



COMPETITION APPEAL TRIBUNAL



Annual Report and Accounts **2014/2015**

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Introduction

The Enterprise Act 2002 provided for the establishment of the Competition Appeal Tribunal (Tribunal) and the Competition Service (CS). Although created as separate entities under the Enterprise Act 2002 and treated as such for accounting purposes, in practical terms the Tribunal and the CS constitute a single organisation. Through the CS, the Tribunal effectively administers itself and a single body of staff deploys the same set of resources in multi-tasking the casework of the Tribunal and necessary support functions.

Principal functions of the Tribunal

The Tribunal hears appeals against: decisions taken under the Competition Act 1998 and Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) by the Competition and Markets Authority (CMA) and by designated sector regulators with concurrent powers¹; certain decisions of the Office of Communications (Ofcom) regarding the communications and broadcasting sectors under the Communications Act 2003; and decisions of the CMA or the Secretary of State for Business Innovation and Skills (BIS) on merger cases and market investigations under the Enterprise Act 2002.

Further powers have been given to the Tribunal to hear appeals under the Payment Services Regulations 2009. Under the Financial Services (Banking Reform) Act 2013, the Tribunal has jurisdiction to hear appeals from some types of enforcement and penalty decisions of the Payment Systems Regulator. Under the Energy Act 2010, the Tribunal is able to hear appeals in relation to decisions taken by the Gas and Electricity Markets Authority (GEMA) in respect of the application of a market power licence condition to particular types of exploitative behaviour in electricity markets. The Tribunal may also hear appeals in respect of 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. 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.

The Civil Aviation Act 2012 affords a right of appeal to the Tribunal in respect of various decisions and determinations of the Civil Aviation Authority including market power determinations, the imposition, modification and revocation of certain enforcement orders, the revocation of licences and the imposition of penalties.

Currently, the Tribunal may also hear claims for damages where there has been a decision by a national competition authority finding an infringement of UK competition law or by the European Commission in respect of an infringement of Article 101 or Article 102 of the TFEU. When it comes into force later this year, the Consumer Rights Act 2015 will widen the Tribunal's jurisdiction with regard to claims for damages in several important respects. First, the Tribunal will be able to hear any claim for damages in respect of an infringement whether or not there is a prior competition authority decision establishing such an infringement. Secondly, the Tribunal will be able to hear collective actions for damages on both an "opt-in" and "opt-out" basis and thirdly, the Tribunal (except in Scottish cases) will have power to grant injunctive relief in order to prevent or curtail infringements of competition law.

Each of the cases within the Tribunal's various areas of statutory jurisdiction is heard and decided by a panel consisting of the President or a Chairman and two Ordinary 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 relation to cases in England and Wales, the Court of Session in respect of Scottish cases or, with regard to Northern Irish cases, the Court of Appeal in Northern Ireland.

Membership of the Tribunal

The Tribunal's membership comprises:

President

The Hon. Mr Justice Roth

Panel of Chairmen

The Right Hon. Lord Justice Sales ²
The Hon. Mr Justice Henderson ³
The Hon. Mr Justice Morgan
The Hon. Mr Justice Norris
The Hon. Mr Justice Proudman
The Hon. Mr Justice Arnold
The Hon. Mr Justice Newey

1. The sector regulators with concurrent powers are set out in section 54(1) of the Competition Act 1998 (as amended) and include: (1) the Office of Communications; (2) the Gas and Electricity Markets Authority; (3) the Water Services Regulation Authority; (4) the Office of Rail Regulation; (5) the Northern Ireland Authority for Utility Regulation; (6) the Civil Aviation Authority; (7) Monitor; (8) the Payment Systems Regulator; and (9), from April 2015, the Financial Conduct Authority.

2. Lord Justice Sales was appointed as a Lord Justice of Appeal in July 2014.

3. Mr Justice Henderson reached the end of his term as Tribunal Chairman in January 2015.

The Hon. Mr Justice Hildyard
The Hon. Mr Justice Asplin
The Hon. Mr Justice Birss
The Hon. Mr Justice Nugee
The Hon. Mr Justice Barling
Heriot Currie QC
Peter Freeman CBE, QC (Hon)
Andrew Lenon QC
Hodge Malek QC
Marcus Smith QC

Ordinary Members

William Allan
Professor John Beath
Michael Blair QC (Hon)
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 OBE
Professor Stephen Wilks

Registrar

Charles Dhanowa OBE, QC (Hon)

Recruitment

The President and Chairmen are appointed by the Lord Chancellor for a fixed term 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 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; a single body of staff multi-tasks across case-handling and administrative roles using a common pool of resources.

The membership of the CS comprises: the President, the Registrar and a non-executive member, Susan Scholefield CMG, who is also chair of the CS Audit and Risk Committee. Ilia Bowles is the Tribunal/CS Director, Operations.

Register of Interests

The CS holds a Register of Interests detailing any directorships or other significant interests held by members of the CS.

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 UK, the Tribunal may hear those cases at premises outside London. Past cases concerning Scottish, Welsh and Northern Irish undertakings have been heard in Edinburgh, Cardiff and Belfast respectively.

Finance and workload

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

President's statement

Introduction

This is my second statement as President of the Competition Appeal Tribunal. The past year has been an interesting one, as the Tribunal prepares for the expansion of its jurisdiction in the realm of private actions in late 2015. While the CMA, which took over the functions of the Office of Fair Trading (OFT) and Competition Commission (CC) in April 2014, settles into its new role, there has been a fall in the number of decisions which can lead to an appeal to the Tribunal. However, the appeals that the Tribunal has heard have raised complex and novel questions.

Looking forward to the next year, we face a number of exciting developments as the Consumer Rights Act 2015 comes into force. Not only will this legislation resolve several jurisdictional difficulties which have blighted the Tribunal's private actions jurisdiction in the past, but it will expand the Tribunal's jurisdiction to hear stand alone private actions and issue injunctions. Further, the Tribunal will become the exclusive forum for the new opt-out collective actions for breaches of competition law. This is the first time opt-out collective actions have been introduced in UK law making it a significant development not only for the Tribunal, but also for UK law as a whole and, indeed, for European competition law. Needless to say, the Tribunal expects a considerable growth in the volume of cases it receives and is preparing for this increase as well as for the very different types of challenges that collective proceedings will bring.

These important changes must be set against the Tribunal's ongoing caseload under its present jurisdiction, which continues to present unique challenges. The past year has seen a number of interesting cases, in this regard, including the first challenge to a commitments decision taken under the Competition Act 1998 in *Skyscanner*. We have also seen *Eurotunnel's* acquisition of the former *SeaFrance* before the Tribunal for a second time, following the reference by a differently constituted Tribunal of the question of jurisdiction back to the CC in December 2013. During the period under review, the Tribunal was upheld by the Court of Appeal in *Akzo Nobel*, a merger case, and by the Supreme Court in *Deutsche Bahn and 08 Numbers*, respectively a private action for damages and a challenge to OFCOM determination regarding BT's charges.

Chairmen

I must, first, thank Peter Freeman CBE, QC (Hon) for his invaluable contribution to the Tribunal, not only in its casework but also in promoting the reputation of the Tribunal, speaking at a number of conferences and other events in his capacity as a Chairman.

We also greatly value the assistance that the Tribunal receives from the Judges of the Chancery Division and we are very grateful to the Chancellor of the High Court, Sir Terence Etherton,

for the assistance he and the Judges of that division have rendered to the Tribunal during the period under review. We also congratulate Lord Justice Sales on his appointment to the Court of Appeal. While a Chancery Judge, Lord Justice Sales chaired the challenge in *BAA v CC* in 2011 and, in the past year, the judicial reviews in *AC Nielsen v CC* and *Private Healthcare*, the latter comprising three separate challenges to the Final Report in the CMA's private healthcare market investigation. *Private Healthcare* has proved especially complex and demanding, particularly in terms of case management, and we are therefore grateful to Lord Justice Sales for continuing to chair these cases since his elevation to the Court of Appeal and to the Master of the Rolls, Lord Dyson, for permitting him to do so.

As my predecessor, Sir Gerald Barling, made clear on many occasions, the Tribunal has long pushed for arrangements to be put in place to enable certain suitably qualified judges in Scotland and Northern Ireland to sit as chairmen of the Tribunal. The new Consumer Rights Act 2015 will enable the heads of the three UK judiciaries to nominate judges sitting in their respective High Courts or the Court of Session to sit as chairmen of the Tribunal. This change will better equip the Tribunal to deal with its expanded jurisdiction. We look forward to welcoming some new judges as chairmen after the Consumer Rights Act comes into force later this year.

Members

Perhaps, the most distinctive feature of the Tribunal is that cases are heard by a legal Chairman and two Ordinary Members, many of whom are not lawyers, who all have an equal voice in the decision. The Members bring their diverse skills and experience to the work of the Tribunal. I have continued to be impressed by their enthusiasm and conscientiousness and they provide great help and support to me and all the Tribunal Chairmen.

I wish to take this opportunity to thank Dr Adam Scott OBE, TD for his work as the Tribunal's Director of Studies, in which capacity his organisation of, and contributions to the interesting and informative training sessions of the Members and Chairmen are invaluable, as is his work in ensuring the effective operation of the Association of European Competition Law Judges (AECLJ) and in representing the Tribunal externally.

I would also like to thank our non-executive member, Susan Scholefield CMG, for chairing the Board meetings of the CS as well as the Audit and Risk Committee.

Last, and by no means least, indeed in many respects most, I would like to thank the Tribunal's Registrar, Charles Dhanowa OBE, QC (Hon). His knowledge of the Tribunal's working is unparalleled and I continue to be impressed by his skills in managing the Tribunal's staff and its daily operations. Charles has played a prominent role in dealing with the policy and legislative



issues that have arisen over the past year, particularly as we prepare Tribunal's Rules for collective proceedings and update our rules more generally, and in discussions with BIS. His contribution on such issues is invaluable.

Cases

Although, as I have explained, this year has seen fewer cases than previous years, the cases that have been filed have been diverse, covering much of the Tribunal's jurisdiction.

New cases registered during the period covered by this report include: a follow-on action for damages under section 47A of the Competition Act 1998; an application for permission to initiate a claim early under rule 31(3) of the Tribunal Rules 2003; an appeal under section 192 of the Communications Act 2003; three applications for review of merger decisions by the CC; three applications for review of decisions taken in the context of market investigations; and a challenge to a commitments decision of the OFT. A number of cases, which were filed in previous years but were then stayed for some time pending related appeals to the Court of Appeal and Supreme Court, have been re-activated. These include three challenges brought under section 192 of the Communications Act.

The Tribunal handed down 25 judgments, rulings and reasoned orders in the period under review. Cases of particular interest, that were heard or decided during this time, are mentioned at the end of my statement.

New functions

The Financial Services (Banking Reform) Act 2013 provided for the creation of a new Payments Systems Regulator (PSR). Since 1 March 2014, certain decisions of the PSR have been subject to appeal to the Tribunal. These include decisions to give directions in relation to regulated payment systems or to impose penalties in respect of compliance failures. The PSR also has concurrent powers to enforce competition law in relation to participation in payment systems. Its powers in relation to market investigations came into force on 1 April 2014 and its powers under the Competition Act 1998 came into force on 1 April 2015, when the PSR became fully operational. Decisions taken by the PSR pursuant to its concurrent powers will also be subject to appeal in the Tribunal.

Looking forward to next year, the Financial Conduct Authority (FCA) became a concurrent regulator on 1 April 2015 when the relevant provisions of the Financial Services (Banking Reform) Act 2013, giving it the power to enforce competition law in respect of financial sector activities, came into force. As with the PSR, the FCA's concurrent competition decisions will be subject to appeal in the Tribunal.

Reform of private enforcement

Last year, I welcomed the expansion of the Tribunal's jurisdiction set out in the Consumer Rights Bill. That Bill has since completed its passage through Parliament, becoming law on 26 March 2015, and is expected to come into force on 1 October 2015. The Consumer Rights Act 2015 gives the Tribunal the power to hear standalone claims for damages, grant injunctive relief and operate a fast-track regime offering expedited procedures and remedies (except in Scottish cases). Moreover, the legislation introduces a regime for opt-out collective actions in appropriate cases. As a "first" in UK law, this new regime will present particular challenges.

The part of the Bill that dealt with competition issues was not substantially amended during its passage through Parliament, although it was debated by the House of Lords Committee and two amendments were introduced at the House of Lords report stage and third reading. The first amendment introduced the provision to which I refer above, whereby the heads of the three UK judiciaries will be able to nominate judges sitting in their respective High Courts or the Court of Session to sit as chairmen of the Tribunal. The second amendment related to the CMA's new power to approve redress schemes.

As I mentioned in my previous statement, the Tribunal published draft rules for collective actions on 10 March 2014. BIS issued a consultation on the draft rules for collective actions on 13 February 2015, as part of a broader consultation on the Tribunal's Rules, which is discussed further below.

On 1 October 2014, a new Practice Direction relating to the Commencement of Damages Claims came into force. This Practice Direction specifies the information that must be included in the claim form where one or more of the defendants in a claim for damages, brought under sections 47A or 47B of the Competition Act 1998, is domiciled outside the UK. Where a proposed defendant is domiciled outside the EU, the Tribunal will consider whether to grant permission to serve outside the jurisdiction. Where the proceedings are treated as being in England and Wales, the Tribunal will apply the same approach as the High Court. In the first case arising under the new Practice Direction, the Tribunal refused permission as regards a part of the claim on the basis that the allegations went beyond the limited jurisdiction that the Tribunal currently has for damages claims.

Review of the rules and guide

During the past year, the Tribunal has completed the general review of its rules, as part of a working group chaired by a retired Lord Justice of Appeal, Sir John Mummery. Sir John Mummery recommended a number of updates to the rules, as well as an expansion of the rules addressing private actions in general.

The expanded rules will enable the Tribunal to effectively manage the increased volume and variety of cases which are expected when the Consumer Rights Act 2015 comes into force. By way of example, the draft revised rules include new rules on new evidence, settlement offers, a fast track procedure, disclosure and injunctions.

BIS issued a consultation on the revised rules, including the draft rules on collective actions, on 13 February 2015. The Tribunal was represented at a stakeholder meeting the following month, at which the draft revised rules were discussed. The consultation closed on 3 April 2015 and the Government's response is expected in due course.

The Tribunal is also working on a revised "Guide to Proceedings", which will update the existing guide and reflect the revised rules. For this process, the Tribunal is greatly assisted by discussion in its User Group, to which I refer further below.

I am confident that the Tribunal's new rules will provide a robust but flexible framework within which the Tribunal can case-manage, hear and determine the complex and challenging cases that will be brought before it, including those that are likely to be commenced under its enhanced jurisdiction resulting from the new legislation.

Triennial Review

In accordance with the normal Triennial Review process for public bodies, BIS published its Triennial Review of the Tribunal and CS on 7 November 2014. BIS recognised the successful operation of the Tribunal since its inception, noting in particular its speed in concluding large scale, complex competition and regulatory cases in a prompt and effective manner. I am therefore extremely pleased with BIS's recommendation that the Tribunal be retained as a specialist tribunal.

BIS also considered the case for the abolition of the CS and the possibility that its functions could be transferred to the Tribunal Service. Recognising the need to maintain the current level of support provided by the CS, and to avoid any longer-term detriment to the effectiveness of the Tribunal, BIS rejected this option instead recommending that the functions of the CS be merged with those of the Tribunal to form a single body.

Accordingly, the Tribunal and CS will merge in due course, although this merger is unlikely to take place until the recent competition reforms have bedded in.

Other activities

Conferences and seminars

It has been a very busy year for outside speaking engagements. Amongst events in the period under review, I chaired a panel session at the annual conference of the Association of European Competition Law Judges (AECLJ), gave a keynote address at the Westminster Business Forum on the future of the competition regime in the UK and spoke at the European Competition Day in Athens on judicial review and the interplay between procedural guarantees and the effectiveness of enforcement. I also spoke at the Competition Tribunal Workshop in Johannesburg, the XI Treviso Conference, the David Vaughan CBE, QC lecture on antitrust litigation and the ICC Young Lawyers event. I gave a speech at the European Competition Day in Rome on the role of competition authorities in fostering growth and consumer welfare and I delivered a King's College lecture entitled "A new era for private competition actions in the UK".

Amongst the activities undertaken by my colleagues at the Tribunal, Peter Freeman CBE, QC (Hon) gave keynote addresses and speeches at a number of conferences and events. He gave a speech on private enforcement in the UK at the International Competition Forum in St Gallen, Switzerland, and he spoke about coherence and stability in regulatory policy at the London conference of the Regulatory Policy Institute. He also spoke at the CRA Annual Conference in Brussels, at the Jevons Institute seminar on two-sided markets and at the Monopolkommission's 40th anniversary event. He contributed to the Roundtable discussion organised by the Centre for Regulatory and Competition Policy of City University in London, speaking on the topic of competition law in public service markets. Finally, he was involved in the training of judges on the use of economic evidence organised by the OECD in Budapest in March this year.

In April 2014, one of our *Référéndaires*, Jennifer Reeves, gave a speech about hub and spoke agreements at the OECD and GVH Regional Centre for Competition. One of our Members, William Allan, spoke about the Court of Justice's case law on the general principles of the European legal system, in May 2014, at the European Institute's seminar for competition law judges in Lisbon. He also spoke at an ERA Academy of Law seminar for European judges held in London in December 2014, about the legal challenges arising from horizontal and vertical agreements. One of our chairmen, Marcus Smith QC, chaired the Crowell & Moring LLP annual conference of the Interdisciplinary Centre for Competition Law and Policy in May 2014; he also spoke at the Sweet and Maxwell Annual Competition Law Conference in September 2014.



Although outside the period covered by this report, I should also mention that in May 2015 the Registrar, Jennifer Reeves and I travelled to Toronto and New York to meet with prominent judges and lawyers to discuss class actions. We found their insights and observations regarding class actions of enormous assistance, and I am greatly appreciative of the time that was made for us.

