Professor Andrew Bain OBE



Professor John Beath



Michael Blair QC



Peter Clayton



Timothy Cowen



## MEMBERSHIP

### **Margot Daly**

Margot Daly has extensive experience in digital music, digital media and distribution, rights management, intellectual property and copyright, with a heavy emphasis on new technology. She has held CEO and COO positions in both FTSE and privately held companies. She was President of the European Digital Media Association and has roots in international business and youth development. She was formerly President of AIESEC U.S., is an affiliate member of Institute of Legal Executives and is a qualified CEDR dispute resolution mediator.

### **Michael Davey**

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

### **Dr Clive Elphick**

Clive Elphick is a non-executive director of the Northern Ireland Authority for Utility Regulation and of the Northwest Regional Development Agency, and an advisor to an economics consultancy (CEPA). His former roles include being a managing director at United Utilities Group Plc, Chairman of the CBI for the North West of England and a non-executive director of a department of state. He is also a trustee of the Lancashire Wildlife Trust.

### **Dermot Glynn**

Dermot Glynn is Chairman of Europe Economics. He read PPE at Balliol and then taught economics and business studies. He was a member of the Department of Applied Economics at Cambridge, Economic Director of the CBI, Chief Economist at KPMG and UK Managing Director of NERA before founding the economics consultancy Europe Economics in 1998.

### **Peter Grant-Hutchison**

Peter Grant-Hutchison is a Scottish advocate specialising in employment law. He also holds appointments as a part-time sheriff, immigration judge, Mental Health Tribunal convenor and Social Security Appeal Tribunal chairman. He retired from the membership of the Tribunal on 31 March 2011.

### **Professor Peter Grinyer**

Peter Grinyer is Emeritus Professor at the University of St Andrews where he was Esmee Fairbairn Professor of Economics, founded the School of Management, and was in the 1980s Vice-Principal and, in 1985, Acting Principal. Prior to St Andrews he held the FME chair in business strategy at City University.

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

### **Stephen Harrison**

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



**Margot Daly**



**Michael Davey**



**Dr Clive Elphick**



**Dermot Glynn**



**Peter Grant-Hutchison**



**Professor Peter Grinyer**



**Stephen Harrison**

# MEMBERSHIP

## Sheila Hewitt JP

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

## Ann Kelly

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

## Brian Landers

Brian Landers has served on the boards of various companies in the UK and overseas including Habitat, Waterstone's and Penguin Books, and was Finance Director of HM Prison Service. He was also Chief Internal Auditor of Sainsbury's and Deputy Chairman of the Financial Ombudsman Service. He is currently an audit commissioner and Treasurer of the UK section of Amnesty International and has an MBA from the London Business School.

## The Honourable Antony Lewis

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

## Graham Mather

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

## Jonathan May

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

## Professor Colin Mayer

Colin Mayer is the Peter Moores Dean of the Saïd Business School at the University of Oxford. He is the Peter Moores Professor of Finance in the Saïd Business School, a professorial fellow of St Edmund Hall, Oxford, an honorary fellow of St Anne's College, Oxford, and an honorary fellow of Oriel College, Oxford. He has published widely on corporate accounting, finance, governance, regulation and taxation.



Sheila Hewitt JP



Ann Kelly



Brian Landers



The Honourable  
Antony Lewis



Graham Mather



Jonathan May



Professor Colin Mayer



## MEMBERSHIP

### **Professor John Pickering**

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

### **Clare Potter**

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

### **Richard Prosser OBE**

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

### **Dr Arthur Pryor CB**

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

### **Professor Gavin Reid**

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

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

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

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

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



**Professor John Pickering**



**Clare Potter**



**Richard Prosser OBE**



**Dr Arthur Pryor CB**



**Professor Gavin Reid**



**Dr Adam Scott OBE TD**



**Dr Vindelyn Smith-Hillman**

## Professor Paul Stoneman

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

## Joanne Stuart

Joanne Stuart is a director of Attrus Limited, which provides IT consultancy services and serves on the board of the Northern Ireland Science Park. From May 2008 to May 2011, she served as Chairman of the Institute of Directors, Northern Ireland Division. She was appointed the Independent Chair of the Northern Ireland Review of Variable Fees and Student Finance Arrangements delivering her final recommendations in February 2011. She has recently been appointed as the NI Champion for STEM (Science, Technology, Engineering and Mathematics) and chairs the government and business steering group tasked with driving forward the NI STEM strategy. She holds a number of other voluntary positions.

## David Summers OBE JP

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

## Professor Stephen Wilks

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

## Competition Service: Appointed Member

### Janet Rubin

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

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

She is currently setting up her own executive coaching business as well as carrying out HR consultancy work.



Professor Paul Stoneman



Joanne Stuart



David Summers  
OBE JP



Professor Stephen Wilks



Janet Rubin







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## CASES

Judgments handed down within the period 1 April 2010 to 31 March 2011	24
Activity by case within the period 1 April 2010 to 31 March 2011	34
Overall case activity within the period 1 April 2010 to 31 March 2011	43



## JUDGMENTS

Judgments handed down within the period 1 April 2010 to 31 March 2011

JUDGMENT	SUBJECT MATTER
<p><b>1. (1) Durkan Holdings Limited (2) Durkan Limited (3) Concentra Limited (formerly known as Durkan Pudelek Limited) v Office of Fair Trading</b></p> <p><b>[2010] CAT 12</b></p> <p><b>28 Apr 2010</b></p> <p>Tribunal: Vivien Rose Michael Blair QC Professor John Pickering</p>	<p>Ruling of the Chairman on an application for disclosure by the OFT. The documents sought by the OFT were said to be relevant to the issue of whether Durkan Holdings Ltd ("Durkan Holdings") exercised decisive influence over Durkan Pudelek Ltd ("Durkan Pudelek") at the time of the infringements which it was admitted were committed by Durkan Pudelek.</p> <p>The Chairman considered that the presumption against allowing the OFT to rely on new evidence was rebutted in the circumstances. There would have been a significant lack of fairness and balance in the appeal process if Durkan Holdings was allowed to rely on certain board minutes, without the OFT having had an opportunity to see whether there was anything in the disputed board minutes that pointed in the opposite direction. The Chairman also considered that the OFT should be entitled to see the other documents sought.</p>
<p><b>2. (1) Durkan Holdings Limited (2) Durkan Limited (3) Concentra Limited (formerly known as Durkan Pudelek Limited) v Office of Fair Trading</b></p> <p><b>[2010] CAT 13</b></p> <p><b>6 May 2010</b></p> <p>Tribunal: Vivien Rose Michael Blair QC Professor John Pickering</p>	<p>Ruling of the Chairman on an application by the OFT for costs and an application by Durkan for an extension of time for requesting permission to appeal under rule 58(1)(b) of the Tribunal Rules of Procedure, following handing down of the Chairman's ruling on disclosure ([2010] CAT 12).</p> <p>The Chairman directed that each party bear its own costs of the application for disclosure and that Durkan's request for an extension of time be refused.</p>
<p><b>3. Stagecoach Group Plc v Competition Commission</b></p> <p><b>[2010] CAT 14</b></p> <p><b>21 May 2010</b></p> <p>Tribunal: Vivien Rose Professor Andrew Bain OBE Michael Blair QC</p>	<p>Judgment of the Tribunal on an application by Stagecoach for a review under section 120(1) of the Enterprise Act 2002 ("EA 2002") of a decision of the Competition Commission ("CC") contained in a report entitled "Stagecoach Group Plc/Preston Bus Limited Merger Inquiry" dated 11 November 2009 ("the Decision"). In the Decision, the CC found that Stagecoach's acquisition of Preston Bus Limited ("PBL") led to a substantial lessening of competition ("SLC") in the market for commercial bus services in the Preston area. The CC concluded that only a divestiture of a reconfigured PBL business would be an effective remedy for the SLC it had found.</p> <p>Stagecoach applied to the Tribunal for a review of the Decision, relying on four grounds of challenge: (i) that the CC had misdirected itself as to the correct legal approach to apply pursuant to its duty under section 35 of the EA 2002; (ii) that the CC made a number of highly material findings of fact which were unsupported by the evidence; (iii) that the CC acted in a procedurally unfair manner; and (iv) that the CC imposed a disproportionate remedy.</p> <p>On the first ground, the Tribunal concluded that the CC had applied the correct legal test when choosing the counterfactual, namely what could have been expected to happen to PBL and Stagecoach's bus operations in the absence of a merger between them. The Tribunal held that, in accordance with its statutory duties, the CC considered whether the merger had led to an SLC.</p> <p>In relation to the second ground, the Tribunal concluded that the CC had not acted rationally in its choice of counterfactual and, in particular, the Decision did not clearly explain why the CC had decided to base the counterfactual on an assumption that Stagecoach had not launched services on the Preston intra-urban routes in June 2007, thereby disregarding what actually happened in the relevant market prior to the merger. The Tribunal unanimously concluded that the second ground of Stagecoach's application</p>



JUDGMENT	SUBJECT MATTER
	<p>succeeded to the extent and on the basis set out in the judgment.</p> <p>The Tribunal found that it was not necessary to come to a conclusion on the third ground.</p> <p>On the fourth ground, the proportionality of the remedy, the Tribunal concluded that the challenge on that ground succeeded to the extent that followed on from the success of the second ground. The Tribunal indicated that it would hear further submissions from the parties on the form of an appropriate order.</p>
<p><b>4. British Telecommunications Plc v Office of Communications (Partial Private Circuits)</b></p> <p><b>[2010] CAT 15</b></p> <p><b>11 Jun 2010</b></p> <p>Tribunal:            Marcus Smith QC            Professor Peter Grinyer            Richard Prosser OBE</p>	<p>Judgment of the Tribunal on the preliminary issues arising in this appeal, as defined in the Order of the Tribunal dated 11 February 2010.</p> <p>On the first preliminary issue, the Tribunal concluded that, on the proper interpretation of the Communications Act 2003 ("CA 2003") and the Tribunal (Amendment and Communications Act Appeals) Rules 2004, BT's appeal did not raise any specified "price control matters" within the meaning of section 193 of the CA 2003 and rule 3 of the 2004 Rules.</p> <p>On the second preliminary issue, the Tribunal held that, on the proper interpretation of the CA 2003, the dispute resolution process provided for in sections 185 to 192 of the CA 2003 drew no distinction between current or prospective issues and historical issues.</p>
<p><b>5. Virgin Media, Inc. v Office of Communications</b></p> <p><b>The Football Association Premier League Limited v Office of Communications</b></p> <p><b>British Sky Broadcasting Limited v Office of Communications</b></p> <p><b>British Telecommunications Plc v Office of Communications</b></p> <p><b>[2010] CAT 16</b></p> <p><b>25 Jun 2010</b></p> <p>Tribunal:            The President            Professor John Beath            Michael Blair QC</p>	<p>Ruling of the President on certain requests for permission to intervene; the scope of the undertaking which BT's in-house lawyers should provide as a pre-condition of their membership of the proposed confidentiality ring and a request by The Football Association Premier League for permission to appeal.</p>
<p><b>6. British Telecommunications Plc v Office of Communications (Termination Charges: 080 calls)</b></p> <p><b>[2010] CAT 17</b></p> <p><b>8 Jul 2010</b></p> <p>Tribunal:            Marcus Smith QC            Peter Clayton            Professor Paul Stoneman</p>	<p>Judgment of the Tribunal on a deemed application by OFCOM and some of the interveners to exclude certain of the evidence relied upon by BT in support of its notice of appeal.</p> <p>The Tribunal rejected the application to exclude the evidence and held that the Communications Act 2003 ("CA 2003") did not contain limits of the sort contended for by OFCOM. The Tribunal decided that, nevertheless, the test of "exceptional circumstances" was met on the facts of this case, which entitled BT to adduce new evidence.</p> <p>The Tribunal also rejected the submission that appeals under section 195 of the CA 2003 constituted de novo hearings; it held that the Tribunal's role was not to make a fresh determination, but to indicate to OFCOM what (if any) was the appropriate action for OFCOM to take and then remit the matter back to OFCOM.</p>



