



House of Commons

Committee of Public Accounts

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# **Enforcing competition in markets**

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**Forty-second Report of  
Session 2005–06**





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Committee of Public Accounts

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# Enforcing competition in markets

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**Forty-second Report of  
Session 2005–06**

*Report, together with formal minutes,  
oral and written evidence*

*Ordered by The House of Commons  
to be printed 19 April 2006*

## The Committee of Public Accounts

The Committee of Public Accounts is appointed by the House of Commons to examine “the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure, and of such other accounts laid before Parliament as the committee may think fit” (Standing Order No 148).

### Current membership

Mr Richard Bacon MP (*Conservative, South Norfolk*)  
Annette Brooke MP (*Liberal Democrat, Mid Dorset and Poole North*)  
Angela Browning MP (*Conservative, Tiverton and Honiton*)  
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Rt Hon Alan Williams MP (*Labour, Swansea West*)

The following was also a Member of the committee during the period of the enquiry:

Stephen Williams MP (*Liberal Democrat, Bristol West*)

### Powers

Powers of the Committee of Public Accounts are set out in House of Commons Standing Orders, principally in SO No 148. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pac>. A list of Reports of the Committee in the present Session is at the back of this volume.

### Committee staff

The current staff of the Committee is Nick Wright (Clerk), Christine Randall (Committee Assistant), Emma Sawyer (Committee Assistant), Ronnie Jefferson (Secretary), and Luke Robinson (Media Officer).

### Contacts

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## Summary

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One of the main ways the Government aims to increase the UK's productivity is through increasing competition. The Office of Fair Trading (OFT) is the UK's main competition enforcement body. Its annual budget, currently £56 million, has grown by over 70% since 2000 and its responsibilities for enforcing competition in the UK economy have also been extended.

The OFT is respected for the quality of its analysis and for the precedents it has set in the interpretation of competition law. It is the third highest rated competition authority in international surveys.

Despite its international reputation, however, there are some internal shortcomings with the OFT which are limiting its overall effectiveness. The OFT is not yet maximising the value for money it provides. It must select its investigations more carefully, make better use of its staff and reduce the time it takes to investigate. By doing so, it will secure greater benefits for consumers and the UK economy as a whole.

On the basis of the C&AG's Report,<sup>1</sup> the Committee took evidence from the OFT. The OFT is clearly in a state of flux, as it responds to its increased powers and resources. It has responded to the C&AG's Report by committing to reducing the average timescale for its investigations by 6 months. The Committee's recommendations will help the OFT to build on this and consolidate its position as one of the world's leading competition enforcement authorities.

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1 C&AG's Report, *The Office of Fair Trading: Enforcing Competition in Markets* (HC 593, Session 2005–06)

## Conclusions and recommendations

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- 1. The OFT has been too reliant on complaints as a source for its competition enforcement work.** The OFT should start a greater proportion of investigations on its own initiative, rather than waiting for a relevant complaint. It should also be ready to stop cases if they are not strong enough to continue.
- 2. The OFT has no database of intelligence to support its investigations.** The OFT needs to supplement information from competition complaints with data from other sources such as the new Consumer Direct helpline and the work of Trading Standards officers across the UK. A database would help it to do so efficiently.
- 3. The OFT suffers from high staff turnover, and many employees do not have sufficient experience to deal with complicated cases.** The OFT should focus on supporting staff better, with broader training including project management and investigation skills, and a complete, up-to-date guidance manual.
- 4. Small case teams are a cause of the OFT's long timescales on cases.** The OFT should employ larger teams on its investigations. In small teams, the loss of important members of staff endangers the investigation's progress. Larger teams will reduce this risk and bring a broader range of skills and experience to the investigation.
- 5. At present, the OFT does not work to any deadlines.** The target timescales on its website are completely unrealistic and are never met. The OFT should have amended these deadlines as soon as it realised they were not achievable. It should now set clear and realistic timetables for each case.
- 6. The OFT does not publish information about performance against timescales.** This lack of transparency limits effective scrutiny, making it difficult for Parliament to assess the OFT's operation against expectations. The OFT should publish its performance against its timescales.
- 7. The OFT's investigations create uncertainty for the companies involved.** There is scope for different interpretations of competition law, and companies face uncertainty over how the OFT will analyse a market. The OFT should reduce this uncertainty by sharing its analysis with companies earlier in an investigation.
- 8. The OFT does not use its powers to compel companies to provide information.** The OFT can impose criminal penalties if companies do not provide information. It has not used the penalties as it considers them heavy-handed. It should use them where companies wilfully obstruct an investigation and should explore with the DTI whether it can raise civil penalties against companies in less serious circumstances.
- 9. The OFT can make an important contribution to increasing productivity and deterring anti-competitive behaviour.** Its preliminary estimate of consumer benefit from investigations (£110 million over five years) does not include wider economic effects. The OFT should consider further research to gain a clearer understanding of these broader deterrent and productivity effects and how they might be enhanced.

10. **The OFT is an organisation in transition, which has yet to demonstrate that it can make effective use of the substantial extra resources it has been given.** The Committee will wish to return to these issues in due course to see what progress has been made and how well the OFT has implemented the Committee's recommendations.



# 1 The OFT's priorities

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1. Vigorous competition encourages companies to be more efficient, reduce prices and innovate, which in turn helps consumers get a good deal. Price fixing and abuse of market dominance can cause significant consumer harm. An effective competition authority helps identify abuse, enhancing the operation of markets and benefiting the economy as a whole.

2. In the United Kingdom, the Office of Fair Trading (OFT) has primary responsibility for enforcing competition law. Its competition enforcement powers come from the Competition Act 1998 and the Enterprise Act 2002. The OFT's other responsibilities are protecting consumers from unfair trading practices and raising trading standards.

## Choosing the right areas to focus on

3. In 2005–06, the OFT selected five priority sectors for the first time: credit markets; construction and housing; healthcare; mass-marketed scams; and markets where the public sector exerts significant influence. Priority areas are only one of 6 criteria used to select investigations, so other areas of the economy, such as the retail sector, need not be neglected.<sup>2</sup> The OFT has struggled to convert these priority areas into practice. It has not communicated the priorities to staff effectively, with the result that staff are unsure how to apply the priorities to the day-to-day work they are doing.<sup>3</sup>

4. The OFT relies largely on complaints to select its cases. It receives around 1,200 complaints from the public each year. There is no guarantee that complaints will relate to one of the five priority sectors. And the OFT's review of complaints suggests that many do not provide sufficient information to demonstrate real competition abuse, with only 2% appropriate for a formal investigation.<sup>4</sup>

5. The OFT should make greater use of market intelligence and undertake more 'own-initiative' investigations. This would enable it to target its investigations better, and avoid wasting time on complaints brought by companies who, in pursuing their own interests, promote a misconceived view of how the particular market operates.<sup>5</sup> Own-initiative cases can also circumvent the need to protect a complainant's identity because the OFT will in some investigations be able to build a case without disclosing the complainant's name.<sup>6</sup>

6. The OFT's efforts to start more own-initiative investigations depend on better use of the intelligence at its disposal. It has established a preliminary investigation unit to identify much earlier cases with the best prospect of improving competition in markets.<sup>7</sup> But it does not yet have a database, which would enable it to integrate intelligence from several different complaints to build its investigations.<sup>8</sup> The new Consumer Direct helpline should

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2 Q 39

3 Q 40

4 C&AG's Report, Figure 13

5 Q 22

6 Qq 82–83

7 Q 32

8 Qq 43–44

help here. Consumer Direct will be the first line of contact for consumers who have a problem with a product or service they have purchased. Once the OFT takes it over in April 2006 it will provide valuable additional evidence base for its competition work.<sup>9</sup> The OFT could also make greater use of information from trading standards officers across the UK.<sup>10</sup>

7. The OFT also needs to stop unpromising investigations earlier in their life. It can take 3 years or more to close some investigations. Even where the OFT concludes that there are insufficient grounds for an investigation, or the case is no longer an administrative priority, the investigation may last up to 3 years before it is closed (**Figure 1**). It is important that cases are considered internally from a variety of perspectives so they are able to withstand external challenge. But there may be a tendency within the OFT not to expose cases to early scrutiny from senior management, and hence not to close weak cases soon enough.<sup>11</sup>

**Figure 1: Time taken to close cases**<sup>12</sup>

Type of case closure	Number of cases closed after		
	1 year	2 years	3 years
Closed because of insufficient grounds	10	3	1
Closed on grounds of administrative priority	4	5	2

Note: Covering all cases opened between 1 April 2003 and 1 April 2005

Source: C&AG's Report

## Staffing

8. To use its powers effectively, the OFT needs to recruit and retain highly skilled staff. Its competition enforcement division has suffered from staff turnover of 20% per year, and 12% of its posts were unfilled in 2005. Many of its staff leave to join the private sector.<sup>13</sup> More recent figures suggest that turnover may have reduced to around 16%. Part of the turnover may reflect the positive development of a 'revolving door' between the public sector and private firms, such as economics consultancies and law firms. The OFT consider that the revolving door can extend knowledge and expertise on competition more widely across the economy.<sup>14</sup>

9. For the revolving door to work, the OFT must be able to attract experts at more senior levels. It is concerned that it does not pay enough at present, so that, while it may attract people at the beginning of their careers, within two or three years working at the OFT they

9 Qq 34–35

10 Q 45

11 C&AG's Report, 3.12

12 *ibid*, Figure 17

13 *ibid*, para 2.10; Q 78

14 Q 1

tend to leave.<sup>15</sup> For example, at the time of the NAO report, the average length of service for economists was 4 years and lawyers only 2 years. And the average pay of a case officer – the main grade for OFT staff working on cases – is £39,000 a year, well below what is available to lawyers elsewhere.<sup>16</sup> The OFT believes that it can increase its attractiveness to skilled staff by increasing the variety of the work that it provides to staff.<sup>17</sup>

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15 Q 78

16 C&AG's Report, Figure 10; Ev 19

17 Q 78

## 2 The OFT's management of investigations

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10. Investigating a potential abuse of competition law is time consuming. The OFT has to weigh up complex economic evidence and consider a range of legal issues. Nevertheless, the way that the OFT carries out its investigations can be improved.

### Managing timescales

11. Many of the OFT's investigations take at least 3 years to reach a decision. Some have lasted over 4 years. As at 1 April 2005, the OFT had reached a decision on 25 cases under the Competition Act. Of these cases, only 3 were resolved within one year.<sup>18</sup> Cases can also extend beyond the OFT's decision if one of the parties to the case lodges an appeal with the Appeals Tribunal. In almost all cases where the OFT finds an infringement of competition law, the defendant has appealed.<sup>19</sup>

12. The OFT has published standards for how long its investigations should take. The standards state that 75% of its investigations should be completed within 9 months. In fact, no investigations have been completed within this timeframe, showing that the standards are unrealistic. The OFT does not expect to prepare revised standards until April 2007.<sup>20</sup>

13. Setting timescales for competition cases is not, however, straightforward. The economic and legal issues that arise in each investigation vary in complexity. The number of parties investigated can also vary significantly between cases. Some cases set precedents, which may mean that the OFT needs to spend longer preparing them.<sup>21</sup>

14. Average timescales could therefore be misleading. In addition, against some international comparators, the OFT believes it compares well. It pointed out that its landmark investigation into Mastercard/Visa, for example, lasted over 5 years; but the US and European Commission investigations into the same issue took 7 and 10 years respectively.<sup>22</sup>

15. It is clear, however, that the OFT's cases take too long, and the OFT has committed to take at least six months off the time of an average investigation as a result of recommendations in the C&AG's report.<sup>23</sup> For example, the OFT's ongoing investigation into independent schools – an apparently simple issue to examine, with many independent schools charging the same – took two years to reach a preliminary conclusion. The principal causes of long investigations include the OFT starting too many cases; difficulties with staff turnover; and poorly managed projects. The OFT is acting to reduce timescales,

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18 C&AG's Report, Figure 16

19 *ibid*, para 3.10

20 Qq 51–56

21 Q 47

22 Q 5

23 Q 50

including establishing deadlines and forming larger teams to work on cases, so that the investigation is less vulnerable to the departure of important members of staff.<sup>24</sup>

16. The OFT should also improve internal guidance and quality review to ensure consistency of casework. It is only half way through the revision of its internal guidance for staff, a project that it intended to complete by April 2005.<sup>25</sup> It is also redesigning its internal training, with a greater focus on case management through a four-part programme based on practical case skills, in addition to training in economics and law. Finally, the OFT aims to introduce a greater number of people with direct experience of the sectors it investigates (for example, people with experience in the banking sector).<sup>26</sup>

## Dealing with the parties to an investigation

17. The OFT can improve the way it deals with the parties to an investigation. For example, it appears reluctant to hold meetings to discuss issues involved in a case. The written requests for information that the OFT sends have been criticised as too imprecise, broad or vague, making it more difficult and expensive for the company to respond.<sup>27</sup> The OFT should improve transparency by engaging more openly with interested parties.