AECLJ

In its capacity as the *de facto* Secretariat for the Association of European Competition Law Judges (AECLJ), an organisation of which I am Treasurer, the Tribunal continues to play an active role in stimulating dialogue and debate between members of the judiciary in the EU Member States and in bringing together judges and officials from competition enforcement agencies. The AECLJ's annual conference took place in Bucharest in June 2014 and centred around the theme "Collective Actions: Experience & Expectations". The conference welcomed a number of distinguished guest speakers, including Cecilio Madero Villarejo, Deputy Director-General for Antitrust at the European Commission, Douglas Ginsberg, Senior Judge on the United States Court of Appeals for the District of Columbia Circuit, and Janet Walker, Professor of Law at Osgoode Hall Law School in Toronto, who spoke about class actions in Canada.

Visitors to the Tribunal

I consider it important that, wherever possible, the Tribunal should exchange views with competition judges and enforcement authorities from other jurisdictions. We had several distinguished visitors to the Tribunal during the year.

In July 2014, we welcomed visitors from the Singaporean Competition Commission. In October 2014, colleagues from the South African Competition Commission visited us and, in December, we received the President of the Malaysian Competition Appeal Tribunal. In February 2015, our two *Référendaires*, Jennifer Reeves and Renella Reuerman, provided an insight to the role and work of the Tribunal to a group of law students from Queen Mary University.

Finally, we hosted the Franco-British Lawyers Conference in October 2014, DG Competition training for judges on competition law over two days in December 2014 and the Jordans 9th Junior Competition Conference in February 2015.

User Group

The meetings of the Tribunal's User Group continue to provide an important forum for sharing information and ideas about the Tribunal's practice and procedure, and discussing important

policy developments and their impact on the Tribunal. I am most grateful to the members of the Group for their feedback and constructive suggestions. Minutes of the User Group's meetings are available on the Tribunal's website.

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

Sir Peter Roth
President
10 July 2015

Notable cases

The following are some of the notable cases determined by the Tribunal in the period covered by this report.

Competition Act 1998 (1998 Act)

Commitments:

Skyscanner Limited v Competition and Markets Authority

In September 2014, the Tribunal quashed and remitted to the CMA a decision by the OFT to accept commitments in its investigation under the 1998 Act into the online supply of hotel accommodation by travel agents. This was the first appeal of a commitments decision adopted under section 31A of the 1998 Act. The challenge was brought by Skyscanner, an operator of price comparison websites. The Tribunal found that the OFT had failed to consider properly, or conscientiously take into account, the objection to the proposed commitments raised by Skyscanner and others. The OFT had also acted irrationally in failing to consider the potential anti-competitive consequences of the commitments.

Follow-on damages:

Emerson Electric Co and others v Morgan Crucible Company PLC Deutsche Bahn AG and others v Morgan Crucible Company PLC and others

Two long-running actions for damages, both based on the European Commission's decision in the electrical and carbon graphite products cartel, settled this year. The settlement in Deutsche Bahn follows a judgment by the Supreme Court in April 2014 holding that a Commission decision regarding the existence of a cartel remains binding or not according to the outcome of any individual appeal. A successful appeal by one addressee of the decision, establishing that there was no cartel, has no effect on the validity and effects of the decision determining that there was such a cartel and levying a fine against another addressee who has not appealed. The Supreme Court's decision effectively restored the decision that the Tribunal reached in May 2011.

Enterprise Act 2002 (2002 Act)

Groupe Eurotunnel S.A. v Competition and Markets Authority Société Coopérative de Production Sea France S.A. v Competition and Markets Authority

The Tribunal's judgment in these cases follows a remittal in 2014 to the CC of the question of whether or not Eurotunnel, when it bought certain SeaFrance assets, acquired "an enterprise" within the meaning of the 2002 Act. On this occasion, following separate appeals by Eurotunnel and the SCOP, the Tribunal upheld the CMA's decision on remittal that the acquired assets were an

"enterprise" and therefore a relevant merger situation arose which the CMA had jurisdiction to review. The SCOP applied to the Court of Appeal for permission to appeal. On 15 May 2015, the Court of Appeal issued its judgement allowing (by majority) the SCOP's appeal.

Akzo Nobel N.V. v Competition Commission

In June 2013, the Tribunal dismissed an application by AkzoNobel for review of the CC's decision prohibiting the merger between AkzoNobel and Metlac Holdings S.r.l.. The Tribunal held that AkzoNobel, a company registered in the Netherlands, carried on business in the UK within the meaning of section 86(1)(c) of the 2002 Act and therefore the CC was entitled to make an order prohibiting the merger. In April 2014, the Court of Appeal dismissed AkzoNobel's appeal, upholding the Tribunal's analysis. In January 2015, the Supreme Court refused AkzoNobel's request for permission to appeal.

Ryanair Holdings PLC v Competition and Markets Authority

As noted in last year's report, in March 2014 the Tribunal dismissed Ryanair's application for review of the merger decision in relation to Ryanair's acquisition of a minority shareholding in Aer Lingus. On 12 February 2015, the Court of Appeal dismissed Ryanair's appeal.

Communications Act 2003 (2003 Act)

British Telecommunications PLC v Office of Communications (1) Cable and Wireless Worldwide plc (2) Virgin Media Limited and (3) Verizon UK Limited v Office of Communications (1) British Sky Broadcasting Limited and (2) TalkTalk Telecommunications Group plc v Office of Communications

In August 2014, the Tribunal issued its decision in three appeals from a determination by OFCOM dealing with disputes between a number of communications providers in relation to Ethernet services. The appeals were brought by BT, Sky and TalkTalk and by the Altnets (Virgin Media, Cable & Wireless and Verizon). In its determination, OFCOM considered whether BT had complied with a licence condition requiring that certain charges be cost-oriented and concluded that BT had overcharged other communications providers for Ethernet services. The Tribunal upheld one of BT's grounds of appeal regarding adjustments that should be made to BT's regulatory financial statements, which would reduce the amount of the overcharge. It also allowed one ground of appeal by Sky, TalkTalk and the Altnets, namely that OFCOM was wrong not to order the payment of interest on the sums to be repaid by BT. BT has applied to the Court of Appeal for permission to appeal the Tribunal's judgement. That decision is pending.

**British Telecommunications PLC (Termination Charges: 0800 calls) v Office of Communications**

In July 2014, the Supreme Court handed down judgment in this case, reversing a decision of the Court of Appeal which, in turn, had set aside the Tribunal's judgment from August 2011. BT had challenged a determination by OFCOM that it was not permitted to introduce so-called "ladder pricing" in wholesale termination charges for certain non-geographic numbers. The Supreme Court clarified that the starting point is that the regulatory framework takes a *"market-oriented and essentially permissive approach"*, relying principally on negotiation between operators in a competitive market to ensure interconnection between networks. When OFCOM determines an interconnection dispute, its role is *"adjudicatory"* rather than regulatory; in other words, it should determine whether there is any positive regulatory reason to depart from the contractual position. On that approach, there was no basis for OFCOM to interfere with BT's introduction of "ladder pricing". BT had a contractual right to introduce it and OFCOM had not found that such pricing would be inconsistent with objectives in Article 8 of the Framework Directive (promoting competition and the interests of consumers).

A further case on "ladder pricing", British Telecommunications PLC v Office of Communications, involving ranges of other non-geographic numbers, settled on 27 April 2015 (outside the period covered by this report).

Strategic report

Resources

In 2014/15 the grant-in-aid received from BIS was £4,253,000 (£3,920,000 in 2013/14). The running costs of the Tribunal/CS for 2014/15 were £3,380,000 (£3,898,000 in 2013/14). Fixed costs (mainly rent, service charge and business rates) comprised £2,986,000 or 88 per cent of the total. £554,000 approximately of our grant-in-aid was earmarked for a substantial IT upgrade described later in this report.

As noted in previous years, our working practices and the nature of our facilities are dictated by the specialised judicial functions of the Tribunal and the particular demands of hearing large scale complex competition and economic regulatory cases, often to very tight timescales. It is essential for our efficient operation that we maintain large modern courtrooms that are suitable for the multi-party and document-heavy cases heard by the Tribunal. We need to be located in central London close to the senior judiciary, who sit on cases in the Tribunal, and convenient for the parties and their counsel. We also need high calibre members and staff with specialist expertise, who can deal with the highly technical and detailed nature of the Tribunal's work as rapidly as possible. That all dictates a fixed cost base which is at or around the level at which we have been operating.

It is important to bear in mind that our work is entirely demand led. We have no control over the number and nature of cases which are received during the year and this increases the uncertainty in planning and budgeting resources. It is also difficult to make assumptions about the demands of individual cases which vary between the small but often difficult and the extremely large and highly complex cases that absorb a great deal of resources.

Presently, the number of decisions made by the UK competition authorities, OFCOM (in respect of telecoms regulation) and the European Commission (in respect of matters that might give rise to follow-on actions for damages) is the primary factor determining the workload of the Tribunal. However, when the Consumer Rights Act 2015 comes into force later this year, claims made by private litigants will also become a very important element in the overall demand on our resources. Over the last year, enforcement activity by the competition authorities has continued to be at a low level which again meant that the Tribunal has had a lower than usual caseload over the year. That has been the primary factor in keeping the Tribunal/CS within its grant-in-aid allocation. During financial year 2015/16, enforcement activity is expected to rise with a corresponding upturn in workload for the Tribunal. Furthermore, when the Consumer Rights Act is brought into force later in the same

financial year, the Tribunal's enlarged jurisdiction in respect of private actions is likely to contribute, in possibly quite a significant way, to an increase in the Tribunal's workload. This will be a welcome development but is likely, in due course, to require additional resources for the Tribunal.

In that regard, the Tribunal/CS's present level of funding (being a miniscule proportion of the amount spent on the UK's system of competition enforcement) will need to be reviewed to ensure that it is suitable for the long term pressures to which the Tribunal will be subject. There are ongoing discussions with BIS as to how to address this issue in the context of the current situation regarding public expenditure. A particularly pressing matter in this regard is the fact that the daily rate of remuneration for Ordinary Members has not increased since 2006 and the rate for Chairmen remains at the level set in 2003, at the inception of the Tribunal. As mentioned last year, this, coupled with the fact that staff pay has been frozen or restricted for over five years, means that we remain concerned about our ability to continue to attract members and staff of the high calibre needed for the difficult work of the Tribunal.

Administration

The last year has again been busy dealing with a number of reviews regarding various aspects of the operation of the Tribunal/CS. Some of these have been fundamental in nature.

During 2014, Sir John Mummery led a review of the Tribunal's procedural rules which resulted in a completely revised and greatly expanded new set of rules being drafted for public consultation during early 2015.⁴ It is anticipated that the new procedural rules will be made by the Secretary of State later this year, as a prelude to the Tribunal taking up its expanded role as a civil court under the Consumer Rights Act 2015.

Since 2011, all Non-Departmental Public Bodies (NDPBs) have to be reviewed by their sponsoring departments at least once every three years. During 2014, BIS carried out a Triennial Review of the Tribunal and the CS. The review had two aspects: first, whether the functions of the Tribunal and the CS were still needed; secondly, whether the CS was operating in accordance with recognised principles of good corporate governance.

Positive conclusions in respect of both aspects were set out in the report of the review published in November 2014.⁵ In particular, the report noted that *"the Tribunal has a vital role to play in determining regulatory and competition appeals which have important consequences for the wider economy and the*

4. <https://www.gov.uk/government/consultations/competition-appeal-tribunal-rules-of-procedure-review>

5. <https://www.gov.uk/government/publications/competition-appeal-tribunal-and-competition-service-triennial-review-2013-to-2014>



Government's growth agenda." It was also noted that: *"the Tribunal is frequently held up as a model in bringing together judicial scrutiny with expert knowledge of competition policy and economics."* Finally, the report set out the Government's decision to retain the Tribunal as: i) a specialist tribunal to hear appeals of decisions of the economic regulators and competition authorities; and ii) a major venue for competition actions in the UK. The report stated that *"this decision is a strong vote of confidence in the Tribunal's ongoing role as a specialist and independent court."* In respect of corporate governance, the Review team found the Tribunal and the CS to be compliant with the vast majority of governance and accountability requirements which are placed on them by statute, regulation, BIS and governmental guidelines or best practice.

It is though likely that there will be organisational change as a result of the Triennial Review in that, as part of the Government's objective of simplifying the public bodies landscape, the report recommended that the Tribunal and the CS should be merged to form a single body, a specialist Tribunal NDPB with its own support functions. In essence, this formal change will reflect the real underlying position to which I have already referred, that, in their day to day practical operations, the Tribunal and CS operate as a single integrated organisation. Nevertheless, if the report's recommendation is to be implemented over the next financial year, there will be a certain amount of work to be done in effecting the formal merger. Primary legislation will be required and new governance structures will need to be created for the merged organisation. Chief amongst these will be an enlarged Board with a wider perspective and able to draw upon experience both within all aspects of the Tribunal and in the other parts of the judicial system. Time will also need to be devoted to the drafting of a new Framework Agreement with our sponsoring department, BIS.

Finally, in January 2015, the Smith Commission Agreement⁶ on devolved powers for Scotland established that *"all powers over the management and operation of all reserved tribunals (which includes administrative, judicial and legislative powers) will be devolved to the Scottish Parliament."* Whilst the Competition Appeal Tribunal falls within the scope of this aspect of the Smith Agreement, precisely what the practical impact will be on the management and operation of the Tribunal is difficult to determine at this point in time. The Smith Agreement will need to be put into effect through legislation and the detail with regard to how that legislation will be implemented will need further consideration by the UK and Scottish Parliaments.

Information technology

This year, the Tribunal/CS has been undertaking a complete overhaul of the organisation's IT infrastructure. The project finished at the beginning of May 2015 (outside the period covered by this report) and has included: the upgrade of the Tribunal/CS electronic document and record management system in parallel with a move to Windows 7 and Microsoft Office 2010; the upgrade of users' workstations; and the uplift of the security elements of the former Tribunal/CS IT infrastructure to ensure OFFICIAL security standards are met (in line with the new Security Classification Policy that came into effect in April last year).

Under the new arrangements, the Tribunal/CS shares services with BIS and the Department of Energy & Climate Change (DECC) through their tower-based platform (iTECC). That platform has been developed by DECC with the Government Digital Service of the Cabinet Office in light of the Government's review of its IT strategy and its recommendation of a cloud-based approach for IT services in the public sector. Under iTECC, cloud back-end servers (for services such as email and document management) are provided by the trading fund of the Foreign and Commonwealth Office, whilst IT Managed Services (for example, workstation configuration and support, users' helpdesk and remote access) are provided by a G-cloud provider, CGI IT UK Ltd.

This has been a large and complex project for the Tribunal/CS and, carrying it out whilst continuing to maintain business as usual, has been a significant challenge with the limited internal resources we have available. The aim is to complete any outstanding and remedial work by the middle of the current financial year.

Charles Dhanowa OBE, QC
Registrar and Accounting Officer
10 July 2015

6. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf

Directors' report

The Tribunal and the CS

In formal terms, the Tribunal and the CS are two separate bodies. In practice, the CS provides the means by which the Tribunal manages itself – the CS's entire staff, premises and other resources being fully deployed in the daily work of the Tribunal. The President and myself, together with a non-executive member, Susan Scholefield CMG, constitute the Board of the CS. Ilia Bowles, Tribunal/CS Director, Operations, acts as the secretary to our meetings. Together, we ensure that the resources formally vested in the CS are fully and efficiently utilised in the work of the Tribunal and that the Tribunal/CS functions as a single integrated organisation.

Staff

Staff departures this year included the retirement of one of our longest serving colleagues, Jeremy Straker, who has been the CS Director, Operations since 2003. Prior to that, Jeremy had been part of the Tribunal's sponsoring team at BIS and had worked on the establishment of the Tribunal. During his time at BIS, Jeremy had also worked on the parliamentary bills that became the Competition Act 1998 and the Enterprise Act 2002. We will all miss having Jeremy as part of the team and wish him all the very best for a long and happy retirement. Also moving on in the last year was George Lusty, one of the *Référendaires*. Having been with the Tribunal for four years, George has now taken up a senior position at the CMA. Finally, Narayan Deb, one of the caseworkers, left the Tribunal to embark on a teacher training course. We all very much enjoyed working with both George and Narayan and wish them well in their new roles.

We were pleased to welcome Julie Hamilton, Operations Manager, back from maternity leave and recruited two new members of staff, Renella Reuerman as *Référendaire* and Juan Carlos as Office Administrator.

The staff team now comprises 14 people (with two of them working part-time), a number of whom multi-task across several roles. The President, Members and myself continue to attach the highest importance to the expertise, dedication and flexibility of our staff without which the Tribunal could not function anywhere near its present level of efficiency.

Once again, the staff absence rate (2.6 per cent of working days) is far below the average for both the private and public sectors.

Members

We anticipate commencing a further recruitment exercise for Ordinary Members during mid to late 2015. This is to ensure that we have sufficient members to deal with increased numbers of cases, largely as a result of the entry into force of the Consumer Rights Act 2015 later this year. It will also enable us to plan properly for the succession, in due course, of the present cadre of Members whose terms of office will come to an end in four years time.

Facilities

As our specialised court accommodation is our largest expense, we have sought to increase the utilisation of that space by making it available, free of charge, to other tribunals and organisations when not in use by the Tribunal/CS. The practice has also now developed of allowing the CMA to make use of our meeting rooms when their own facilities are fully utilised.

Data security

There have been no incidents involving a breach of data security (including personal data) 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). Liability for payment of future benefits is a charge on the PCSPS. Employer contributions are charges to the CS's income and expenditure account. A new pension scheme, Alpha, was introduced on 1 April 2015 to which all members of the classic, premium and *nuvos* schemes with more than 10 years to retirement will be transferred. Further information on the terms of the old and new pension schemes can be found in the Remuneration Report and in the notes to the CS's accounts.

