

Annual Review & Accounts 1998/99



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Competition Commission  
New Court, 48 Carey Street,  
London WC2A 2JT  
Tel: 0207 271 0100  
Fax: 0207 271 0367  
e-mail: [info@competition-commission.gov.uk](mailto:info@competition-commission.gov.uk)  
Website: [www.competition-commission.gov.uk](http://www.competition-commission.gov.uk)

## INQUIRY AND DEVELOPMENT COSTS

	Brought forward from previous years £'000	Costs in 1998/99 £'000	Total cost £'000
<b>Mergers</b>			
Fresenius AG and Caremark Limited	349	2	351
Johnston Press plc and Home Counties Newspapers Holdings plc	125	105	230
Ladbroke Group PLC and the Coral betting business	3	360	363
Tomkins plc and Kerry Group plc		201	201
ARRIVA plc and Lutonian Buses Ltd		208	208
Cendant Corporation and RAC Holdings Limited		269	269
IMS Health Inc and Pharmaceutical Marketing Services Inc		258	258
<b>Monopoly</b>			
Underwriting services for share offers	520	656	1,176
<b>Utility licence inquiries</b>			
Cellnet and Vodafone and British Telecommunications plc	95	1,289	1,384
<b>Competition Act 1980 inquiry</b>			
Birds Eye Wall's Ltd	345	98	443
References laid aside		19	19
Unpublished reports and inquiries in progress	204	2,852	3,056
<b>TOTAL COSTS OF INQUIRIES IN 1998/99</b>		<b>6,317</b>	
Development costs relating to the Competition Commission		121	121
<b>TOTAL COSTS IN 1998/99</b>		<b>6,438</b>	

The reconciliation between total inquiry and development costs and the income and expenditure account is:

	£'000
Expenditure per income and expenditure account	6,483
Interest receivable net of notional cost of capital	(60)
Corporation tax	15
	<b>6,438</b>

1998/99 was the final year of operation of the Monopolies and Mergers Commission (MMC). Its functions have now been subsumed into the Competition Commission (CC) which was set up on 1 April 1999. This is therefore an opportunity not only to review the MMC's activities in its final year but also to look forward to the Competition Commission's new role. In addition, further changes are in prospect both in utilities regulation and merger control which will affect the Commission.



### Work in 1998/99

The details of the MMC's workload during the year are provided in the Secretary's statement and the chart on page 6. This workload has, as events turned out, been at a fairly stable level throughout the year, rather than exhibiting the substantial fluctuations that we have seen in some previous years, but has included some high profile mergers, including Ladbroke/Coral, Cendant/RAC and BSKyB/Manchester United (though this was not published until the beginning of the new financial year). The year also saw a major monopoly inquiry into underwriting services, and a major regulatory inquiry into the price of calls to mobile phones. Summaries of all reports published this year are set out in pages 18 to 27.

The year saw a number of experiments in greater transparency of process, including publication of issues statements, and a joint hearing between all the main parties in the mobile phones inquiry. These and other such experiments are due to continue, together with wider consultation on the best ways to promote greater openness.

### Membership changes

During the period of this review, Roger Davies, Sir Archie Forster, Sir Ronnie Halstead, Patricia Hodgson, Professor John Pickering and James Roe completed their terms as members. Of the members appointed to special panels, Tim Bowdler, Sir Peter Gibbings, Mark Kersen and Tim Willis completed their service on the newspaper panel; and Professor Michael Bromwich completed his service on the water panel. I am grateful to all of them, particularly for the hard work and dedication of those who served on a large number of inquiries.

In the course of the year, the DTI conducted recruitment exercises to replenish the special panels. As with the recruitment of regular members last year, I am delighted with the outcome. We have been fortunate in the appointment of Sarwar Ahmed, Linda Christmas, William Gibson, Gerald Holbrook, Joyce Hopkirk, Eve Pollard, Professor Donald Trelford and Charles Wilson to the newspaper panel; Tony Hadfield and Alan Young to the electricity panel; Nicholas Garthwaite to the telecommunications panel; Patricia Henton and Martyn Webster to the water panel; Graham Hadley, Gilbert Hogg, Nigel Macdonald and Dr Elizabeth Monck to the electricity and water panels jointly; and Professor Cosmo Graham, Professor David Parker and Jeremy Seddon to the water, electricity and telecommunications panels jointly. We are well-placed as a result to deal with any surge in regulatory inquiries that may arise this year. Joint membership of panels should further help to achieve a consistent approach in our work.

“The Competition Act proposals for regulatory reform and the associated institutional arrangements, in my view, have now created the right policy framework for a powerful competition policy designed to protect competition and consumers while providing proper and effective safeguards for companies.”