18. At the same time, there is also a responsibility on the companies involved in investigations to meet deadlines for providing information requested by the OFT. The Competition Act makes late provision of information to the Office of Fair Trading a criminal offence. The OFT could therefore impose criminal penalties on companies that do not meet deadlines for information. This power has never been used, because the OFT would have to bring criminal proceedings against individual company directors. It is concerned that criminal proceedings could be disproportionate and it has received legal advice that it would be difficult to meet the criteria for establishing criminal liability.<sup>28</sup>

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24 Q 78

25 Qq 90–91

26 Q 33

27 C&AG's Report, paras 3.27, 3.29

28 Qq 62, 69

## 3 The OFT's economic impact

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19. As a result of the Competition Act 1998, and the Enterprise Act 2002, the OFT took on greater responsibilities for enforcing competition in markets. As a result, its budget increased by 70% between 2000–01 and 2005–06, from £33 million in 2000–01 to £56.8 million. £17 million of the OFT's budget in 2005–06 was dedicated to competition enforcement work. This budget increase was matched by an increase in the OFT's competition powers under the Competition Act 1998 and the Enterprise Act 2002.<sup>29</sup>

20. The OFT's work should bring direct benefits to consumers through lower prices in markets that have featured anti-competitive practices. It should also have a wider impact on the UK's productivity. The Treasury sees increasing competition as one of the five main drivers of productivity improvements.<sup>30</sup> The OFT is the main body charged with improving competitive markets.<sup>31</sup>

### Consumer benefits

21. The main aim of the OFT is to make markets work well for consumers. It can demonstrate its impact on the economy in several ways. It can measure its impact on the price paid by consumers for specific products; it can record the level of fines it imposes for anti-competitive behaviour; and it can estimate its economic impact more broadly through the use of evaluation techniques.

22. It has achieved some successes for consumers. For example, before its investigation into price fixing of football shirts, an England adult shirt retailed at £39.99. Following the investigation, shirts were widely available for £25.<sup>32</sup> Similarly, before its investigation into price fixing for board games, Monopoly cost £17.99. Following the OFT's decision, it was sold for £13.49.<sup>33</sup> It has not yet identified and investigated a major criminal cartel, however, and in general its cases have not achieved the headline successes of the football shirt and board game examples.<sup>34</sup>

23. When it concludes that competition law has been infringed, the OFT typically levies a fine on the company. Fines are set to reflect the size of the market, the gravity of the offence and also act as a deterrent to future anti-competitive behaviour. Since the introduction of the Competition Act, the OFT has imposed fines totalling £60 million. Most of this £60

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29 C&AG's Report, para 1.11

30 The others are promoting enterprise; supporting science and innovation; raising skill levels; and encouraging efficient investment. HM Treasury, Pre Budget Report, November 2005, chapter 3.

31 Q 27

32 C&AG's Report, Executive Summary, para 1

33 *ibid*, Figure 21

34 *ibid*, para 4.14

million came from five major decisions.<sup>35</sup> The fines in these cases were later reduced on appeal.<sup>36</sup>

24. The OFT's fines are lower than those achieved by the Dutch competition authority. For example, the Dutch authority imposed €79 million (about £50 million) in 2004–05.<sup>37</sup> The Dutch experience may be unusual however, with a large number of cases involving construction cartels.<sup>38</sup>

25. It is difficult to quantify the total impact of the OFT on the economy. For example, where it successfully prevents anti-competitive behaviour by a company, there may be a wider deterrent effect that is difficult to measure.<sup>39</sup> And the OFT pointed out that it should avoid an excessive focus on cases with quantifiable benefits at the expense of less easily quantifiable outcomes.<sup>40</sup>

26. Some estimate of the OFT's economic impact is nevertheless possible. In response to the C&AG's report, the OFT conducted a preliminary evaluation of the impact of its competition enforcement work. This initial work suggests a conservative figure of £110 million of consumer benefits since 2000, based on an examination of cases in which the OFT had found the Competition Act had been infringed. The OFT assumed that its intervention stopped consumers being overcharged for the relevant products and its estimate aggregates the net benefit.<sup>41</sup> The OFT should develop its methodology further, in particular by exploring whether it can measure the deterrent effect of its work.

## Burdens on business

27. Some burden on business from the OFT's work is inevitable. These burdens may be small in relation to the potential benefits from stopping anticompetitive behaviour. But the OFT must try and reduce any unnecessary burdens – from delays, long timescales, and unclear information requests.

28. At present, the extent of the burden is unclear. If a case is appealed, cost information may enter the public domain. If there is no appeal, however, it is harder for the OFT to establish the costs of cases for the parties involved. The OFT is planning to consider how much its closed cases have cost by talking to the parties involved.<sup>42</sup> There is some evidence that legal costs alone costs can be sizeable. CBI members, for example, estimate that they can incur legal fees in excess of £200,000 on an OFT case. In complex cases, these costs can

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35 These investigations are: Toys and Games; Replica football kits; Genzyme; Napp; and Aberdeen Journals. C&AG's Report, Figure 20

36 Q 10

37 C&AG's Report, Figure 27 (Appendix 4)

38 Q 11

39 Q 28

40 Q 30

41 *Positive Impact – An initial evaluation of the effect of the competition enforcement work conducted by the OFT*, OFT, December 2005

42 Q 48

be far higher, particularly if the company appeals. One company whose case started in 2001, including an appeal, has incurred legal fees in excess of £1.7 million.<sup>43</sup>

29. The burden is particularly relevant where the OFT targets small or medium-sized markets. In such markets, the companies involved tend to be small, and more affected by an OFT investigation than larger companies. In addition, in smaller markets, there is a wide scope for different interpretations of market conditions, so companies may not recognise the OFT's theoretical model of the market under investigation.<sup>44</sup>

30. Many of the OFT's investigations involve small, local markets. Recent investigations have, for example, involved a single crematorium in Hertfordshire (Harwood Park) and roofing contractors in the West Midlands. This reflects the nature of the UK economy, with a large services sector made up of a large number of medium-sized markets.<sup>45</sup>

## Public awareness

31. One of the OFT's roles in the Enterprise Act 2002 is to increase awareness of the ways in which competition may benefit consumers and the wider economy. Besides alerting business to the risks of behaving anti-competitively, such awareness will also encourage consumers and businesses to complain to the OFT if they have suffered from anti-competitive behaviour. The OFT seeks to communicate and educate through a range of channels, including its website, its annual report, press releases, and public seminars and roadshows.<sup>46</sup>

32. Awareness of competition law among the business community stands at around 40%, though on a rising trend.<sup>47</sup> But smaller businesses have a much lower awareness (24%). And while nearly a quarter of small businesses believe they are harmed by anti-competitive practice, only a minority would report it to the OFT.<sup>48</sup> In response, the OFT has established a small business forum. It believes that small businesses may have an interest in a specific competition issue from time to time, but less interest in competition more generally.<sup>49</sup>

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43 C&AG's Report, para 3.33

44 Q 22

45 Q 9

46 C&AG's Report, para 4.16

47 *ibid*, Figure 25

48 *ibid*, paras 4.13, 4.15

49 Q 80

# Formal minutes

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**Wednesday 19 April 2006**

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon

Greg Clark

Helen Goodman

Mr Sadiq Khan

Sarah McCarthy-Fry

Mr Alan Williams

A draft Report (Enforcing competition in markets), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 32 read and agreed to.

Summary read and agreed to.

Conclusions and recommendations read and agreed to.

*Resolved*, That the Report be the Forty-second Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until Monday 24 April at 4.30 pm.]

## Witnesses

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**Wednesday 18 January 2006**

*Page*

**Mr Philip Collins, Mr John Fingleton, and Mr Vincent Smith,** Office of Fair Trading

Ev 1

## List of written evidence

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Office of Fair Trading

Ev 18

## List of Reports from the Committee of Public Accounts Session 2005–06

First Report	Managing National Lottery Distribution Fund balances	HC 408 (Cm 6712)
Second Report	The regeneration of the Millennium Dome and associated land	HC 409 (Cm 6689)
Third Report	Ministry of Defence: Major Projects Report 2004	HC 410 (Cm 6712)
Fourth Report	Fraud and error in benefit expenditure	HC 411 (Cm 6728)
Fifth Report	Inland Revenue: Tax Credits and deleted tax cases	HC 412 (Cm 6689)
Sixth Report	Department of Trade and Industry: Renewable energy	HC 413 (Cm 6689)
Seventh Report	The use of operating theatres in the Northern Ireland Health and Personal Social Services	HC 414 (Cm 6699)
Eighth Report	Navan Centre	HC 415 (Cm 6699)
Ninth Report	Foot and Mouth Disease: applying the lessons	HC 563 (Cm 6728)
Tenth Report	Jobskills	HC 564 (Cm 6724)
Eleventh Report	Local Management of Schools	HC 565 (Cm 6724)
Twelfth Report	Helping those in financial hardship: the running of the Social Fund	HC 601 (Cm 6728)
Thirteenth Report	The Office of the Deputy Prime Minister: Tackling homelessness	HC 653 (Cm 6743)
Fourteenth Report	Energywatch and Postwatch	HC 654 (Cm 6743)
Fifteenth Report	HM Customs and Excise Standard Report 2003–04	HC 695 (Cm 6743)
Sixteenth Report	Home Office: Reducing vehicle crime	HC 696 (Cm 6743)
Seventeenth Report	Achieving value for money in the delivery of public services	HC 742 (Cm 6743)
First Special Report	The BBC's investment in Freeview: The response of the BBC Governors to the Committee's Third Report of Session 2004–05	HC 750 (N/A)
Eighteenth Report	Department for Education and Skills: Improving school attendance in England	HC 789 (Cm 6766)
Nineteenth Report	Department of Health: Tackling cancer: improving the patient journey	HC 790 (Cm 6766)
Twentieth Report	The NHS Cancer Plan: a progress report	HC 791 (Cm 6766)
Twenty-first Report	Skills for Life: Improving adult literacy and numeracy	HC 792 (Cm 6766)
Twenty-second Report	Maintaining and improving Britain's railway stations	HC 535 (Cm 6775)
Twenty-third Report	Filing of income tax self assessment returns	HC 681 (Cm 6775)
Twenty-fourth Report	The BBC's White City 2 development	HC 652
Twenty-fifth Report	Securing strategic leadership in the learning and skills sector	HC 602 (Cm 6775)
Twenty-sixth Report	Assessing and reporting military readiness	HC 667 (Cm 6775)
Twenty-seventh Report	Lost in translation? Responding to the challenges of European law	HC 590 (Cm 6775)
Twenty-eighth Report	Extending access to learning through technology: Ufi and the learndirect service	HC 706 (Cm 6775)
Twenty-ninth Report	Excess Votes 2004–05	HC 916 (N/A)

Thirtieth Report	Excess Votes (Northern Ireland) 2004–05	HC 917 (N/A)
Thirty-first Report	Northern Ireland's Waste Management Strategy	HC 741
Thirty-second Report	Working with the voluntary sector	HC 717
Thirty-third Report	The Royal Parks and the Diana, Princess of Wales Memorial Fountain	HC 644
Thirty-fourth Report	Returning failed asylum applicants	HC 620
Thirty-fifth Report	The refinancing of the Norfolk and Norwich PFI Hospital	HC 694
Thirty-sixth Report	Tackling the complexity of the benefits system	HC 765
Thirty-seventh Report	Inland Revenue Standard Report: New Tax Credits	HC 782
Thirty-eighth Report	Channel Tunnel Rail Link	HC 727
Thirty-ninth Report	Consular services to British nationals	HC 813
Fortieth Report	Environment Agency: Efficiency in water resource management	HC 749
Forty-first Report	The South Eastern Passenger Rail Franchise	HC 770
Forty-second Report	Enforcing competition in markets	HC 841

The reference number of the Treasury Minute to each Report is printed in brackets after the HC printing number

# Oral evidence

## Taken before the Committee of Public Accounts

on Wednesday 18 January 2006

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon  
Greg Clark  
Mr David Curry  
Mr Ian Davidson  
Helen Goodman

Sarah McCarthy-Fry  
Mr Austin Mitchell  
Jon Trickett  
Kitty Ussher

**Sir John Bourn KCB**, Comptroller and Auditor General and **Mr Edward Humpherson**, Director, Regulation, National Audit Office, were in attendance and gave oral evidence.

**Ms Paula Diggle**, Treasury Officer of Accounts, HM Treasury, was in attendance.

### REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

#### OFFICE OF FAIR TRADING:

#### ENFORCING COMPETITION IN MARKETS (HC 593)

*Witnesses:* **Mr Philip Collins**, Chairman, **Mr John Fingleton**, Chief Executive Officer and **Mr Vincent Smith**, Director of Competition Enforcement Division, Office of Fair Trading, gave evidence.

**Q1 Chairman:** Good afternoon, welcome to the Committee of Public Accounts where today we are looking at the Comptroller and Auditor General's Report *Enforcing competition in markets*. We are joined by Mr Philip Collins, who is Chairman of the Office of Fair Trading, Mr John Fingleton, who is the Chief Executive Officer and Mr Vincent Smith, who is Director of Competition Enforcement Division. Presumably, as you are sitting in the middle Mr Fingleton, I should address my questions to you but obviously either of your colleagues can answer questions as they like. Most of the questions I shall be asking you are conveniently from the summary at the beginning of the Report which you can find on page two. Would you like to look at paragraph nine first of all? I should just like to deal with a couple of questions about your effectiveness as an organisation. Do you think you can hold your own against well-resourced companies and law firms, especially as some of your best people appear to be leaving on a regular basis to join them?