The Tribunal/CS Audit and Risk Committee

The Tribunal/CS Audit and Risk Committee meets three to four times a year under the chairmanship of Susan Scholefield CMG. Stephen Harrison and Brian Landers, both Tribunal Members with considerable accounting experience, are also members of the committee.



Format of accounts

The accounts for the Tribunal/CS have been prepared in accordance with the 2014/15 Government Financial Reporting Manual (FReM) and the separate Accounts Direction for the Tribunal and the CS given by the Secretary of State with the consent of HM Treasury, in accordance with Schedule 3 of the Enterprise Act 2002. The accounting policies contained in the FReM apply International Financial Reporting and Accounting Standards as adapted or interpreted for the public sector.

The Accounts Direction for the Tribunal provides for the Statement of Accounting Officer's Responsibilities and Corporate Governance Statement to be 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's accounts in accordance with its statutory purpose set out in the introduction to this report. Whilst it is necessary to make this division for accounting purposes, it should be borne in mind that in its day to day operations the Tribunal/CS acts as a single integrated organisation.

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 (2013/14: £6,000) and £18,000 for the CS (2013/14: £18,000).

In 2014/15 XDIAS, BIS's Cross Departmental Internal Audit Service, continued to provide internal audit services to the CS. The cost of providing this function was £8,000 (2013/14: £8,000). From 1 April 2015, XDIAS was superseded by the Government Internal Audit Agency (GIAA) which will provide internal audit services to the Tribunal/CS during 2015/16.

No non-audit work was undertaken during the year.

Payment of creditors

The Tribunal/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 six days (2013/14: ten days) and 69 per cent of (undisputed) invoices were settled within ten days (2013/14: 71 per cent).

Disclosure of relevant audit information

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

Charles Dhanowa OBE, QC
Registrar and Accounting Officer
10 July 2015

Membership

President



Sir Peter Roth was called to the Bar in 1977 and took Silk in 1997. He was appointed a Recorder in 2000 and a High Court Judge in 2009. He was, for many years, a leading practitioner in competition law and, as a judge, has heard many of the recent competition cases brought in the High Court. From 2003 to 2009, he was Chairman of the Competition Law Association. He held a visiting professorship at King's College, London, teaching competition law on the Master of Laws (LLM) course and he was the General Editor of the 5th and 6th editions of Bellamy & Child on the European Union Law of Competition.

Chairmen

Panel of Chairmen

The Right Hon. Lord Justice Sales
The Hon. Mr Justice Henderson
The Hon. Mr Justice Morgan
The Hon. Mr Justice Norris
The Hon. Mr Justice Proudman
The Hon. Mr Justice Arnold
The Hon. Mr Justice Newey
The Hon. Mr Justice Hildyard
The Hon. Mr Justice Asplin
The Hon. Mr Justice Birss
The Hon. Mr Justice Nugee
The Hon. Mr Justice Barling

**Heriot Currie QC (Scotland)**

Heriot Currie practises as a Queen's Counsel at the Scottish Bar. He commenced practice in 1979 and was Standing Junior in Scotland to the Department of Trade and Industry, between 1987 and 1992. He was called to the English Bar (Gray's Inn) in 1991. In 1992, he was appointed Queen's Counsel in Scotland. Between 2005 and 2014, he was in practice at the English Bar as a member of Monckton Chambers. His practice has covered a wide range of commercial cases including competition law, intellectual property, judicial review, procurement, human rights and EU law, professional negligence, commercial fraud, building and engineering contracts, arbitrations and public inquiries.

**Peter Freeman CBE, QC (Hon)**

Peter Freeman is a solicitor who has held senior posts in UK competition enforcement. He is a member of the Lloyd's Enforcement Appeal Tribunal Panel. From 2011 to 2013, he was Senior Consultant to the international law firm Cleary Gottlieb Steen & Hamilton. From 2005 to 2011, he was Chairman of the CC, having been a Deputy Chairman since 2003. Prior to that, he practised for 30 years at the international law firm Simmons & Simmons, 25 of them as a partner, managing the Commercial Department and heading the EC and Competition Law practice group. He was for many years Chairman of the Regulatory Policy Institute, Oxford, and has written and spoken widely on competition and regulatory law. He is a member of the advisory board of the International Competition Forum, University of St Gallen, and the Scientific Board of Concurencia e Regulacao, Lisbon, and is a governor of Kingswood School, Bath.

**Andrew Lenon QC**

Andrew Lenon was called to the Bar in 1982 and was appointed Queen's Counsel in 2006. A member of One Essex Court Chambers, his practice covers the full range of company and commercial litigation, arbitration and advisory work. He has been involved in many leading cases involving banking and financial services, company and insolvency matters and the insurance, reinsurance and energy industries. He sits as a Deputy District Judge and as a Chairman of the Bar Disciplinary Tribunals.

**Hodge Malek QC**

Hodge Malek was called to the Bar in 1983 and was appointed Queen's Counsel in 1999. He is a member of Thirty Nine Essex Street Chambers and his practice has covered many areas of commercial law and dispute resolution including banking and financial services, fraud, professional disciplinary cases, energy, insurance and reinsurance and procurement. He is the general editor of the leading book on the law of evidence, Phipson on Evidence (18th edition, 2013), and the joint author of Disclosure (4th edition, 2012). He is also a contributor to Mithani, Directors Disqualification (Human Rights chapters) and various volumes of Atkins Court Forms (Financial Services, Human Rights, Disclosure and Information Requests, and Administrative Court). He was a member of the Commercial Court working party chaired by Lord Justice Cresswell on Electronic Disclosure and has been a Chairman of the Bar Disciplinary Tribunals. He sits as a Recorder in both civil and criminal cases, is a member of the Inns of Court Conduct Committee and a Bencher of Gray's Inn.

**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, 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" 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 in the law firm 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 John Beath

John Beath is Secretary-General of the Royal Economic Society and 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. He has held academic posts at Cambridge, Bristol and St Andrews. He is an applied micro-economist with interests in the economics of industry, competition and regulation, and in public finance. Previous public appointments have included membership of the Review Body on Doctors' and Dentists' Pay Remuneration and the Economic and Social Research Council, chairing both its Research Grants Board and its Training and Skills Committee. He was also chair of the Economic Research Institute of Northern Ireland. He is currently a member of the Prison Service Pay Review Body.



Michael Blair QC (Hon)

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, after some years as General Counsel to the Financial Services Authority and its predecessor. He served on the Board of the Dubai Financial Services Authority from 2004 to 2013. From 2008 to 2009, he was the Chairman of SWX Europe Limited, the London exchange where the major Swiss equities were traded, and is a director of CME Europe Limited, the new London derivatives exchange. He was the Treasurer of his Inn of Court, the Middle Temple, in 2008. He served on the Bar Council for nine years (including as Treasurer for four years, from 1994 to 1998). Between 1966 and 1987, he had been employed as a civil servant in the then Lord Chancellor's Department, latterly as the Under Secretary in charge of the court service and legal aid in England and Wales. He is the author or editor of a number of textbooks on financial services.



Timothy Cowen

Tim Cowen has been in private practice since 2009, as a partner in the international law firm of Sidley Austin and, more recently, as a partner at the specialist law firm of Preiskel & Co. 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.

**Margot Daly**

Margot Daly has held Chief Executive Officer and Chief Operating Officer positions in both FTSE listed and privately held companies. She has extensive international experience in digital media with a heavy emphasis on disruptive technology, strategy, operations and business transformation. She is a qualified CEDR dispute resolution mediator, serves as a consumer redress adjudicator for the OFCOM approved Communications and Internet Services Adjudication Scheme and as a non-executive director for Sports Resolutions, which runs dispute resolution services for professional and amateur sport; she also operates the UK's National Anti-Doping Panel. She is a graduate of UC Berkeley, an affiliate member of the Chartered Institute of Legal Executives and holds a post-graduate diploma in Competition Economics from King's College, London.

**Dr Clive Elphick**

Clive Elphick is a board member of the Environment Agency and an independent director of National Grid Gas PLC and of National Grid Electricity Transmission PLC. His former roles include being a board member of the Northern Ireland Authority for Utility Regulation, Managing Director at United Utilities Group PLC, Chairman of the CBI for the North West of England and a board member of a department of state and of a regional development agency. He is also a trustee of the Lancashire Wildlife Trust and the National Museums Liverpool.

**Dermot Glynn**

Dermot Glynn is a Senior Adviser at Europe Economics. He read philosophy, politics and economics at Balliol and then taught economics and business studies. He was appointed as a member of the Department of Applied Economics at Cambridge, Economic Director of the CBI, Chief Economist at KPMG's London office and UK Managing Director of NERA before founding an economics consultancy, Europe Economics, in 1998.

**Stephen Harrison**

Stephen Harrison is a retired partner from PwC. During his career at 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 and in lecturing on financial matters. He has been actively involved in local organisations, encouraging economic growth and promoting skills and employment. He is currently involved as Chairman of a charity and a college, and is an advisor to a number of private companies.

**Brian Landers**

Brian Landers is Chairman of Companies House and an Audit Commissioner. He 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, Deputy Chairman of the Financial Ombudsman Service and Treasurer of Amnesty International UK. He has a MBA from the London Business School.



Jonathan May

Jonathan May has been closely involved in the development of competition and regulatory policy and its practical delivery since the mid 1990s, working in the Treasury, the then Department of Trade and Industry and, since 2001, the former OFT. As an OFT board member since 2006, he was responsible for delivery and policy on most competition and consumer issues. He has been a member of the Financial Services Consumer Panel since 2012, a member of the Consumer Futures' board since 2013 and a member of Ofgem's Enforcement Decision Panel since April 2014.



Professor Colin Mayer

Colin Mayer is the Peter Moores Professor of Management Studies at the Saïd Business School at the University of Oxford. He is an honorary fellow of Oriel College, Oxford, and of St Anne's College, Oxford, a professorial fellow of Wadham College, Oxford, a fellow of the British Academy, and an inaugural fellow of the European Corporate Governance Institute. He is a member of the UK Department for Environment, Food and Rural Affairs' Natural Capital Committee. He was the First Professor at the Saïd Business School in 1994, the Peter Moores Dean of the Business School between 2006 and 2011, and the First Director of the Oxford Financial Research Centre between 1998 and 2005. He was a Harkness fellow at Harvard University, a Houblon-Norman fellow at the Bank of England, the first Leo Goldschmidt Visiting Professor of Corporate Governance at the Solvay Business School, Université de Bruxelles, and he has had visiting positions at Columbia, Massachusetts Institute of Technology and Stanford universities. He was Chairman of the economics consultancy firm Oxera Limited between 1986 and 2010, he is a director of Aurora Energy Research Limited and he has consulted for firms, governments, regulators and international agencies around the world.



Clare Potter

Clare Potter was Chief Legal Adviser to the then CC from 2004 until May 2010. Prior to joining the CC, 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.



Professor Gavin Reid

Gavin Reid was Professor of Economics at the University of St Andrews from 1991 to 2013, where he is now Honorary Professor in Economics and Finance. Since 2007, he has also been Visiting Professor in Accounting and Finance at Strathclyde University Business School and, in 2014, was appointed Head of Dundee Business School, Abertay University. He is the author of ten books on industrial organisation, small business, entrepreneurship and venture capital, and of over 70 academic articles in leading research journals in economics, accounting and finance. Since 2009, he has been Adviser to the Centre for Business Research, Judge Business School, Cambridge University. In recent years, he has received an honorary Doctor of Business Administration from the University of Abertay, for his research in business economics, and a Doctor of Literature from Aberdeen University for his research on small business enterprise. His current research areas include financial reporting standards, corporate governance and intellectual property.



Joanne Stuart OBE

After 20 years working in the IT industry, in 2006, Joanne Stuart founded Attrus Limited which supports businesses and entrepreneurs both in the private and social enterprise sectors. A former Chairman of the Institute of Directors, Northern Ireland Division, she chaired the independent review on university fees in Northern Ireland leading to a published report in February 2011. She currently chairs the Government and business steering group tasked with driving forward the Northern Ireland Science, Technology, Engineering and Mathematics (STEM) strategy. This dovetails with her role on Matrix, the Northern Ireland Science Panel, and her work with the Northern Ireland Science Park Trust. She is Chairman of Arts & Business Northern Ireland and Vice Chair of the Northern Ireland Assembly and Business Trust, as well as holding a number of other voluntary roles.



Professor Stephen Wilks

Stephen Wilks is Emeritus 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 has just published the book "The Political Power of the Business Corporation" with Edward Elgar. From 2001 to 2009, he was a member of the then CC and served on 12 merger inquiries.

Competition Service: Non-executive member



Susan Scholefield CMG

Susan Scholefield was the Secretary and Chief Legal Officer at the London School of Economics and Political Science until September 2014. She is a Fellow of the Chartered Institute of Personnel and Development and a Chartered Public Finance Accountant. She had an early academic career at the University of California, then joined the Civil Service in 1981 and held senior roles in the Balkans Secretariat, Northern Ireland Office, Communities Department and the Cabinet Office as Head of the Civil Contingencies Secretariat. Most recently, she was Director General, Human Resources and Corporate Services, at the Ministry of Defence. She studied at the Ecole Nationale d'Administration in Paris from 1985 to 1986 and, in 1999, was awarded a CMG in the New Year's Honours for her work in Bosnia.

Cases

Judgments handed down within the period 1 April 2014 to 31 March 2015	24
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Overall case activity within the period 1 April 2014 to 31 March 2015	43



Judgments handed down

within the period 1 April 2014 to 31 March 2015

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

Judgment	Subject matter
<p>1.</p> <p>Lafarge Tarmac Holdings Limited v Competition and Markets Authority (No. 2)</p> <p>[2014] CAT 5</p> <p>4 Apr 2014</p> <p>Tribunal</p> <p>Andrew Lenon QC</p> <p>Dr Clive Elphick</p> <p>Professor Gavin Reid</p>	<p>Ruling of the Tribunal in connection with an application by Lafarge Tarmac to admit certain expert evidence.</p>
<p>2.</p> <p>Ryanair Holdings Plc v Competition and Markets Authority</p> <p>[2014] CAT 6</p> <p>23 Apr 2014</p> <p>Tribunal</p> <p>Hodge Malek QC</p> <p>Professor John Beath</p> <p>Margot Daly</p>	<p>Ruling of the Tribunal granting Ryanair permission to appeal the Tribunal's Judgment of 7 March 2014 ([2014] CAT 3) in relation to grounds 1 and 3 of Ryanair's application for permission to appeal and refusing Aer Lingus's application for its costs in the proceedings.</p>
<p>3.</p> <p>Skyscanner Limited v Competition and Markets Authority</p> <p>[2014] CAT 7</p> <p>19 May 2014</p> <p>Tribunal</p> <p>Peter Freeman CBE, QC (Hon)</p> <p>Brian Landers</p> <p>Professor Stephen Wilks</p>	<p>Reasoned Order of the Tribunal regarding the scope of intervention.</p>
<p>4.</p> <p>A.C. Nielsen Company Limited v Competition and Markets Authority</p> <p>[2014] CAT 8</p> <p>4 Jul 2014</p> <p>Tribunal</p> <p>Lord Justice Sales</p> <p>Dermot Glynn</p> <p>Clare Potter</p>	<p>Reasoned Order of the Tribunal quashing the decision of the OFT and referring the matter back to the CMA to make a new decision pursuant to section 22(1) of the 2002 Act.</p>



Judgment	Subject matter
<p>5.</p> <p>HCA International Limited v Competition and Markets Authority</p> <p>[2014] CAT 9</p> <p>8 Jul 2014</p> <p>Tribunal</p> <p>Lord Justice Sales Dermot Glynn Clare Potter</p>	<p>Reasoned Order of the Tribunal refusing HCA's application to adduce expert evidence and requiring HCA to file an amended notice of application within seven days. The Order also refused permission to appeal.</p>
<p>6.</p> <p>HCA International Limited v Competition and Markets Authority</p> <p>[2014] CAT 10</p> <p>9 Jul 2014</p> <p>Tribunal</p> <p>Lord Justice Sales Dermot Glynn Clare Potter</p>	<p>Ruling of the Tribunal dismissing HCA's application to adduce expert evidence.</p>
<p>7.</p> <p>HCA International Limited v Competition and Markets Authority</p> <p>[2014] CAT 11</p> <p>25 Jul 2014</p> <p>Tribunal</p> <p>Lord Justice Sales Dermot Glynn Clare Potter</p>	<p>Ruling of the Tribunal granting HCA's application for disclosure of materials relating to the CMA's Insured Prices Analysis.</p>
<p>8.</p> <p>Skyscanner Limited v Competition and Markets Authority</p> <p>[2014] CAT 12</p> <p>28 Jul 2014</p> <p>Tribunal</p> <p>Peter Freeman CBE, QC (Hon) Brian Landers Stephen Wilks</p>	<p>Ruling of the Tribunal granting Skyscanner's application for disclosure of the OFT's statement of objections.</p>
<p>9.</p> <p>A.C. Nielsen Company Limited v Competition and Markets Authority</p> <p>[2014] CAT 13</p> <p>30 Jul 2014</p> <p>Tribunal</p> <p>Lord Justice Sales Dermot Glynn Clare Potter</p>	<p>Ruling of the Tribunal addressing the issue of costs and the use of disclosed documents. The Tribunal ordered that the intervener, IRI, bear the costs of both Nielsen and the CMA arising directly in relation to Nielsen's fifth ground of challenge. In relation to other costs in the proceedings, the Tribunal made no order as to costs.</p> <p>Following an application from IRI, the Tribunal also ordered that all documents disclosed as between Nielsen, the CMA or IRI for the purposes of the application for review be treated in accordance with Civil Procedure Rule 31.22. Further, the Tribunal clarified that the reference to "proceedings" for the purposes of the applicable confidentiality ring and this Ruling meant the proceedings in this case (Case: 1227/4/12/14) and did not include any subsequent review of the completed acquisition by IRI of Aztec Group by the CMA.</p>