# JUDGMENTS

Judgments handed down within the period 1 April 2010 to 31 March 2011

JUDGMENT	SUBJECT MATTER
<p><b>7. British Telecommunications Plc v Office Of Communications (Partial Private Circuits)</b>  <b>[2010] CAT 18</b>  <b>9 Jul 2010</b></p> <p>Tribunal:          Marcus Smith QC          Professor Peter Grinyer          Richard Prosser OBE</p>	<p>Ruling of the Chairman granting an application by BT for an extension of time in which to bring an appeal against the Tribunal's judgment ([2010] CAT 15) on the preliminary issues.</p>
<p><b>8. British Telecommunications Plc v Office Of Communications (Termination Charges: 080 calls)</b>  <b>[2010] CAT 19</b>  <b>23 Jul 2010</b></p> <p>Tribunal:          Marcus Smith QC          Peter Clayton          Professor Paul Stoneman</p>	<p>Ruling of the Chairman rejecting an application by OFCOM for a stay of the proceedings.</p>
<p><b>9. Stagecoach Group Plc v Competition Commission</b>  <b>[2010] CAT 20</b>  <b>3 Aug 2010</b></p> <p>Tribunal:          Vivien Rose          Professor Andrew Bain OBE          Michael Blair QC</p>	<p>Ruling of the Tribunal on a costs application by Stagecoach.</p> <p>As regards the Competition Commission's ("CC") unsuccessful strike out application, the Tribunal concluded that Stagecoach was entitled to its costs of that application.</p> <p>As regards the costs of the main hearing, the Tribunal concluded that the CC should pay Stagecoach the sum of £200,000 in respect of its costs. The Tribunal concluded that such an award served the justice of the case by requiring that Stagecoach, the party who successfully challenged the Decision, received its costs less a material discount in respect of unsuccessful grounds deployed in its notice of application.</p>
<p><b>10. (1) Asda Stores Limited (2) Asda Group Limited (3) Wal-Mart Stores (UK) Limited (4) Broadstreet Great Wilson Europe Limited v Office of Fair Trading</b>  <b>[2010] CAT 21</b>  <b>6 Sep 2010</b></p> <p>Tribunal:          Vivien Rose          Dr Adam Scott OBE TD          David Summers OBE JP</p>	<p>Ruling of the Chairman dismissing an application by the appellants to amend their notices of appeal.</p>
<p><b>11. British Telecommunications Plc v Office Of Communications (Termination Charges: 080 calls)</b>  <b>[2010] CAT 22</b>  <b>9 Sep 2010</b></p> <p>Tribunal:          Marcus Smith QC          Peter Clayton          Professor Paul Stoneman</p>	<p>Ruling of the Tribunal dismissing an application by OFCOM for permission to appeal the Tribunal's judgment of 8 July 2010 ([2010] CAT 17).</p>

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<p><b>12. Cable &amp; Wireless UK v Office of Communications (Leased Lines Charge Control)</b></p> <p><b>[2010] CAT 23</b></p> <p><b>20 Sep 2010</b></p> <p>Tribunal: Vivien Rose The Honourable Antony Lewis Dr Arthur Pryor CB</p>	<p>Ruling of the Tribunal disposing of the appeal. On 30 June 2010, the Competition Commission ("CC") notified the Tribunal of its determination of the questions that had been referred to it by the Tribunal. The CC rejected many of the challenges raised by the Appellant but found that some of the challenges to the Leased Line Charge Control ("LLCC") Statement were well founded.</p> <p>As no aspects of the CC's determination fell to be set aside on the application of judicial review principles, the Tribunal upheld those grounds of the Appellant's appeal which were encapsulated in reference questions 2(aa), 3(c), 4(a)(i), 4(a)(iii) and 4(b)(i) to the extent set out in the determination, and dismissed the other grounds of appeal. The Tribunal accordingly remitted the LLCC Statement to OFCOM pursuant to section 195(4) of the Communications Act 2003 with the directions set out in the annex to the Ruling.</p>
<p><b>13. (1) Imperial Tobacco Group Plc (2) Imperial Tobacco Limited v Office of Fair Trading</b></p> <p><b>Co-operative Group Limited v Office of Fair Trading</b></p> <p><b>Wm Morrison Supermarkets Plc v Office of Fair Trading</b></p> <p><b>(1) Safeway Stores Limited (2) Safeway Limited v Office of Fair Trading</b></p> <p><b>(1) Asda Stores Limited (2) Asda Group Limited (3) Wal-Mart Stores (UK) Limited (4) Broadstreet Great Wilson Europe Limited v Office of Fair Trading</b></p> <p><b>(1) Shell U.K. Limited (2) Shell U.K. Oil Products Limited (3) Shell Holdings (U.K.) Limited v Office of Fair Trading</b></p> <p><b>[2010] CAT 24</b></p> <p><b>30 Sep 2010</b></p> <p>Tribunal: Vivien Rose Dr Adam Scott OBE TD David Summers OBE JP</p>	<p>Ruling of the Chairman in relation to an application by Sainsbury's to intervene in each of the six appeals (Cases 1160/1/1/10 to 1165/1/1/10) lodged against the OFT's Decision of 15 April 2010 in respect of retail pricing practices relating to the sale of tobacco products.</p> <p>For the reasons set out in the Ruling, Sainsbury's was granted limited permission to intervene in the appeals in order: (i) to protect Sainsbury's' position as regards any future application for reimbursement of the costs it may incur during the course of the appeals; and (ii) in respect of any disputes as to the admissibility of documents in which Sainsbury's claims privilege or confidentiality. The Chairman rejected any wider intervention by Sainsbury's in the appeals.</p>
<p><b>14. Telefónica O2 UK Limited v Office of Communications (900 MHz Band)</b></p> <p><b>[2010] CAT 25</b></p> <p><b>7 Oct 2010</b></p> <p>Tribunal: The Honourable Mr Justice Vos Ann Kelly Professor John Pickering</p>	<p>Judgment of the Tribunal on an appeal by Telefónica O2 against OFCOM's failure to grant its application for a variation of its licence so as to allow it to use Universal Mobile Telecommunications System ("UMTS") technology in the 900 MHz and 1800 MHz frequency bands.</p> <p>Telefónica O2 claimed that it had a directly effective right to deploy UMTS in the 900MHz and 1800MHz Bands, to which OFCOM was obliged to give effect, under the Directive 2009/114/EC of 16 September 2009 ("GSM Amendment Directive"), and Commission Decision 2009/766/EC of 16 October 2009 ("900MHz and 1800MHz Decision"). Member States of the EU were required to implement the GSM Amendment Directive by 9 May 2010.</p> <p>The Tribunal concluded by a majority (Mr Justice Vos and Ann Kelly) that the GSM Amendment Directive and the 900/1800 MHz Decision were concerned with the technical harmonisation measures that Member States should have put in place to ensure that, by 9 May 2010, the 900 MHz and 1800 MHz frequency bands were capable of being</p>



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	<p>authorised for use with UMTS technology. The Directives comprising the European common regulatory framework, made clear that a two stage approach had to be adopted: first, the necessary harmonisation across the EU under the GSM Amendment Directive had to take place by 9 May 2010; and secondly, there had to be the implementation of the necessary authorisations and licence amendments under the Authorisation Directive. The majority therefore did not accept that Telefónica O2 already had an inviolable right to use the 900 MHz and 1800 MHz frequency bands with UMTS technology. Telefónica O2's only right was to use the 900/1800 MHz bands for GSM systems.</p> <p>The Tribunal further concluded by a majority that, because of the way in which the GSM Directive had been implemented in the UK, the GSM Amendment Directive and the 900/1800 MHz Decision did not require OFCOM to take any specific steps to implement it prior to 9 May 2010. Telefónica O2, therefore, had no directly enforceable right to require OFCOM to take specific steps to lift the restrictions on its licence before 9 May 2010.</p> <p>Professor John Pickering (dissenting) considered that there was no justification for the interpretation of the GSM Amendment Directive as a two stage procedure. In his view, the full liberalisation of the 900 MHz and 1800 MHz frequency bands for UMTS was mandated by the GSM Amendment Directive. Professor Pickering would have upheld Telefónica O2's appeal and remitted the matter for prompt action by OFCOM.</p>
<p><b>15. The Carphone Warehouse Group Plc v Office of Communications (Local Loop Unbundling)</b>  <b>[2010] CAT 26</b>  <b>11 Oct 2010</b>  Tribunal:  Vivien Rose  The Honourable Antony Lewis  Dr Arthur Pryor CB</p>	<p>Ruling of the Tribunal disposing of the appeal. On 31 August 2010, the Competition Commission ("CC") notified the Tribunal of its determination of the questions that the Tribunal had referred to the CC. The CC rejected some of the challenges raised by Carphone Warehouse ("CPW") but found that some of the challenges to the Local Loop Unbundling ("LLU") decision were well founded.</p> <p>Upon none of the parties seeking to challenge the CC's determination, the Tribunal decided that no aspects of the determination fell to be set aside on the application of judicial review principles. The Tribunal therefore upheld those grounds of CPW's appeal which were encapsulated in reference questions 1(i), 1(v), and 2 to the extent set out in the determination, and dismissed the other grounds of appeal. The Tribunal accordingly remitted the LLU decision to OFCOM pursuant to section 195(4) of the Communications Act 2003 with the directions set out in the annex to the Ruling.</p> <p>CPW applied for permission to amend its notice of appeal, having decided not to pursue its request for an adjustment to the price control to reflect the overpayment for BT services, and the Tribunal granted permission for that amendment under rule 11 of the Tribunal's Rules of Procedure.</p>
<p><b>16. The Carphone Warehouse Group Plc v Office of Communications (Wholesale Line Rental)</b>  <b>[2010] CAT 27</b>  <b>11 Oct 2010</b>  Tribunal:  Vivien Rose  The Honourable Antony Lewis  Dr Arthur Pryor CB</p>	<p>Ruling of the Tribunal disposing of the appeal. On 31 August 2010, the Competition Commission ("CC") notified the Tribunal of its determination of the questions that the Tribunal had referred to the CC. The CC had rejected all the challenges made by CPW and so did not indicate that any changes were necessary to the price controls established by OFCOM.</p> <p>Upon none of the parties seeking to challenge the CC's determination, the Tribunal decided that no aspects of the determination fell to be set aside on the application of judicial review principles. Accordingly, the Tribunal dismissed CPW's challenge to the Wholesale Line Rental decision pursuant to subsections 193(6) and 195(2) of the Communications Act 2003.</p>

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<p><b>17. (1) Imperial Tobacco Group Plc (2) Imperial Tobacco Limited v Office of Fair Trading</b></p> <p><b>Co-operative Group Limited v Office of Fair Trading</b></p> <p><b>Wm Morrison Supermarkets Plc v Office of Fair Trading</b></p> <p><b>(1) Safeway Stores Limited (2) Safeway Limited v Office of Fair Trading</b></p> <p><b>(1) Asda Stores Limited (2) Asda Group Limited (3) Wal-Mart Stores (UK) Limited (4) Broadstreet Great Wilson Europe Limited v Office of Fair Trading</b></p> <p><b>[2010] CAT 28</b></p> <p><b>27 Oct 2010</b></p> <p>Tribunal: Vivien Rose Adam Scott OBE TD David Summers OBE JP</p>	<p>Ruling of the Tribunal on applications by Imperial Tobacco Group, Morrisons, Safeway and Asda for disclosure of documents relating to the OFT's decision not to make a finding of infringement in relation to Tesco's trading arrangements. The documents sought included internal OFT papers and any correspondence between the OFT and Tesco relating to the OFT's decision, in effect, to drop proceedings against Tesco.</p> <p>The Tribunal held that disclosure should not be ordered since the documents sought were irrelevant to the issues before the Tribunal in these appeals. The Tribunal concluded that it was not part of its function to consider why the OFT concluded that it did not have sufficient evidence of an infringing arrangement between Tesco and the tobacco manufacturers.</p>
<p><b>18. British Sky Broadcasting Group Limited v Office of Communications (Interim Relief)</b></p> <p><b>[2010] CAT 29</b></p> <p><b>9 Nov 2010</b></p> <p>Tribunal: The President</p>	<p>Judgment of the President on an application by Real Digital EPG Services Limited ("Real") to vary the President's order for interim relief dated 29 April 2010.</p> <p>On 29 April 2010 the President had ordered that the OFCOM decision (the "Decision") to insert a "wholesale must offer" obligation ("WMO") into Sky's broadcasting licences must be implemented (subject to certain conditions) in relation to BT, Top-Up TV and Virgin, but that the Decision would otherwise be suspended.</p> <p>Real stated that it intended to launch a new digital satellite TV platform in January 2011 and applied for the interim order to be varied so that it could take advantage of the WMO.</p> <p>The President proposed to exercise his discretion to vary the interim order by lifting the suspension of the Decision in respect of Real. The President reached the conclusion that if a test involving the balance of convenience or balance of injustice or balance of interests was applied, in all the circumstances the balance would lie strongly in favour of varying the interim order so as to put Real in the same position mutatis mutandis as the other three companies who had been brought within the exception to the general suspension of the Decision.</p>
<p><b>19. Albion Water Limited v Dŵr Cymru Cyfyngedig</b></p> <p><b>[2010] CAT 30</b></p> <p><b>8 Dec 2010</b></p> <p>Tribunal: Vivien Rose Sheila Hewitt JP Graham Mather</p>	<p>Ruling of the Tribunal on an application by Dŵr Cymru to strike out sections of the particulars of claim lodged by Albion on 18 June 2010. The strike out application related to a claim for compensation/ restitution and a claim for exemplary damages.</p> <p>The Tribunal found that, in respect of compensatory damages arising from alleged loss of profits regarding the supply of water by Albion to Shotton Paper, there were no grounds for Albion to pursue that claim in the context of the proceedings. This was due to the fact that the Tribunal had made no previous finding as to whether the price under the Second Bulk Supply Agreement was an abuse of a dominant position.</p> <p>The Tribunal rejected the application to strike out the claim for damages in respect of supply to Corus Shotton. The Tribunal further rejected Dŵr Cymru's challenge based on the alleged temporal aspect of the infringement.</p>