**Mr Fingleton:** Yes, I do believe we can hold our own. Our turnover figures may appear high. The 20% figure has fallen in the most recent year to 16% and the average figure over four years is about 15%; that figure also includes transfers to other parts of OFT, so some of that expertise is not lost to the agency as a whole. I should make the point that a revolving door is a typical feature of agencies like ours internationally and it is a desirable feature to have OFT alumni who are experienced in competition and consumer affairs working in other parts of government, which many of them are, and in the private sector. That helps meet our wider objectives of developing knowledge and expertise in competition generally in the economy. It also allows

us to bring in new talent. I should point out with the average figures over the last five years that average tenure—

**Q2 Chairman:** At the end of the day you had a staff turnover of nearly 20% in 2004–05.

**Mr Fingleton:** Yes.

**Q3 Chairman:** We shall not delay on that then. If you look at the previous paragraph, your approach to competition enforcement, paragraph eight, you received extra powers and it took your four or five years to identify obvious areas such as construction, which everybody knows is rife with anti-competitive practice. Why was this?

**Mr Fingleton:** I do not believe we took four or five years to identify priority areas. We adopted a new approach to setting priorities in a three-year cycle, starting in the current year.

**Q4 Chairman:** It says here, "The OFT selected five priority sectors in which to channel its efforts . . . The OFT has not, however, been able to fully reflect these priorities in its day-to-day competition work".

**Mr Fingleton:** Yes, and it says that we have been very responsive to complainants in the past and in going forward, we shall be implementing all of the recommendations made by the NAO and many of those are addressed to us being able to select better the cases we take forward and be more proactive in how we do that.

**Q5 Chairman:** I want to ask a couple of questions on how you manage your cases now. If you look to paragraph 10 of the summary, which you can find on page three, you will see "Most full investigations

take between one year and three years . . . six of the 37 ongoing investigations had exceeded three years”, one had been investigated for five years. Why are you not doing more to reduce the time you take on cases?

**Mr Fingleton:** We are doing a lot to reduce the timetable on cases. Some of our cases have gone on longer than we should have liked. We are in the learning phase. I should point out that competition cases take a very long time. People would point, for example, to our Visa and Mastercard cases, which have taken, in one case, up to five years. I should point out that the Department of Justice in the US took seven years on its Visa case, an agency which is referred to approvingly in this Report, and the European DG-Comp took 10 years on its Visa case. So I think that the OFT’s timing record on complex investigations is remarkably good by international comparison, especially for an agency which has had these competition powers for a mere six years, compared to those other agencies who have had them, respectively, for 110 and 50 years.

**Q6 Chairman:** Why has it taken you so long to investigate anti-competitive practices in the independent schools sector? This is a fairly simple issue is it not?

**Mr Fingleton:** We operate in an environment where there is a great number of markets and issues that we could investigate and we have to prioritise them. That does mean frequently that we are not able to investigate everything that is raised with us at that time and in fact, one of the—

**Q7 Chairman:** How long has this particular investigation been taking place into independent schools?

**Mr Fingleton:** I might turn to Vincent Smith on that.

**Mr Smith:** The investigation took just under two years to reach a preliminary conclusion and the schools now—

**Q8 Chairman:** So they all charge the same?

**Mr Smith:** No, they do not all charge the same. The finding was that they had exchanged information in a way which infringed the law and we are consulting them, or seeking their representations, on whether or not they have anything further to say before we reach a final decision. We are in that phase at the moment, so our preliminary decision is out with them for their representations.

**Q9 Chairman:** I should like to ask a couple of questions on consumer benefits. Let us just take one example. Why do you seem to pick on such small targets, for instance West Midlands Roofing, which is dealt with in appendix three, page 43? If we look to figure 21 on page 31, apparently you spent time looking into toys and games including the board game Monopoly. I should have thought there were more interesting subjects you could look at like monopoly practices perhaps in the construction industry.

**Mr Fingleton:** The most conservative possible estimate of the benefit of our intervention in the toys market is £40 million for UK consumers. I should argue that is a relatively good outcome for consumers from one case. I should also make the point that the majority of markets in the UK economy are medium-sized markets; that is just the nature of the bell-shaped distribution of sizes of markets. It is very important that we do not ignore the full range of markets that consumers buy products and services in. Many markets are extremely local, particularly services markets, services are 70% and more of the economy and local competition in those markets means that there could be many local markets that are quite small, but when you add up those markets across the UK as a whole, it amounts to a very large amount for consumers. If you take an example like contractors on particular types of building work, roofing for example, roofing contractors probably compete locally, but in tackling a cartel in one or more areas of the economy, we are sending a very clear signal, especially with the fines which can be imposed in those cases, about that type of behaviour across the economy as a whole and that is one of the things where we find it extremely difficult to measure the full benefit for consumers, but it is substantial.

**Q10 Chairman:** If you are doing so well, if you look at the previous page, paragraph 4.5 “Since the introduction of the Competition Act in 2000, fines imposed have totalled £60 million”. Why so little? We find on page 44 that even the Netherlands imposed fines of €78 million in just one year. Why only £60 million over four or five years?

**Mr Fingleton:** The fines we have imposed result from a particular evaluation in each case. They have been reduced slightly in several instances by the Competition Appeals Tribunal and we have fining guidelines which we adopt. The case of the Netherlands stands out internationally as being an absolutely remarkable performance in terms of fines and I should say that in my experience of comparative international work I know of no other case, aside from the Netherlands, where the change in the level of fines has been so dramatic on the introduction of a new law.

**Q11 Chairman:** So you have learned something from them, have you?

**Mr Fingleton:** In introducing a new law like this, it is very important that, and this argument is often made to us, business has a chance to adjust to the new law and so on. We have to tailor our fines for each individual case according to our fining guidelines and according to turnover. It could be possible, for example, that some of the fines in the Netherlands are particularly one group of fines in the construction sector; there was one case involving bicycles which amounted to £27 million. I am aware of a few small cases in the Netherlands which amounted to a very large number of fines. Because cases are also done on worldwide turnover in most

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countries, if you end up with a market where the players play internationally, the fining levels would naturally be much higher.

**Mr Collins:** May I add a European perspective? It is also the case in Europe that fines have risen over time and they have only begun to rise to the kind of levels that you see quoted here in relation to the Netherlands in perhaps the last four or five years. So international experience suggests the best thing to do is to have a high, but not over-high level of fines to start with and gradually ratchet up the fines.

**Q12 Chairman:** On the other side of the coin, let us look at the burden on businesses, which is dealt with in paragraph 11 of the summary. Some of these inquiries take a long time and there are obviously costs to business in terms of legal fees, reputation costs and management opportunity costs. Do you care about the effect of your timescales on competitiveness?

**Mr Fingleton:** Absolutely. The OFT's work as a whole is very positively focused on reducing burden for business. Burdens on business ultimately are burdens on consumers, they get passed on to consumers and we care hugely about that. Many businesses, especially those exporting, benefit when we uncover cartels in markets where they are buying. For example, in the roofing case which was mentioned earlier some of the buyers in that market, in addition to public authorities, were also private businesses which benefited from lower prices when that cartel was uncovered. We have produced a great deal of guidance and reasoned decisions for business. We have worked hard at international level to ensure consistency of law so that businesses operating in the UK face the same substantive standard across countries and we have made particularly important contributions under the guidance on article 82 and the European merger regulation which has been very beneficial to UK business. We have surveyed small businesses and their attitude towards competition. We have set up a small business forum to work with small businesses to develop the benefits of competition. In our investigations we have been very attentive to making sure that our interventions are proportionate. In the investigations we have done, the burden on business in terms of the costs of complying with our investigations, the direct legal costs, which are not the only costs obviously, are small relative to the burden on the victims from that anti-competitive behaviour.

**Q13 Chairman:** My last question is on value for money, which is what this Committee is interested in. We learn from paragraph 13 that apparently you do not measure your impact, so it is difficult for us to know whether you provide value for money. What we do know from paragraph five is that your costs have increased by over 70% since 2000–01, that is over five years; 70% over five years. You have been given strengthened powers, but you do not have a great deal to show for it Mr Fingleton.

**Mr Fingleton:** We have begun evaluation work. The preliminary results from that are that across all of our competition work we have saved UK consumers £750 million over that period and on the competition enforcement work £110 million.

**Q14 Chairman:** Where is this in the Report?

**Mr Fingleton:** This is work that we have now been doing as a result—

**Q15 Chairman:** You have shared this information already with the NAO, have you?

**Mr Fingleton:** Actually this is quite new work that we have been doing.

**Q16 Chairman:** May I ask the National Audit Office whether they are aware of all this?

**Mr Humpherson:** We are aware of the figure. We have not looked at the methodology or the findings.

**Q17 Chairman:** There is no point having an inquiry where figures are thrown at us, especially of this importance, if they have not been shared properly with the National Audit Office.

**Mr Fingleton:** I will say—

**Q18 Chairman:** Were you aware of these figures when they were conducting their investigation of you? Did you share the figures you have just given me, which apparently provide tremendous value for money to us, with the National Audit Office?

**Mr Fingleton:** As I said, I believe these figures have been developed since the conclusion of this Report.

**Q19 Chairman:** Why? Why were they developed since the Report? You have had these increased powers all this time, why did you not develop these figures beforehand?

**Mr Collins:** One of the points made by the NAO in their Report was that we should do more work on evaluation and we had already decided to set up an evaluation unit. The work was ongoing but was not completed until after the NAO Report.

**Q20 Chairman:** It makes our work very hard. The whole point of these inquiries is they are based on an accurate inquiry conducted by the National Audit Office. It makes our work impossible if figures like this are thrown at us at the last minute. Sir John, would you like to comment on this?

**Sir John Bourn:** I agree with you Chairman. It would have been possible and would have been helpful if OFT, when they developed these figures, had told us about them so that we could have put in a supplementary note to you on the basis of discussion with the OFT.

**Q21 Mr Curry:** Perhaps first of all I should just refer to the fact that the Register of Members' Interest shows that I am the chairman of Dairy UK. It is in the book, but it would just be fair for you to know that. I shall not refer to anything specific. I think we should also recognise that you are both new in the job, but if you look at the annual plan for 2006–07, what I read into that is that you feel your

predecessors' work will bear a great deal of improvement. If that is your view, then I endorse it whole-heartedly. Third, I am absolutely astonished by something you said Mr Fingleton. You were judging the burden on business in relation to the burden on victims. I think we need to be rather careful about how we use the word "victim", but if you are going to evaluate the burden on a company which is doing, let us say, £100,000 or £200,000 turnover against a collective purchasing power of the British consumer, it does seem to me that business never stands a chance. Do you just recognise how big the burden is? If you investigate, first of all that has to be noted in the business's accounts and it then sits like a blight across the business for perhaps three years. Second, the behaviour of the whole of the sector will be determined to some extent by the anticipation of how you may react to things, so you are, in many ways, determining business outcomes passively. Third, it is not just how much time they have to buy from specialists, it is the amount of management time which goes into defending their case. I know of cases where companies have abandoned projects because the cost of defending them to you would have been greater than the value of the project they were undertaking. Do you not think it would be reasonable, if they are found not guilty at the end of the day, that the OFT should meet their costs?

**Mr Fingleton:** There are standard rules for cost allocation at the end of cases and the allocation of costs is a matter for the Competition Appeals Tribunal and the Court of Appeal. I mentioned earlier that we shall be implementing all of the recommendations in the NAO Report in full and several of those, such as shorter investigations, better case prioritisation and greater transference of communication will help reduce the burden on business. I cannot promise that there is going to be zero burden on business from competition investigations. We must investigate illegal behaviour as required by statute and that necessarily imposes a cost on business. We are acutely conscious of that and we work closely with business and with legal practitioners to try to ensure that that burden is kept to a minimum.

**Mr Collins:** Having come from the private sector, I am very conscious of the time and cost involved in investigations. The last point you referred to in relation to abandoning projects probably relates specifically to the merger regime where we are now unfortunately somewhat constrained by the rulings of the CAT and the Court of Appeal about what the appropriate test is and that is an issue which needs to be looked at further at a policy level.

**Q22 Mr Curry:** I wonder whether I could put something else to you. Your actions are obviously, and have to be, based upon a certain view of how a market behaves and therefore you have a view of how a particular market behaves. The problem is that the companies in that market often do not recognise in any shape or form the model of the market which you appear to be operating to. When you come to a view about the way a market behaves,

what discussions do you have with the industries in it, the businesses in it, to try to reach a common perception of the way a market behaves so that when you act, then at least you are talking within a framework which is common to both of you and business does not think you are talking about an activity which belongs on a different galaxy to the one on which we are engaged?

**Mr Fingleton:** We put a great deal of effort into developing sectoral expertise and into close interaction with industry to understand the details of how that industry works. I should say that our competition enforcement work is frequently litigious; there is a litigation mentality at the outset because of the nature of the legal process. In that context, it does raise different issues about how much parties may be prepared to share with us and under what circumstances. In our market study work, where we look at general issues in the market where there is no specific suggestion or allegation that the competition laws have been infringed, we have developed a very high degree of cooperation with industry. The study we are currently doing on PPRS, the pharmaceutical pricing system, has involved a very high level of cooperation with the pharmaceutical industry and its representatives and that would be common across all of our studies and we should always try to develop that sectoral expertise.