Judgment	Subject matter
<p>10.</p> <p>British Telecommunications Plc & Others v Office of Communications (Ethernet Determinations)</p> <p>[2014] CAT 14</p> <p>1 Aug 2014</p>	<p>Judgment of the Tribunal in relation to three appeals from a determination of OFCOM dated 20 December 2012 dealing with disputes between a number of CPs in relation to Ethernet services (the Determination). Appeals were brought by the Altnets. In the Determination, OFCOM considered whether BT had complied with Condition HH3.1 of its licence (an SMP condition imposed on BT requiring that certain charges be cost-oriented), concluding that BT had overcharged other CPs for certain Ethernet services in certain years.</p> <p>The three distinct appeals introduced a number of grounds of appeal:</p> <ol style="list-style-type: none"> 1) BT appealed on six grounds, arguing that: OFCOM had misinterpreted and misapplied Condition HH3.1 and, had it applied the condition correctly, the overcharge found would have been considerably lower (Grounds 1 and 2); OFCOM's approach violated the principles of legal certainty (Ground 3); a number of adjustments should have been made to BT's regulatory financial statements (RFS) that would have reduced the amount of the overcharge (Ground 4); OFCOM had no power to order repayment of sums paid without dispute by the other CPs, albeit in breach of a cost orientation obligation (Ground 5); and, in the alternative to Ground 5, OFCOM had incorrectly exercised its discretion by ordering full repayment (Ground 6). 2) Sky/TalkTalk appealed on three grounds: OFCOM had been wrong to assess compliance with Condition HH3.1 on the basis of only the distributed stand alone cost measure and, had OFCOM applied the correct cost test, it would have found significantly higher levels of overcharging (Ground 1); OFCOM should have made a regulatory asset value adjustment to BT's RFS, which would also have increased the overcharge figure (Ground 2); and OFCOM had been wrong not to order the payment of interest on the sums to be repaid to BT (Ground 4). Sky/TalkTalk abandoned a further ground of appeal (Ground 3) following service of OFCOM's defence. 3) The Altnets appealed on a single ground, arguing that OFCOM was wrong not to order the payment of interest on the sums to be repaid by BT. <p>For the reasons set out in the Judgment, the Tribunal:</p>
<p>Tribunal</p> <p>The President Stephen Harrison Professor Colin Mayer</p>	<ul style="list-style-type: none"> • allowed, in part, Ground 4 of BT's appeal insofar as it concerned an adjustment to BT's rental costs (in respect of the exclusion of excess construction costs); • allowed Sky/TalkTalk and the Altnet's appeals as regards the payment of interest. <p>In all other respects, the Tribunal dismissed the appeals of BT and Sky/TalkTalk.</p>
<p>11.</p> <p>Deutsche Bahn AG & Others v Morgan Crucible Company PLC & Others</p> <p>[2014] CAT 15</p> <p>9 Sep 2014</p> <p>Tribunal</p> <p>Marcus Smith QC Margot Daly Dermot Glynn</p>	<p>Reasoned Order of the Tribunal giving case management directions regarding the application by the UK Claimants for non-party disclosure from Morgan.</p>

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Judgment	Subject matter
<p>13.</p> <p>British Sky Broadcasting Limited v Office of Communications (Interim Relief)</p> <p>[2014] CAT 17</p> <p>5 Oct 2014</p> <p>Tribunal The President</p>	<p>Judgment on an application by BT to vary the Interim Relief Order dated 29 April 2010, as amended on 23 November 2010 (the IRO).</p> <p>On 31 March 2010, OFCOM published its “Pay TV Statement” containing its decision to vary the conditions in the broadcasting licences of Sky for its core premium sports channels, Sky Sports 1 and Sky Sports 2. The new conditions required Sky to offer to wholesale its core premium sports channels to retailers on other broadcasting platforms and, in the case of standard definition versions of the channels, offer them at wholesale prices set by OFCOM. This condition was referred to as “the wholesale must-offer obligation” or “WMO”. Sky appealed the Pay TV Statement. It also applied for urgent Interim Relief pursuant to rule 61 of the Tribunal Rules.</p> <p>Following a hearing in April 2010, the parties agreed to a form of Interim Relief that modified Sky’s obligations under the WMO in respect of certain specified platform operators and otherwise suspended the decision contained in the Pay TV Statement. This was set out in the IRO made by the then President of the Tribunal on 29 April 2010.</p> <p>BT then applied to vary the IRO so that its customers with BT’s “Cardinal” and “YouView” set-top boxes would be able to receive the Sky Sports 1 and Sky Sports 2 channels by means of a technology platform – internet protocol television (IPTV) – which had not been provided for in the IRO. The application was made pursuant to rule 61(4) of the Tribunal Rules and in reliance on the specific liberty to apply set out in paragraph 2 of the Schedule to the IRO.</p> <p>The President held that BT was entitled to seek to vary the IRO under the express liberty to apply in the light of subsequent developments. The President granted BT’s application to amend the IRO upon BT undertaking to maintain BT Sport on Sky’s platform until the conclusion of Sky’s appeal or further order.</p> <p>In reaching his conclusion, the President’s starting point was that the WMO remedy had been imposed by OFCOM in the public interest in order to ensure fair and effective competition pursuant to s. 316 of the 2003 Act. Unless suspended, the WMO remedy covered any form of delivery of Sky Sports 1 and Sky Sports 2, including via IPTV.</p> <p>The President had regard to a number of other factors, including: (i) the fact that the complexity of appeals such as these meant that it would usually be impossible for the Tribunal on an Interim Relief hearing to arrive at even a provisional view as to the prospect of the appeal succeeding; (ii) the technical developments that had occurred over the exceptional time that the appeal has taken had rendered the IRO largely ineffective as regards BT; (iii) BT had acquired valuable football broadcasting rights, making it a more formidable competitor to Sky; and (iv) the ability of Sky customers to access all Premier League matches on Sky set top boxes.</p>
<p>14.</p> <p>British Sky Broadcasting Limited v Office of Communications (Interim Relief)</p> <p>[2014] CAT 18</p> <p>12 Oct 2014</p> <p>Tribunal The President</p>	<p>Ruling of the President in relation to OFCOM’s costs of attending the hearing of BT’s application to vary the Interim Relief Order (see [2014] CAT 17). The President decided that Sky, as the losing party, should pay OFCOM’s costs.</p>



Judgment	Subject matter
<p>15.</p> <p>Skyscanner Limited v Competition and Markets Authority</p> <p>[2014] CAT 19</p> <p>26 Nov 2014</p> <p>Tribunal Peter Freeman CBE, QC (Hon) Brian Landers Professor Stephen Wilks</p>	<p>Ruling of the Tribunal in connection with an application for costs by Skyscanner. For the reasons set out in the Ruling, the Tribunal ordered the CMA to pay Skyscanner a total of £186,096.81 in respect of its costs.</p>
<p>16.</p> <p>British Telecommunications Plc & Others v Office of Communications (Ethernet Determinations)</p> <p>[2014] CAT 20</p> <p>4 Dec 2014</p> <p>Tribunal The President Stephen Harrison Professor Colin Mayer</p>	<p>Ruling of the Tribunal addressing the directions that had to be made to give effect to the Tribunal's main Judgment in the proceedings ([2014] CAT 14), costs and permission to appeal.</p> <p>The Tribunal remitted to OFCOM the issue of the interest rate payable on BT's overcharge, whether interest was payable on BT's overpayment in respect of excess construction costs and the total amount payable as between BT and the disputing CPs. OFCOM, Sky/TalkTalk and the Altnets were all partially successful in their applications for costs.</p> <p>The Tribunal refused BT's application for permission to appeal the Amendment Ruling and both BT's and TalkTalk's applications for permission to appeal the main Judgment.</p>
<p>17.</p> <p>British Telecommunications Plc & Others v Office of Communications (Ethernet Determinations)</p> <p>[2014] CAT 21</p> <p>10 Dec 2014</p> <p>Tribunal The President Stephen Harrison Professor Colin Mayer</p>	<p>Judgment of the Tribunal amending the Tribunal's Supplementary Judgment of 4 December 2014 ([2014] CAT 20) in relation to costs.</p>
<p>18.</p> <p>British Telecommunications plc v Office of Communications (Termination charges: NCCNs 1046, 1101 and 1107)</p> <p>[2014] CAT 22</p> <p>11 Dec 2014</p> <p>Tribunal Marcus Smith QC Professor Gavin Reid Stephen Harrison</p>	<p>Reasoned Order of the Tribunal granting TalkTalk permission to intervene. TalkTalk had applied for permission to intervene after the time limit for doing so had expired.</p>

Judgment	Subject matter
<p>19.</p> <p>AXA PPP Healthcare Limited v Competition and Markets Authority</p> <p>[2014] CAT 23</p> <p>23 Dec 2014</p> <p>Tribunal</p> <p>Lord Justice Sales Dermot Glynn Clare Potter</p>	<p>Ruling of the Tribunal following a directions hearing held on 15 December 2014, which the Tribunal decided to quash and remit the insured AEC decision and the divestment decision. For the reasons set out in the Ruling, the Tribunal:</p> <ul style="list-style-type: none"> dismissed HCA's application for the remitted decisions to be determined by a differently constituted CMA Inquiry Group and case team; stayed HCA's remaining grounds of review so far as they related to the self pay AEC decision and AXA's first and second grounds of review; and ordered the CMA to pay HCA's costs incurred in relation to Ground 1 (that the CMA's procedure was unfair and was conducted in breach of its statutory duty to consult), excluding the costs of the data room exercise, which were refused.
<p>20.</p> <p>Groupe Eurotunnel S.A. and Société Coopérative de Production Sea France S.A. v Competition and Markets Authority</p> <p>[2015] CAT 1</p> <p>9 Jan 2015</p>	<p>Judgment of the Tribunal dismissing the applications for review under section 120 of the 2002 Act brought by Eurotunnel and the SCOP.</p> <p>Eurotunnel and the SCOP challenged the CMA's decision on a matter remitted back to it by a differently constituted Tribunal in its Judgment of 4 December 2013 (Eurotunnel I [2013] CAT 30) in relation to the completed acquisition by Eurotunnel of certain assets of the former SeaFrance. The CMA's decision was contained in its Remittal Report of 27 June 2014.</p> <p>The previous Tribunal had considered applications for review, filed by the same applicants, of a decision by the CMA's predecessor, the CC. The CC had decided that the acquisition by Eurotunnel and the SCOP, as "associated persons" for the purposes of the 2002 Act, constituted a relevant merger situation (RMS) and that the acquisition might be expected to result in a substantial lessening of competition (SLC) in the freight and passenger markets on the short sea (the short sea routes refer to routes via the tunnel, between Dover and Calais, between Dover and Dunkirk and certain other routes across the Channel). By way of remedy, the CC effectively prohibited the merger.</p> <p>In Eurotunnel I, the Tribunal dismissed challenges to the CC's decision on various grounds, including a challenge to the remedy. However, it had allowed the SCOP's challenge to the CC's jurisdiction to review the acquisition on the basis that it was unclear whether this was a case of two enterprises ceasing to be distinct within the meaning of section 26(1), such that a RMS arose within the meaning of section 35(1) (a) of the 2002 Act. That being the statutory foundation for the CC to intervene, the Tribunal had therefore remitted the matter back to the CC (which has since been replaced by the CMA).</p> <p>By the Remittal Report, the CMA had decided that Eurotunnel/SCOP had acquired an enterprise. Eurotunnel and the SCOP both challenged this decision. By its second and third grounds, Eurotunnel also challenged the legal consequences of the decision to remit contained in Eurotunnel I.</p> <p>1. No "enterprise"</p> <p>As to the first ground, the parties both argued that the SeaFrance assets acquired did not constitute an "enterprise".</p> <p>The Tribunal considered the approach taken in Eurotunnel I to the enterprise question and decided that it was not for it to reconsider that approach. Rather, the Tribunal's role was to decide whether the CMA's conclusion disclosed an error of law or was irrational under the established principles of judicial review. On that basis, and bearing in mind that the CMA's task was to apply the approach prescribed in Eurotunnel I, the Tribunal saw no ground to set aside its decision that the jurisdictional test in the 2002 Act was satisfied on the facts.</p> <p>The CMA had considered what over and above bare assets Eurotunnel/SCOP obtained and, then, how that placed them in a different position than if they had gone out in the market and acquired the assets. The Tribunal considered that that was what they were required to do by Eurotunnel I. The CMA's findings, that the difference was sufficient to give rise to the conclusion that Eurotunnel acquired the activities of a business, could not be regarded as irrational under the test for judicial review.</p>

Judgment	Subject matter
	<p>2. Decision to reinstate the rest of the report of 6 June 2013 by the CC entitled "A report on the completed acquisition by Groupe Eurotunnel S.A. of certain assets of former SeaFrance S.A." (the Original Report)</p> <p>The Tribunal rejected Eurotunnel's further argument that the CMA erred in law in finding that the other conclusions of the Original Report could simply be reinstated. Eurotunnel I only quashed the part of the decision in the Original Report that related to the question of whether two enterprises ceased to be distinct. The remaining parts were never quashed.</p> <p>3. CMA fettered its discretion</p> <p>The Tribunal also rejected Eurotunnel's alternative argument that the CMA had erred in law and/or wrongly fettered its discretion in finding that it was bound by the findings in the Original Report where these had not been challenged at the Tribunal or had been unsuccessfully challenged. The Tribunal considered that the CMA was entirely correct in its view that it could not hear further argument revisiting matters on which it had reached conclusions in the Original Report, concerning the remedy, aside from the question of whether there had been a material change of circumstances such that the remedy should be reconsidered.</p> <p>Accordingly, the Tribunal dismissed Eurotunnel and the SCOP's applications for review.</p>
<p>Tribunal The President Professor John Beath Joanne Stuart OBE</p>	
<p>21. The Société Coopérative de Production SeaFrance S.A. v Competition and Markets Authority [2015] CAT 2 20 Jan 2015</p> <p>Tribunal The President Professor John Beath Joanne Stuart OBE</p>	<p>Ruling of the Tribunal in relation to an application by the SCOP for permission to appeal the Tribunal's Judgment of 9 January 2015 ([2015] CAT 1). For the reasons set out in the Ruling, the SCOP's application was refused.</p>
<p>22. HCA International Limited v Competition and Markets Authority [2015] CAT 3 11 Feb 2015</p> <p>Tribunal Lord Justice Sales Dermot Glynn Clare Potter</p>	<p>Ruling of the Tribunal in respect of HCA's application for: (a) permission to appeal the Tribunal's Ruling of 23 December 2014 ([2014] CAT 23); and (b) an Order staying the remittal of the insured AEC decision and the divestment decision to the CMA.</p>
<p>23. Groupe Eurotunnel S.A. and Société Coopérative de Production Sea France S.A. v Competition and Markets Authority [2015] CAT 4 2 Mar 2015</p> <p>Tribunal The President Professor John Beath Joanne Stuart OBE</p>	<p>Ruling of the President granting the CMA's application for an extension of time for the making of an application for its costs as against Eurotunnel and the SCOP.</p>

Judgment	Subject matter
<p>24.</p> <p>AXA PPP Healthcare Limited v Competition and Markets Authority</p> <p>[2015] CAT 5</p> <p>13 Mar 2015</p>	<p>Judgment of the Tribunal dismissing an application for review under section 179 of the 2002 Act brought by AXA PPP.</p> <p>AXA PPP challenged parts of the CMA's final report on its investigation of the private healthcare market dated 2 April 2014 (the Report). In that Report, the CMA had concluded that the formation and operation of consultant groups did not give rise to an AEC for the purposes of section 134 of the 2002 Act. AXA PPP contended that this conclusion was flawed.</p> <p>By its application, AXA PPP challenged the CMA's finding in relation to consultant groups on three grounds:</p> <ol style="list-style-type: none"> (1) AXA PPP claimed that the CMA had failed properly to recognise that there was a prima facie AEC in relation to at least some local markets by reason of the formation and operation of anaesthetist groups in those markets where a group has very high market share and there is evidence that it collectively sets prices, and the CMA had failed to identify any adequate reasons or evidence to displace the presumption that there was an AEC. For the reasons set out in the Judgment, the Tribunal concluded that the CMA was entitled to reach the conclusion it did. (2) AXA PPP claimed that the evidence the CMA had relied on, as the basis for its conclusion that there was no AEC, did not support such a determination and was irrational. AXA PPP submitted that, in fact, the evidence assembled by the CMA demonstrated that the formation and operation of anaesthetist groups had led to an increase in prices in at least some local markets. Therefore, either this evidence did not displace the presumption of an AEC which AXA PPP argued existed or it positively tended to show that there was indeed an AEC in at least some local markets, and the CMA had not done any further analysis which would be capable of displacing such a conclusion. The Tribunal found that this was a case in which there was evidence pointing in different directions, in relation to which an overall evaluative judgment had to be made and where more than one alternative conclusion was rationally possible. The CMA had tested the hypothesis set out in its theory of harm and rationally concluded that price analysis showed "mixed results". The CMA's decision not to pursue its investigations at that point engaged its discretion and could not be impugned as irrational or in any way unlawful based on the application of judicial review principles. (3) AXA PPP submitted that the CMA had breached its statutory obligation under section 134(1) of the 2002 Act to find whether there was an AEC. For the reasons set out in the Judgment, the Tribunal considered that the CMA's conclusion on the existence of an AEC was a proper and lawful response to the question it was obliged to determine under section 134(1). The Tribunal also concluded that the CMA was lawfully entitled to decide that it had taken its investigations far enough and that it would be disproportionate and potentially prejudicial to the fulfilment of its overall statutory obligations to take it further.
<p>Tribunal</p> <p>Lord Justice Sales</p> <p>Dermot Glynn</p> <p>Clare Potter</p>	<p>Accordingly, the Tribunal unanimously dismissed AXA PPP's application for review. AXA PPP also challenged another part of the CMA's report, regarding the provision of private hospital services. That part of the application was stayed pursuant to the Tribunal's Order of 12 January 2015 and was therefore not addressed in the Judgment.</p>