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	In respect of Dŵr Cymru's application to strike out the claim for exemplary damages, the Tribunal decided that the claim was not prevented by the judgment of Lewison J in <i>Devenish Nutrition v Sanofi-Aventis</i> [2007] EWHC 2394 (Ch).
<p><b>20. Albion Water Limited v Dŵr Cymru Cyfyngedig</b>  <b>[2011] CAT 1</b>  <b>21 Feb 2011</b></p> <p>Tribunal:  Vivien Rose  Sheila Hewitt JP  Graham Mather</p>	<p>Further ruling of the Tribunal on an application by Dŵr Cymru to strike out sections of the particulars of claim lodged by Albion on 18 June 2010. In the absence of agreement by the parties as to the form of order following its earlier ruling (see [2010] CAT 30), the Tribunal ordered that certain paragraphs of Albion's particulars of claim be struck out.</p> <p>The Tribunal also granted an extension of time to Dŵr Cymru to appeal against the Tribunal's decision on exemplary damages and ordered that each side should bear its own costs of Dŵr Cymru's strike out application.</p>
<p><b>21. Wm Morrison Supermarkets Plc v Office of Fair Trading</b>  <b>(1) Safeway Stores Limited (2) Safeway Limited v Office of Fair Trading</b>  <b>[2011] CAT 2</b>  <b>21 Feb 2011</b></p> <p>Tribunal:  Vivien Rose  Dr Adam Scott OBE TD  David Summers OBE JP</p>	<p>Ruling of the Tribunal on an application to order the OFT to disclose a schedule itemising all documents placed on its case file after 24 April 2008 that had not already been disclosed, describing each document and explaining the reasons for non-disclosure.</p> <p>The Tribunal dismissed the application and held that a requirement that the OFT produce a schedule of the many hundreds of documents that it had withheld would be disproportionate and unnecessary.</p>
<p><b>22. (1) Kier Group Plc (2) Kier Regional Limited v Office of Fair Trading</b>  <b>Ballast Nedam N.V. v Office of Fair Trading</b>  <b>Corringway Conclusions Plc (in liquidation) v Office of Fair Trading</b>  <b>(1) Thomas Vale Holdings Limited (2) Thomas Vale Construction Plc v Office of Fair Trading</b>  <b>(1) John Sisk &amp; Son Limited (2) Sicon Limited v Office of Fair Trading</b>  <b>(1) Bowmer and Kirkland Limited (2) B&amp;K Property Services Limited v Office of Fair Trading</b>  <b>[2011] CAT 3</b>  <b>11 Mar 2011</b></p> <p>Tribunal:  The President  Professor Andrew Bain OBE  Peter Clayton</p>	<p>Judgment following six appeals by ten appellants ("the Appellants") against a decision of the OFT dated 21 September 2009 entitled "Bid rigging in the construction industry in England" ("the Decision"). In the Decision the OFT found that, in the period 2000 to 2006, 103 undertakings had each committed between one and three infringements of the prohibition contained in section 2 of the Competition Act 1998, which applies to agreements or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom. The OFT had imposed penalties totalling £129.2m, of which nearly £42m were imposed on the Appellants.</p> <p>The majority of the infringements involved cover pricing, whereby a company that was invited to tender for a construction contract, but did not wish to win the contract, sought a cover price from another company tendering for that contract. The cover price provided was at a level to ensure that the company requesting the cover price did not win the tender, although it was submitted to that company's client as though it was a genuine tender. The principal rationale for cover pricing was to ensure that a company could remain on the client's tender list in circumstances where it was unable or unwilling to carry out the particular project for which the invitation to tender was issued.</p> <p>The Tribunal concluded:</p> <ul style="list-style-type: none"> <li>that the final penalties imposed by the OFT on each of the Appellants for "simple" cover pricing were excessive;</li> <li>that for such infringements the figure of 5 per cent of turnover in the relevant market, adopted by the OFT as its starting point at step 1 of its guidance as to the appropriate amount of a penalty was too high;</li> <li>that the OFT's interpretation of the guidance as meaning that "relevant turnover" was measured in the undertaking's last business year prior to the Decision was incorrect;</li> </ul>

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	<p>the guidance should be interpreted as referring to the year preceding the date when the infringement came to an end;</p> <ul style="list-style-type: none"> <li>that the minimum deterrent threshold ("MDT"), used by the OFT at Step 3 of the guidance, was by its nature and application such as to give rise to penalties which were excessive and disproportionate.</li> </ul> <p>Accordingly, the Tribunal varied the penalties imposed on the Appellants as follows:</p> <ul style="list-style-type: none"> <li>Kier: the original total penalty of £17,894,438 was varied to £1,700,000.</li> <li>Ballast Nedam: the original total penalty of £8,333,116 was varied to £534,375.</li> <li>Bowmer and Kirkland: the original total penalty of £7,574,736 was varied to £1,524,000.</li> <li>Corringway: the original total penalty of £769,592 was varied to £119,344.</li> <li>Thomas Vale: the original total penalty of £1,020,473 was varied to £171,000.</li> <li>John Sisk: the original total penalty of £6,191,627 was varied to £356,250.</li> </ul>
<p><b>23. (1) Emerson Electric Co (2) Valeo SA (3) Robert Bosch GmbH v (1) Morgan Crucible Company Plc (2) Schunk GmbH (3) Schunk Kohlenstofftechnik GmbH (4) SGL Carbon SE (sued as SGL Carbon AG) (5) Mersen SA (sued as Le Carbone Lorraine SA) (6) Mersen UK Portslade Limited (sued as Le Carbone (Great Britain) Limited)</b></p> <p><b>[2011] CAT 4</b></p> <p><b>21 Mar 2011</b></p> <p>Tribunal: The President Dr Adam Scott OBE TD Dr Vindelyn Smith-Hillman</p>	<p>Judgment of the Tribunal in respect of an application by Mersen UK Portslade Ltd (formerly Le Carbone (Great Britain) Ltd) ("Carbone GB") to dismiss certain claims for damages against it on the ground that the Tribunal lacked jurisdiction, alternatively to strike out the claims pursuant to rule 40 of the Tribunal Rules of Procedure.</p> <p>The Tribunal unanimously held that there was no infringement decision of the European Commission within the meaning of subsection 47A(6)(d) of the Competition Act 1998 on which the claimants could base their claims against Carbone GB. There were therefore no reasonable grounds for making those claims within the meaning of rule 40 and the claims were struck out.</p>
<p><b>24. British Telecommunications Plc v Office of Communications (Partial Private Circuits)</b></p> <p><b>[2011] CAT 5</b></p> <p><b>22 Mar 2011</b></p> <p>Tribunal: Marcus Smith QC Professor Peter Grinyer Richard Prosser OBE</p>	<p>Judgment on an appeal by BT under section 192(2) of the Communications Act 2003 ("CA 2003") against a determination of OFCOM dated 14 October 2009 ("the Determination") resolving disputes between BT and each of Cable &amp; Wireless, Virgin, Global Crossing (UK) Telecommunications, Verizon UK Limited, Colt Technology Services and Thus plc (together, "the Altnets") in relation to BT's charges for partial private circuits ("PPCs"). OFCOM concluded in the Determination that, amongst other matters, BT had overcharged the Altnets by £41.688 million in respect of 2 Mbit/s trunk services purchased by the Altnets from BT in the period 1 April 2005 to 30 September 2008, and that BT should make repayments to the Altnets in the amounts by which they had been overcharged, with interest.</p> <p>BT challenged the Determination on a number of grounds, which can be broadly summarised as follows:</p> <ul style="list-style-type: none"> <li>OFCOM had misused the dispute resolution process contained in sections 185 to 191 of the CA 2003 ("the Dispute Resolution Process") in determining the dispute between the Altnets and BT by way of this process.</li> <li>OFCOM had erred in law in its construction of the cost orientation obligation that was imposed on BT in 2004, alternatively OFCOM was obliged to apply the cost orientation obligation in a manner different from the true construction of this provision because OFCOM had engendered in BT an expectation regarding the manner in which the cost</li> </ul>





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	<p>orientation obligation would be enforced. Either way, BT contended that OFCOM's conclusion that BT had overcharged the Altnets was wrong.</p> <ul style="list-style-type: none"> <li>• OFCOM had misused its powers under section 190(2)(d) of the CA 2003 by ordering that the entire amount of the overcharge should be repaid by BT to the Altnets.</li> </ul> <p>The Tribunal dismissed BT's appeal, concluding in particular that:</p> <ul style="list-style-type: none"> <li>• OFCOM's use of the Dispute Resolution Process was unimpeachable; OFCOM applied the cost orientation obligation in accordance with its true construction, and BT had no right to expect that it would be applied in any other way; and</li> <li>• OFCOM had correctly applied its powers under section 190(2)(d) of the CA 2003 by ordering that the entire amount of BT's overcharge should be repaid by BT to the Altnets.</li> </ul>
<p><b>25. (1) Durkan Holdings Limited (2) Durkan Limited (3) Concentra Limited (formerly known as Durkan Pudelek Limited) v Office of Fair Trading</b></p> <p><b>[2011] CAT 6</b></p> <p><b>22 Mar 2011</b></p> <p><b>Tribunal:</b>  Vivien Rose  Professor John Pickering  Michael Blair QC</p>	<p>Judgment of the Tribunal on an appeal brought by Durkan Holdings Limited, Durkan Limited and Durkan Pudelek Limited (now Concentra Limited) (together "Durkan") against certain aspects of the decision of the OFT entitled "Bid rigging in the construction industry in England" dated 21 September 2009 ("the Decision"). In the Decision the OFT had imposed a total fine of £6,720,551 on Durkan for having infringed the Chapter I prohibition contained in section 2 of the Competition Act 1998 in relation to three tenders (referred to in the Decision as Infringements 135, 220 and 240).</p> <p>Durkan appealed to the Tribunal, relying on three grounds of challenge. First, Durkan Holdings and Durkan Pudelek challenged the OFT's decision to hold them jointly and severally liable for the penalties imposed for Infringements 135 and 240. Secondly, Durkan Limited disputed the OFT's finding that it had supplied an unlawful cover price to another contractor in connection with works commissioned by a local authority ("Infringement 220"). Thirdly, Durkan challenged various aspects of the way in which the fines were calculated.</p> <p>On the first ground, the Tribunal unanimously concluded that the OFT had been right to hold Durkan Holdings liable because it found that at the relevant time Durkan Holdings could and, in fact, did exercise "decisive influence" over Durkan Pudelek.</p> <p>On the second ground, the Tribunal unanimously concluded that the OFT had failed to establish, on the balance of probabilities, that the cover price came from the employee of Durkan Limited named in the Decision.</p> <p>On the third ground, the Tribunal concluded that the OFT had erred in using the last business year prior to the Decision for determining relevant turnover; the correct business year was the one prior to the end of the infringement.</p> <p>The Tribunal dismissed the other challenges to the penalty.</p> <p>Accordingly, the fines for which Durkan Pudelek and Durkan Holdings were jointly and severally liable were varied to £789,000 for Infringement 135 and £1,647,000 for Infringement 240. The fine imposed on Durkan Limited and Durkan Holdings for Infringement 220 was set aside.</p>