**Mr Collins:** Often these cases have been complained and of course a complainant will always put a particular spin on how he feels the market should be operating. One of the things we have to do is to test that. What we are trying to do as part of our prioritisation of cases now is to be less reliant on complaints and be more guided by intelligence from a number of different sources which forms a more informed view so we can challenge in particular individual complaints at the outset. I have seen cases in private practice which have been wholly thrown off the rails by a wholly misconceived view which has been sold to the regulators by a particular complainant with a specific interest and that is not the way we should be driving ourselves.

**Q23 Mr Curry:** That is very helpful. I wonder whether I could just illustrate my remark in very general terms. One is your view as to what extent a market is national or international and sometimes you take a view that the market is very hermitically sealed nationally, where the businesses in it believe that effectively they have to measure themselves against what is happening overseas and there is clearly a difference in perception there and if that could be overcome, it would be greatly helpful. If I may refer to a specific case—somebody is going to mention Tesco today, so I might as well be the first one to do so—when you are looking at the retail market, you appear to have a model which is based upon the segmentation of the market and the market falls into different segments, which many of the players in the market, certainly the suppliers, simply do not believe is the reality of the marketplace. What can one do to try to overcome those differences which do lead to enormous battles and resentments?

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I have to say Mr Fingleton did his little piece about how hard you work to reduce the burdens on business, but I have never yet met a company who actually would agree to what you have said, they would not subscribe to your mission statement; they certainly do not think that is what happens in practice.

**Mr Fingleton:** The question of whether we define a market nationally or internationally in a particular competition case tends to be the first line of argument in any case because, if the market is defined very widely internationally, market shares are lower and the presumption is that behaviour is not harmful. So perhaps the most litigated element of a case is often the question of market definition. There will invariably be cases where, not only will we not agree with the parties on that, but that would be the central issue which the Competition Appeals Tribunal may have to rule on. There is an accepted methodology for doing that, but of course two reasonable people, the OFT and the parties, may not always agree on how that applies and sometimes there will be disagreements about it. We do our best to make sure that we take account of all the market facts because we are subject to appeal and because we do want to get the right answers in these cases. With regard to the particular question about supermarkets, where it is not a national/international issue, but a question of whether there is a separate market for convenience, as opposed to supermarket, multiple shopping, I have been very clear when I spoke to the all-party group on shops in November here and in an interview in *The Grocer* magazine, that I have come to this with a fresh look and without a fixed view one way or the other on that question. It is something which our preliminary decision in early March will address.

**Q24 Mr Curry:** Without pursuing the supermarket issue, the procurement is a worldwide procurement of course, so in that sense, it is an international marketplace and someone might be selling into a national marketplace.

**Mr Fingleton:** In some cases, part of the operation of some companies will be international and part will be national and, for example, if you think about banking and finance for companies, unsecured finance for small and medium-sized enterprises tends to be a pretty local market where the bank managers who know them personally are the only people they can go to and there is very narrow competition. However, for large companies looking to finance large projects the world is their oyster and so the market definition could be truly international.

**Q25 Mr Curry:** You operate under the 1992 legislation.

**Mr Fingleton:** The 1998 Act which came into force in 2000.

**Q26 Mr Curry:** Do you think the definitions there are too narrowly defined? The reason I ask the question is that you keep referring to the consumer and the whole of politics revolves around the consumer. We are consumers of health, we are

consumers of education, we seem to have become fixated with this notion of suppliers and consumers right across the whole of the public sector as well as the private sector and yet there obviously are people whose livelihoods depend on your decisions, who may, as well as being consumers, also be suppliers. Do you think the legislation confines you too narrowly and would you welcome having a little bit more flexibility in the criteria you bring to bear?

**Mr Fingleton:** The interpretation of the Competition Act is heavily influenced by how the European Court of Justice has interpreted articles 81 and 82 of the European Treaty on which our chapter one and chapter two are modelled and the Competition Appeals Tribunal rulings rely heavily on that. So my first point is that that probably has a very heavy influence on how we interpret the Competition Act of 1998. In terms of the question, which is a policy question of whether competition policy should put this focus on consumers, that is a question obviously on which Parliament has come to a view. My personal view is, particularly based on economics, that that is the right answer because when companies strive to win consumers' business, they strive to become more efficient, more innovative, to get their costs down and there is an almost perfect, but not always perfect, correlation between productivity growth and market serving consumers. There are exceptions to that and the system is flexible enough to deal with those cases, so I should be confident that the system we have is good and conforms to international best practice. If you look internationally at the way in which competition practice has developed over the last 20 years, look at the US guidelines, the way the European Commission has reformed its practice over the last 10 years, I should say that where the Competition Act here comes out is basically anticipating and being ahead of international best practice.

**Q27 Kitty Ussher:** Following on the economic point that you just raised, my understanding of the situation is that the Treasury believes that to make us all richer with unemployment low and employment high, we should focus on productivity and that one of the five drivers is competition. You are obviously one of the main bodies charged with improving competitive markets and therefore you have received greater resources and your budget has gone up as part of the Government's increase in productivity. What has the Government got for its increased resources?

**Mr Fingleton:** I did not get a chance to apologise for introducing figures that I should not have earlier, but if I give you the particular example that is mentioned in the NAO Report of football replica kit, where prices fell from £40 to £25, an almost 40% decrease, and where the market turnover is £250 million, that comes out as an annual saving to consumers, simple arithmetic, if you multiply the two figures in the NAO Report, at about £100 million. So the numbers, in terms of the savings to consumers when competition is increased as a result of our intervention, can be extremely substantial. The serious question for us to address as

a result of the NAO Report is not the question of whether the benefit of what we do exceeds the cost. I think we give fantastic value for money. The serious question we have to address is whether the benefit is as high as it could be and there we accept that no, it is not and we could do more to prioritise that better and have an even better impact. I should say in our defence that we have learned a lot over the last few years, we are a self-critical organisation, we are going to implement not just all the recommendations but we shall be acting on all the other suggestions in the Report. We are third best in the world by peer review as a competition and consumer agency. I should like us to be best and these recommendations can help us to deliver on the very high expectations that the Treasury has asked of us.

**Q28 Kitty Ussher:** You said that the potential is far greater. How do you quantify the potential? What economic effect can you have on this country's economy?

**Mr Fingleton:** Price reductions for consumers, enhanced choice are the first line when you look at that. Second, and this is extremely difficult and the NAO Report says it is almost impossible to measure, is the wider deterrence effect that we have. Another thing that is very difficult to measure is the reduction in uncertainty. Our recent decisions clarified the law and there is a reduction in uncertainty, for example, because the European test for mergers is now the same test that Parliament here adopted with the Competition Act. That was a change made after we made our change here, so we are leading best practice and that reduces uncertainty for business. After the savings to consumers, we also wanted to look at the question of when we intervene and prices come down, what efforts companies put into getting their costs down and to what extent more efficient businesses will grow and develop at the expense of less efficient businesses and that is driving productivity growth which is an extremely difficult thing to measure. The OFT and the UK as a whole are ahead of any other country I know in the world in terms of evaluating the benefits of what is done in the competition field. Others are looking at the work we are doing and this NAO Report is already being studied internationally to see how other competition authorities can improve as well.

**Q29 Kitty Ussher:** It is very hard, but you will appreciate that as elected people we want to be able to understand how to hold you to account and if you are not able to describe the measures that we should use, beyond price savings on football shirts, then our task is made harder. So I want to push you on this. Your organisation is full of economists and people who have the expertise to be able to quantify the effect of your organisation on the economy. The Treasury think you can, that is why they are resourcing you. How should we hold you to account? How should the public bodies hold you to account?

**Mr Fingleton:** We are developing evaluation measures. The NAO Report itself says some of the benefits we deliver are impossible to measure. It is not a problem that nobody has ever thought about before. Other competition authorities face a similar difficulty; many other agencies that this Committee reviews will have intangibles that are large but difficult to put monetary amounts on. We shall do absolutely our best to try to quantify what we can quantify and to identify those elements that we cannot quantify and, where we can, to try to illustrate other ways which can give a sense of the magnitudes involved.

**Q30 Kitty Ussher:** When will you produce those?

**Mr Collins:** May I give you an example there? One of the measures that the Department of Justice uses is the volume of dollar commerce effected. That is a very crude measure; it is a very easy measure for the department to take, because they require everything to be classified under standard industrial classification. One of the things we are going to try to do is to collect more data at the outset of a case; having prioritised a case to collect more data and then use that to follow through. So, to take a simple example, if we were going to do football replica kits, we would try to collect data in parallel sectors, for instance tracksuits, football shoes, football boots, all those kinds of things, and then see the impact one case in one very narrow product area had on prices generally. One of the things you have noticed, and we claim no benefit for it at the moment, in the high street in sports shops is much greater competition and indeed to the point where one company has actually gone out of business as a result of the competition. We have only measured the very narrow benefits that we can quantify from these specific cases. One of the things we are going to try to do in the future is look more broadly, but obviously we cannot collect the data over everything.

**Mr Fingleton:** It is also very important for public accountability and for the public interest that our efforts in our enforcement work are not directed excessively towards things that are quantifiable at the expense of larger and less easy to quantify benefits. We are all familiar with the call answering in two minutes which you can measure, but you cannot measure the quality of the call and we need to be acutely conscious that devoting all the resources to answering calls but very little to quality needs to be balanced out.

**Q31 Kitty Ussher:** We want our country to be richer because of the work that you do and we want to be able to hold you to account for that. Could you tell me when you are going to produce as many measures as you can? You said that you were doing some evaluation work on that.

**Mr Fingleton:** By April of next year we shall publish, for consultation, our proposals on how we propose to do this evaluation work. We have already started some international communication with other

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competition authorities and other experts on it and that methodology will be put out for consultation and the results that it brings.

**Q32 Kitty Ussher:** On a related point, am I right in my understanding that you currently decide reactively what to investigate based on complaints that come in? Would it not be better to develop sufficient expertise within your organisation to understand sectors well enough to decide where you think you can have maximum effect on the economy? Will you be doing that?

**Mr Fingleton:** Yes. That is one of the recommendations of the NAO and we are in the process of establishing a preliminary investigation unit which will be the first stage of doing that; there are many other elements in doing it as well. In general, the desire to be more proactive in how we take things forward is a central objective we have and it is set out in our annual plan which is out for consultation at the moment.

**Q33 Kitty Ussher:** What are you doing to make sure that the skills of your team are sufficiently large to be able to do this? I do not know whether this is an interest, but I used to work at the DTI and I know that companies complained to me often that they felt their teams were dealing with really quite junior economists in your Department.

**Mr Fingleton:** We have training programmes in place. On the competition side we have a post-graduate certificate on competition law and economics, very much based around case work. As a result of the NAO Report, we are putting in place a specific four-part skills training programme which is around practical case skills, rolled out in modules, again using case work and that is going to be on everything from project management to evidence gathering. Separately, and going back to the Chairman's question about turnover, one of the difficulties for our organisation is developing what I should call sectoral expertise. I have just come from an OFT induction meeting where I met somebody who had just come to us from a retail bank to work in our banking work, so the flip side of that turnover is that we are able to bring in people with sectoral expertise and to try to develop and work that better internally. One of the things I have asked an internal change management team to look at in the OFT is how we can better exploit cross-Office expertise. We do that very well on issues like credit cards where we have people across all the divisions of the Office working on credit cards who meet regularly. On our healthcare and construction priorities, one of the central reasons for prioritising work like this is to see it as a focal point for encouraging cross-Office working as well and developing expertise.

**Q34 Kitty Ussher:** I have always thought, and this is confusing for members of the public, that it is slightly not clear where a consumer should go if they have a problem. There are all sorts of other consumer organisations and in fact, if you look at your website, you are almost encouraging people to come to you. What work are you doing with other

government departments and agencies to make it absolutely clear where consumers should go? I actually personally do not think they should necessarily be signposted to you. I should prefer that you were starting from more of a kind of technical grounding.

**Mr Fingleton:** We are really pleased to be taking on Consumer Direct from 1 April and that is where I should ask people to direct their constituents to as the frontline office for all consumer enquiries. It has just taken its one millionth call in the last few weeks. It is very successful and it feeds calls into us, into Trading Standards, into Citizens' Advice Bureaux. Ten of the 11 regional centres are now live and the eleventh one comes live next month and we are very happy to be taking that on.

**Mr Collins:** An important aspect of Consumer Direct is that it will assist us and assist Trading Standards very much in prioritising and focusing on those areas where there is real consumer concern and detriment.

**Q35 Kitty Ussher:** So they do not come to you as the first port of call.

**Mr Collins:** There is a first tier which is the phone lines and then referral to other people but the data is obviously collected. An analysis of that data will enable us to inform our priorities and also, which is very positive, engage with business to address with business where there is a high level of complaints. One or two cases I have seen so far have been to call centres where the Consumer Direct people have been able to identify particular problems and address them with local or regional management of business and that is very positive for business because often it contributes a new source of information.