Judgment	Subject matter
<p>25.</p> <p>British Telecommunications plc v Office of Communications (Termination charges: NCCNs 1046, 1101 and 1107)</p> <p>[2015] CAT 6</p> <p>17 Mar 2015</p> <p>Tribunal Marcus Smith QC Professor Gavin Reid Stephen Harrison</p>	<p>Ruling of the Tribunal addressing the questions of admissibility of new reasons and new evidence which the interveners in support of OFCOM (H3G and Telefónica (together the MNO Interveners)), sought to adduce in these proceedings.</p> <p>The Ruling: (i) identified the points in issue on the pleadings, the points that the MNO Interveners sought to put in issue and the new evidence on which they wished to rely; (ii) articulated the principles that the Tribunal considered should be applied when deciding such questions of admissibility; and (iii) applied the principles to the new reasons and new evidence that the MNO Interveners sought to adduce.</p> <p>Applying those principles, the Tribunal gave permission for the MNO Interveners to adduce new evidence in relation to Principle 3 (the question of whether ladder pricing in respect of the relevant Network Charge Change Notices (the NCCNs) is reasonably practical to implement). This question had been left open by OFCOM when it determined the dispute between BT and the MNO Interveners. The MNO Interveners were not given permission to raise new points relating to their contractual arrangements with BT, and they were not permitted to adduce new evidence in relation to Principle 2 (the question of whether ladder pricing in respect of the relevant NCCNs might adversely affect consumer welfare).</p>

Glossary of defined terms

in use in the Judgment summaries

Defined Term	Meaning
1998 Act	Competition Act 1998
2002 Act	Enterprise Act 2002
2003 Act	Communications Act 2003
AXA PPP	AXA PPP Healthcare Limited
AEC	Adverse Effect on Competition
Aer Lingus	Aer Lingus Group Plc
AKZO Nobel	AKZO Nobel N.V.
Altnets	Virgin, Cable & Wireless and Verizon
BMI	BMI Healthcare Limited
Booking.com	Booking.com B.V.
BT	British Telecommunications Plc
Cable & Wireless	Cable & Wireless Worldwide Plc
CC	Competition Commission (now the CMA)
CMA	Competition and Markets Authority (successor body to the OFT and CC)
CPs	Communications Providers
Eurotunnel	Groupe Eurotunnel S.A.
EE	Everything Everywhere Limited
Expedia	Expedia, Inc.
HCA	HCA International Limited
H3G	Hutchison 3G UK Limited
IHG	Intercontinental Hotels Group Plc
IRi	Information Resources, Inc.
Lafarge Tarmac	Lafarge Tarmac Holdings Limited
Morgan	Morgan Advanced Materials Plc
Nielsen	A.C. Nielsen Company Limited
OFCOM	Office of Communications
OFT	Office of Fair Trading (now the CMA)
OTAs	Online Travel Agents
Ryanair	Ryanair Holdings Plc
SCOP	Société Coopérative de Production Sea France S.A.
SeaFrance	Sea France S.A.

Defined Term	Meaning
Sky	British Sky Broadcasting Limited (now known as Sky UK Limited)
Skyscanner	Skyscanner Limited
SMP	Significant Market Power
TalkTalk	TalkTalk Telecom Group Plc
Telefónica	Telefónica UK Limited
Tribunal Rules	Competition Appeal Tribunal Rules (S.I. 2003 No. 1372)
UK Claimants	The 13th – 17th claimants in the <i>Deutsche Bahn</i> proceedings, namely: DB Schenker Rail (UK) Limited, Loadhaul Limited, Mainline Freight Limited, Rail Express Systems Limited, and English Welsh & Scottish Railway International Limited
Virgin	Virgin Media
Vodafone	Vodafone Limited



Activity by case

within the period 1 April 2014 to 31 March 2015

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 2015
Emerson Electric Co & Others v Morgan Crucible Company Plc Case: 1077/5/7/07 9 Feb 2007	06-07 07-08 08-09 09-10 10-11 11-12 12-13 13-14 14-15		1	3 1	4 1 1	2 2 1 1	 1	 Closed
Notes On 4 August 2014, the claimants settled their claims with the remaining defendant, Morgan, and so the claims were withdrawn – see the Tribunal's Order of 5 August 2014.								
British Sky Broadcasting Limited v Office of Communications (Interim Relief) Case: 1152/8/3/10 (IR) 16 Apr 2010	10-11 11-12 12-13 13-14 14-15			2 1	5.5 1	1 2		 Ongoing
Notes The Interim Relief granted by the President in his order of 29 April 2010 has continued in force pending the final disposal of appeals by 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) – together referred to below as “the Pay TV appeals”. There were two Judgments given during the review period: (1) a Judgment in relation to an application by BT to vary the Interim Relief Order of 29 April 2010 ([2014] CAT 17); and (2) a Judgment in connection with an application by OFCOM for its costs of attending the hearing to hear BT's application ([2014] CAT 18).								
Virgin Media, Inc. v Office of Communications Case: 1156/8/3/10 28 May 2010	10-11 11-12 12-13 13-14 14-15	12	2	1 1 1 1	1 37 1 2	1 3 2 8 Aug 2012 (26.4)	 1 1	 Ongoing
Notes The main Judgment in the Pay TV appeals was given on 8 August 2012. Two Judgments were given in 2013, [2013] CAT 9 and [2013] CAT 14. Following an appeal by BT to the Court of Appeal, that Court remitted the Pay TV appeals to the Tribunal to consider the issue of whether the prices proposed by British Sky Broadcasting Limited allowed a hypothetical new entrant to compete, and whether this separate concern of OFCOM would have affected the Tribunal's main Judgment in the Pay TV appeals. A hearing took place on 26 and 27 March 2015 to determine whether the original Tribunal should deal with the remitted question or whether a new Tribunal should be constituted. The Tribunal's Ruling on this issue was given on 6 May 2015 ([2015] CAT 9) (outside the period covered by this report).								
The Football Association Premier League Limited v Office of Communications Case: 1157/8/3/10 1 Jun 2010	10-11 11-12 12-13 13-14 14-15	12						 Ongoing
Notes See the notes in relation to Virgin Media (Case: 1156/8/3/10).								

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2015
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British Sky Broadcasting Limited v Office of Communications Case: 1158/8/3/11 1 Jun 2010	10-11 11-12 12-13 13-14 14-15	12						Ongoing
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Notes

See the notes in relation to Virgin Media (Case: 1156/8/3/10).

British Telecommunications Plc v Office of Communications Case: 1159/8/3/10 1 Jun 2010	10-11 11-12 12-13 13-14 14-15	12						Ongoing
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Notes

See the notes in relation to Virgin Media (Case: 1156/8/3/10).

British Sky Broadcasting Limited v Office of Communications (Linear-only Set Top Boxes) Case: 1170/8/3/10 11 Oct 2010	10-11 11-12 12-13 13-14 14-15	4						Ongoing
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Notes

This case is being heard concurrently with the Pay TV appeals mentioned above.

Deutsche Bahn AG and Others v Morgan Crucible Company Plc and Others Case: 1173/5/7/10 15 Dec 2010	10-11 11-12 12-13 13-14 14-15			1	1	2	1	
			1		1	1	1	
				1	1	8	1	
			1	1	1			Closed

Notes

A Reasoned Order was made by the Tribunal on 13 September 2012 extending a stay of proceedings pending determination of the 1st defendant's (Morgan Crucible Company Plc) application to the UK Supreme Court for permission to appeal the Court of Appeal's Judgment of 31 July 2012. The Supreme Court granted Deutsche Bahn permission to appeal by Order made on 21 December 2012. On 15 August 2013, the Chairman handed down a Ruling granting an application by 13-17th claimants and partially lifting the stay in respect of the UK Claims. On 24 September 2013, the Tribunal refused the 2nd-6th defendants permission to appeal the lifting of the stay of proceedings and the Court of Appeal refused renewed applications in respect of that matter in a Judgment given on 20 November 2013 ([2013] EWCA Civ 1484).

The 2nd-6th defendants filed defences on 29 November 2013; the UK claimants filed their replies on 3 January 2013. A case management conference was held in respect of the UK Claims on 20 January 2014 and Orders made regarding disclosure and other directions, as well as confidentiality. By an Order dated 2 April 2014, the UK Claims were stayed for a period of three months. On 9 April 2014, the Supreme Court handed down its Judgment ([2014] UKSC 24) allowing Morgan's appeal and restoring the Tribunal's Judgment of 25 May 2011. A settlement was subsequently concluded with the claimants and the 6th defendant (Hoffman & Co. Elektrokohle AG) – see the Tribunal's Order of 2 May 2014. On 8 July 2014, the Tribunal made an Order amending the disclosure order drawn on 27 January 2014 and, on 28 July 2014, the proceedings were stayed until 31 August 2014. On 9 September 2014, the Tribunal made a Reasoned Order ([2014] CAT 15) giving certain case management directions regarding a non-party disclosure application. By an Order dated 12 November 2014, the Tribunal gave permission for all the claims in the proceedings to be withdrawn.

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 2015
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British Sky Broadcasting Limited v Office of Communications (Conditional Access Modules) Case: 1179/8/3/11 14 Feb 2011	10-11 11-12 12-13 13-14 14-15	4						Ongoing
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Notes

This case is being heard concurrently with the Pay TV appeals mentioned above.

British Telecommunications Plc v Office of Communications (08x Nos: BT-Vodafone Dispute) Case: 1195/3/3/12 11 Jun 2012	12-13 13-14 14-15	1 1						Closed
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Notes

This case was stayed to await the decision of the Higher Courts on the Tribunal's Judgment of 1 August 2011 in British Telecommunications Plc v Office of Communications (Cases: 1151/3/3/10, 1168/3/3/10 and 1169/3/3/10). On 9 July 2014, the Supreme Court handed down its Judgment ([2014] UKSC 42) allowing British Telecommunications Plc's (BT) appeal and restoring the Tribunal's Judgment of 1 August 2011. On 9 September 2014, the Tribunal made an Order regarding the future conduct of this case. On 4 February 2015, BT was granted permission to withdraw its appeal – see the Tribunal's Order of that date.

British Telecommunications Plc v Office of Communications (Ethernet Determinations) Case: 1205/3/3/13 20 Feb 2013	12-13 13-14 14-15	3	1 1	1	13	1 3	1 Aug 2014 (17.3)	2	Closed
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This case was heard concurrently with Cable & Wireless Worldwide plc and British Sky Broadcasting Limited (Cases: 1206/3/3/13 and 1207/3/3/13). The related appeals were heard over 13 days between 29 October and 22 November 2013. British Telecommunications Plc (BT) applied for permission to amend its grounds of appeal on 29 November 2013. The Tribunal gave Judgment on BT's application on 11 March 2014 ([2014] CAT 4) refusing permission. The Tribunal's Judgment on the main issues ([2014] CAT 14) was given on 1 August 2014. By an Order of the same date, the Tribunal: (1) extended the deadline for requesting permission to appeal the Judgment; and (2) made further directions concerning the future conduct of the appeals. On 14 August 2014, the Tribunal made an Order extending the period for requesting permission to appeal the Tribunal's Ruling of 11 March 2014. The Tribunal's supplementary Judgment ([2014] CAT 20) in relation to: (a) the directions to be made to give effect to the main Judgment in the appeals ([2014] CAT 14); (b) costs; and (c) permission to appeal, was handed down on 4 December 2014. On 10 December 2014, the Tribunal gave Judgment ([2014] CAT 21) amending the supplementary Judgment. The Tribunal made an Order for the final disposal of each appeal on the same day.

(1) Cable & Wireless Worldwide plc (2) Virgin Media Limited and (3) Verizon UK Limited v Office of Communications (Ethernet Determinations) Case: 1206/3/3/13 19 Feb 2013	12-13 13-14 14-15	1							Closed
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Notes

See the notes to British Telecommunications Plc (Case: 1205/3/3/13).

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 2015
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(1) British Sky Broadcasting Limited and (2) TalkTalk Telecommunications Group Plc v Office of Communications (Ethernet Determinations) Case: 1207/3/3/13 20 Feb 2013	12-13 13-14 14-15	1						Closed
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Notes

See the notes to British Telecommunications Plc (Case: 1205/3/3/13).

(1) Somerfield Stores Limited (2) Co-operative Group Food Limited v Office of Fair Trading Case: 1208/1/1/13 24 Apr 2013	13-14 14-15							Closed
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Notes

On 29 April 2013, the President made an Order staying the period for filing defence until 14 days after the determination of the OFT's permission to appeal applications (and any ensuing appeals) in Cases: 1197/1/1/12 and 1200/1/1/12. On 23 July 2013, the Court of Appeal granted the OFT permission to appeal the Tribunal's rule 8 ruling in Cases: 1197/1/1/12 and 1200/1/1/12. On 7 April 2014, the Court of Appeal gave Judgment ([2014] EWCA Civ 400) allowing the OFT's appeal. By an Order dated 30 May 2014, the Tribunal granted the Appellants permission to withdraw their appeals.

(1) Gallaher Group Limited (2) Gallaher Limited v Office of Fair Trading Case: 1209/1/1/13 24 Apr 2013	13-14 14-15							Closed
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Notes

See the notes to (1) Somerfield Stores Limited (2) Co-operative Group Food Limited v Office of Fair Trading (Case: 1208/1/1/13).

British Telecommunications plc v Office of Communications (Termination charges: NCCNs 1046, 1101 and 1107) Case: 1211/3/3/13 24 May 2013	13-14 14-15	5 1	1	1	2	2		Ongoing
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Notes

On 25 June 2013, the President made an Order staying the proceedings until the handing down of the UK Supreme Court's Judgment in case UKSC 2012/0204 (Case: 1195/3/3/12). On 9 July 2014, the Supreme Court gave Judgment ([2014] UKSC 42) allowing British Telecommunications Plc's appeal and restoring the Tribunal's Judgment of 1 August 2011. By an Order dated 8 August 2014, the Tribunal made various directions regarding the future conduct of the proceedings. A case management conference took place on 30 October 2014. By Order dated 5 November 2014, the Tribunal gave further directions regarding the conduct of proceedings and the establishment of a confidentiality ring. On 11 December 2014, the Tribunal made a Reasoned Order ([2014] CAT 22) granting TalkTalk Telecom Group Plc permission to intervene and issuing directions in connection with this intervention. On 24 February 2015, the Tribunal made an Order permitting the withdrawal of the interventions by Vodafone Limited and Everything Everywhere Limited. A hearing took place on 26 and 27 February 2015. A Ruling in respect of matters addressed at that hearing was given on 17 March 2015 ([2015] CAT 6). By Order dated 20 March 2015, the Chairman gave directions for the future conduct of these proceedings and a hearing was listed for 6 May 2015 with a time estimate of up to three days. By an Order dated 27 April 2015, the Tribunal granted BT permission to withdraw its appeal and so the hearing was duly vacated.



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 2015
Ryanair Holdings PLC v Competition Commission Case: 1219/4/8/13 23 Sep 2013	13-14 14-15	1	1	1	3	2 1	7 March 2014 (5.4) 1	Closed
Notes The hearing took place between 12 and 14 February 2014. The Tribunal handed down its Judgment dismissing Ryanair Holdings Plc's (Ryanair) application on 7 March 2014. On 23 April 2014, the Tribunal gave a Ruling ([2014] CAT 6) in relation to permission to appeal and costs. On 17 July 2014, the Court of Appeal granted Ryanair permission to appeal the Tribunal's Judgment of 7 March 2014 in respect of a further ground of appeal. On 12 February 2015, the Court of Appeal gave Judgment ([2015] EWCA Civ 83) dismissing Ryanair's appeal.								
BMI Healthcare Limited v Competition Commission (No. 2) Case: 1220/6/8/13 8 Oct 2013	14-15							Closed
Notes By an Order dated 9 October 2013, the Tribunal stayed the application until the handing down by the Tribunal of its Judgment in Groupe Eurotunnel S.A. and Société Coopérative de Production Sea France S.A. (Cases: 1216/444/8/13 and 1217/4/8/13) and abridged time for intervention. On 12 December 2013, the Tribunal made a further Order extending the stay until after publication of the CC's final report in its investigation of privately funded healthcare services. On 22 April 2014, the Tribunal granted BMI Healthcare Limited permission to withdraw its application.								
TalkTalk Telecom Group PLC v Office of Communications (MPF New Provide) Case: 1221/3/3/13 15 Oct 2013	13-14 14-15							Closed
Notes By an Order dated 29 April 2014, the Chairman granted TalkTalk permission to withdraw its appeal.								
Lafarge Tarmac Holdings Limited v Competition Commission Case: 1222/6/8/13 22 Oct 2013	13-14 14-15		1			1		Stayed
Notes By an Order dated 18 November 2013, the Tribunal directed that the application be stayed pending the publication of the CC's final report in the Aggregates market investigation. The CC's final report was published on 14 January 2014. On 4 April 2014, the Tribunal made an Order staying the proceedings until the handing down of the Tribunal's Judgment in Lafarge Tarmac Holdings Limited (Case: 1224/6/8/14).								
Lafarge Tarmac Holdings Limited v Competition Commission (No. 2) Case: 1224/6/8/14 12 Mar 2014	13-14 14-15	1	1			1		Stayed
Notes A case management conference took place on 4 April 2014 at which the Tribunal made various directions regarding the future conduct of the case and ruled on an application by Lafarge Tarmac Holdings Limited (Lafarge Tarmac) to admit certain expert evidence. On 16 April 2014, the Tribunal made an Order amending the case management directions and establishing a confidentiality ring. On 22 April 2014, the Tribunal made an Order granting Lafarge Tarmac permission to amend its notice of application. By Orders dated 11 September 2014 and 23 February 2015, the proceedings were stayed pending the outcome of an European Commission investigation covering the proposed merger between Lafarge SA and Holcim Limited.								