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<p>26. (1) GF Tomlinson Building Limited (2) GF Tomlinson Group Limited v Office of Fair Trading</p> <p>(1) Sol Construction Limited (2) Barkbury Limited v Office of Fair Trading</p> <p>(1) Interclass Holdings Limited (2) Interclass PLC v Office of Fair Trading</p> <p>Apollo Property Services Group Limited v Office of Fair Trading</p> <p>Galliford Try PLC v Office of Fair Trading</p> <p>(1) G&amp;J Seddon Limited (2) Seddon Group Limited v Office of Fair Trading</p> <p>[2011] CAT 7</p> <p>24 Mar 2011</p> <p>Tribunal: Vivien Rose Sheila Hewitt Graham Mather</p>	<p>Judgment following six appeals by the ten appellants ("the Appellants") against a decision of the OFT dated 21 September 2009 entitled "Bid rigging in the construction industry in England" ("the Decision"). In the Decision the OFT found that each of the Appellants had engaged in cover pricing contrary to the Chapter I prohibition contained in section 2 of the Competition Act 1998. The OFT imposed penalties totalling £129.2m, of which £15.5m were imposed on the Appellants.</p> <p>The Tribunal accepted some of the challenges to the methodology adopted by the OFT in the Decision. In particular, the Tribunal concluded that the OFT had erred in its interpretation of its penalties guidance as regards the appropriate year for determining "relevant turnover"; the guidance should be interpreted as referring to the year preceding the date when the infringement came to an end. The Tribunal also held that the application of the so-called 'minimum deterrence threshold' by the OFT led to disproportionate and excessive fines. However the Tribunal rejected the criticism that the OFT should not have imposed a separate fine for each infringement.</p> <p>The Tribunal considered a number of challenges based on characteristics of the construction industry which it was alleged the OFT failed to take into account adequately or at all. The Tribunal rejected the challenge to the OFT's product market definition, but accepted that the high turnover and low margin nature of the construction industry was relevant to the calculation of the penalties. The Tribunal also accepted that the OFT had failed adequately to take into account the general mitigation resulting from the perceptions of legitimacy of that practice in the construction industry.</p> <p>The Tribunal rejected all of the challenges alleging that the fines imposed were excessive in comparison with fines imposed either in other fields of law or in other competition cases or on other addressees of the Decision.</p> <p>Having resolved further issues specific to the individual cases, the Tribunal then fixed the penalties imposed on the Appellants as follows:</p> <ul style="list-style-type: none"> <li>• The penalty imposed on Galliford Try was fixed at £465,000 each for Infringements 42, 142 and 186 making a total penalty of £1,395,000.</li> <li>• The penalty imposed on Apollo was fixed at £133,000 each for Infringements 154, 199 and 203, making a total penalty of £399,000.</li> <li>• The penalty imposed on Seddon was fixed at £164,000 each for Infringements 23, 39 and 176, making a total penalty of £492,000.</li> <li>• The penalty imposed on Interclass was £162,000 each for Infringements 75 and 150, making a total penalty of £324,000.</li> <li>• The penalty imposed on Tomlinson was £156,000 each for Infringements 46, 187 and 201, making a total penalty of £468,000.</li> <li>• The penalty imposed on Sol was £234,000 for each of Infringements 142, 156 and 187 making a total penalty of £702,000.</li> </ul>



## ACTIVITY BY CASE

### Activity by Case within the period 1 April 2010 to 31 March 2011

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2011
Wanadoo UK Plc (formerly Freeserve.com Plc) v Office of Communications Case No. 1026/2/3/04 20 Jan 2004	03-04 04-05 05-06 06-07 07-08 08-09 09-10 10-11	1	1 5 1		4 1			Closed
Notes:	Adjourned generally at the request of the parties on 14 June 2005 pending a new decision by OFCOM.							
Emerson Electric Co & Others v Morgan Crucible Company Plc Case No. 1077/5/7/07 9 Feb 2007	06-07 07-08 08-09 09-10 10-11		1	3 (4)	2 2 1			Ongoing
Notes:	This case was stayed from April to December 2009 pending judgment of the European Court of Justice.							
T-Mobile (UK) Limited v Office of Communications (Donor Conveyance Charge) Case No. 1093/3/3/07 17 Oct 2007	07-08 08-09 09-10 10-11	2	1 1		1			Closed
Notes:	This case was withdrawn following an Order of the Tribunal on 8 June 2010.							
Enron Coal Services Limited (in liquidation) v English Welsh & Scottish Railway Limited Case No. 1106/5/7/08 7 Nov 2008	08-09 09-10 10-11		1	1 (1) 1 (5)	2 3	21 Dec 2009 (13.5)	2 1	Closed
The Carphone Warehouse Group Plc v Office of Communications (Local Loop Unbundling) Case No. 1111/3/3/09 22 Jul 2009	09-10 10-11	2	2	3 (3)	4 1	11 Oct 2010 (14.7)		Closed
Cable & Wireless UK v Office of Communications (Leased Lines Charge Control) Case No. 1112/3/3/09 2 Sep 2009	09-10 10-11	2	1		1	20 Sep 2010 (12.6)		Closed
Cable & Wireless UK & Others v Office of Communications (Carrier Pre-Selection Charges) Case No. 1113/3/3/09 4 Sep 2009	09-10 10-11	1						Closed
Notes:	Pursuant to the Tribunal order of 16 November 2009, this matter was stayed pending a redetermination of the issue by OFCOM. Following an Order of the Tribunal this case was withdrawn on 19 July 2010.							



## ACTIVITY BY CASE

### Activity by Case within the period 1 April 2010 to 31 March 2011

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2011
(1) Kier Group Plc (2) Kier Regional Limited v Office of Fair Trading Case No. 1114/1/1/09 10 Nov 2009	09-10		1		1			
	10-11			1 (0.5)	1	11 Mar 2011	(16)	Ongoing as to costs
Notes:	(1) The case management conference and ruling noted in this case in 2009-10 also relate to 24 other cases (listed below) constituting appeals against an infringement decision by the OFT dated 21 September 2009 concerning the construction sector. (2) The judgment of 11 March 2011 also relates to five other cases listed below: Ballast Nedam (Case: 1119/1/1/09); Bowmer and Kirkland Ltd (Case: 1127/1/1/09); Corringway Conclusions Plc (Case: 1129/1/1/09); Thomas Vale Holdings Ltd (Case: 1132/1/1/09); John Sisk & Son Ltd (Case: 1133/1/1/09).							
Crest Nicholson Plc v Office of Fair Trading Case No. 1115/1/1/09 18 Nov 2009	09-10			1 (0.5)				Ongoing
	10-11							
Notes:	See note (1) to Kier Group Plc (Case: 1114/1/1/09).							
(1) G F Tomlinson Building Limited (2) G F Tomlinson Group Limited v Office of Fair Trading Case No. 1117/1/1/09 18 Nov 2009	09-10			1 (0.5)	1	24 Mar 2011	(16.1)	Ongoing as to costs
	10-11							
Notes:	(1) See note to (1) Kier Group Plc (Case: 1114/1/1/09). (2) The judgment of 24 March 2011 also relates to five other cases listed below: Sol Construction (Case: 1123/1/1/09); G&J Seddon Ltd (Case: 1134/1/1/09); Interclass Holdings Ltd (Case: 1135/1/1/09); Apollo Property Services Ltd (Case 1138/1/1/09); Galliford Try Plc (Case: 1139/1/1/09).							
(1) GMI Construction Holdings Plc (2) GMI Construction Group Plc v Office of Fair Trading Case No. 1118/1/1/09 20 Nov 2009	09-10			1 (2)				Ongoing
	10-11							
Notes:	See note (1) to Kier Group Plc (Case: 1114/1/1/09).							
Ballast Nedam N.V. v Office of Fair Trading Case No. 1119/1/1/09 20 Nov 2009	09-10			1 (0.5)				Ongoing as to costs
	10-11							
Case No. 1114/1/1/09								
Notes:	See notes (1) and (2) to Kier Group Plc (Case: 1114/1/1/09).							
(1) Quarmby Construction Company Limited (2) St James Securities Holdings Limited v Office of Fair Trading Case No. 1120/1/1/09 20 Nov 2009	09-10			1 (2)				Ongoing
	10-11							
Notes:	See note (1) to Kier Group Plc (Case: 1114/1/1/09).							
(1) Durkan Holdings Limited (2) Durkan Limited (3) Concentra Limited (formerly known as Durkan Pudelek Limited) v Office of Fair Trading Case No. 1121/1/1/09 20 Nov 2009	09-10			2 (6)	3	22 Mar 2011	(16)	Ongoing
	10-11							
Notes:	See note (1) to Kier Group Plc (Case: 1114/1/1/09).							



## ACTIVITY BY CASE

### Activity by Case within the period 1 April 2010 to 31 March 2011

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2011
A.H Willis & Sons Limited v Office of Fair Trading Case No. 1122/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing
See note (1) to Kier Group Plc (Case: 1114/1/1/09).								
(1) Sol Construction Limited (2) Barkbury Limited v Office of Fair Trading Case No. 1123/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing as to costs
(1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See note (2) to G F Tomlinson Building Ltd (Case: 1117/1/1/09).								
North Midland Construction Plc v Office of Fair Trading Case No. 1124/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing
See note (1) to Kier Group Plc (Case: 1114/1/1/09).								
(1) Barrett Estate Services Limited (2) Francis Construction Limited v Office of Fair Trading Case No. 1125/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing
See note (1) to Kier Group Plc (Case: 1114/1/1/09).								
ISG Pearce Limited v Office of Fair Trading Case No. 1126/1/1/09 23 Nov 2009 Notes:	09-10 10-11	1		1	(1.5)			Ongoing
See note (1) to Kier Group Plc (Case: 1114/1/1/09).								
(1) Bowmer and Kirkland Limited (2) B&K Property Services Limited v Office of Fair Trading Case No. 1127/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing as to costs
See notes (1) and (2) to Kier Group Plc (Case: 1114/1/1/09).								
(1) GAJ Construction Limited (2) GAJ (Holdings) Limited v Office of Fair Trading Case No. 1128/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing
See note (1) to Kier Group Plc (Case: 1114/1/1/09).								
Corringway Conclusions Plc (in liquidation) v Office of Fair Trading Case No. 1129/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing as to costs
See notes (1) and (2) to Kier Group Plc (Case: 1114/1/1/09).								



## ACTIVITY BY CASE

### Activity by Case within the period 1 April 2010 to 31 March 2011

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2011
(1) Renew Holdings Plc (2) Allenbuild Limited v Office of Fair Trading Case No. 1130/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing
See note (1) to Kier Group Plc (Case: 1114/1/1/09).								
(1) Robert Woodhead (Holdings) Limited (2) Robert Woodhead Limited v Office of Fair Trading Case No. 1131/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing
See note (1) to Kier Group Plc (Case: 1114/1/1/09).								
(1) Thomas Vale Holdings Limited (2) Thomas Vale Construction Plc v Office of Fair Trading Case No. 1132/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing as to costs
See notes (1) and (2) to Kier Group Plc (Case: 1114/1/1/09).								
(1) John Sisk & Son Limited (2) Sicon Limited v Office of Fair Trading Case No. 1133/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing as to costs
See notes (1) and (2) to Kier Group Plc (Case: 1114/1/1/09).								
(1) G&J Seddon Limited (2) Seddon Group Limited v Office of Fair Trading Case No. 1134/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	0.5			Ongoing
(1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See note (2) to G F Tomlinson Building Ltd (Case: 1117/1/1/09).								
(1) Interclass Holdings Limited (2) Interclass Plc v Office of Fair Trading Case No. 1135/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing as to costs
(1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See note (2) to G F Tomlinson Building Ltd (Case: 1117/1/1/09).								
(1) J H Hallam (R&J) Limited (2) J H Hallam (Contracts) Limited v Office of Fair Trading Case No. 1136/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing
See note (1) to Kier Group Plc (Case: 1114/1/1/09).								
Hobson and Porter Limited v Office of Fair Trading Case No. 1137/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1	(0.5)			Ongoing
See note (1) to Kier Group Plc (Case: 1114/1/1/09).								



## ACTIVITY BY CASE

### Activity by Case within the period 1 April 2010 to 31 March 2011

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2011
Apollo Property Services Group Limited v Office of Fair Trading Case No. 1138/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1 (0.5)				Ongoing
(1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See note (2) to G F Tomlinson Building Ltd (Case: 1117/1/1/09).								
Galliford Try PLC v Office of Fair Trading Case No. 1139/1/1/09 23 Nov 2009 Notes:	09-10 10-11			1 (0.5)				Ongoing
(1) See note (1) to Kier Group Plc (Case: 1114/1/1/09). (2) See note (2) to G F Tomlinson Building Ltd (Case: 1117/1/1/09).								
Eden Brown Limited v Office of Fair Trading Case No. 1140/1/1/09 30 Nov 2009 Notes:	09-10 10-11		1	1 (4)				Ongoing
(1) This case is being heard concurrently with CDI AndersElite Limited (Case: 1141/1/1/09) and Hays Plc (Case: 1142/1/1/09). (2) Judgment was delivered on 1 April 2011, just after the period under review.								
(1) CDI AndersElite Limited (2) CDI Corp v Office of Fair Trading Case No. 1141/1/1/09 30 Nov 2009 Notes:	09-10 10-11							Ongoing
(1) This case is being heard concurrently with Eden Brown Limited (Case: 1140/1/1/09) and Hays Plc (Case: 1142/1/1/09). (2) Judgment was delivered on 1 April 2011, just after the period under review.								
(1) Hays Plc (2) Hays Specialist Recruitment Limited (3) Hays Specialist Recruitment (Holdings) Limited v Office of Fair Trading Case No. 1142/1/1/09 30 Nov 2009 Notes:	09-10 10-11							Ongoing
(1) This case is being heard concurrently with Eden Brown Limited (Case: 1140/1/1/09) and CDI AndersElite Limited (Case: 1141/1/1/09). (2) Judgment was delivered on 1 April 2011, just after the period under review.								
Stagecoach Group Plc v Competition Commission Case No. 1145/4/8/09 8 Dec 2009	09-10 10-11			1 (2)	1	21 May 2010 (5.4)		Closed
British Telecommunications Plc v Office of Communications (Partial Private Circuits) Case No. 1146/3/3/09 14 Dec 2009	09-10 10-11	5	1	2 (8)	3	22 Mar 2011 (15.2)		Ongoing
(1) Moy Park Limited (2) Faccenda Group Limited (3) GW Padley Poultry Limited v (1) Evonik Degussa GmbH (2) Degussa Limited Case No. 1147/5/7/09 22 Dec 2009 Notes:	09-10 10-11			1 (0.5)				Stayed
Upon the application of the parties this case has been stayed for most of the time since registration.								