**Q36 Chairman:** Mrs Ussher asked you about value for money. This is another way of asking that question. The NAO saves £9 for every pound it spends. How many pounds do you save for every pound you spend? The National Audit Office saves £9 for the taxpayer for every pound that it spends. Your costs have increased by 70% over five years. For every pound that you spend, how much do you save the taxpayer or the economy?

**Mr Fingleton:** We would agree with the NAO figure.

**Mr Smith:** On the basis of the preliminary work to which Mr Fingleton referred earlier, we think that we cannot have saved less than £2 for every pound we have spent so far, but we aim to get better.

**Q37 Sarah McCarthy-Fry:** On page 13 in paragraph 2.2, it talks about how you have gone for these five priority areas and you have selected these five priority areas largely on the types of complaints that were most regularly received. Since you have introduced these five priority areas, do you think that they have been useful in increasing your efficiency?

**Mr Fingleton:** I should say that we chose the priority areas, as you said, on the volume of complaints but also on the impact on consumers and the size of the

market. The priority areas are chosen over a three-year period of which we are almost completing the first year at the moment. I should say that in both healthcare and construction, which are the ones which are most relevant, but not exclusively, to competition enforcement, cases like Genzyme have occurred. Because of our work on PPRS, the pharmaceutical pricing, on care homes, our work on a case called Frederick Muller, dodgy healthcare products, private dentistry and so on, we are developing quite a lot of expertise and knowledge about healthcare and these are complex markets where consumers face new and complex choices. We are hoping to do more proactive work in that area and on construction obviously, cases like roofing contractors, our work on estate agents and property searches. Our work around these priority areas allows us to focus at the margin, and it is at the margin, because our competition enforcement work is driven by complaints as well and something we are trying to do more of is to make sure that our work is prioritised better around particular areas.

**Q38 Sarah McCarthy-Fry:** So picking up the point Mrs Ussher made, do you think that by having these, by concentrating on these five priority areas, you may be able to go more into own initiative stuff rather than just responding to complaints?

**Mr Fingleton:** Yes and indeed in my previous position with the Irish Competition Authority we ended up with about a 50/50 split between very complaint focused investigations and what we called *ex officio* or own initiative investigations. A slightly different legal environment, but that would be something that we should aspire to and the expression I like to use for that is complaint-informed investigations rather than complaint led, so that we can use all of the intelligence from complainants, from Consumer Direct, from Trading Standards, from our own knowledge of the economy to determine where we should be prioritising our investigative resources.

**Q39 Sarah McCarthy-Fry:** Is there not a danger though that if you are focusing your resources into these five priority areas, if you are getting complaints that do not fit into that criteria, they may not receive the same attention?

**Mr Fingleton:** At the margin, it would mean that we focus slightly more on these areas, but we have six criteria for opening competition investigations so we look at the strength of evidence, the likely impact on consumers. These priority areas are not intended to exclude work on other areas, but more to provide a focus for cross-Office work and a focus for us to build sectoral expertise within the Office in these areas.

**Mr Collins:** And also, to get back to Mr Curry's point, to make sure that we are well informed about markets, just by seeing what is happening in markets.

**Q40 Sarah McCarthy-Fry:** I must say, it does sound a little muddled to me. We are either focusing on areas or we are not, or we are focusing on complaints

or we are not. I am not surprised at the NAO finding on paragraph 2.3, that communication of your five priorities' plan to your operational level staff was unclear and your staff were unclear how these priorities were supposed to apply to the work they were doing. Is that a fair comment?

**Mr Fingleton:** Yes.

**Q41 Sarah McCarthy-Fry:** What are you doing about it?

**Mr Fingleton:** Our staff are unclear about it. We face a huge number of possible areas we could investigate and setting these priority areas is a way of giving our staff a way of applying some of the criteria in terms of thinking about what types of cases they should be bringing. Faced with the large number they could bring and faced with a number of cases that would have a similar impact on consumers and similar evidential value, if there were one in construction or one in healthcare, then we would certainly take that forward rather than one of the others.

**Mr Collins:** It is also important to understand that the choice of the priority areas did not take place at the outset of the new regime; it took place only after several years of experience. What it was trying to do was, as the system bedded down, to give more focus to prioritisation. Now we are moving on from that to enhance prioritisation in the Office and it may well be that in year three or beyond we should change the priorities, we should refine them, but you do have to put some markers down to try to guide you along the path, particularly in a new regime.

**Q42 Sarah McCarthy-Fry:** Are you happy now that your staff understand your strategy?

**Mr Fingleton:** Yes, I think they understand it much better and one of the difficulties we have is moving from the system where staff understandably are more responsive to complainants who come in with very difficult stories than to one which does not lead our investigations in quite the same way. The establishment of a preliminary investigation unit and other measures that we are taking following the NAO recommendations are designed to assist our staff in applying these priority areas and our criteria in a more consistent way.

**Q43 Sarah McCarthy-Fry:** May I move you on to page 15, figure eight, where it says the OFT is yet to fully explore making better use of the complaints and intelligence you have. It says "The OFT could use intelligence from several complaints to build evidence and invest in a searchable database for intelligence". Is that right? Do you not have an electronic searchable database in order to cross refer, which presumably would help reduce the time and expense?

**Mr Fingleton:** Yes, that is something we plan to develop.

**Q44 Sarah McCarthy-Fry:** Were you planning to develop it before it went in the NAO Report or are you planning to develop it because of the NAO Report?

**Mr Smith:** Our IT is constantly being updated, as you would expect. A database of this kind is difficult to build because the historical data is not actually in an electronic format necessarily. Nevertheless, we are proposing to build something shortly, within the next year or so.

**Q45 Sarah McCarthy-Fry:** And what are you doing to prepare the data you have now so you can put it in an electronic format? Or are you only going to start from the . . .

**Mr Fingleton:** In my experience it is only very recently, because of the many security issues and other issues, that law firms have begun to use data in electronic form. If parties choose to give us everything in written form, we can do a certain amount to encourage an electronic form but ultimately it may be their choice that that is what they prefer to do. Increasingly over the last three or four years of my work, I have seen a shift from a tiny percentage of material coming in in electronic form to the vast majority now and that would be of enormous assistance to us in practical implementing.

**Mr Collins:** There is also a big issue here in terms of intelligence gathering nationally. Of course we are looking at a moving target here and one of the important issues we have to look at in relation to our work on the consumer side and working with Trading Standards is how to pull together the huge amount of information that is available about particular practices in the market nationally, so things that come to us and things that go to other bodies. There has to be a project which will look at the whole way in which we use intelligence, both within the OFT and between the OFT and other enforcement authorities.

**Q46 Sarah McCarthy-Fry:** Is this plan to get this database part of how you are going to increase the amount of benefit money to the consumer and to the country compared with the amount of money you spend?

**Mr Fingleton:** It is one element of that: having better intelligence, better data, Consumer Direct will supply that, Trading Standards; we think we could make much more of what is out there in terms of data. The second stage is converting data to intelligence and that is expensive and time consuming, but IT is a huge tool in doing that. I should say we already have huge amounts of intelligence at the OFT and part of the problem is not just that we do not have the intelligence, but also that we have been in the past overly responsive to complainants and perhaps not proactive enough, so that will make a big difference as well in terms of prioritising our investigative work around the areas of greatest impact.

**Q47 Sarah McCarthy-Fry:** I just want to bring up one point and it is about the expense that is involved in these investigations. Page 20, paragraph 3.5 says that you will close a case if you are “ . . . unable to reach a definitive view without incurring disproportionate expenses”. Would it be possible for

a major investigation to be dropped if you thought it was going to cost too much? At what point do you make that decision on cost effectiveness?

**Mr Fingleton:** Obviously, we are very attentive to the likely benefit or magnitude of the turnover in a market in terms of the cost of an investigation, both in terms of value for money and in terms of the impact on the business. There may be instances where the cost of the investigation would be large relative to the size of the market, but where the precedential effect of the case, or the deterrent effect on others because it was a small market but with many, many such small markets across the UK, makes it worthwhile to go ahead with that case. Yes, we always try to balance that very finely.

**Q48 Sarah McCarthy-Fry:** And presumably as you build your database of intelligence, that tips the balance the other way towards effectiveness rather than cost.

**Mr Fingleton:** Yes, indeed and one of the other things we shall be doing better after implementing these recommendations is retrospectively looking at what cases cost and even talking to the parties afterwards to get a sense of it. We get a good idea of the cost data if there is an appeal; we probably do not get such a good idea if it is not appealed. There are innovative things we could think about doing which do go beyond what is in the NAO Report, but are very much in keeping with the spirit of the recommendations to try to go even further than has been recommended here.

**Q49 Greg Clark:** As Kitty Ussher was saying, the Competition Act is of huge importance to the economy and Parliament clearly took a decision in passing the Act that a much more robust and rigorous system of competition law was to be enacted. In particular, it gave your organisation the powers to compel evidence, to mount dawn raids, to fine people 10% of turnover. So a very clear signal there and we expect that you will make use of those powers rigorously. May I ask you about your standards? Paragraph 3.17 and footnote 37 on page 23 of the Report point to official standards, that you will complete 75% of anti-competitive practice investigations within six months and 75% of cartel investigations within a year. What is your latest performance against your standards?

**Mr Fingleton:** I am going to pass this particular question to Vincent. I do know that, as a result of our implementation of these recommendations, we believe that we can take at least six—

**Q50 Greg Clark:** I am sorry, may I stop you there? I am surprised that as chief executive of the organisation, you were not aware of the standards you have to meet.

**Mr Fingleton:** I am aware of the standards and we expect to take at least six months off the time of an average investigation as a result of these recommendations. We expect to bring the time between opening a formal investigation to the statement of rejection—

**Q51 Greg Clark:** May I just stop you there? I think you misunderstood the question. What is your current performance against the standards? What percentage of ACP investigations is completed within six months? It is a question for the chief executive; I assumed you would know where you are against your own standards.

**Mr Fingleton:** I do not know the percentage of our current investigations against our standard.

**Mr Smith:** None of our investigations are fully completed within six months.

**Q52 Greg Clark:** None. Not a single one of your investigations meets your published standard.

**Mr Smith:** Not after we have started a formal investigation.

**Q53 Greg Clark:** This is extraordinary. Mr Fingleton said a few moments ago in answer to an earlier question that the Office of Fair Trading offers fantastic value for money. Not a single case meets the published standard that 75% of investigations be completed within six months. How could you possibly say this is fantastic value for money? My question is to Mr Fingleton.

**Mr Fingleton:** We are revising the standard; we have removed our standard from our website since the NAO Report.

**Q54 Greg Clark:** That does not give us much comfort.

**Mr Fingleton:** We shall be publishing retrospective timescales on all our investigations from later this year so as to give guidance to business on the timescales which can be expected.

**Q55 Greg Clark:** But the point about standards, Mr Fingleton, is not just about guidance to businesses. It is important that as a public body you should be held to account so that if you publish standards, the idea that you meet them not at all is frankly scandalous. In terms of the revision of these standards, I was looking at your website this morning which says that you are currently reviewing the timescales for competition case work and you expect to publish amended benchmarks by April 2007. April 2007 to give a revised benchmark. Why does it take so long to come up with a standard that you feel able to adopt?

**Mr Fingleton:** As the NAO Report says, the timescales vary hugely by the type of case. We feel that if we gave a single standard, a standard we aspired to have—

**Q56 Greg Clark:** That is not my question. My question is: why does it take until April 2007? We are now January 2006. Why is it going to take you well over a year to adopt a new standard?

**Mr Fingleton:** Because we should like that standard to be the standard that takes account of all the changes we are implementing.

**Q57 Greg Clark:** Of course, but does it take 14 months to come up with that standard?

**Mr Fingleton:** We shall see whether we can do that much faster.

**Q58 Greg Clark:** Clearly it does. It is revealing of the state of lethargy in the organisation. The Chairman's question noted the length of some of these investigations, some of them going on for five years. Can you turn to page 23, paragraph 3.17? The NAO asked your staff what the reasons were for these long investigations and the Report says, which is agreed, "... many respondents identified reasons such as change in priorities, turnover in personnel, internal processes and delays in getting information back from third parties". You, Mr Fingleton, mentioned complexity, but changing priorities is a symptom of organisational chaos. It does not represent value for money if investigations take many years because of the changing priorities within your own Office. You would accept that I assume?

**Mr Fingleton:** Yes and that is something we have already begun to address.

**Q59 Greg Clark:** How have you begun to address it?

**Mr Fingleton:** We are establishing a preliminary investigation unit which will deliver results on 90% of cases within 30 days or complaints within 30 days. That will help us with our prioritisation of cases. We intend to have more senior involvement in prioritisation. I personally have decided that I am going to be involved in all decisions to open formal investigations from now on.

**Q60 Greg Clark:** Good, that is very welcome, but intentions are one thing, actions will be another. Can we turn to a particular example of that? One of the reasons given for delays was delays in getting information back from third parties; that is something you are presumably familiar with. Is it not the case that you have the power to compel information from third parties with the threat of criminal sanctions against delay? That is correct is it not?

**Mr Fingleton:** Yes.

**Q61 Greg Clark:** How many times have you invoked criminal sanctions to make them deliver information on time?

**Mr Fingleton:** We have not invoked them.

**Q62 Greg Clark:** Not once?

**Mr Fingleton:** Not once. May I explain why? There is a very good reason, which is that the information requests are generally addressed to the company, but the criminal proceedings would have to be brought against the individuals and our legal advice is that in establishing that liability it would be difficult for the individual to be expected to take criminal liability for something that was a delay by the company.