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 2015
Hope Construction Materials Limited v Competition Commission Case: 1225/6/8/14 13 Mar 2014	13-14 14-15	1						Stayed
Notes See the notes in relation to Lafarge Tarmac (Case: 1224/6/8/14).								
Skyscanner Limited v Competition and Markets Authority Case: 1226/2/12/14 31 Mar 2014	13-14 14-15	4	1	1	2	4	26 Sep 2014 (5.9)	Closed
Notes A case management conference took place on 1 May 2014, at which the Tribunal made various directions concerning the future conduct of the appeal. On 19 May 2014, the Tribunal made a Reasoned Order ([2014] CAT 7) in connection with the scope of intervention in the proceedings. By Orders dated 20 June and 17 July 2014, the Tribunal varied the case management directions in the proceedings. On 28 July 2014, the Tribunal gave a Ruling ([2014] CAT 12) in relation to a disclosure application. The main hearing took place on 28 and 29 July 2014. On 26 September 2014, the Tribunal quashed the decision of the OFT and remitted it to the OFT's successor, the Competition and Markets Authority, with a direction to reconsider the matter in accordance with the Judgment ([2014] CAT 16). The Tribunal's Ruling on costs ([2014] CAT 19) was issued on 26 November 2014.								
A.C. Nielsen Company Limited v Competition and Markets Authority Case: 1227/4/12/14 17 Apr 2014	14-15	1	1			2	4 Jul 2014 (2.6)	Closed
Notes By an Order dated 24 April 2014, the President abridged time for interventions. On 14 May 2014, the Chairman made an Order granting permission to Information Resources, Inc. to intervene. On 15 May 2014, a confidentiality ring was established. A case management conference took place on 16 May 2014 and case management directions were made by Order of the Chairman on the same day. On 2 June 2014, the Chairman made an Order: (i) granting A.C. Nielsen Company Limited permission to amend its notice of application; and (ii) fixing (and varying) existing case management directions. On 4 July 2014, the Tribunal made a Reasoned Order ([2014] CAT 8) quashing the decision and referring the matter back to the CMA. On 30 July 2014, the Tribunal gave a Ruling ([2014] CAT 13) in relation to costs and the use of disclosed documents.								
AXA PPP Healthcare Limited v Competition and Markets Authority Case: 1228/6/12/14 30 May 2014	14-15	7	1	1	2	2	13 Mar 15 (9.4)	Ongoing
Notes This matter has been case managed with HCA International Limited and Federation of Independent Practitioner Organisations (Cases: 1129/6/12/14 and 1230/6/12/14) and the details of the case management process preceding the hearing of the application on 23 January 2015 are recorded against HCA International Limited. The hearing of AXA Healthcare Limited's application took place on 23 and 26 January 2015. Judgment was given on 13 March 2015.								



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 2015
HCA International Limited v Competition and Markets Authority Case: 1229/6/12/14 30 May 2014	14-15	4	1	1	1	4	1	Stayed
Notes A case management conference took place on 25 June 2014, at which the Chairman made various directions regarding the future conduct of the case. On 2 July 2014, the Chairman made: (i) an Order suspending the effect of certain aspects of the CMA's Final Report on privately funded healthcare services in relation to this case; and (ii) two confidentiality ring Orders. A second case management conference took place on 8 July 2014, at which the Tribunal refused an application to adduce expert evidence - see the Tribunal's Reasoned Order drawn on 9 July 2014 ([2014] CAT 9). The Tribunal's reasons for dismissing the application were set out in its accompanying ruling of 9 July 2014 ([2014] CAT 10). The Tribunal's Ruling on an application for disclosure ([2014] CAT 11) was given on 25 July 2014. On 30 July 2014, the Chairman made an Order in relation to disclosure and the creation of a data room. On 29 October 2014, the Chairman made an Order: (i) granting HCA permission to amend its notice of application; and (ii) revising the procedural timetable. A directions hearing took place on 15 December 2014 at which the Tribunal was requested to quash and remit part of the CMA's report back to the CMA. The Tribunal's Ruling of 23 December 2014 ([2014] CAT 23) set out the parts of the report that were to be quashed and remitted back to the CMA and dealt with a number of issues including: the refusal of HCA's application that the remitted matter be considered by a new CMA investigative group; and costs. On 11 February 2015, the Tribunal granted HCA permission to appeal the Tribunal's refusal to direct that a new CMA investigative group consider the remitted matter but refused permission for HCA to appeal its ruling of 23 December 2014 with respect to costs ([2015] CAT 3). On 5 March 2015, the Court of Appeal granted permission for HCA to appeal the Tribunal's Ruling on costs.								
Federation of Independent Practitioner Organisations v Competition and Markets Authority Case: 1230/6/12/14 2 Jun 2014	14-15	2		1	2			Ongoing
Notes This matter has been case managed with AXA PPP Healthcare Limited and HCA International Limited (Cases: 1128/6/12/14 and 1129/6/12/14) and the details of the case management process preceding the hearing of the application on 26 January 2015 are recorded against HCA International Limited. The hearing of the FIPO application took place on 26 and 27 January 2015. Judgment was given on 29 April 2015 (outside the period covered by this report).								
The Ministry of Defence v British Airways plc Case: 1231/5/7/14 17 Jun 2014	14-15							Withdrawn
Notes On 30 June 2014, the President made an Order staying the proceedings until 17 October 2014. The parties subsequently agreed to settle the claim and, by an order dated 10 October 2014, the claim was withdrawn.								
DSG Retail Limited and Others v MasterCard Incorporated and Others Case: 1232/5/7/14 25 Jun 2014	14-15							Withdrawn
Notes On 25 June 2014, the applicants applied to the Tribunal, pursuant to rule 31(3) of the Tribunal Rules for permission to initiate a claim for monetary loss against the defendants pursuant to section 47A of the Competition Act 1998. By an Order dated 3 July 2014, the President made various directions regarding the future conduct of the case. On 10 September 2014, the President made an Order granting the applicants permission to withdraw their application.								

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 2015	
Groupe Eurotunnel S.A. v Competition and Markets Authority Case: 1233/4/12/14 22 Jul 2014	14-15	2		1	2	2	9 Jan 2015 (5.6)	1	Closed
Notes By an Order dated 1 August 2014, the President made directions concerning the future conduct of the case. The main hearing took place on 24 and 25 November 2014. Judgment was given on 9 January 2015 ([2015] CAT 1). On 2 March 2015, the Tribunal made a Ruling granting an application by the CMA's for an extension of time for making an application for costs ([2015] CAT 4).									
Gamma Telecom Holdings Limited v Office of Communications Case: 1234/3/3/14 23 Jul 2014	14-15								Stayed
Notes By an Order dated 13 August 2014, the Chairman stayed the appeal pending developments in British Sky Broadcasting Limited and TalkTalk Communications Group Plc (Case: 1207/3/3/13).									
The Société Coopérative de Production SeaFrance S.A. v Competition and Markets Authority Case: 1235/4/12/14 24 Jul 2014	14-15	2				1			Closed
Notes This case was heard concurrently with Groupe Eurotunnel (Case: 1233/4/12/14). On 20 January 2015, the Tribunal issued a Ruling refusing permission to appeal.									
DSG Retail Limited and Another v MasterCard Incorporated and Others Case: 1236/5/7/15 11 Feb 2015	14-15			1	1				Ongoing
Notes Claim for damages under section 47A of the Competition Act 1998 based on the decision of the European Commission dated 19 December 2007 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (COMP/34.579 MasterCard, COMP/36.518 EuroCommerce and COMP/38.580 Commercial Cards). An application for permission to serve the claim form out of the jurisdiction on two defendants was heard on 24 March 2015. The Ruling in respect of that application was given on 22 April 2015 (outside the period covered by this report).									
Total	14-15	26	6	10	16	25		5	



Overall case activity

within the period 1 April 2014 to 31 March 2015

	2014/15	2013/14	2012/13
Appeals, applications and claims received	10	19	18
of which:			
section 46 Competition Act 1998 ¹	0	2	2
section 47 Competition Act 1998 ²	0	1	0
section 47A Competition Act 1998 ³	3	1	5
section 47B Competition Act 1998 ⁴	0	0	0
section 120 Enterprise Act 2002 ⁵	3	4	3
section 179 Enterprise Act 2002 ⁶	3	6	2
section 192 Communications Act 2003 ⁷	1	5	6
section 317 Communications Act 2003 ⁸	0	0	0
applications for Interim Relief	0	0	0
Applications to intervene	26	24	16
Case management conferences held	6	8	7
Hearings held (sitting days)	10(16)	8(28)	12 (42)
Judgments handed down	25	28	29
of which:			
judgments disposing of main issue or issues	5	7	10
judgment on procedural and interlocutory matters	10	14	11
judgments on ancillary matters (e.g. costs)	10	7	8
Orders made	114	106	106
<p>1. An appeal by a party to an agreement or conduct in respect of which the CMA (or one of the other regulators with concurrent powers to apply the 1998 Act) has made an "appealable decision".</p> <p>2. An appeal against an "appealable decision" made by the CMA or other regulator with concurrent powers to apply the 1998 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 1998 Act.</p> <p>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 1998 Act or of EU competition law.</p> <p>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.</p> <p>5. An application by "any person aggrieved" by a decision of the CMA 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 2002 Act.</p> <p>6. An application by "any person aggrieved" by a decision of the CMA or the Secretary of State in connection with a market investigation reference or possible market investigation reference under the 2002 Act.</p> <p>7. An appeal by "a person affected" by a decision of OFCOM or of the Secretary of State in relation to certain specified communication matters set out in that section.</p> <p>8. An appeal by "a person affected" by a decision of OFCOM to exercise its Broadcasting Act power for a competition purpose (pursuant to Section 317 of the 2003 Act).</p>			

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Management Commentary

in respect of the Tribunal and the CS for the year ended 31 March 2015

The key activities of the Tribunal and the 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 President's statement and in the Strategic and Directors' reports. 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 the CS in accordance with the Accounts Directions issued by the Secretary of State for 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 the CS at the year end, and provide disclosures and notes to the accounts in compliance with the accounting principles and disclosure requirements issued by HM Treasury and included in the Government Financial Reporting Manual (FReM) in force for financial year 2014/15.

Financial performance

The programme and administration funding allocation from BIS for 2014/15 was £4,353,000 for resource expenditure (net of any income from other sources) including £72,000 for capital expenditure.

The actual resource expenditure for the year was £3,380,000 and capital expenditure was £393,000.

The actual expenditure for the Tribunal was £436,000 in 2014/15 (£538,000 in 2013/14). The reduction in the Tribunal costs is primarily attributable to savings on members' case costs, travel costs and associated tax, and national insurance on travel costs.

The CS's expenditure decreased to £2,944,000 in 2014/15, from £3,360,000 in 2013/14. The main changes in the CS's costs are set out below.

	Increase/(Decrease) in costs 2014/15 £'000
Core staff payroll & agency staff	(18)
VAT no longer paid on premises*	(285)
Accommodation due to reduction in footage**	(88)
Case variable***	(26)
IT, Staff training, Recruitment & Communication	1
Year on year reduction	(416)

* The CMA was informed that no VAT is to be charged on accommodation costs for rent, service charges and power when they registered for VAT. The VAT on accommodation was therefore £285,000 less than previous years.

** The reduction in accommodation costs relate to an in year reduction of £49,000; the increase of additional £39,000 relates to a reduction in liability amortised over the period of the lease as a result of reduction in footage.

*** Case related costs for transcript, photocopying, courier, etc.

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 2015 relating to the activities of the Tribunal which are paid by the CS. The liabilities in the CS's statement of financial position therefore include those liabilities that relate to the activities of the Tribunal.

The book value of the CS's non current assets increased from £80,000 to £449,000.

Capital expenditure during the year amounted to £393,000, which is largely related to the costs of a major IT infrastructure project. This capital expenditure included hardware, software and consultancy costs associated with the project. In addition, the CS replaced some office machinery and furniture.

The total assets of the CS increased to £1,542,000 from £579,000. Closing cash balance was £749,000 (2013/14: £450,000).

The VAT on accommodation costs for rent, service charges and power was £285,000 less than previous years as, when registering for VAT, the CMA was informed that no VAT is to be charged on accommodation costs.

The closing cash balance reflects funding received in respect of the IT infrastructure costs and related retentions (amounting to £374,000), which arose prior to 31 March 2015 but will be paid in the next financial year.

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) has changed due to costs related to the IT project and no VAT payable on accommodation costs for rent, service charges and power.

Pension liabilities

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 CS staff, including the Registrar. The appointments of the Tribunal Chairmen are pensionable; the appointments of the Ordinary Members are non-pensionable.

Risks and uncertainties

The Tribunal/CS maintains a risk register which is monitored and updated regularly. On a quarterly basis, the Audit and Risk Committee considers the register. The risk register is intended to identify strategic, operational and financial risks together with the controls and arrangements to manage those risks. For financial year 2014/15, the main risks relate to the IT infrastructure project mentioned above. Failure to implement this projects properly could lead to operational and reputational damage with consequent waste of money and inefficiency.

Future developments

The Resource Departmental Expenditure Limit (RDEL) approved by BIS for 2015/16 incorporates the increased costs linked to legislative changes (enlarging the Tribunal's jurisdiction in respect of private actions) and enhancements of the Tribunal/CS website and courtroom equipment. An amount of £4,391,000 has been earmarked for resource and £72,000 for capital expenditure. Nearly 80 per cent of the resource costs for the Tribunal/CS are fixed costs. Accommodation costs (specialised courtrooms and associated facilities) are more than 42 per cent of the RDEL.

Charles Dhanowa OBE, QC
Registrar and Accounting Officer
10 July 2015

Remuneration Report

for the Tribunal and the CS for the year ended 31 March 2015

Remuneration policy

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

The President is a High Court Judge and his salary is set at the applicable level in the judicial salaries list. The President's salary increased by 1 per cent as recommended by 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 (MoJ) and invoiced to the CS.

The salary of the Registrar is linked to judicial salaries as determined by the Secretary of State. For 2014/15, the salary of the Registrar increased by 1 per cent in accordance with the government pay limits.

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.

Tribunal 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. Tribunal Chairmen' and Ordinary Members' remuneration costs are charged to the Tribunal's operating cost statement.

The non-executive member of the CS is remunerated on a *per diem* basis, at a rate of £350, as determined by the Secretary of State. This rate has remained unchanged since 2003. The remuneration costs of the non-executive member are charged to the CS's operating cost statement.

CS contracts, salary and pension entitlements

The following sections provide details of the contracts, remuneration and pension entitlements 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 2002 Act. The Registrar is appointed by the Secretary of State pursuant to section 12(3) of the 2002 Act.

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 2002 Act. The appointment carries no right of pension, gratuity or allowance on its termination.

Remuneration

The following part of the Remuneration Report has been audited.

Single total figure of remuneration

	Salary (£'000)		Pension benefits (to nearest £1000)		Total (£'000)	
	2014/15	2013/14	2014/15	2013/14	2014/15	2013/14
Sir Gerald Barling until 4 November 2013	-	100 - 105	-	40,000	-	140 - 145
Sir Peter Roth from 5 November 2013	175 - 180	69 - 74	92,000	36,000	265 - 270	105 - 110

The full-time equivalent salary for the President's post was £175,000 - £180,000 in 2014/15 (£170,000 - £175,000 in 2013/14).

Single total figure of remuneration

	Salary (£'000)		Pension benefits (to nearest £1000)		Total (£'000)	
	2014/15	2013/14	2014/15	2013/14	2014/15	2013/14
Registrar (Highest Paid Officer's)	95 - 100	95 - 100	23,000	17,000	120 - 125	110 - 115
Median Total Remuneration (£)					39,486	39,000
Ratio					2.47	2.53

The full-time equivalent salary for the Registrar's post was £95,000 - £100,000 in 2014/15 (£95,000 - £100,000 in 2013/14).

Reporting bodies are required to disclose the relationship between the remuneration of the highest-paid officer in their organisation and the median remuneration of the organisation's workforce. For 2014/15, as these were an even number of employees, the median total remuneration was calculated as the average of the middle two employees' total remuneration.

Total remuneration includes salary, non-consolidated performance-related pay and benefits-in-kind. It does not include severance payments, employer pension contributions and cash equivalent transfer value of pensions.

As Chairmen and Ordinary Members are only paid when working on cases and the non-executive member is paid on an ad-hoc basis, they are excluded from the calculation above.

The non-executive member of the CS is remunerated at a rate of £350 per day (2013/14: £350 per day) and, as noted above, the rate has remained unchanged since 2003. Total remuneration in 2014/15 was £4,375 (2013/14: £1,225). The increase has arisen as a result of the appointment of the non-executive member on 18 October 2013, which did not represent a full year in 2013/14.

Benefits in kind

The CS does not provide any allowances, bonuses or 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. As the Tribunal/CS has a very small staff team, this can result, from time to time, in the unavoidable accumulation of untaken leave.

The Registrar's untaken leave liability accrual reduced by £6,000 to £22,000 in 2014/15 but only becomes payable by the CS upon cessation of employment unless the leave is taken. The movement in this liability is reflected in the Net Expenditure Account and affects the CS's general fund.

Pensions applicable to the Tribunal and the CS

Judicial pensions

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 Judicial Pensions Scheme (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 2014/15, has been assessed at 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 (MoJ): JPS can be found on the MoJ website (www.justice.gov.uk).

From 1 April 2015, serving salaried and fee-paid judicial office-holders will transfer into a New Judicial Pension Scheme (NJPS). The terms of the NJPS are still being developed by MoJ and will be subject to a three month consultation with those fee-paid judicial office-holders eligible for membership in due course. There will be a further announcement detailing those judicial office-holders who will be eligible for membership of NJPS.