# ACTIVITY BY CASE

## Activity by Case within the period 1 April 2010 to 31 March 2011

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2011
The Campaign for Real Ale v Office of Fair Trading Case No. 1148/6/1/09 22 Dec 2009 Notes:	09-10 10-11							Closed
Following an Order of the Tribunal this case was withdrawn by the Applicant on 7 February 2011.								
The Carphone Warehouse Group Plc v Office of Communications (Wholesale Line Rental) Case No. 1149/3/3/09 24 Dec 2009 Notes:	09-10 10-11	2		1 (1)	1	11 Oct 2010 (9.6)		Closed
The hearing in 2009-10 was omitted from the Annual Review for that period.								
CTS Eventim AG v Competition Commission Case No. 1150/4/8/10 19 Jan 2010	09-10 10-11	1		1 (1)	2	11 Feb 2010 (1)		Closed
British Telecommunications Plc (Termination Charges: 080 calls) v Office of Communications Case No. 1151/3/3/10 6 Apr 2010 Notes:	10-11	4	2	1 (2)	3		1	Ongoing
This case is being heard concurrently with Everything Everywhere Limited (Case: 1168/3/3/10) and British Telecommunications Plc (Case: 1169/3/3/10).								
British Sky Broadcasting Limited v Office of Communications (Interim Relief) Case No. 1152/8/3/10 (IR) 16 Apr 2010 Notes:	10-11			2 (5.5)	1			Ongoing
The Interim Relief granted by the President in his Order of 29 April 2010 will continue in force until the determination of the proceedings in: Virgin Media, Inc. (Case: 1156/8/3/10); The Football Association Premier League Limited (Case: 1157/8/3/10); British Sky Broadcasting Limited (Case: 1158/8/3/10); and British Telecommunications Plc (Case: 1159/8/3/10).								
Marshall Food Group Limited and Others v (1) Evonik Degussa GmbH (2) Degussa Limited Case No. 1153/5/7/10 21 May 2010	10-11		1					Ongoing
Telefónica O2 UK Limited v Office of Communications (900 MHz Band) Case No. 1154/3/3/10 26 May 2010	10-11	3	1	1 (2)	1	7 Oct 2010 (4.4)	1	Closed
Top Up TV Europe Limited v Office of Communications Case No. 1155/3/3/10 27 May 2010	10-11	3						Stayed



## ACTIVITY BY CASE

### Activity by Case within the period 1 April 2010 to 31 March 2011

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2011
Virgin Media, Inc. v Office of Communications Case No. 1156/8/3/10 28 May 2010 Notes: This case is being heard concurrently with: The Football Association Premier League Limited (Case: 1157/8/3/10); British Sky Broadcasting Limited (Case: 1158/8/3/10); and British Telecommunications Plc (Case: 1159/8/3/10). Figures for case management conferences, hearings and judgments have been recorded against this case only.	10-11	12	2	1 (1)	1			Ongoing
The Football Association Premier League Limited v Office of Communications Case No. 1157/8/3/10 1 Jun 2010 Notes: See the note to Virgin Media, Inc. (Case: 1156/8/3/10).	10-11	12						Ongoing
British Sky Broadcasting Limited v Office of Communications Case No. 1158/8/3/10 1 Jun 2010 Notes: See the note to Virgin Media, Inc. (Case: 1156/8/3/10).	10-11	12						Ongoing
British Telecommunications Plc v Office of Communications Case No. 1159/8/3/10 1 Jun 2010 Notes: See the note to Virgin Media, Inc. (Case: 1156/8/3/10).	10-11	12						Ongoing
(1) Imperial Tobacco Group Plc and (2) Imperial Tobacco Limited v Office of Fair Trading Case No. 1160/1/1/10 15 Jun 2010 Notes: This case is being heard together with: Co-operative Group Limited (Case: 1161/1/1/10); Wm Morrison Supermarkets Plc (Case: 1162/1/1/10); Safeway Stores Limited Plc (Case: 1163/1/1/10); Asda Stores Limited (Case: 1164/1/1/10); and Shell U.K. Limited (Case: 1165/1/1/10).	10-11	1	1		2			Ongoing
Co-operative Group Limited v Office of Fair Trading Case No. 1161/1/1/10 16 Jun 2010 Notes: See the note to Imperial Tobacco Group Plc (Case: 1160/1/1/10).	10-11							Ongoing
Wm Morrison Supermarkets Plc v Office of Fair Trading Case No. 1162/1/1/10 16 Jun 2010 Notes: (1) See the note to Imperial Tobacco Group Plc (Case: 1160/1/1/10). (2) The judgment recorded here also relates to Safeway Stores Limited Plc (Case: 1163/1/1/10).	10-11				1			Ongoing
(1) Safeway Stores Limited and (2) Safeway Limited v Office of Fair Trading Case No. 1163/1/1/10 16 Jun 2010 Notes: (1) See the note to Imperial Tobacco Group Plc (Case: 1160/1/1/10). (2) See note (2) to Wm Morrison Supermarkets Plc (Case: 1162/1/1/10).	10-11							Ongoing



# ACTIVITY BY CASE

## Activity by Case within the period 1 April 2010 to 31 March 2011

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2011
(1) Asda Stores Limited (2) Asda Group Limited (3) Wal-Mart Stores (UK) Limited (4) Broadstreet Great Wilson Europe Limited v Office of Fair Trading Case No. 1164/1/1/10 16 Jun 2010 Notes: See the note to Imperial Tobacco Group Plc (Case: 1160/1/1/10).	10-11				1			Ongoing
(1) Shell U.K. Limited (2) Shell U.K. Oil Products Limited (3) Shell Holdings (U.K.) Limited v Office of Fair Trading Case No. 1165/1/1/10 16 Jun 2010 Notes: See the note to Imperial Tobacco Group Plc (Case: 1160/1/1/10).	10-11							Ongoing
Albion Water Limited v Dŵr Cymru Cyfyngedig Case No. 1166/5/7/10 18 Jun 2010	10-11			1 (1)	2			Ongoing
Everything Everywhere Limited v Office of Communications (Termination rates: Stour Marine) Case No. 1167/3/3/10 11 Aug 2010	10-11	1						Stayed
Everything Everywhere Limited v Office of Communications (Termination charges: 0845 and 0870 numbers) Case No. 1168/3/3/10 11 Oct 2010 Notes: This case is being heard concurrently with British Telecommunications Plc (Case: 1151/3/3/10) and British Telecommunications Plc (Case: 1169/3/3/10).	10-11	5						Ongoing
British Telecommunications Plc v Office of Communications (Termination charges: 0845 and 0870 numbers) Case No. 1169/3/3/10 11 Oct 2010 Notes: This case is being heard concurrently with British Telecommunications Plc (Case: 1151/3/3/10) and Everything Everywhere Limited (Case: 1168/3/3/10).	10-11	5						Ongoing
British Sky Broadcasting Limited v Office of Communications (Linear-only Set Top Boxes) Case No. 1170/8/3/10 11 Oct 2010 Notes: This case is being heard concurrently with Virgin Media, Inc. (Case: 1156/8/3/10) and associated cases.	10-11	4						Ongoing



## ACTIVITY BY CASE

### Activity by Case within the period 1 April 2010 to 31 March 2011

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2011
British Telecommunications Plc (Termination charges: 080 calls, NCCN 1007) v Office of Communications Case No. 1171/3/3/10 11 Nov 2010 Notes: This case is being heard concurrently with British Telecommunications Plc (Case: 1172/3/3/10).	10-11	5		1	(2)			Ongoing
British Telecommunications Plc v Office of Communications (Ethernet Extension Services) Case No. 1172/3/3/10 15 Nov 2010 Notes: This case is being heard concurrently with British Telecommunications Plc (Case: 1171/3/3/10).	10-11	5						Ongoing
Deutsche Bahn AG & Others v Morgan Crucible Company Plc & Others Case No. 1173/5/7/10 15 Dec 2010	10-11							Ongoing
Ryanair Holdings Plc v Office of Fair Trading Case No. 1174/4/1/11 7 Jan 2011	10-11			1	(2)			Ongoing
D H Francis v Cardiff City Transport Services Limited Case No. 1175/5/7/11 14 Jan 2011	10-11							Ongoing
D B Fowles v Cardiff City Transport Services Limited Case No. 1176/5/7/11 14 Jan 2011	10-11							Ongoing
N V Short v Cardiff City Transport Services Limited Case No. 1177/5/7/11 14 Jan 2011	10-11							Ongoing
2 Travel Group PLC (in liquidation) v Cardiff City Transport Services Limited Case No. 1178/5/7/11 18 Jan 2011	10-11							Ongoing
British Sky Broadcasting Limited v Office of Communications (Conditional Access Modules) Case No. 1179/8/3/11 14 Feb 2011 Notes: This case is being heard concurrently with Virgin Media, Inc. (Case: 1156/8/3/10) and associated cases.	10-11	4						Ongoing
<b>Total</b>	<b>10-11</b>	<b>89</b>	<b>7</b>	<b>39</b>	<b>(51)</b>	<b>26</b>	<b>2</b>	



## Overall Case Activity within the period 1 April 2010 to 31 March 2011

	2010/11	2009/10	2008/09
Appeals, applications and claims received of which	29	41	11
Section 46 Competition Act 1998 <sup>1</sup>	6	29	1
Section 47 Competition Act 1998 <sup>2</sup>	-	-	-
Section 47A Competition Act 1998 <sup>3</sup>	7	1	4
Section 47B Competition Act 1998 <sup>4</sup>	-	-	-
Section 120 Enterprise Act 2002 <sup>5</sup>	1	3	1
Section 179 Enterprise Act 2002 <sup>6</sup>	-	2	2
Section 192 Communications Act 2003 <sup>7</sup>	8	5	3
Section 317 Communications Act 2003 <sup>8</sup>	6	-	-
Applications for interim relief	1	1	-
Applications to intervene	89	20	10
Case management conferences held	7	10	13
Hearings held (sitting days)	39 (51)	14 (27)	16 (36)
Judgments handed down of which	26	38	42
Judgments disposing of main issue or issues	9	4	11
Judgments on procedural and interlocutory matters	13	14	11
Judgments on ancillary matters (e.g. costs)	4	20	20
Orders made	133	123	184

1. An appeal by a party to an agreement or conduct in respect of which the Office of Fair Trading (or one of the other regulators with concurrent powers to apply the Competition Act 1998 ("the Competition Act")) has made an "appealable decision". During the period to 31 March 2011 appealable decisions included a decision as to whether the Chapter I prohibition or Chapter II prohibition of the Competition Act had been infringed, as to whether Articles 101 or 102 of the Treaty on the functioning of the European Union (formerly Articles 81 and 82 of the EC Treaty) had been infringed and the imposition of a penalty for infringement of those provisions or as to the amount of such penalty.
2. An appeal against an "appealable decision" made by the Office of Fair Trading or other regulator with concurrent powers to apply the Competition Act and

- made by a third party with a sufficient interest in the decision not otherwise entitled to appeal the decision pursuant to section 46 of the Competition Act.
3. A claim for damages or other claim for a sum of money by a person who has suffered loss or damage as a result of the infringement of the Competition Act or of European competition law.
4. A claim for damages or other claim for a sum of money brought by "a specified body" on behalf of two or more consumers.
5. An application by "any person aggrieved" by a decision of the Office of Fair Trading, the Competition Commission or the Secretary of State in connection with a reference or possible reference in relation to a relevant merger situation or special merger situation under the Enterprise Act 2002.

6. An application by "any person aggrieved" by a decision of the Office of Fair Trading, the Competition Commission or the Secretary of State in connection with a market investigation reference or possible market investigation reference.
7. An appeal by "a person affected" by a decision of the Office of Communications or of the Secretary of State in relation to certain specified communication matters set out in that section.
8. An appeal by "a person affected" by a decision of the Office of Communications to exercise its Broadcasting Act power for a competition purpose (pursuant to Section 317 of the Communications Act 2003).





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# COMPETITION APPEAL TRIBUNAL AND COMPETITION SERVICE

## Management Commentary in respect of the Tribunal and the CS for the year ended 31 March 2011

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

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

### Accounts direction

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

The accounts are prepared so as to give a true and fair view of the state of affairs of the Tribunal and CS at the year end, and provide disclosures and notes to the accounts in compliance with the accounting principles and disclosure requirements of the edition of the Government Financial Reporting Manual (FReM) issued by HM Treasury in force for the current financial year 2010/11.