**Q63 Greg Clark:** Parliament has given you these powers expecting you to use them. You are saying that actually the drafting of the Bill which became the Act has failed against its intention. Have you communicated this to the Trade and Industry Secretary?

**Mr Fingleton:** I am not aware that we have communicated.

**Q64 Greg Clark:** You have not. So you were given a power to compel evidence, presumably to allow you to do that, the excuse that you give is that it has not been legally possible to do that but you have made no representations to have the law amended.

**Mr Fingleton:** Going back to the discussion we had about burden on business and there is also a question about whether it is something we should prefer to approach by criminal prosecution rather than by working with business on how we can better—

**Q65 Greg Clark:** Parliament has given you the power to invoke criminal penalties, for you to think rather airily that actually it might be best to do this surely is not implementing the law which was given to you to enforce?

**Mr Fingleton:** We should have to make an assessment of how serious the offence was, whether it merited a criminal case against an individual for information not provided by the company. Thus far, we have worked with practitioners and with business around trying to develop realistic timescales and we are cognisant of the burden that these requests put on business. I should make the point that these problems are not unique to the OFT; in fact the same paragraph you referred to says other competition authorities face similar difficulties.

**Q66 Greg Clark:** Mr Fingleton, I am surprised that a man of your experience in anti-trust should display such naivety. You must know that it is in the interests of some organisations under investigation to delay and defer an investigation and to be rather dilatory in coming forward with the information required and especially when you have a situation at the OFT in which, according to the NAO, priorities change so rapidly that there is every chance that the investigation may be dropped if they spin it out long enough. So the idea that you might take a relaxed view of people's motivations in this and not use once in five years the criminal powers that you have is astonishing. On fines, you have the power to fine up to 10% of turnover. What is the average fine that you have imposed?

**Mr Fingleton:** I have not done the calculation of the average.

**Q67 Greg Clark:** Have you imposed any fines of 10% of turnover?

**Mr Fingleton:** No we have not imposed any and legally, if you look at our fining guidelines, there is a great number of factors to be taken into account in the fining guidelines and we applied them rigorously, they are scrutinised by the Competition Appeals Tribunal, but no, we have not imposed any.

**Q68 Greg Clark:** Presumably a fine of 10% of turnover is reserved for very serious cases.

**Mr Fingleton:** Very serious cases.

**Q69 Greg Clark:** And you are saying that during your five years of existence there has been no anti-competitive behaviour taking place in Britain of sufficient seriousness to result in that? Does it not exist, or have you not detected it?

**Mr Fingleton:** It is a question of proportionality. Some of our fines have started at 8%. We have to look not just at the nature of the agreement that happened, but how quickly parties have stopped. In the cases we have investigated so far, parties have either cooperated with the investigation or have stopped the behaviour and that is a factor we are required under our guidelines to take into consideration.

**Q70 Greg Clark:** Just as a criminal sanction against failure to supply information sends a signal to other people, so obviously does the level of fine imposed. It strikes me that the Dutch competition authority has imposed fines of £200 million since 2002 and you have imposed fines of £60 million since the year 2000, given that the UK economy is rather bigger than the Dutch economy, the signal that is being sent does not seem to be very strong. In fact, if I reflect on your answers to the questions so far, despite having been given enormous new powers, powers that Parliament expected you to use, your evidence today paints a picture of a very meek organisation, an organisation which fails to use its powers and as a result is disappointing and is liable to fall short of the standards that Kitty Ussher expected you to contribute to the economy.

**Mr Fingleton:** I would look at it more broadly than that. I would look at the question of compliance with the law across the economy as a whole and look at the wider deterrence effect that those fines have and it is certainly the case that they have achieved very high levels of publicity. People are aware of the law as a result of them. The Competition Appeals Tribunal has, in several instances, reduced the fines and it has not seen fit to increase them. That suggests, if anything, that our interpretation of the statute has been more severe rather than less severe. So I do not know that the comparison with the Netherlands bears it out on a case by case basis and if you look at the particular construction cases that were uncovered there, they were different in magnitude and covered the construction industry in the entire country with 470 or so parties in a number of investigations, many of whom volunteered to pay fines. So there were several differences in that particular example.

**Q71 Mr Mitchell:** I wanted to ask about a couple of specific cases. You have made much of the football shirts and the effect of savings for the consumer. How substantial is that achievement, because football shirts from the big clubs do seem to me still very expensive? They still change the strip every so often. I am not putting any of these accusations against Grimsby Town, which charges very reasonable prices and is the only one I buy at. However, the racket of changing them for trivial reasons and charging high prices is still going on.

**Mr Fingleton:** We have many markets that we could look at where people would say prices seem to be very high relative to related markets, particularly international markets. That is one aspect of intelligence we should take into consideration. We have to focus on where we believe there is evidence of a breach of the Act in doing our competition investigations and that is what we did in that particular investigation. We can take account more generally in our market studies of concerns with markets which, for structural reasons, are not working well or government legislation maybe is causing an effect and we do that via that particular route and we can send substantial market structure issues to the Competition Commission for market investigation. We use all those criteria, but that is a market where we have already had an impact and unless we came up with evidence of substantial illegal behaviour, we would be unlikely to look at it quickly again until we got through some other markets.

**Q72 Mr Mitchell:** It still is a racket, with the clubs in collusion with the manufacturers.

**Mr Fingleton:** What we have dealt with there is the relationship between the clubs and manufacturers and the retailers and ensured that there are no illegal agreements there. Obviously clubs have intellectual property in their own particular brand and that is not something that competition law can come along and trump; even if we thought personally or for whatever reason that prices were very high, we would have to respect their intellectual property rights in law.

**Mr Collins:** Let us be clear, if there were evidence of illegal collusion in relation to periods within which strips were changed, a horizontal agreement, that is something that we would look at, but we do not have evidence of that at the moment.

**Q73 Mr Mitchell:** The second one is the public school fees. I should add that I had one of your staff on secondment with me and took her along to a talk I was giving at St Paul's School, Westminster; to my fury actually, because the staff and students paid inordinate attention to her and ignored me totally, partly because she was a very attractive member of your staff but mainly because they were asking questions about the fees case. The Chairman asked why that case took so long when the case was obvious. These schools were colluding to fix the prices because they thought they had it as a God-given upper class right, when they did not. The law had been changed and in fact it amounted to conspiracy against the public and collusion to fix prices. The case was black and white. Why has it taken so long?

**Mr Fingleton:** One of the huge difficulties of the work we do is explaining why our cases take a long time. The NAO Report, figure 12 on page 20, gives the main stages of an investigation and each of those takes a certain amount of time from complaint handling, formal investigation and gathering data. I obviously cannot say very much about cases which are not yet fully decided, but I can say that it is public

knowledge in that case that there is a substantial number of parties and the case in respect of each of those has to be outlined and it has to be outlined in a manner which will stand up to robust cross-examination in a litigious environment. That is not a trivial matter and we have to be very sure of all our facts; we frequently go back and gather more information to be sure. As I said at the outset, we should like to take—

**Q74 Mr Mitchell:** They had admitted they were colluding; they said they thought it was their right to do so.

**Mr Collins:** One of the complexities of the case is that it blew up as a result of a leak to the press. It became pretty clear that there were several different schemes or arrangements in operation and therefore we had to collect data over a large number of schools. I believe the total number of schools who were sent requests for information was close to 85 or 90. What we then had to do was to analyse that data and refine it down to a sufficient number of schools where we were confident of the evidence and the case we could put against them. That is what essentially takes the time, going to the schools, asking for information and getting the information back. Even though they came back and said yes, we admit to doing this, if we are going to proceed to a decision, we still have to formulate the evidence in a proper way so they have a chance to put their case. If we just said they had admitted it, so that was it, then some of them might decide not to admit it, might change their minds and might then take us to court. It is not as simple as it appears at first sight.

**Q75 Mr Mitchell:** You had them on toast and you should have bashed them. Let us move on. It has to be said that your performance is disappointing. We are talking about five to 10 decisions a year which is pathetic, long periods, slow judgment and nothing particularly exciting apart from the football shirts. The question is: why is this? Is it because you began before the new chums took over with too much of a scattergun approach so that you were covering too wide an area and none of it successfully? What was the problem? Were you not being selective enough?

**Mr Fingleton:** We accept that we can improve how we select cases. Competition cases are, by their nature, large and complex. Internationally, when you look at the number of cases and the time we take to do cases, OFT comes out third in the world in peer review at the moment, behind two very long-established competition agencies in larger jurisdictions. Our concern is not so much that we feel that we do an incredibly bad job, but rather that we do a good job that we could improve upon. I should not want to create the expectation that we are going to produce 100 competition cases a year, because they are complex, they are detailed, they are very time consuming and best practice internationally is doing a small number of high quality cases which set clear legal precedent, produce reasoning that is guidance to business, that legal practitioners can point out to businesses when they are adopting their strategies and say this is what they can safely do, this

is the safe harbour in law and work in that way. That is a change from, for example, how it has been done traditionally in Germany by the *Bundeskartellamt* which does handle about 1,200 cases a year, does them all in a very short period of time. It uses a very simple rule of thumb and, for example, high market shares are just considered to be wrong or behaviour by companies with high market shares is considered to be wrong. The Germans are very much re-evaluating that approach in the light of changes to international best practice and moving slowly, with great difficulty, towards the type of approach that the UK has pioneered.

**Q76 Mr Mitchell:** Would it not be more convenient and quicker and more efficient to do what the Americans do and use plea bargaining, or come to some sort of negotiated settlement without putting it to the courts?

**Mr Fingleton:** That is very much something we shall take on board from the NAO Report. I should make the point that in the first number of years parties will litigate more issues until the law has settled and until it is clear what way the Competitions Appeals Tribunal will fall. The US practice of plea bargaining, because the Department of Justice is an enforcement agency that litigates before the court rather than decides, is very similar to our practice of settling cases and that is something we do and, as a precedent is established, it is something we shall be able to do more of.

**Q77 Mr Mitchell:** A question of stature.

**Mr Fingleton:** And evolution of the system as well.

**Q78 Mr Mitchell:** I was concerned to see the figures for staff turnover. That is appalling. You cannot run a continuous investigation, if the staff keep changing. That must be a cause of a lot of problems, problems of continuity, new people having to learn the job. Why is it so high? Are you not paying folk enough?

**Mr Fingleton:** The average figure for staff we lose each year from the OFT as a whole over the last four years is about 12%. It is slightly higher in the competition area. One of the things we have learned, working with the NAO on this Report, is that we need to form our case teams slightly more broadly. One of the things that happened in the past was that two or three people randomly would depart, but they happened to be on the same case and that caused a huge problem, not just for us but also the parties under investigation. We accept that and it is something we shall do better in future. The second thing that will help is making the investigations shorter; that will also mean that they are less robust to turnover. We cannot compete on salary with the private sector. Even if we can compete with people at the beginning of their careers, within two or three years working at the OFT the experience they have had and the training they have had is hugely valuable, not just to the private sector but the rest of the public sector. We shall look longer term, over the next two or three years, at our salary structures and whether they are flexible enough to deal with the

challenge and particularly with the challenge of competing with well resourced and better resourced public bodies like the Financial Services Authority and Ofcom. Many of our staff are actually lost to the private sector. We also recognise that we need to compete on the work environment and on the variety of work.

**Q79 Mr Mitchell:** You also need to give them more excitement and more high profile stuff. Turning them all into little spritzers and turning them loose around the country would be the best thing for career prospects. The National Audit Office does manage to retain more staff, has a lower turnover and is subject to the same kind of poaching and loss that you are going to be subject to. Surely the answer has to be more interesting work and better pay.

**Mr Fingleton:** I agree with you; yes.

**Q80 Helen Goodman:** I should like to begin by declaring an interest. My husband has a shareholding in a magazine called *Prospect*. I am advised that it is not registerable because it is below the 15% limit and anyway it is not mine. I want to ask you some questions about section four of the Report. One of the problems raised in section four is that it says in paragraph 4.15 "... nearly a quarter of small and medium sized firms believe they were harmed by unfair practices such as cartel price-fixing and collusion to set tender prices. However, only a minority would Report this to the OFT". I know this very well from my own constituency because I have a lot of farmers and, as you are aware, farmers and suppliers complain a lot about the monopoly power of the supermarkets. I wonder whether you could say whether you agree that the reason why the small actors in the market are not making formal complaints is due to a lack of awareness.

**Mr Fingleton:** Yes, I agree. I believe the figures given in the NAO Report are based on work that the OFT commissioned from an academic to survey small business. We have established a small business forum and the first public act I did when I took up this job in October was to chair the first meeting of that forum bringing together representative organisations for small business. We are trying to expand that. One of the big difficulties we have, and that representative organisations have, is that their members individually may be hugely incensed about a competition issue at one point, but that generally speaking they do not think of competition as a really important issue. I know in my last job I would go along to Cork or Sligo or somewhere to give a speech to a business association that was really thrilled to have me along and seven people would turn up because they were not terribly interested in the work we did, but the representative body was.