Civil Service pensions

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 which is 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 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 salary-related and range between 1.5 per cent and 6.85 per cent of pensionable earnings for classic and 3.5 per cent and 8.85 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 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 his pensionable earnings during their period of scheme membership. At the end of the scheme year (31 March), the member's earned pension account is credited with 2.3 per cent of their pensionable earnings in that scheme year and the accrued pension is uprated in line with 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 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 on the Civil Service website (www.civilservicepensionscheme.org.uk).

New career average pension arrangements are being introduced from 1 April 2015 and the majority of classic, premium, classic plus and nuvos members will join the new scheme. Further details of this new scheme are available at <http://www.civilservicepensionscheme.org.uk/members/the-new-pension-scheme-alpha/>.

Further information regarding the Principal Civil Service Pension Scheme (PCSPS) is included in note 5 of the CS's accounts.

Cash Equivalent Transfer Values

A Cash Equivalent Transfer Value (CETV) pot 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 payment is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which disclosure applies.

The figures include the value of any pension benefit in another scheme or arrangement which the member has transferred to the Civil Service pension arrangements. They also include any additional pension benefit accrued to the member as a result of their buying additional pension benefits at their own cost. CETVs are worked out in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 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.

(a) President's pension benefits

The President is a member of the JPS. For 2014/15, employer contributions of £57,000 were payable to the JPS at a rate of 32.15 per cent of pensionable pay.

The following part of the Remuneration Report has been audited.

	Accrued pension as at 31 March 2015 and related lump sum £'000	Real increase in pension and related lump sum as at 31 March 2015 £'000	CETV at 31 March 2015 £'000	CETV at 31 March 2014 £'000	Employee contributions and transfers £'000	Real increase in CETV £'000
Sir Peter Roth	5 - 10 10 - 15	2.5 - 5 7.5 - 10	122	34	5	83

(b) Registrar's pension benefits

The Registrar's pension benefits are provided through the Civil Service Pension arrangements. For 2014/15, employer contributions of £24,000 (2013/14: £24,000) were payable to the PCSPS at a rate of 24.3 per cent (2013/14: 24.3 per cent) of pensionable pay.

The following part of the Remuneration Report has been audited.

	Accrued pension at age 60 as at 31 March 2015 and related lump sum £'000	Real increase in pension and related lump sum at age 60 £'000	CETV at 31 March 2015 £'000	CETV at 31 March 2014 £'000	Employee contributions and transfers £'000	Real increase in CETV £'000
Registrar	30 - 35 95 - 100	0 - 2.5 2.5 - 5	621	561*	20	16

*The CETV figure as at 31 March 2014 is a figure provided by MyCSP. It, therefore, differs from the corresponding figure in the previous year's accounts, which was estimated to be £554,000.

Charles Dhanowa OBE, QC
Registrar and Accounting Officer
10 July 2015

Statement of the Accounting Officer's Responsibilities

in respect of the Tribunal and the CS

Under Paragraph 12 of Schedule 3 of the 2002 Act, 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 HM 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, the Accounting Officer is required to comply with the requirements of the FReM and in particular 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 assume 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 HM Treasury and published in Managing Public Money.

Corporate Governance Statement

The purpose of the Governance Statement

The Governance Statement (the Statement) is intended to provide a clear picture of the structure of the controls within the organisation with regard to the management of risk. The Statement identifies and prioritises the risks to the achievement of the organisation's statutory functions, evaluates the likelihood of those risks materialising and their likely effect, and indicates how they should be managed efficiently, effectively and economically. The Statement also informs the Accounting Officer how well internal controls operated in the year and assists in making informed decisions about progress against the business plan.

Scope of responsibility

As Accounting Officer, I have ensured that a system of governance and internal controls is in place to support the performance of the CS's and the Tribunal's statutory functions, whilst safeguarding the public funds and departmental assets for which I am responsible (in accordance with the responsibilities assigned to me in the HM Treasury publication Managing Public Money). I have been assisted in this by the Board and Audit and Risk Committee of the CS, to which reports are regularly made. In addition, our internal auditors, Government Internal Audit Agency (GIAA), provide advice and guidance on risk management, governance and accountability issues. They work in conjunction with our external auditors, the National Audit Office (NAO), to ensure that the CS properly accounts for and uses its financial resources efficiently, effectively and economically. 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's governance structure

The President of the Tribunal, a non-executive member (Susan Scholefield CMG) and I constitute the CS Board, which meets usually four times a year to consider the strategic direction of the organisation. There was full attendance at Board meetings for all members during the year. Reports on workload, financial and administrative matters and from the Audit and Risk Committee are standing agenda items for Board meetings. The President and I have a detailed knowledge of the working of the Tribunal and the CS, and Susan Scholefield brings her wide and extensive experience of HR, finance and corporate governance matters to the Board. The Director, Operations acts as secretary to the Board.

The President is appointed by the Lord Chancellor on the recommendation of the Judicial Appointments Commission (JAC). The Registrar is recruited in an open competition and appointed by the Secretary of State for BIS.

The non-executive member of the Board chairs the Audit and Risk Committee, which also comprises two members of the Tribunal who have considerable accounting experience. Meetings of the Audit and Risk Committee are attended by representatives of both the CS's internal and external auditors and often by a representative of our sponsoring department. There was full attendance at one of the three Audit and Risk Committee meetings during the year. One of the members could not attend two meetings. The Audit and Risk Committee reviews the financial performance of the organisation and examines the Annual Report and Accounts prior to publication. At each meeting, the auditors and the committee members are offered the opportunity of a private meeting without CS personnel being present so that management performance can be discussed. The Director, Operations usually acts as secretary to the Audit and Risk Committee.

As part of BIS's group corporate governance assessment process, the CS completes an annual governance submission based on an evaluation of risk management processes. The CS's internal auditors review this return as part of their audit work.

The CS also completes a statement of assurance to the BIS Senior Information Risk Owner (SIRO) on an annual basis confirming that information is being used as effectively as possible and in line with data confidentiality and integrity principles.

The risk and internal control framework

The CS holds a risk register which highlights the strategic risks faced by the organisation. Risks are rated according to their impact and likelihood. The register is kept under review by myself, the Director, Operations and the HR Information Manager and is also examined regularly by the Audit and Risk Committee. In the financial year ended 31 March 2015, the risk register underwent a detailed re-examination and its format was revised.

The CS endeavours to promote a strong understanding of risk throughout the organisation and for Tribunal members and CS staff to have a full awareness of risk considerations in the performance of their duties.

The internal auditors' work complies with the Public Sector Internal Audit Standards. The internal auditors report on the adequacy and effectiveness of the CS's system of internal control and provide recommendations for improvement to senior management who undertake to respond within agreed timescales.

In the financial year ended 31 March 2015, internal audit work included the usual audit of key financial functions as well as an audit of the Tribunal/CS IT infrastructure upgrade project. This provided assurance to the Accounting Officer on the framework of governance, risk management and control relating to the development and implementation of a new IT provision. The findings of these audits were reported to me and to the Audit and Risk Committee. The Head of Internal Audit provided a substantial opinion on the adequacy and effectiveness of the CS's system of internal control.

Detailed monthly management accounts are circulated to me and other members of the CS's senior management, the Audit and Risk Committee and BIS. Quarterly grant-in-aid requests also provide BIS with highly detailed information on the CS's financial position.

In addition, the CS's senior management have meetings with BIS staff to share management and financial information.

Each year, a Business Plan is produced, which identifies the objectives for the year. The plan is approved by the CS Board and copied to BIS for information.

The majority of CS contractors are selected from the Crown Commercial Service (CCS), an executive agency sponsored by the Cabinet Office, that provides centralised commercial and procurement services for the Government and the UK public sector.

In line with BIS Counter Fraud Measures, we have put in place preventative measures to ensure we mitigate risks of fraud to ourselves and the BIS family.

The CS has one appointee who is not paid through the payroll system. Steps have been taken to ensure that full tax compliance pertains in this case.

Information security

This year, the CS has been undertaking a major IT infrastructure upgrade project that has included the launch of a new electronic document and record management system in parallel with a move to Windows 7 and Microsoft Office 2010. The project has brought in new users workstations and has uplifted the security elements of the former CS IT infrastructure to ensure OFFICIAL security standards are met (in line with the iTECC platform and the Security Classifications Policy that came into effect in April 2014). The project has been undertaken within a timeframe that ensured that the upgrade was completed prior to the withdrawal of support for Windows XP. The project ended at the beginning of May 2015, outside of the period covered by this report. As part of its new infrastructure, the CS shares services with BIS and DECC through their cloud tower-based iTECC platform.

As SIRO, I am responsible for ensuring that all information risks are recognised and managed through a sound information risk policy and assessment process.

A Departmental Security Officer (DSO) and an Information Technology Security Officer (ITSO) ensure that the CS complies with any relevant Government security policy frameworks.



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. In particular, during the year under review, risk assessments were tailored to analyse risks associated with the changes in the IT infrastructure upgrade project.

There have been no incidents in the year involving a breach of security. All members of staff have completed the online information awareness training made available by Civil Service Learning.

Review of effectiveness

As Accounting Officer, I have responsibility for reviewing the effectiveness of the CS's governance, risk management and internal control systems. My review is informed by the work of the internal auditors and the relevant CS managers, advice from the Audit and Risk Committee and the external auditors' reports.

We have identified there are weaknesses in internal control around cash advances and, in the future, BIS best practice will be followed.

My overall conclusion is that the CS's governance and internal control structures are good at this point but will remain subject to continuous review.

Charles Dhanowa OBE, QC
Accounting Officer
10 July 2015

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 2015 under the Enterprise Act 2002. The financial statements comprise: the Statements of Comprehensive Net Expenditure, Financial Position, Cash Flows, 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 Board, Accounting Officer and auditor

As explained more fully in the Statement of Accounting Officer's Responsibilities, the Accounting Officer is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view. My responsibility is to audit, 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 and to identify any information that is apparently materially incorrect based on, or materially inconsistent with, the knowledge acquired by me in the course of performing the audit. If I become aware of any apparent material misstatements or inconsistencies, I consider the implications for my certificate.

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

Opinion on regularity

In my opinion, in all material respects, the expenditure and income recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements 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 2015 and of the 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's directions issued thereunder.



Opinion on other matters

In my opinion:

- the part of the Remuneration Report to be audited has been properly prepared in accordance with Secretary of State's directions made under the Enterprise Act 2002; and
- the information given in the Strategic report, the Directors' report and the Governance statement 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 returns adequate for my audit have not been received from branches not visited by my staff; or
- the financial statements and the part of the Remuneration report to be audited are not in agreement with the accounting records and returns; or
- I have not received all of the information and explanations I require for my audit; or
- the Governance statement does not reflect compliance with HM Treasury's guidance.

Report

I have no observations to make on these financial statements.

Sir Amyas C E Morse
Comptroller and Auditor General
National Audit Office
157-197 Buckingham Palace Road
Victoria
London
SW1W 9SP

14 July 2015

Competition Appeal Tribunal:

Statement of Comprehensive Net Expenditure for the year ended 31 March 2015

	Note	2014/15 £'000	2013/14 £'000
Expenditure:			
Members' remuneration costs	3(d)	(367)	(461)
Other operating charges	4(a)	(69)	(77)
Total Expenditure		(436)	(538)
Income		–	–
Net Expenditure for the financial year		(436)	(538)

The notes on pages 63 to 67 form part of these accounts.



Competition Appeal Tribunal:

Statement of Financial Position as at 31 March 2015

	Note	31 March 2015 £'000	31 March 2014 £'000
Non current assets:			
Trade receivables and other receivables	5(a)	55	47
Total non current assets		55	47
Current assets:			
Trade receivables and other receivables	5(a)	59	66
Cash and cash equivalents		–	–
Total current assets		59	66
Total assets		114	113
Current liabilities:			
Trade payables and other payables	6(a)	(59)	(66)
Total current liabilities		(59)	(66)
Net current assets		55	47
Non current liabilities:			
Other financial liabilities		–	–
Provisions	7	(55)	(47)
Total non current liabilities		(55)	(47)
Assets less liabilities		–	–
Taxpayers' equity:			
General fund		–	–
Total taxpayers' equity		–	–

The notes on pages 63 to 67 form part of these accounts.

Charles Dhanowa OBE, QC
Registrar and Accounting Officer
10 July 2015

Competition Appeal Tribunal:

Statement of Cash Flows for the year ended 31 March 2015

	Note	2014/15 £'000	2013/14 £'000
Cash flows from operating activities:			
Net operating cost		(436)	(538)
(Increase)/Decrease in receivables		(1)	3
(Decrease) in payables		(7)	(2)
(Decrease)/Increase in provisions		8	(1)
Net cash (outflow) from operating activities		(436)	(538)
Cash flows from financing activities:			
Grant-in-aid from the CS	2	436	538
Increase/(Decrease) in cash in the period		–	–

The notes on pages 63 to 67 form part of these accounts.

Competition Appeal Tribunal:

Statement of Changes in Taxpayers' Equity for the year ended 31 March 2015

	General Fund £'000
Balance at 31 March 2013	0
Net operating cost for 2013/14	(538)
Net financing from CS for 2013/14	538
Balance at 31 March 2014	0
Net operating cost for 2014/15	(436)
Net financing from CS for 2014/15	436
Balance at 31 March 2015	0

The notes on pages 63 to 67 form part of these accounts.

Competition Appeal Tribunal:

Notes to the accounts

1. Basis of preparation and statement of accounting policies

These financial statements have been prepared in accordance with the 2014/15 Government FReM. The accounting policies contained in the FReM apply International Financial Reporting Standards as adapted or interpreted for the public sector and follow International Accounting Standards to the extent that it is meaningful to do so and appropriate to the public sector. The Tribunal does not enter into any accounting transactions in its own right, as the CS has the responsibility, under the Enterprise Act 2002, to meet all the expenses of operating the Tribunal. Accordingly, the Tribunal has no assets, liabilities, funds or cash flows.

Under an accounts directive from HM Treasury (the 2014/15 Government Financial Reporting Manual), the Tribunal is to prepare accounts on the basis that it had directly incurred the expenses relating to its activities. Accordingly, the accounts of the Tribunal are prepared on this basis, which includes those assets, liabilities and cash flows of the CS, which relate to the Tribunal's activities.

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

The FReM requires non-departmental public bodies to account for grant-in-aid received for revenue purposes as financing. The CS draws down grant-in-aid on behalf of the Tribunal to fund the Tribunal's activities. The debtor balance of £59,000 shown in note 5a is of the equal amount to the liability of £59,000 shown in note 6a which represents the amount that the CS shall transfer to meet those liabilities.

(c) Pensions

The pension arrangements for the President are mentioned separately in the Remuneration Report.

The appointment of the Tribunal Chairmen is pensionable; the appointment of the Ordinary Members is non-pensionable.

(d) Going concern

The accounts have been prepared on a going concern basis.

In accordance with accounts directions issued by the Secretary of State, with the approval of HM Treasury, the Tribunal and the CS have prepared a joint Statement of Accounting Officer's Responsibilities and Corporate Governance Statement.

2. Government grant-in-aid

Total grant-in-aid allocated by the CS in financial year 2014/15 was £436,000 (2013/14: £538,000).

3. Members' remuneration

- (a) The President and the Chairmen are appointed by the Lord Chancellor upon the recommendation of the JAC. The Ordinary Members are appointed by the Secretary of State. Chairmen and Ordinary Members are appointed for a fixed term of up to eight years. The membership of the Tribunal is included in the introduction to this report.
- (b) Remuneration costs for members of the panel of chairmen are shown in the table below.

	2014/15 £	2013/14 £
Heriot Currie QC	600	15,279
Peter Freeman CBE, QC (Hon)	26,468	31,133
Andrew Lenon QC	4,714	5,507
Hodge Malek QC	1,629	17,999
Dame Vivien Rose DBE	–	602
Marcus Smith QC	7,935	44,377

Heriot Currie QC, Peter Freeman CBE, QC (Hon), Hodge Malek QC, Andrew Lenon QC, Dame Vivien Rose DBE and Marcus Smith QC are remunerated at a rate of £600 per day (2013/14: £600 per day) or pro rata. Their remuneration costs are included in note 3(d). Dame Vivien Rose's appointment as Tribunal Chairman ceased in December 2014.

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

- (c) The Ordinary Members are remunerated at a rate of £350 per day (2013/14: £350 per day). The total remuneration payable to Ordinary Members of £62,788 (2013/14: £74,754) is included in note 3(d).
- (d) The total cost of members' remuneration is shown in the table below.

	2014/15 £'000	2013/14 £'000
Members' remuneration (including the President, Chairmen and Ordinary Members)	279	364
Social security costs	31	41
Pension contributions for the President	57	56
Total members' remuneration	367	461

4. Other operating charges

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

	2014/15 £'000	2013/14 £'000
Members' travel and subsistence	13	27
Members' PAYE and National Insurance on travel and subsistence expenses	5	10
Members' training	37	35
Long service award	8	(1)
Audit fees*	6	6
Total other operating charges	69	77

*Audit fees related to statutory audit work.

- (b) The long service award relates to a provision 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 (GAD) and reflects the President's length of service and judicial grade. The level of the long service award is dependent on the tax paid by the member on his retirement lump sum. For this year's disclosures, the GAD has assumed tax is paid on his lump sum at 45 per cent, reflecting the top income rate prevailing at 31 March 2015. However, if the President pays tax on the lump sum at a different rate, the long service award will differ.

5. Trade receivables and other receivables

- (a) Analysis by type

	31 March 2015 £'000	31 March 2014 £'000
Amounts falling due within one year:		
Trade receivables and other receivables with the CS	59	66
Amounts falling due after more than one year:		
Trade receivables and other receivables with the CS	55	47
Total trade receivables and other receivables	114	113

- (b) Intra-government balances

	Amounts falling due within one year		Amounts falling due after more than one year	
	31 March 2015 £'000	31 March 2014 £'000	31 March 2015 £'000	31 March 2014 £'000
Balances with other central government bodies	59	66	55	47
Total trade receivables and other receivables	59	66	55	47

6. Trade payables and other payables

(a) Analysis by type

	31 March 2015 £'000	31 March 2014 £'000
Amounts falling due within one year:		
Taxation and social security	5	16
Other payables	5	–
Accruals	49	50
Total trade payables and other payables	59	66

The payables balance represents the total liabilities outstanding at the balance sheet date, that directly relate to the activities of the Tribunal. The CS meets all expenses relating to the Tribunal's activities.