### Financial performance

The programme and administration funding allocation from BIS for 2010/11 was £3,889,000 for resource expenditure (net of any income from other sources) and £75,000 for capital expenditure. The capital expenditure allocation is for the CS only.

Actual resource expenditure for the year was £4,197,000 and capital expenditure was £14,000. The overspend on resource expenditure was covered by the approved running down of a larger than usual bank balance at the beginning of the year.

The actual expenditure for the Tribunal increased from £583,000 in 2009/10 to £724,000. During the year 29 new cases were received. The main hearings for the majority of those cases are listed in the coming financial year. The increase in expenditure is mainly attributed to an increasing number of case hearings. The training programme for the 14 newly appointed members has also contributed to the increase.

The actual expenditure for the CS, increased from £3,246,000 in 2009/10 to £3,473,000. Accommodation costs are the major factor for the increase in the CS costs. During the year rates increased by £48,000, a 21 per cent increase on last year, and service charges charged by the new managing agent Jones Lang LaSalle Ltd increased by £36,000, a 17 per cent increase. As VAT was 15 per cent for most of 2009/10 but then raised to 17.5 per cent in 2010/11 there was an increase of £24,000 on rent as a result. The second increase in VAT in 2010/11 to 20 per cent has resulted in an increase in operating lease liability from £84,000 to £219,000. A water leak from Sport England located on the floor above the Tribunal's premises damaged Court 2 and adjoining areas, repairs for which have amounted to £50,000. A further £9,000 was spent on the Court 1 ceiling after a flood caused by a burst pipe, half of which amount, was reimbursed by the building's insurers.

The savings on salary costs are mainly due to: the first year of the government's two year pay freeze; some staff working shorter hours; a reduction in the untaken leave accrual; and new staff (recruited before the recruitment freeze) starting on lower salaries than leaving staff.

A staff absence rate of 0.8 per cent was achieved for 2010/11 against the target rate of 3 per cent.

### Financing of activities

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

### Statement of financial position

The Tribunal's statement of financial position shows only those liabilities at 31 March 2011 that are directly attributable to the Tribunal. There is a receivables balance of an equal amount representing the amount that the CS has to transfer to meet those liabilities. The liabilities in the CS's statement of financial position therefore include the liabilities of the Tribunal.

The book value of the CS's non current assets fell from £162,000 in 2009/10 to £84,000. The majority of the assets are low value with a short life of three or five years. Most of the assets are fully depreciated with a book value of zero. Capital expenditure during the year

amounted to £14,000 which was £41,000 lower than incurred in 2009/10. The CS purchased four new laptops and software. The camera, microphones and doors in Court 2 needed replacing as a result of the flood damage mentioned above. Damaged court benches requiring replacement have been ordered for delivery in August 2011.

Total assets decreased by £371,000 to £438,000. Closing cash balances were £274,000 (2009/10: £573,000). The reduction in cash resulted from the use of part of the balance to make up the shortfall between budget and allocation.

The CS's general fund (which represents the total assets less liabilities of the CS to the extent that the total is not represented by other reserves and financing items) reduced by £382,000.

## Pension liabilities

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

## Social, economic and environmental issues

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

## Risks and uncertainties

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

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

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

- There is a risk that the absence of the President or the Registrar for a prolonged period of time would result in the Tribunal being unable to function. There are three members of the panel of Chairmen to share the workload of the President. If the Registrar is away then the Referendaires working under the direction of the President will cover the Registrar's supervision of cases before the Tribunal. The administrative tasks of the Registrar will be covered by the Director, Operations.
- There is a risk that the unavailability of the Registrar or the Finance Manager for a prolonged period of time would result in disruption to the finance function, failure to pay staff and members, and failure to obtain funding from BIS. Financial authority is delegated to key staff principally the Director, Operations. The Director, Operations also has delegated authority to make salary and other payments when the Registrar is unavailable for a period of time.
- There is a risk that, due to possible design defects in the air conditioning system in the Tribunal's premises, incidents of flooding may occur. If any such incident occurs in either of the two courts, then hearings would have to take place at a temporary venue which would thus cause significant disruption to the work of the Tribunal. Information updates would be published on the Tribunal's website.

## Future developments

For the 2011/12 resource request, the CS has continued to restrict expenditure and make savings wherever it is prudent to do so without impairing the Tribunal's and the CS's abilities to carry out their respective statutory functions.

The budget proposal for 2011/12 was submitted to BIS in February 2011. For 2011/12, the Tribunal and the CS requested a combined Resource Departmental Expenditure Limit (RDEL) of £4,229,000 and a further £50,000 for the capital expenditure programme. The RDEL approved by BIS is £3,915,000 and a further £50,000 for capital expenditure.

Resource costs for the CS are budgeted to rise by £87,000 when compared with the 2010/11 outturn. This increase can be attributed to three specific areas:

- The CS payroll costs include costs for some staff being in post for the full year in comparison with 2010/11 when these staff were only in post for part of that year or on maternity leave and also a 1 per cent increase in employer's national insurance contributions.





# COMPETITION APPEAL TRIBUNAL AND COMPETITION SERVICE

- Accommodation costs will be higher due to a 20 per cent increase in rates.
- The VAT increase from 17.5 per cent to 20 per cent for the full year.

The total remuneration paid to Ordinary Members will

increase as the Tribunal now has a higher caseload with some significantly longer hearings. The CS, as the support organisation for the Tribunal, must ensure that the required resources are made available to meet the needs of the Tribunal.

## Remuneration Report for the Tribunal and the CS for the year ended 31 March 2011

### Remuneration policy

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

The first year of the two year government pay freeze was in force in 2010/11 and the President's salary therefore remained unchanged. The President's salary is subject to the recommendations of the Senior Salaries Review Body (which makes recommendations about the pay of the senior civil service, senior military personnel and the judiciary). The President's salary is paid by the Ministry of Justice and invoiced to the CS.

The salary of the Registrar is linked with the judicial salaries. For 2010/11, the Secretary of State determined that the salary of the Registrar should be frozen as per the two year government pay freeze.

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

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

The Ordinary Members are remunerated at the rate of £350 per diem, which has remained unchanged since 2006. The non-executive member of the CS is remunerated on

a per diem basis at a rate determined by the Secretary of State. This rate has remained unchanged in the year. The remuneration costs of the non-executive member are charged to the CS's operating cost statement.

### CS contract, salary and pension entitlements

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

### CS contracts

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

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

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

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

### Remuneration

The following part of the Remuneration Report has been audited.

	2010/11 Salary £'000	2010/11 Benefits in kind (to nearest £100)	2009/10 Salary £'000	2009/10 Benefits in kind (to nearest £100)
President	170-175	-	170-175	-
Registrar	95-100	-	95-100	-



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

The non-executive member of the CS is remunerated at a rate of £350 per day (2009/10: £350 per day). Total remuneration payable in 2010/11 was £4,725 (2009/10: £4,550).

### Benefits in kind

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

### Untaken leave

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

	Total as at 2010/11 £'000	Movement in liability £'000	Total as at 2009/10 £'000
Registrar	22	2	24

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

### Pensions

#### (a) President's pension benefits

	Accrued pension at age 60 as at 31/03/11 and related lump sum £'000	Real increase in pension and related lump sum at age 60 £'000	CETV* at 31/03/11 £'000	CETV at 31/03/10 £'000	Employee contributions and transfers in £'000	Real increase in CETV £'000
President	10 – 15 30 – 35	2.5 – 5 7.5 – 10	269	177	2	90

\*Cash Equivalent Transfer Value

#### Judicial pensions

The President is a member of the Judicial Pension Scheme (JPS). For 2010/11, employer contributions of £56,000 were payable to the JPS at a rate of 32.15 per cent of pensionable pay.

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

The JPS is an unfunded public service scheme, providing pensions and related benefits for members of the judiciary. Participating judicial appointing or administering bodies make contributions known as Accruing Superannuation Liability Charges (ASLCs) to cover the expected cost of

benefits under the JPS. ASLCs are assessed regularly by the Scheme's Actuary – The Government Actuary's Department.

The contribution rate required from the judicial appointing or administering bodies to meet the cost of benefits accruing in the year 2010/11 has been assessed as 32.15 per cent of the relevant judicial salary. This includes an element of 0.25 per cent as a contribution towards the administration costs of the scheme.

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



# COMPETITION APPEAL TRIBUNAL AND COMPETITION SERVICE

## (b) Registrar's pension benefits

	Accrued pension at age 60 as at 31/03/11 and related lump sum £'000	Real increase in pension and related lump sum at age 60 £'000	CETV at 31/03/11 £'000	CETV at 31/03/10 £'000	Employee contributions and transfers in £'000	Real increase in CETV £'000
Registrar	20 – 25 70 – 75	0 – 2.5 2.5 – 5	390	341	15	5

The actuarial factors used to calculate CETVs were changed in 2010/11. The CETVs at 31/03/10 and 31/03/11 have both been calculated using the new factors, for consistency. The CETV at 31/03/10 therefore differs from the corresponding figure in last year's report which was calculated using the previous factors.

### Civil Service pensions

The Registrar's pension benefits are provided through the Civil Service Pension arrangements. For 2010/11, employer contributions of £24,000 (2009/10: £24,000) were payable to the Principal Civil Service Pension Scheme (PCSPS) at a rate of 24.3 per cent (2009/10: 24.3 per cent) of pensionable pay.

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

Employee contributions are set at the rate of 1.5 per cent of pensionable earnings for classic and 3.5 per cent for premium, classic plus and nuvos. Benefits in classic accrue at the rate of 1/80th of final pensionable earnings for each year of service. In addition, a lump sum equivalent to three years initial pension is payable on retirement. For premium, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike classic, there is no automatic lump sum. Classic plus is essentially a hybrid with benefits for service before 1 October 2002 calculated broadly as per classic and benefits for service from October 2002 worked out as in premium. In nuvos a member builds up a pension based on pensionable earnings

during the period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3 per cent of their pensionable earnings in that scheme year and the accrued pension is up-rated in line with Pensions Increase legislation. In all cases members may opt to give up (commute) pension for a lump sum up to the limits set by the Finance Act 2004.

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

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

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

Further information regarding the PCSPS is included in note 5 of the CS's accounts.

### Cash Equivalent Transfer Values

A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme.

A CETV is a payment made by a pension scheme or



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arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which disclosure applies.

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

Lifetime Allowance Tax which may be due when pension benefits are taken.

## **Real increase in CETV**

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

**Charles Dhanowa OBE**

Registrar and Accounting Officer

Competition Service

6 July 2011

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

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

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

- observe the accounts directions issued by the Secretary of State, including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis;

- make judgements and estimates on a reasonable basis;
- state whether applicable accounting standards have been followed, and disclose and explain any material departures in the financial statements; and
- prepare the financial statements on a going concern basis, unless it is inappropriate to presume that the Tribunal and the CS will continue in operation.

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



# COMPETITION APPEAL TRIBUNAL AND COMPETITION SERVICE

## Statement on Internal Control

### Scope of responsibility

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

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

### The purpose of the System of Internal Control

The SIC is intended to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable and not absolute assurance of effectiveness. The SIC is based on a continuous process designed to: identify and prioritise the risks to the achievement of departmental policies, aims and objectives; to evaluate the likelihood of those risks being realised and the impact should they be realised; and to manage them effectively, efficiently and economically. The SIC has been in place in the CS and the Tribunal for the year ended 31 March 2011 and up to the date of approval of the Annual Review and Accounts, and accords with Treasury guidance.

### Capacity to handle risk

A risk register is compiled by the CS's Finance Manager, who discusses each risk with the risk owner. Risks are rated according to impact and likelihood. The register is reviewed regularly by the management team (including myself), and four times a year by the Audit Committee, who frequently offer detailed comments and suggestions.

The CS is committed to promoting a strong understanding of risk throughout the organisation and for the Tribunal members

and CS staff to have a full awareness of risk considerations in the achievement of objectives. All staff are required to complete the information assurance awareness e-learning made available by the National School of Government once every year.

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

### Data handling

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

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

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

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

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

### The risk and control framework

The CS uses BIS as its internal auditors. They make recommendations to the senior management, who undertake to respond within agreed timescales. In the financial year ended 31 March 2011, Internal Audit reviewed the CS's financial systems. Findings were reported to the Accounting Officer and the Audit Committee.

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

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

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

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

The CS is also participating in the Treasury's Managing Risk of Financial Loss project.

## Review of effectiveness

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

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

1. The President and the Registrar of the Tribunal and a non-executive member (currently Janet Rubin) make up the CS Board, which meets four times a year to discuss the strategic direction of the organisation. Reports on workload, financial and administrative matters and from the Audit Committee are standing agenda items for Board meetings. The Director, Operations acts as secretary to the Board.
2. The non-executive member of the Board chairs the Audit Committee, which also comprises two members of the Tribunal with considerable financial and business experience. Meetings of the Audit Committee are

attended by representatives of both the internal and external auditors and often by a representative of the sponsoring department. The Audit Committee reviews the financial performance of the organisation and examines the Annual Report prior to publication. The CS's risk register is a standing agenda item for Audit Committee meetings. At each meeting, the auditors and the committee members are offered the opportunity of a private meeting without members of the CS being present so that management performance can be discussed. The Director, Operations is also secretary to the Audit Committee.