**Q81 Helen Goodman:** I am sure farmers in Ireland are just like farmers in England and they are pretty incensed about the supermarkets on a pretty ongoing basis.

**Mr Fingleton:** Farmers in Ireland were the ones who did turn up when I went to speak. A very large number of investigations have resulted from

complaints from small business. This is something we are going to work very hard to develop and make sure that we can be responsive to them and understand their needs. We are also able to take account of that in our work on market studies and in our broader work where we are very often looking at government regulations which inhibit entry into markets and frequently damage smaller firms rather than the incumbents in the market who have been responsible for those regulations.

**Q82 Helen Goodman:** One of the things that they say to me is that they do not want to make formal complaints because they are concerned that the data cannot be anonymised properly and that what will happen is that they will be screwed down in the renewal of the contract, or indeed not be given a contract at all. Could you say something about what you do to anonymise the data please?

**Mr Fingleton:** In some cases, if there is a commercial dispute in the market, it does not matter how much we try to keep the identity of the complainant anonymous, the party would know whether a complaint had been made, so there are some cases where it is unavoidable. We always try to protect complainants that we feel are vulnerable during an investigation. I do know, for example, that one of our complainants, Healthcare at Home, in the Genzyme case, really had to cling on to its supplies during that investigation. That was a very difficult issue for them and once a case gets to the question of a statement of objections, the complainant may have critical evidence and if we are to deal with the issue and to resolve it in their interests, it is not going to be possible to put the allegations to the party without revealing where they have come from. That is a very difficult choice for us to make.

**Q83 Helen Goodman:** Coming back to figure eight, the one which is about bundling together complaints, to what extent can you deal with that problem by taking a more proactive approach rather than a reactive approach?

**Mr Fingleton:** You are quite right that moving towards a system of complainant-informed rather than complainant-led investigations would help a lot with that and, particularly on our market studies, which is a valuable part of our work, though it is not obviously the study here. When it comes to developing evidence, however, we frequently need to rely on evidence from specific companies in order to move forward, but we always try to anonymise that. Similarly in our merger work, we end up redacting quite a lot of information for confidentiality reasons to protect business. It is something we work very closely with legal practitioners on through the joint group we have with the Bar and Law Society and try to refine this further. It is an issue which happens; it happened in Ireland and it was often a problem and it happens with competition authorities elsewhere.

**Mr Collins:** I am aware from private practice that it has happened in many countries and the key thing is to try to get the complainants alongside the officials so you can be creative in the way in which you receive the evidence, particularly in confidence and

anonymously, and then can use it to ask the right kind of questions to get the data essentially independently without it appearing that the complainant has actually dished the story to the authorities. That is very sensitive and I am aware of two or three cases in continental Europe where that has gone through and that is why we need to tread very carefully because there is always a risk that it goes wrong. A creative approach between the complainants and the officials in the OFT can help solve that problem, but I am well aware of the problem.

**Q84 Helen Goodman:** I also want to ask you about measuring effectiveness which is also in part four of the NAO's Report. Benefits to consumers from competition enforcement are described in paragraph 4.2. One concern that I have is that technical improvements to the competitiveness of a market may have disadvantages to consumers as well as benefits to consumers. I wonder to what extent you take that into account or whether you cannot take it into account because of the way the legislation is framed.

**Mr Fingleton:** In the absence of a specific example, I should say we can take it into account because we do look very much in all our work at the consumer welfare or consumer benefit tests at the end of the day.

**Q85 Helen Goodman:** The obvious example is the one which the *Newcastle Chronicle and Journal* has written to me about which is the investigation into the wholesale distribution of magazines and newspapers. The problem here, just for Members who have not been following this in detail, is briefly that the market is not, in a classical sense, competitive but there are various benefits from the current state of the market, namely that small newsagents, people in rural areas, receive newspapers which they would not in a purely competitive market. It is also of benefit to short print run magazines and newspapers. The issue here is about the public benefit of having widely available a good spread of news and opinion which is a public good, which is completely different from washing powder or, dare I say it, football shirts. I do think the quality of news is a different kind of public good and that is why I am asking you about it.

**Mr Fingleton:** I should stress that the particular work we are doing in that area is not an investigation of any infringement of the Competition Act, but rather a request from the industry itself to the OFT for an opinion on the general applicability of the law to a particular type of commercial arrangement. So it is a different kettle of fish from an investigation.

**Q86 Helen Goodman:** It is a request from a part of the sector, not the whole industry, is it not? Clearly there is disagreement about it.

**Mr Fingleton:** Yes; quite right. What I should say in answer to the general question is that often the argument is made that if there were less competition in a particular sector, that would enable people for whom the market was less viable to be viable and we

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should make the response to that, first of all, that it is not something we can necessarily take into consideration. We can point out to the Government the cost, if it is resulting from legislation for example, and say the cost of lost competition in the market is X million pounds a year and then it is the Government's job to assess that against the benefits. There will be cases where there are wider public service requirements in terms of access to things that the market may not provide and in many markets, such as postal services and other areas, other instruments are used to deal with those. Obviously I do not want to comment on the particular merits of this matter, but it is generally now accepted that other instruments tend to be used rather than restricting competition in order to achieve those policy objectives.

**Q87 Helen Goodman:** Fine. My understanding is, and I should just like to know whether this is true, that in France and Germany, however, the competition authorities can take into account other public interest arguments. Is that true and would you consider looking at what they are doing in France and Germany and seeing how that works?

**Mr Fingleton:** My knowledge of German competition law would suggest that that is not the answer but that there is a provision that has been used once in 50 years for the minister to look at a broader public interest issue, having taken advice from a separate body called the *Monopolkommission*. In France, competition enforcement is done by a government ministry; it is not politically independent. The decisions are made by the minister. They are not necessarily reasoned and argued in the same way that they are here, so the system is indeed very different. I should point out, I suppose, without expressing a view on policy, which is a matter for the DTI in the first instance, that the arguments which were made when we moved towards, for example, more political independence on mergers, were that business certainty is hugely improved by having independent decision-making appeals to a tribunal with clarity of the law and that having a combination of political decision making and competition expertise decision making adds extra uncertainty which business would generally be burdened by. That was the argument made at the time and that would have to be judged by people like you who have to make these judgments all the time, not by me.

**Q88 Mr Bacon:** May I ask you to turn to page 17? In paragraph 2.15 it says "The OFT identified weaknesses in its previous guidance to staff". When was that? When did the OFT identify weaknesses in its previous guidance?

**Mr Fingleton:** I am going to ask Vincent exactly when.

**Mr Smith:** This came about as a part of the review of our processes as a result of the change in the law from 1 May 2004 when we became part of the European competition network applying European competition law.

**Q89 Mr Bacon:** So you identified the weaknesses at May 2004.

**Mr Smith:** Shortly afterwards.

**Q90 Mr Bacon:** The sentence continues that you "intended to revise the manual by April 2005. It was realised, however, that a complete rewrite was necessary if the guidance was to improve the consistency and professionalism of competition work. The new guidance is still being developed". When will it be fully available to your staff?

**Mr Smith:** There are 11 parts to it; the three most difficult parts of it are ready.

**Q91 Mr Bacon:** So you are three elevenths of the way through?

**Mr Smith:** We are nearly half of the way through, because they are the three biggest parts. The rest of it is expected to be with them by the summer and it will be complete by the end of this year.

**Q92 Mr Bacon:** It will be completed by the end of this year. You are aiming for the end of December 2006. So at the moment it is correct to say that there is not a complete set of up-to-date guidance to your staff.

**Mr Smith:** That is indeed correct, yes.

**Q93 Mr Bacon:** It is also correct to say, is it not, that there is not complete published guidance for external economic actors as to what your standards are? That is correct, is it not?

**Mr Fingleton:** Do you mean our timescale?

**Q94 Mr Bacon:** Mr Clark quoted from your website that your amended benchmarks were expected to be published by April 2007. What I am trying to establish, and I am just looking for a yes or no answer to this question, is that at the moment you do not have up-to-date published benchmarks which are available externally and you do not have fully up-to-date guidance to your staff internally. That is correct, is it not?

**Mr Smith:** That is correct.

**Q95 Mr Bacon:** I must say I find that quite extraordinary. May I ask about staff experience? On page 16, it says "The OFT's case teams consist of staff significantly less experienced than similar staff" elsewhere. Is 175 a correct figure for your headcount?

**Mr Smith:** Yes, that is correct.

**Q96 Mr Bacon:** How many of the 175 staff have a legal qualification?

**Mr Smith:** About 55.

**Q97 Mr Bacon:** What is the age profile of those 55, what is the average age?

**Mr Smith:** I do not know the average age off hand. I would say it was in the early 30s.

**Q98 Mr Bacon:** Is it possible you could write to the Committee with a chart showing the age distribution and how many there are of such and such an age and

also how many years' legal qualification they have, which is a separate point as well. Is it possible that you could do that?

**Mr Fingleton:** Yes; happily<sup>1</sup>.

**Q99 Mr Bacon:** That would be very kind. What is the average salary of those 55 with a legal qualification?

**Mr Fingleton:** Again, we would have to write to you with that information.

**Q100 Mr Bacon:** Stratify it in the usual way. That would be excellent.

**Mr Fingleton:** Yes<sup>2</sup>.

**Q101 Mr Bacon:** I am very concerned about this question of the length of the cases. It says in paragraph 3.16 "There are a large number of cases that have been open for at least two to three years (20 out of 37 cases)". I am just wondering, notwithstanding that these can be complex matters, what it is that can make something drag on for several years, for three years? Businesses are created in that time, make huge profits and people sell out. Businesses that were doing very well go bankrupt in that period. How can something take this long?

**Mr Fingleton:** Any one of a number of factors. One can be that we underestimate at the outset exactly how much work is going to be involved and that is something that we did do at the outset of some of these investigations. We took on more than we probably had the resources to do and we have learned that lesson. The second thing that can go wrong with them is that two or three key staff on a case could leave and we have to get people to be skilled up on it and that also happened in the past and we are taking measures to reduce our vulnerability to that.

**Q102 Mr Bacon:** How are you reducing the likelihood of staff leaving?

**Mr Fingleton:** A number of factors. One is that we shall have more broadly based teams, so they will be less vulnerable to one or two key individuals leaving. The second is that reduced timescales and having a broader team working on a particular case faster will also help with that, make it less vulnerable. Another reason why they can take longer is because we have to have regard to developments in EU law that the parties arguing to us are relevant and, in fact, on many of our cases, we get letters like that every month saying that there is a new case from the Court of Justice that we must consider. In other cases, we stay proceedings pending another case which is relevant, in agreement with the parties. In other cases there are delays because the parties are unable to meet an information request on time.

**Q103 Mr Bacon:** And in still other cases there are all the reasons given in paragraph 3.17 to which Mr Clark referred earlier. Is that right?

**Mr Collins:** That is right. May I just come in there and point out that the following sentence says "Other competition authorities also face similar difficulties with long timescales".

**Q104 Mr Bacon:** Yes, Mr Fingleton referred to America.

**Mr Collins:** Yes, and it is important. I have worked with a number of competition authorities on the other side. This is a characteristic feature of these cases.

**Q105 Mr Bacon:** I am sorry. When you say "on the other side", do you mean on the other side of cases?

**Mr Collins:** On the other side representing parties before cases. You do see that many cases will take two, three, four, five years, for all the reasons that John Fingleton has given. What we are saying is that those are the result of internal review carried out pre-NAO Report and as a result of this Report we are making every effort we can to speed up those timescales and, particularly, this is important, averages can be very misleading. It is very important that you try to engage with parties or those parties who are willing to engage with you, and some are not, to try to agree realistic timescales so that business knows and so that we know the kind of stages in which a case will progress.

**Q106 Mr Bacon:** Mr Collins, may I stop you there because I want to come back to you on another point in a second, but just one further question to Mr Fingleton concerning figure 15 on page 23 and these different businesses here, for example, Harwood Crematorium. What is the turnover of Harwood Crematorium? How economically important an actor in the UK economy is Harwood Crematorium?

**Mr Fingleton:** Harwood Crematorium is not an important actor and in that case, if I am not mistaken—

**Q107 Mr Bacon:** What about West Midlands Roofing?

**Mr Fingleton:** West Midlands Roofing is not a significantly large player, but I did make the point earlier that many of the markets which we look at are local markets with local competition, where, if we took the argument that there should be a *de minimis*, so anybody below a certain size would be excluded from the scope of competition law, the vast majority of markets in the UK in the services sector—

**Q108 Mr Bacon:** Is it possible to write to the Committee with the turnover of each of those businesses referred to in figure 15?

**Mr Fingleton:** Yes<sup>3</sup>.

**Q109 Mr Bacon:** It would be quite interesting to know and a two or three sentence summary about what it is that makes the case interesting or significant or why you have investigated it. If you could do that, I should be very grateful.<sup>4</sup>

<sup>1</sup> Ev 18

<sup>2</sup> Ev 19

<sup>3</sup> Not printed (commercial in confidence).

<sup>4</sup> Ev 19–20

**Mr Fingleton:** There may be some cases of that kind where we closed an investigation, a complainant appealed to the Competition Appeals Tribunal and we were forced by the Competition Appeals Tribunal to carry out a much longer investigation into that matter, although we wished to close it. Some of them are of that character.