(b) Intra-government balances

	Amounts falling due within one year	
	31 March 2015 £'000	31 March 2014 £'000
Balances with other central government bodies	31	42
Balances with bodies external to government	28	24
Total trade payable and other payables	59	66

There are no intra-government balances that fall due after one year.

7. Provisions for liabilities and charges

	Long service award costs £'000
Balance at 31 March 2014	47
Provided in the year	8
Balance at 31 March 2015	55

The provision made in the year relates to the expected cost of the President's long service award which becomes payable on retirement and will be met by the CS. The liability was calculated by the GAD and is based on the President's judicial grade and length of service. The level of the long service award is dependent on the tax paid by the member of the JPS on his retirement lump sum. For this year's disclosures the GAD have assumed tax is paid on the lump sum at 45 per cent, the prevailing tax rate as at 31 March 2015. However, if the member paid tax on the lump sum at a different rate, the long service award would differ. The value of the long service award payable to the current President is £11,000. The remaining provision held of £44,000 is payable to the previous holder of the office of President, at their personal retirement date.



8. Related party transactions

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. These financial statements were authorised for issue on 14 July 2015, the date of certification by the Comptroller and Auditor General.

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 2015 under the Enterprise Act 2002. The financial statements comprise: the Statements of Comprehensive Net Expenditure, Financial Position, Cash Flows, 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 Board, Accounting Officer and auditor

As explained more fully in the Statement of Accounting Officer's Responsibilities, the Accounting Officer is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view. My responsibility is to audit, 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 and to identify any information that is apparently materially incorrect based on, or materially inconsistent with, the knowledge acquired by me in the course of performing the audit. If I become aware of any apparent material misstatements or inconsistencies, I consider the implications for my certificate.

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

Opinion on regularity

In my opinion, in all material respects the expenditure and income recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements 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 Competition Service's affairs as at 31 March 2015 and of the 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's directions issued thereunder.



Opinion on other matters

In my opinion:

- the part of the Remuneration report to be audited has been properly prepared in accordance with the Secretary of State's directions made under the Enterprise Act 2002; and
- the information given in the Strategic report, the Directors' report and the Governance statement 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 returns adequate for my audit have not been received from branches not visited by my staff; or
- the financial statements and the part of the Remuneration report to be audited are not in agreement with the accounting records and returns; or
- I have not received all of the information and explanations I require for my audit; or
- the Governance statement does not reflect compliance with HM Treasury's guidance.

Report

I have no observations to make on these financial statements.

Sir Amyas C E Morse
Comptroller and Auditor General
National Audit Office
157-197 Buckingham Palace Road
Victoria
London
SW1W 9SP

14 July 2015

Competition Service:

Statement of Comprehensive Net Expenditure for the year ended 31 March 2015

	Note	2014/15 £'000	2013/14 £'000
Expenditure:			
Funding the activities of the Tribunal		(436)	(538)
CS and Audit and Risk Committee members' remuneration	3(a)	(7)	(7)
Staff Costs	4(a)	(844)	(862)
Other expenditure	6	(2,068)	(2,462)
Depreciation	6	(25)	(29)
Total expenditure		(3,380)	(3,898)
Income:			
Other income	7	5	4
Net expenditure		(3,375)	(3,894)
Interest received	7	2	2
Net expenditure after interest		(3,373)	(3,892)
Taxation	8	(0)	(0)
Net expenditure after taxation		(3,373)	(3,892)

All activities were continuing during the year.

The notes on pages 73 to 83 form part of these accounts.



Competition Service:

Statement of Financial Position as at 31 March 2015

	Note	31 March 2015 £'000	31 March 2014 £'000
Non current assets:			
Property, plant & equipment	9	106	55
Intangible assets	10	343	25
Total non current assets		449	80
Current assets:			
Trade receivables and other receivables	11(a)	344	49
Cash and cash equivalents	12	749	450
Total current assets		1,093	499
Total assets		1,542	579
Current liabilities:			
Trade payables and other payables	13(a)	(430)	(214)
Total current liabilities		(430)	(214)
Non current assets plus net current assets		1,112	365
Non current liabilities:			
Financial liabilities	13(a)	1,682	(1,823)
Provisions	14	(55)	(47)
Total non current liabilities		(1,737)	(1,870)
Assets less liabilities		(625)	(1,505)
Taxpayers' equity:			
General fund		(625)	(1,505)
Total taxpayers' equity		(625)	(1,505)

The notes on pages 73 to 83 form part of these accounts.

Charles Dhanowa OBE, QC
Registrar and Accounting Officer
10 July 2015

Competition Service:

Statement of Cash Flows for the year ending 31 March 2015

	Note	2014/15 £'000	2013/14 £'000
Cash flows from operating activities:			
Net deficit before interest		(3,375)	(3,894)
Adjustments for non-cash transactions	6	25	29
(Increase)/Decrease in receivables		(295)	17
(Decrease) in payables		(40)	–
Increase/(Decrease) in provisions	14	8	(1)
Net cash (outflow) from operating activities		(3,677)	(3,849)
Cash flows from investing activities:			
Interest received	7	2	2
Taxation	8	–	(1)
Property, plant and equipment purchases	9	(60)	(15)
Intangible asset purchases	10	(219)	(12)
Net cash generated from/(used in) investing activities		(277)	(26)
Cash flows from financing activities:			
Grant-in-aid from BIS	2	4,253	3,920
Net Increase in cash and cash equivalents in the period	12	299	45
Cash and cash equivalents at the beginning of the period	12	450	405
Cash and cash equivalents at the end of the period	12	749	450

The purchase of assets figure represents the cash paid in the year. The payables amount is net of non-operating expenses relating to corporation tax accrued at 31 March 2015.

The notes on pages 73 to 83 form part of these accounts.



Competition Service:

Statement of Changes in Taxpayers' Equity for the year ending 31 March 2015

	General Fund £'000
Balance at 31 March 2013	(1,533)
Net operating cost for 2013/14	(3,892)
Net financing from BIS for 2013/14	3,920
Balance at 31 March 2014	(1,505)
Net operating cost for 2014/15	(3,373)
Net financing from BIS for 2014/15	4,253
Balance at 31 March 2015	(625)

The notes on pages 73 to 83 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 2014/15 Government FReM. The accounting policies contained in the FReM apply International Financial Reporting Standards as adapted or interpreted for the public sector and 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) Going concern

A going concern basis has been adopted 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. The operating lease liability referred to in Note 13 includes the full cost of annual rent increments from September 2008 of 2.5 per cent, calculated every five years and compounded to 13 per cent spread on a straight line basis over the 20 years of the lease. Therefore, although the operating lease liability is recognised, the increase will be paid from future grant-in-aid receipts.

(b) Accounting convention

The financial statements have been prepared according to 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.

(c) 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 BIS with the approval of HM Treasury, the Tribunal and the CS have prepared a joint Statement of Accounting Officer's responsibilities and Corporate Governance Statement.

(d) 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.

The FRM requires non-departmental public bodies to account for grant-in-aid received for revenue purposes as financing which is credited to the general fund as it is regarded as contributions from a sponsor body.

(e) 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.

(f) 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 and are not depreciated in the year of disposal.

(i) Property, plant and equipment assets:

Information Technology:	
Desktop/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:

Information Technology:	
Software licences	1 to 3 years

(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 PCSPS. The CS recognises the expected costs of the PCSPS pensions 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.

The PCSPS is therefore treated as a defined contribution scheme and the contributions recognised as they are paid each year.

(i) Income

The main source of income is from the website and library service (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 the CS pays for its and the Tribunal's accommodation in Victoria House.

**(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 and non-current payables. The current payables 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, for both current and non-current payables.

(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.

(m) 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. There is no discounting applied to the provision.

Specific assumptions are given in note 14.

2. Government grant-in-aid

	2014/15 £'000	2013/14 £'000
Allocated by BIS	4,353	3,876
Total drawdown	4,253	3,920
Spent:		
Resource	3,374	3,894
Capital	279	27
Total spent	3,653	3,920

3. The CS and Audit and Risk Committee members' remuneration

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

	2014/15 £'000	2013/14 £'000
CS and Audit and Risk Committee members' remuneration	7	7
Social security costs	–	–
Total CS and Audit and Risk Committee members' remuneration	7	7

- (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.

The remuneration of Susan Scholefield, the non-executive member and Chairman of the CS Audit and Risk Committee, of £4,375 (2013/14: £1,225) is included in note 3(a) above. The post is remunerated at a rate of £350 per day (unchanged since 2003) and is non-pensionable.

4. Staff related costs and numbers

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

	Total 2014/15 £'000	Permanently employed staff 2014/15 £'000	Temporary employed staff 2014/15 £'000	Total 2013/14 £'000
Wages and salaries	655	649	6	671
Social security costs	56	56	–	54
Other pension costs	133	133	–	137
Total employee costs	844	838	6	862

No severance payments were made in 2014/15.

- (b) The average number of staff employed during the year (full time and part time) remained 16 for the previous year and the reporting year. One temporary agency staff has been employed since February 2015.

5. Pension costs

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. Further information can be found on the resource accounts of the Cabinet Office: Civil Service Pensions website (www.civilservicepensionscheme.org.uk).

For 2014/15, employer contributions of £133,000 (2013/14: £137,000) were payable to the PCSPS at one of four rates in the range 16.7 to 24.3 per cent (2013/14: 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 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

	2014/15 £'000	2013/14 £'000
Hire of plant and machinery	2	11
Other operating leases	947	1,245
Non case related expenditure including internal audit fees	9	11
IT service fees	117	102
Accommodation and utilities	752	827
Travel, subsistence and hospitality	11	17
Other administration including case related expenditure	212	231
Audit fees	18	18
Non cash item		
Depreciation	25	29
Total other expenditure	2,093	2,491

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

The current policy of the CS is not to charge HMCTS and other government bodies for use of Tribunal/CS's court facilities.

Audit fees related to statutory audit work.

7. Tribunal/CS's income and interest received

	2014/15 £'000	2013/14 £'000
Website and library service income	5	4
Gross interest received	2	2
Total income	7	6

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

The website income relates to a contract with Bloomberg, a US publisher, for non-exclusive use of information published on the website. The library service income relates to a contract with LexisNexis Butterworths for inclusion of the Tribunal's Guide to Proceedings in one of their publications.

8. Taxation

As in the previous year a negligible amount of corporation tax was payable. Corporation tax payable is based on 20 per cent of gross interest receivable (2013/14: 20 per cent).

9. Property, plant and equipment

	Information Technology £'000	Furniture and Fittings £'000	Office Machinery £'000	Total £'000
Cost or valuation:				
At 31 March 2013	319*	336*	32	687
Additions	7	2	6	15
Disposals	1	1	-	2
At 31 March 2014	325	337	38	700
Depreciation:				
At 31 March 2013	298	318	10	626
Charged in year	10	5	5	20
Disposals	-	1	-	1
At 31 March 2014	308	322	15	645
Net book value at 31 March 2013	21	18	22	61
Asset financing:				
Owned	21	18	22	61
Net book value at 31 March 2014	17	15	23	55
Asset financing:				
Owned	17	15	23	55

*Included in the cost of fixed assets, shown in the table above, are IT assets with a value of £290,222 and F&F assets with the value of £183,201, which have been fully written down but are still in use.

	Information Technology £'000	Furniture and Fittings £'000	Office Machinery £'000	Assets Under Construction £'000	Total £'000
Cost or valuation:					
At 31 March 2014	325*	337*	38	-	700
Additions	4	1	1	62	68
Disposals	90	-	-	-	90
At 31 March 2015	239	338	39	62	678
Depreciation:					
At 31 March 2014	308	322	15	-	645
Charged in year	7	4	6	-	17
Disposals	90	-	-	-	90
At 31 March 2015	225	326	21	-	572
Net book value at 31 March 2014	17	15	23	-	55
Asset financing:					
Owned	17	15	23	-	55
Net book value at 31 March 2015	14	12	18	62	106
Asset financing:					
Owned	14	12	18	62	106

*Included in the cost of fixed assets, shown in the table above, are IT assets with a value of £214,510 and F&F assets with a value of £183,201 which have been fully written down but are still in use.



10. Intangible assets

	Purchased software licences £'000	Assets under construction £'000	Total £'000
Cost or valuation:			
At 31 March 2013	241	-	241
Additions	-	12	12
At 31 March 2014	241	12	253
Amortisation:			
At 31 March 2013	219	-	219
Charged in the year	9	-	9
At 31 March 2014	228	-	228
Net book value at 31 March 2013	22	-	22
Net book value at 31 March 2014	13	12	25

	Purchased software licences £'000	Assets under construction £'000	Total £'000
Cost or valuation:			
At 31 March 2014	241	12	253
Additions	5	320	325
At 31 March 2015	246	333	579
Amortisation:			
At 31 March 2014	228	-	228
Charged in the year	7	-	7
At 31 March 2015	235	-	235
Net book value at 31 March 2014	13	12	25
Net book value at 31 March 2015	11	332	343

11. Trade and other receivables

(a) Analysis by type

	31 March 2015 £'000	31 March 2014 £'000
Amounts falling due within one year:		
Deposits and advances	8	6
Prepayments and accrued income	336	43
Total trade receivables and other receivables	344	49

(b) Intra-government balances

	Amounts falling due within one year	
	31 March 2015 £'000	31 March 2014 £'000
Balances with other central government bodies	293	6
Balances with bodies external to government	51	43
Total trade and other receivables	344	49

There are no intra-government balances that fall due after one year.

12. Cash and cash equivalents

	2014/15 £'000	2013/14 £'000
Balance at 1 April	450	405
Net change in cash balances	299	45
Balance at 31 March	749	450
The following balances were held at 31 March:		
Commercial banks	748	450
Cash in hand	1	
Balance at 31 March	749	450

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

(a) Analysis by type

	31 March 2015 £'000	31 March 2014 £'000
Amounts falling due within one year:		
Payables representing activities of the Tribunal at 31 March	59	66
Taxation and social security	18	18
Trade payables	111	4
Accruals	175	56
Untaken leave accrual	44	47
Deferred income rent free	23	23
Total amounts falling due within one year	430	214
Amounts falling due after more than one year:		
Deferred income rent free	170	193
Operating lease liability	1,512	1,630
Total amounts falling due after more than one year	1,682	1,823

(b) Intra-government balances

	Amounts falling due within one year		Amounts falling due after more than one year	
	31 March 2015 £'000	31 March 2014 £'000	31 March 2015 £'000	31 March 2014 £'000
Balances with other central government bodies	233	141	1,682	1,823
Balances with bodies external to government	197	73	–	–
Total trade and other payables	430	214	1,682	1,823

(c) Deferred income and operating lease liability

The deferred income in note 13(a) 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 five month rent-free period for Victoria House over the expected full 20 year length of the tenancy agreement.

The operating lease liability in note 13(a) represents obligations under operating leases which include an increase of 2.5 per cent compounded over every five years and 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. No VAT is payable on the operating lease liability obligations from 1 April 2014.

Further details of the lease arrangements in respect of land and buildings are given in note 6.

14. Provisions for liabilities and charges

	Long service award costs £'000
Balance at 31 March 2014	47
Provided in the year	8
Balance at 31 March 2015	55

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 GAD and is based on the President's judicial grade and length of service. The level of the long service award is dependent on the tax paid by the member on his retirement lump sum. For this year's disclosures the GAD have assumed tax is paid on his lump sum at 45 per cent, the prevailing tax rate as at 31 March 2015. However, if the member paid tax on the lump sum at a different rate, the long service award would differ. The value of the long service award payable to the current office holder is £11,000. The remaining provision of £44,000 is payable to the previous office holder.

15. Commitments under operating leases

Commitments under operating leases show the rentals payable during the year following the year of these accounts; these rentals are given in the table below. For 2013/14, rentals are inclusive of VAT analysed according to the period in which the lease expires.

	31 March 2015 £'000	31 March 2014 £'000
Obligations under operating leases comprise:		
Buildings:		
Not later than one year	842	1,344
Later than one year and not later than five years	4,445	5,463
Later than five years	4,188	6,836
Other:		
Not later than one year	3	4
Later than one year and not later than five years	–	3
Later than five years	–	–
Total obligations under operating leases*	9,478	13,650

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.

* The reduction in the obligations under operating leases, in respect of land and buildings for no VAT charge, is £2,156,000; reduction of office footage is £592,000, plus VAT of £118,000.

16. Financial instruments

IAS 32 Financial Instruments Presentation requires disclosure of the role that financial instruments have had during the period in creating or changing the risks that 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. There was no difference between the book values and fair values of the CS's financial assets. Cash at bank was £748,000 as at 31 March 2015.

17. Related party transactions

During the year, the CS had various material transactions with the CMA 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 had various other material transactions with BIS including internal audit services.

The CS also had material transactions with DECC and FCOS in respect of the IT infrastructure project.

There were also transactions with AECLJ for £2,514 in relation to the organisation of the AECLJ's annual conference. There were no outstanding balances. The President and the Registrar of the Tribunal are respectively the Treasurer and Secretary of the AECLJ.

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

18. Contingent liability

On 24 September 2013 there was a water leak. The water seeped through to other occupiers' offices. There have been discussions between CMA and the building insurers on the flood liability. In February 2015, the CMA has managed to reach an agreement that the repair costs for CS, Michael Page and Amway will be paid by the building insurers. The building insurers will pay CMA in the first instance who in turn will reimburse the CS.

19. Events after the reporting period

There were no events after the reporting period to report. These financial statements were authorised for issue on the 14 July 2015, the date of certification by the Comptroller and Auditor General.

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