3. The internal audit function is carried out by the Internal Audit Directorate of BIS, who operate according to government internal audit standards (GIAS) developed by HM Treasury. Audit work during the year included the financial and accounting audit.
4. As part of BIS's group corporate governance assessment process, CS personnel complete an annual governance return based on an evaluation of risk management processes currently in place and the measures taken to promote awareness and understanding of governance issues under specific headings. This return has been reviewed by BIS Internal Audit personnel.
5. CS personnel also complete an annual return to the Cabinet Office assessing the effectiveness of protective security and Information Assurance risk management within the organisation. This return has been independently validated by the Audit Committee.
6. Finance staff are also involved in the Treasury initiative Managing Risk of Financial Loss.

No significant internal control problems have arisen during the financial year.

**Charles Dhanowa OBE**

Registrar and Accounting Officer  
Competition Service  
6 July 2011





## Competition Appeal Tribunal: The Certificate and Report of the Comptroller and Auditor General to the Houses of Parliament

I certify that I have audited the financial statements of the Competition Appeal Tribunal for the year ended 31 March 2011 under the Enterprise Act 2002. These comprise the Statement of Comprehensive Net Expenditure, the Statement of Financial Position, the Statement of Cash Flows, the Statement of Changes in Taxpayers' Equity and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration Report that is described in that report as having been audited.

### Respective responsibilities of the Accounting Officer and auditor

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

### Scope of the Audit of the Financial Statements

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

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

### Opinion on Regularity

In my opinion, in all material respects, the expenditure and

income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

### Opinion on financial statements

In my opinion:

- the financial statements give a true and fair view of the state of the Competition Appeal Tribunal's affairs as at 31 March 2011 and of its net expenditure for the year then ended; and
- the financial statements have been properly prepared in accordance with the Enterprise Act 2002 and the Secretary of State for Business, Innovation and Skills' directions issued thereunder.

### Opinion on other matters

In my opinion:

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

### Matters on which I report by exception

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

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

### Report

I have no observations to make on these financial statements.

**Amyas C E Morse**

Comptroller and Auditor General  
National Audit Office

6 July 2011

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





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

	Note	2010/11 £'000	2009/10 £'000
<b>Expenditure:</b>			
Members' remuneration costs	3d	(661)	(532)
Other operating charges	4a	(63)	(51)
<b>Total Expenditure</b>		<b>(724)</b>	<b>(583)</b>
<b>Income</b>		<b>-</b>	<b>-</b>
<b>Net Expenditure for the financial year</b>		<b>(724)</b>	<b>(583)</b>

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

The notes on pages 57 to 60 form part of these accounts.



## Competition Appeal Tribunal: Statement of Financial Position as at 31 March 2011

	Note	31 March 2011 £'000	31 March 2011 £'000	31 March 2010 £'000	31 March 2010 £'000
<b>Current assets:</b>					
Trade receivables and other receivables	5a	133		101	
Cash and cash equivalents		-		-	
<b>Total current assets</b>			133		101
<b>Current liabilities:</b>					
Trade payables and other payables	6a	(115)		(89)	
<b>Total current liabilities</b>			(115)		(89)
<b>Net current assets</b>			18		12
<b>Non current liabilities:</b>					
Other financial liabilities			-		-
Provisions	7		(18)		(12)
<b>Total non current liabilities</b>			(18)		(12)
<b>Assets less liabilities</b>			-		-
<b>Taxpayers' equity:</b>					
General fund			-		-
<b>Total taxpayers' equity</b>			-		-

The notes on pages 57 to 60 form part of these accounts.

Charles Dhanowa OBE  
Registrar and Accounting Officer  
Competition Appeal Tribunal  
6 July 2011



## Competition Appeal Tribunal: Statement of Cash Flows for the year ended 31 March 2011

	Note	2010/11 £'000	2009/10 £'000
<b>Cash flows from operating activities:</b>		<b>(724)</b>	<b>(583)</b>
Net operating cost		<b>(32)</b>	12
Decrease/(Increase) in receivables		<b>26</b>	(17)
(Decrease)/Increase in payables		-	-
Use of provisions		<b>6</b>	5
Increase in provisions		<b>(724)</b>	(583)
Net cash (outflow) from operating activities			
<b>Cash flows from financing activities:</b>			
Grant-in-aid from the CS	2	<b>724</b>	583
<b>Increase/(decrease) in cash in the period</b>		<b>-</b>	<b>-</b>

The Tribunal does not have a bank account and therefore does not hold any cash. Cash required to fund the activities of the Tribunal is paid into the CS's bank account. The notes on pages 57 to 60 form part of these accounts.

## Competition Appeal Tribunal: Statement of Changes in Taxpayers' Equity for the year ended 31 March 2011

The Tribunal does not have reserves. The Tribunal's activities are funded by the CS. The notes on pages 57 to 60 form part of these accounts.

## Competition Appeal Tribunal: Notes to the accounts

### 1. Statement of accounting policies

These financial statements have been prepared in accordance with the 2010/11 Government Financial Reporting Manual (FReM). The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector. The accounting policies contained in the FReM follow International Accounting Standards to the extent that it is meaningful to do so and appropriate to the public sector.

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

#### (a) Accounting convention

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

#### (b) Basis of preparation of accounts

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

#### (c) Pensions

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

#### (d) Going concern

The accounts have been prepared on a going concern basis.



# COMPETITION APPEAL TRIBUNAL

## 2. Grant-in-aid

	2010/11 £'000	2009/10 £'000
Allocated by the CS	724	583
<b>Total grant-in-aid</b>	<b>724</b>	<b>583</b>

## 3. Members' remuneration

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

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

Marcus Smith QC, Lord Carlile QC and Vivien Rose were remunerated on a per diem basis at a rate of £600 per day (2009/10: £600 per day) or pro rata. Their remuneration costs are included in note 3d.

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

	2010/11 £	2009/10 £
Marcus Smith QC	46,757	3,300
Lord Carlile QC	28,907	41,229
Vivien Rose	58,693	49,038

(c) The Ordinary Members are remunerated at a rate of £350 per day (2009/10: £350 per day). The total remuneration payable to Ordinary Members of £231,786 (2009/10: £166,508) is included in note 3d.

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

	2010/11 £'000	2009/10 £'000
Members' remuneration (including the President, Chairmen and Ordinary Members)	547	433
Social security costs	58	43
Pension contributions for the President	56	56
<b>Total members' remuneration</b>	<b>661</b>	<b>532</b>

The increase was caused by a greater number of hearings held in the year, notably those on the construction cases.



#### 4. Other operating charges

(a) Other operating charges are shown in the table below.

	2010/11 £'000	2009/10 £'000
Members' travel and subsistence	31	25
Members' PAYE and National Insurance on travel and subsistence expenses	16	10
Members' training	4	4
Long service award	6	5
Audit fees*	6	7
<b>Total other operating charges</b>	<b>63</b>	<b>51</b>

\*Audit fees related only to statutory audit work.

(b) The long service award relates to a provision of £6,000 for the President in his capacity as a judge of the High Court. The value of the award was calculated by the Government Actuary's Department and reflects the President's length of service and judicial grade.

#### 5. Trade receivables and other receivables

(a) Analysis by type

	31 March 2011 £'000	31 March 2010 £'000
<b>Amounts falling due within one year:</b>		
Trade receivables and other receivables with the CS	115	89
<b>Amounts falling due after more than one year:</b>		
Trade receivables and other receivables with the CS	18	12
<b>Total trade receivables and other receivables</b>	<b>133</b>	<b>101</b>

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

(b) Intra-government balances

	Amounts falling due within one year		Amounts falling due after more than one year	
	31 March 2011 £'000	31 March 2010 £'000	31 March 2011 £'000	31 March 2010 £'000
Balances with other central government bodies	115	89	18	12
Balances with bodies external to government	-	-	-	-
<b>Total trade receivables and other receivables</b>	<b>115</b>	<b>89</b>	<b>18</b>	<b>12</b>



# COMPETITION APPEAL TRIBUNAL

## 6. Trade payables and other payables

### (a) Analysis by type

	31 March 2011 £'000	31 March 2010 £'000
<b>Amounts falling due within one year:</b>		
Taxation and social security	26	19
Trade payables	1	5
Accruals	88	65
<b>Total trade payables and other payables</b>	<b>115</b>	<b>89</b>

### (b) Intra-government balances

	Amounts falling due within one year		Amounts falling due after more than one year	
	31 March 2011 £'000	31 March 2010 £'000	31 March 2011 £'000	31 March 2010 £'000
Balances with other central government bodies	51	44	-	-
Balances with bodies external to government	64	45	-	-
<b>Total trade payables and other payables</b>	<b>115</b>	<b>89</b>	<b>-</b>	<b>-</b>

## 7. Provisions for liabilities and charges

	Long service award costs £'000
<b>Balance at 31 March 2010</b>	<b>12</b>
Provided in the year	6
Provisions utilised in the year	-
<b>Balance at 31 March 2011</b>	<b>18</b>

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

## 8. Related party transactions

All expenses of the Tribunal are paid by the CS.

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

## 9. Events after the reporting period

There were no events after the reporting period to report.

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



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

I certify that I have audited the financial statements of the Competition Service for the year ended 31 March 2011 under the Enterprise Act 2002. These comprise the Statement of Comprehensive Net Expenditure, the Statement of Financial Position, the Statement of Cash Flows, the Statement of Changes in Taxpayers' Equity and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration Report that is described in that report as having been audited.

### Respective responsibilities of the Accounting Officer and auditor

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

### Scope of the Audit of the Financial Statements

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

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

### Opinion on Regularity

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

### Opinion on financial statements

In my opinion:

- the financial statements give a true and fair view of the state of the Competition Service's affairs as at 31 March 2011 and of its net expenditure for the year then ended; and
- the financial statements have been properly prepared in accordance with the Enterprise Act 2002 and Secretary of State directions issued thereunder.

### Opinion on other matters

In my opinion:

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

### Matters on which I report by exception

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

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

### Report

I have no observations to make on these financial statements.

**Amyas C E Morse**

Comptroller and Auditor General

National Audit Office

6 July 2011

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





## Competition Service: Statement of Comprehensive Net Expenditure for the year ended 31 March 2011

	Note	2010/11 £'000	2009/10 £'000
<b>Expenditure:</b>			
Funding the activities of the Tribunal		(724)	(583)
CS and Audit Committee Members' remuneration	3a	(12)	(11)
Staff costs			
Staff salary costs	4a	(839)	(866)
Other expenditure	6	(2,531)	(2,254)
Depreciation	6	(91)	(115)
<b>Total expenditure</b>		<b>(4,197)</b>	<b>(3,829)</b>
<b>Income:</b>			
Other income	7	7	5
<b>Net expenditure</b>		<b>(4,190)</b>	<b>(3,824)</b>
Interest received	7	-	3
<b>Net expenditure after interest</b>		<b>(4,190)</b>	<b>(3,821)</b>

All activities were continuing during the year.

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

The notes on pages 65 to 74 form part of these accounts.



## Competition Service: Statement of Financial Position as at 31 March 2011

	Note	31 March 2011 £'000	31 March 2011 £'000	31 March 2010 £'000	31 March 2010 £'000
<b>Non current assets:</b>					
Property, plant & equipment	9	55		104	
Intangible assets	10	29		58	
<b>Total non current assets</b>			<b>84</b>		162
<b>Current assets:</b>					
Trade receivables and other receivables	11a	80		75	
Cash and cash equivalents	12	274		573	
<b>Total current assets</b>			<b>354</b>		648
<b>Total assets</b>			<b>438</b>		810
<b>Current liabilities:</b>					
Trade payables and other payables	13a	(243)		(432)	
<b>Total current liabilities</b>			<b>(243)</b>		(432)
<b>Non current assets plus net current assets</b>			<b>195</b>		378
<b>Non current liabilities:</b>					
Financial liabilities	13a	(1,736)		(1,540)	
Provisions	14	(18)		(12)	
<b>Total non current liabilities</b>			<b>(1,754)</b>		(1,552)
<b>Assets less liabilities</b>			<b>(1,559)</b>		(1,174)
<b>Taxpayers' equity:</b>					
General fund			(1,560)		(1,178)
Revaluation reserve			1		4
<b>Total taxpayers' equity</b>			<b>(1,559)</b>		(1,174)

The notes on pages 65 to 74 form part of these accounts.