**Q110 Mr Bacon:** If you would just write to us to explain, I should be grateful. Mr Collins, I notice that you are chairman of the OFT and you were appointed last October for a four-year term. You have experience in competition law in the City at Lovells. That is the old Lovell, White . . . is it?

**Mr Collins:** Yes.

**Q111 Mr Bacon:** What else do you do? You are a part-time chairman, are you not?

**Mr Collins:** I am a part-time chairman. I took on the job on the basis that I would do it half time, that is between two and three days a week. I also undertook to be available for up to another 40 days during the first year, particularly in view of the issues surrounding the Hampton Report and the CTSA. I have not taken on any other additional appointments, partly because I recognise the challenge of this job.

**Q112 Mr Bacon:** Are you remaining a partner in Lovells?

**Mr Collins:** No, I am not. I have completely retired from practice.

**Q113 Mr Bacon:** You are completely retired; you have no other job apart from this one and this one is part time.

**Mr Collins:** No, and this job is very important.

**Q114 Mr Bacon:** Yes; indeed. It is a central principle in English law that you have the right to know the case against you. I was very interested in what you said earlier about trying to find out information without giving away to the person being complained of and who it is who is doing the complaining. At what point in that process do you, if at all, let the firm which is being complained of know the full case against them, including who it is who is complaining?

**Mr Collins:** You make the case, you make that information available at the time of the statement of objections. As I was explaining earlier on to Mrs Goodman, it is very important to manage the obtaining of the evidence in a way which does not compromise the commercial interests of the complainant. You are absolutely right that it is a fundamental principle in English law that you have to know the case against you and that is the dichotomy we face when we are trying on the one hand to pursue complaints and collect evidence and on the other hand trying to make sure we comply with the law.

**Q115 Chairman:** Anybody who represents a rural seat knows that this issue of farmers' incomes is an absolutely massive issue, particularly the pressure they feel from supermarkets. I asked the NAO what you were doing and they told me the OFT are

considering referring the convenience store sector to the Competition Commission under the Enterprise Act. This relates to the move by supermarkets into the corner shop market. OFT also approved the supermarkets' code of practice on purchasing. Presumably that is right, but I should have expected a massive high profile investigation of this issue by you over the last five years.

**Mr Fingleton:** There has been a very high profile attached to the work we are currently doing on whether to refer the supermarket and convenience sector or aspects of it to the Competition Commission. We have undertaken to have a draft out for consultation at the beginning of March and a decision at the end of April on that. In that context, that is not about allegations of breaches of Competition Act 1998 and chapter one or chapter two. I cannot comment on any investigations which might be ongoing against any party in that sector at the moment, but they would be separate issues. We are looking at all aspects of competition in that sector at the moment and we just received on time all of the information we requested of the parties earlier this week.

**Q116 Greg Clark:** The OFT is clearly in a state of flux at the moment. I wonder whether it might be possible, through you, to ask Sir John whether perhaps in a year or 18 months' time we might have a note updating us on what has happened to these deadlines, the lengthy investigations and in particular whether the powers which are available under the Competition Act have been used.

**Sir John Bourn:** I should be glad to do that.

**Q117 Mr Curry:** Do you think there is a distinction between a short-term and a longer-term consumer interest?

**Mr Fingleton:** In predatory pricing cases that is one of the most difficult aspects of evaluating harm and liability. Predatory pricing cases have the feature that short term there is a very substantial gain to consumers, but longer term consumers will face higher prices once the rival is eliminated. There is a great deal of international best practice about what timescales one should use and what quality of evidence one wants in those cases and it is a controversial area of practice in competition policy. I do not know whether it was the first in the world but certainly the Office of Fair Trading was the first in the European Union to publish guidance on abusive dominance and on questions like this. The European Commission has now followed with draft guidance for European competition law which is very much along the lines our previous Chairman John Vickers had overseen at the OFT.

**Q118 Mr Curry:** Would you think that you might apply a similar logic on issues which arise about restructuring or rationalisation within industries? Whereas you might think in the first instance perhaps that mergers might diminish competition, but put in a wider international context the alternative to those mergers might be sustained vulnerability right across a sector with companies disappearing and perhaps

overseas companies themselves, based on a much more monopolistic position in their home markets, dominating this market.

**Mr Fingleton:** Yes, in the particular context of mergers the Enterprise Act allows for us to take efficiencies into account. We are also allowed under the Enterprise Act to balance cost to consumers in one market in a merger against efficiencies gained in another market. We are able to look at consumer welfare in the round, but over time and across markets, as a result of the new features in the Enterprise Act.

**Chairman:** In conclusion, Mr Fingleton, I stand by what I said at the time the NAO brought out this Report. I said that the OFT has been too slow and too cautious.

It is no longer acceptable that a body like the OFT carries out its work without proving its value to the consumer, to the taxpayer and to Parliament. My own personal conclusion as a result of this hearing is that you have not yet achieved your potential in terms of value for money, because it takes too long to investigate cases and you only reach a small number of decisions each year. You need to improve your project management, your staff policy and your performance measurement. You are new in your job and I shall be requesting the Comptroller and Auditor General to investigate you again before the end of the Parliament. Whether he does or not is of course his prerogative, but I am sure he may well want to and we shall see how you have performed. Thank you.

### Supplementary memorandum submitted by the Office of Fair Trading

Question 98 (Mr Richard Bacon): *Age distribution and years' qualification of OFT lawyers working in competition enforcement*

As of 31 December 2005, there were 65 legally qualified staff working on competition enforcement issues. Of these, 52 worked in our competition enforcement division and 13 in the legal division. Following a reorganisation at the end of January 2006 all of these 65 staff now work in the competition enforcement division and the information given here relates to all of them.

Table 1 shows the age profile of the 65 staff—their average age is 34.

TABLE 1: AGE DISTRIBUTION OF STAFF WITH LEGAL QUALIFICATIONS:

	Age							Total
	20–24	25–29	30–34	35–39	40–44	45–50	50+	
Number	0	9	31	18	5	1	1	65

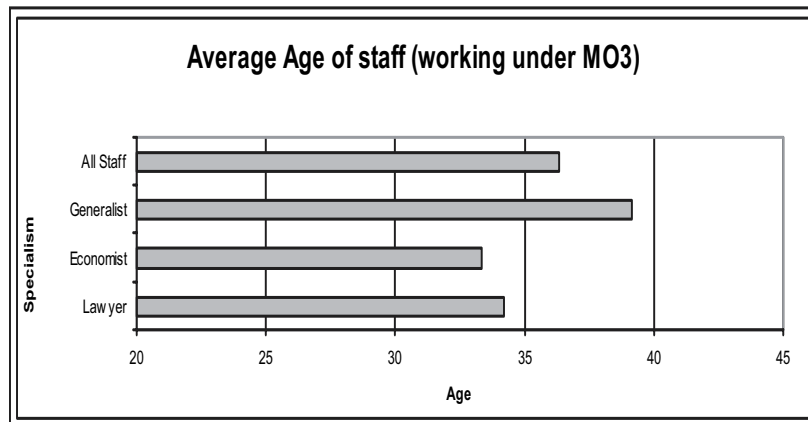
To provide a comparison, table 3 showing the average age for staff in the competition enforcement division who do “anti-trust” work (OFT management objective 03) and their length of service.

The OFT’s staff records concentrate on maintaining information relevant to individual performance and current record; information on staff careers before they joined the OFT is not readily available. Attachment 1 also gives the length of service of OFT competition enforcement staff by specialisation (lawyer, economist and “generalist”), which will give an indication of post-qualification experience. However, some specialist staff have had significant experience outside the OFT.

TABLE 2

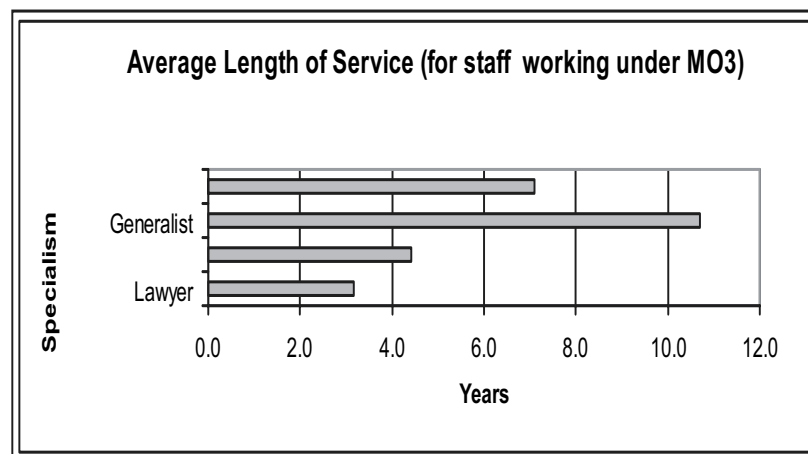
Average Age under MO3 by Specialism

Specialism	Av Age
Lawyer	34.2
Economist	33.3
Generalist	39.2
All Staff	36.4



Average length of Service under MO3 by Specialism

Specialism	Av Length of Service
Lawyer	3.2
Economist	4.4
Generalist	10.7
All Staff	7.1



Question 99 (Mr Richard Bacon): *Average salary of staff with a legal qualification.*

The average basic salary (excluding bonuses) of these legally qualified staff is £46,945, with a range from £27,951 to £90,073. By way of comparison, table 3 illustrates the average pay by grade across all specialisations in the OFT's competition enforcement division.

TABLE 3: AVERAGE PAY OF STAFF

Grade	Average Pay		Number of Staff	
	Basic Pay (excluding bonuses)	Cost (including pensions)	In Grade	With Legal Qualification
Senior Civil Servant	£75,074	£104,865	12	10
Assistant Director/Principal Case Officer (G6/7)	£51,259	£68,153	84	35
Case Officer (HEO/SEO)	£30,824	£39,425	54	18
Support Staff	£21,181	£26,923	22	2

Question 109 (Mr Richard Bacon): *A summary of what made the cases investigated significant.*

A short summary of the main points which prompted us to begin our investigation in relation to each case looked at in Appendix 3 of the NAO Report is given below.

#### WEST MIDLANDS ROOFING

This was a cartel investigation into collusion in tendering bids for roofing contracts in the West Midlands area. Although a relatively small geographic and product market, this case is important as it focused on a

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key priority area for the Office (construction) and involved allegations that the companies had engaged in secret cartel agreements, which tend to be the most damaging to the proper operation of the market. A number of the victims of the practice were public bodies, mainly schools. It was also felt that this case could be the “tip of the iceberg” and lead to similar investigations in other geographic areas. This has indeed turned out to be the case. The OFT also reserved leniency applications in this case, which enable us to obtain evidence without the need to use extensive compulsory investigation powers. This was also a significant factor leading us to open an investigation.

#### DU PONT DE NEMOURS

The OFT received a complaint that a company dominant in supply of photographic polymer film (it was in fact the only manufacturer of this film in the world) was abusing its dominant position by refusing to supply a competitor in a downstream market for the production of holograms needed for, amongst other things, security makings on credit cards using this film. This was a serious allegation against what is described as a “super-dominant” undertaking and the complainant provided a well argued complaint and initial evidence which suggested there were reasonable grounds to suspect an infringement. The case was also interesting from a policy perspective as it involved the concept of “essential facilities”, which is still being developed at an EU level.

#### TM PROPERTY SERVICES

The OFT received a complaint that related dominant companies were abusing their position by engaging in predatory pricing, and raising wholesale prices to an unacceptable level. There were a number of associated complaints which indicated that an investigation under the Competition Act 1998 was warranted. The result of the investigation was that neither company was found to hold a dominant position in the market, so action could not be taken under the Act. However, this did not address the competition concerns that had been raised in relation to the property search market regarding access concerns with some local authorities which indicate possible problems in the way the market operates. As a result, the OFT launched a market study into the use of public sector information in a commercial context in December 2004.

#### REPLICA KIT

This is a significant market (about £250 million total annual turnover) where allegations of price fixing at the retail level have been made for a number of years. The complaint which led to the investigation concerning allegations of price fixing for a wide range of replica kits. The evidence which emerged as the investigation proceeded confirmed that our decision should primarily focus upon Manchester United and England strips, as we had received sufficient evidence about these kits to warrant the belief that a successful outcome could be achieved. This was indeed the case.

#### HARWOOD CREMATORIUM

A funeral undertaker complained to the OFT that its local crematorium was abusing its position of market dominance by refusing access to its facilities in the Stevenage area. The case was initially dismissed by the OFT on the grounds that the complaint do not show evidence that Harwood Park was dominant in the relevant market. Following further evidence from the complainant, the OFT subsequently decided that there were reasonable grounds to suspect an infringement. We took the case given its potential importance for competition in local markets where an incumbent has some kind of “inbuilt” competitive advantage. We were also concerned that, if proven, the alleged abuse would affect a group of particularly disadvantaged consumers—the recently bereaved.

#### TV EYE

This case was unusual as TV Eye asked to negotiate commitments at an early stage in the investigation. Since the commitments regime is new (having been introduced in June 2003 by the Enterprise Act 2002), a number of procedural and substantive issues arose during this process. Consequently, although the process of formalising the commitments was extended, the level of resources we dedicated to the case over time was relatively small. We have identified the issues raised by this new process in this case and have taken steps to address them.