Charles Dhanowa OBE  
Registrar and Accounting Officer  
Competition Service  
6 July 2011



## COMPETITION SERVICE

### Competition Service: Statement of Cash Flows for the year ending 31 March 2011

	Note	2010/11 £'000	2009/10 £'000
<b>Cash flows from operating activities:</b>			
<b>Net deficit/surplus after interest</b>		<b>(4,190)</b>	<b>(3,821)</b>
Adjustments for non-cash transactions	6	91	115
(Increase)/Decrease in receivables		(5)	4
Increase in payables		8	233
Investment income	7	-	(3)
Use of provisions	14	-	-
Increase in provisions	14	6	5
<b>Net cash (outflow) from operating activities</b>		<b>(4,090)</b>	<b>(3,467)</b>
<b>Cash flows from investing activities:</b>			
Interest received	7	-	3
Taxation	8	-	(5)
Property, plant and equipment purchases	9	(13)	(12)
Intangible asset purchases	10	(1)	(43)
Proceeds of disposal of non current assets		-	-
<b>Net cash generated from/(used in) investing activities</b>		<b>(14)</b>	<b>(57)</b>
<b>Cash flows from financing activities:</b>			
Grant-in-aid from BIS	2	3,805	3,689
<b>Net cash generated from/(used in) financing activities</b>		<b>3,805</b>	<b>3,689</b>
<b>Net (Decrease)/Increase in cash and cash equivalents in the period</b>	12	<b>(299)</b>	<b>165</b>
<b>Cash and cash equivalents at the beginning of the period</b>	12	<b>573</b>	<b>408</b>
<b>Cash and cash equivalents at the end of the period</b>	12	<b>274</b>	<b>573</b>

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

The payables amount is net of non-operating expenses relating to corporation tax accrued at 31 March 2011.

The notes on pages 65 to 74 form part of these accounts.



## Competition Service: Statement of Changes in Taxpayers' Equity for the year ending 31 March 2011

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

The notes on pages 65 to 74 form part of these accounts.

## Competition Service: Notes to the accounts

### 1. Statement of accounting policies

These financial statements have been prepared in accordance with the 2010/11 Government Financial Reporting Manual (FReM). The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector. The accounting policies contained in the FReM follow International Accounting Standards to the extent that it is meaningful to do so and appropriate to the public sector.

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

#### (a) Accounting convention

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

#### (b) Basis of preparation of accounts

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

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

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

#### (c) Grant-in-aid

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

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

#### (d) Non current assets

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

#### (e) Depreciation

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



## COMPETITION SERVICE

### (i) Property, plant and equipment assets:

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

### (ii) Intangible non current assets:

Software licences	1 to 3 years
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### (f) Cost of capital

In accordance with Treasury guidelines no charge reflecting the cost of capital utilised by the CS is included in operating costs.

### (g) Taxation

(i) The CS is liable for corporation tax on interest earned on bank deposits.

(ii) The CS is not registered for VAT and therefore cannot recover any VAT. Expenditure in the income and expenditure account is shown inclusive of VAT and VAT on the purchase of non current assets is capitalised.

### (h) Pension costs

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

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

### (i) Income

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

### (j) Operating leases

Rentals payable under operating leases are charged to the income and expenditure account on a straight line basis over the 20 year term of the lease which CS pays for its and

the Tribunal's accommodation in Victoria House. Operating lease estimates are based on VAT remaining at 20 per cent for the remaining term of the lease.

### (k) Financial instruments

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

#### (i) Financial assets

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

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

#### (ii) Financial liabilities

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

### (l) Reserves

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

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

### (m) Going concern

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

Although the CS is mentioned in the Public Bodies Bill currently before Parliament, it is understood by the CS that Ministers have accepted that there shall be no change in its status. Reference to the Tribunal has been removed from the Bill. Accordingly it is appropriate to adopt a going concern



basis for the preparation of these financial statements.

The statement of financial position indicates a negative balance because of timing differences between consumption and payment. The CS draws grant-in-aid to cover its cash requirements and not to represent income. This is largely because the operating lease liability recognised will be paid from future grant-in-aid receipts.

## (n) Provisions

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

Specific assumptions are given in Note 15.

## 2. Government grant-in-aid

	2010/11 £'000	2009/10 £'000
Allocated by BIS	3,964	4,253
<b>Drawn down:</b>		
Resource	3,791	3,634
Capital	14	55
<b>Total drawn down</b>	<b>3,805</b>	<b>3,689</b>

## 3. The CS and Audit Committee Members' remuneration

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

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

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

Mrs Janet Rubin is a non-executive member of the CS. Mrs Rubin is also Chairman of the CS's Audit Committee. Mrs Rubin's appointment runs until September 2013. Her appointment is not pensionable. Mrs Rubin is remunerated at a rate of £350 per day. Her remuneration of £4,725 in the year (2009/10: £4,550) is included in note 3a above.



# COMPETITION SERVICE

## 4. Staff related costs and numbers

(a) Staff costs are shown in the table below.

	<b>Total 2010/11 £'000</b>	<b>Permanently employed staff 2010/11 £'000</b>	<b>Others 2010/11 £'000</b>	<b>Total 2009/10 £'000</b>
Wages and salaries	649	638	11	670
Social security costs	57	57	-	59
Other pension costs	133	133	-	137
<b>Total employee costs</b>	<b>839</b>	<b>828</b>	<b>11</b>	<b>866</b>

The staff costs include the annual adjustment in untaken leave accrual, giving rise to a credit of £10,000 in 2010/11 and a debit of £7,000 in 2009/10.

(b) The average headcount during the year is shown in the table below.

	<b>Total 2010/11</b>	<b>Permanently employed staff 2010/11</b>	<b>Others 2010/11</b>	<b>Total 2009/10</b>
<b>Headcount</b>	<b>15</b>	<b>14</b>	<b>1</b>	<b>16</b>

## 5. Pension costs

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

For 2010/11, employer contributions of £133,000 (2009/10: £137,000) were payable to the PCSPS at one of four rates in the range 16.7 to 24.3 per cent (2009/10: 16.7 to 24.3 per cent) of pensionable pay, based on salary bands. The Scheme's Actuary reviews employer contributions every four years following a full scheme valuation. The salary bands were revised for 2010/11. The contribution rates reflect benefits as they are accrued, not when the costs are actually incurred, and reflect past experience of the scheme.





## 6. Other expenditure

	2010/11 £'000	2009/10 £'000
Hire of plant and machinery	21	19
Other operating leases	1,360	1,225
Non case related expenditure including internal audit fees	1	18
IT service fees	107	103
Accommodation and utilities	697	584
Travel, subsistence and hospitality	19	18
Other administration including case related expenditure	307	263
Audit fees	19	24
<b>Non cash items:</b>		
Depreciation	91	115
<b>Total other expenditure</b>	<b>2,622</b>	<b>2,369</b>

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

The increase in VAT to 20 per cent during the year has resulted in the operating lease liability increasing by £135,000.

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

Audit fees relate only to statutory audit work.

In accordance with Treasury guidelines, the notional interest payable on capital employed has been removed from other administration expenses non cash element. The cost of capital of £38,000 credit has also been removed from last year's figures; although this is a prior period adjustment, it has no impact on the accounts.



## COMPETITION SERVICE

### 7. Income

	2010/11 £'000	2009/10 £'000
Gross interest received	-	3
Courtroom rental income	3	1
Website service income	4	4
Total income	7	8

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

Courtroom rental income was particularly low due to the adverse economic climate and flooding which put court 2 out of action for several months.

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

### 8. Taxation

	2010/11 £'000	2009/10 £'000
Corporation tax payable	-	-

Corporation tax payable is based on 21 per cent of gross interest receivable (2009/10: 21 per cent).

### 9. Property, plant and equipment

	Information Technology £'000	Furniture and Fittings £'000	Office Machinery £'000	Total £'000
<b>Cost or valuation:</b>				
<b>At 31 March 2010</b>	<b>357</b>	<b>318</b>	<b>14</b>	<b>689</b>
Additions	6	7	-	13
Disposals	(5)	-	-	(5)
<b>At 31 March 2011</b>	<b>358</b>	<b>325</b>	<b>14</b>	<b>697</b>
<b>Depreciation:</b>				
<b>At 31 March 2010</b>	<b>316</b>	<b>262</b>	<b>7</b>	<b>585</b>
Charged in year	17	42	2	61
Disposals	(4)	-	-	(4)
<b>At 31 March 2011</b>	<b>329</b>	<b>304</b>	<b>9</b>	<b>642</b>
<b>Net book value at 31 March 2010</b>	<b>41</b>	<b>56</b>	<b>7</b>	<b>104</b>
<b>Asset financing:</b>				
Owned	41	56	7	104
<b>Net book value at 31 March 2011</b>	<b>29</b>	<b>21</b>	<b>5</b>	<b>55</b>
<b>Asset financing:</b>				
Owned	29	21	5	55



## 10. Intangible assets

	Purchased software licences £'000
<b>Cost or valuation:</b>	
<b>At 31 March 2010</b>	<b>213</b>
Additions	1
Disposals	-
<b>At 31 March 2011</b>	<b>214</b>
<b>Amortisation:</b>	
<b>At 31 March 2010</b>	<b>155</b>
Charged in the year	30
Disposals	-
<b>At 31 March 2011</b>	<b>182</b>
<b>Net book value at 31 March 2010</b>	<b>58</b>
<b>Net book value at 31 March 2011</b>	<b>29</b>

## 11. Trade and other receivables

### (a) Analysis by type

	31 March 2011 £'000	31 March 2010 £'000
<b>Amounts falling due within one year:</b>		
Deposits and advances	8	8
Other receivables	-	4
Prepayments and accrued income	72	63
<b>Total trade receivables and other receivables</b>	<b>80</b>	<b>75</b>

### (b) Intra-government balances

	Amounts falling due within one year		Amounts falling due after more than one year	
	31 March 2011 £'000	31 March 2010 £'000	31 March 2011 £'000	31 March 2010 £'000
Balances with other central government bodies	8	-	-	-
Balances with bodies external to government	72	75	-	-
<b>Total trade and other receivables</b>	<b>80</b>	<b>75</b>	<b>-</b>	<b>-</b>



## COMPETITION SERVICE

### 12. Cash and cash equivalents

	2010/11 £'000	2009/10 £'000
Balance at 1 April	573	408
Net change in cash balances	(299)	165
<b>Balance at 31 March</b>	<b>274</b>	<b>573</b>
The following balances at 31 March were held at:		
Commercial banks and cash in hand	274	573
<b>Balance at 31 March</b>	<b>274</b>	<b>573</b>

### 13. Trade payables and other current/non-current liabilities

#### (a) Analysis by type

	31 March 2011 £'000	31 March 2010 £'000
<b>Amounts falling due within one year:</b>		
Payables of the Tribunal at 31 March	115	89
Taxation and social security	17	19
Trade payables	6	23
Accruals	42	64
Untaken leave accrual	40	49
BIS grant-in-aid payable	-	165
Deferred income rent free	23	23
<b>Total amounts falling due within one year</b>	<b>243</b>	<b>432</b>
<b>Amounts falling due after more than one year:</b>		
Deferred income rent free	261	284
Operating lease liability	1,475	1,256
<b>Total amounts falling due after more than one year</b>	<b>1,736</b>	<b>1,540</b>

#### (b) Intra-government balances

	Amounts falling due within one year		Amounts falling due after more than one year	
	31 March 2011 £'000	Restated 31 March 2010 £'000	31 March 2011 £'000	Restated 31 March 2010 £'000
Balances with other central government bodies	114	286	1,736	1,540
Balances with bodies external to government	129	146	-	-
<b>Total trade and other payables</b>	<b>243</b>	<b>432</b>	<b>1,736</b>	<b>1,540</b>



**(c) Deferred income and operating lease liability**

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

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

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

Note 6 gives further details of the lease arrangements in respect of land and buildings.

## 14. Provisions for liabilities and charges

	<b>Tribunal's long service award costs £'000</b>
<b>Balance at 31 March 2010</b>	<b>12</b>
Provided in the year	6
Provisions utilised in the year	-
<b>Balance at 31 March 2011</b>	<b>18</b>

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

## 15. Commitments under operating leases

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

	<b>31 March 2011 £'000</b>	<b>31 March 2010 £'000</b>
<b>Obligations under operating leases comprise:</b>		
<b>Buildings:</b>		
Not later than one year	<b>1,188</b>	1,163
Later than one year and not later than five years	<b>5,141</b>	4,881
Later than five years	<b>10,955</b>	12,043
<b>Other:</b>		
Not later than one year	<b>22</b>	21
Later than one year and not later than five years	<b>37</b>	55
Later than five years	<b>-</b>	2
<b>Total obligations under operating leases</b>	<b>17,343</b>	18,165

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



## COMPETITION SERVICE

### 16. Financial instruments

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

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

Set out below is a comparison by category of book values and fair values of the CS's financial assets as at 31 March 2011.

	Book value £'000	Fair value £'000
Cash at the bank	274	573

### 17. Related party transactions

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

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

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

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

### 18. Contingent liability

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

### 19. Events after the reporting period

There were no other post balance sheet events to report.

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





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