## Competition Act 1998

The Government's reform of competition law was implemented through the Competition Act 1998. This establishes two prohibitions: on agreements and concerted practices which prevent, restrict or distort competition; and on conduct which abuses a dominant position. From 1 March 2000, when the prohibitions are intended to come into force, the Director General of Fair Trading (DGFT) and the utility sector regulators will have powers to determine whether companies have breached either prohibition and, if so, what fine to impose. Parties will have a right of appeal to the newly-established appeal tribunals of the Competition Commission. All those who were regular or specialist members of the MMC became reporting panel or specialist panel members of the Competition Commission, and the staff of the MMC have become the staff of the Competition Commission, so that there will be no loss of the experience and expertise necessary to ensure robust, fair and timely investigation and reporting.

This new role for the Commission is unlikely to start in earnest until later in 2000. It was nonetheless, in my view, a sound decision by the Government to set up the Competition Commission well in advance so that preparations could be made. The Secretary of State announced on 31 March 1999 that Judge Christopher Bellamy QC (presently a judge at the European Court of First Instance) would be the first President of the Appeal Tribunals. He will take up his appointment later this year. It is excellent that we have such a distinguished lawyer with extensive experience of competition law to lead this new area of work.

Preparations are in hand for the recruitment by the DTI of the first members for the appeals panel. At least some of those selected should be appointed early in 2000, in time for training and induction. Discussions are under way with Christopher Bellamy about staffing and other resourcing issues, so that the appeal tribunals function smoothly and effectively as soon as they are needed.

The reforms are a very welcome strengthening of the UK's competition law. They provide new protections for consumers and others damaged by anti-competitive conduct. They are therefore an important complement to the Fair Trading Act provisions, which permit investigation into a range of more structural issues of public interest concern, in relation to monopoly, oligopoly and mergers. These will continue to be investigated by the reporting side of the Competition Commission. Referrals by the DGFT, over the last 18 months, comprised underwriting, milk, ice cream, cars and supermarkets.

The two sides of the Competition Commission will not only operate under different legislation but have different functions. The Commission's two panels of members will therefore be operating independently and in different ways. Although there is likely to be some cross-membership, the panels will differ in their overall composition. It will be vital however that members of both panels maintain the same independence, impartiality and thoroughness of approach which have been core qualities of the MMC in the past.

‘At a fundamental level, the institution worked and worked well.’

Chairman

Dr Derek Morris

Deputy Chairman

Graham Corbett CBE

Deputy Chairman

Denise Kingsmill

‘The continuation of the MMC in one guise or another for 50 years is rather extraordinary.’

### Utility Regulation

It is now 15 years since regulation of privatised utilities was introduced in the UK. The RPI-X formula for price caps devised by Professors Beesley and Littlechild was described by them in 1983 as 'a temporary safeguard, not a permanent method of control'. It was to 'hold the fort' until competition arrived. In practice, price controls set on an RPI-X basis proved to have powerful incentive characteristics which have led to large efficiency gains. Although one might have hoped that standardised methods for determining the appropriate value of X would have emerged, this has not happened for a variety of reasons. A number of key elements remain controversial (for example, how best to estimate the equity risk premium in the capital asset pricing model); a number of new issues have emerged (for example, how best to avoid perverse incentives where allowable capital expenditure is concerned); alternative approaches which might provide more stability through time, for both prices and incentives, have been proposed; the regulatory approach to setting standards of service is still evolving; and—most importantly—competition is emerging in nearly all the regulated industries.

The shift from regulation towards competition is paralleled by shifts in the policy regime which utility companies face. The 1998 Competition Act gives sector regulators concurrent powers with the DGFT to fine utility companies for breach of either of the two new prohibitions. Regulators therefore have scope to use licence amendments, as at present, to control the prices charged for activities which are not by their nature competitive; while using the powers of the Competition Act to deal with anti-competitive behaviour. This is a sensible framework and one within which over time, as competition extends to broader areas of utility activities, there is scope for the regulatory control mechanism progressively to decline and the use of the competition powers progressively to increase. In either case utility companies will have recourse to the Competition Commission, with disputed licence amendments going to the reporting side and appeals against prohibition decisions, fines and other related decisions going to the appeal tribunals. The Competition Act makes decisions of the appeal tribunals final (subject to further appeal on points of law). The Government's White Paper on regulatory reform envisages a similar, determinative role on the reporting side, subject to judicial review.

Throughout the period since the issue of utility prices was first referred to the MMC, the Commission has striven to provide a coherent and consistent framework which could help to provide predictability while, at the same time, remaining flexible enough to encompass latest best-practice thinking, new evidence and factors specific to the company or industry in question. That will continue in the Competition Commission.

‘The Secretary of State announced on 31 March 1999 that Judge Christopher Bellamy QC (presently a judge at the European Court of First Instance) would be the first President of the Appeal Tribunals.’



The Competition Act proposals for regulatory reform and the associated institutional arrangements, in my view, have now created the right policy framework for a powerful competition policy designed to protect competition and consumers while providing proper and effective safeguards for companies. One remaining issue is the extent of ministerial discretion in referring mergers to the Commission, and in implementing recommendations of the Commission in the event of an adverse finding. The Government has indicated that in due course it will want to review the present arrangements. For the Commission's part it stands ready either to continue as at present or to operate any new approach which the Government may determine. Apart from this, however, the main priority will be to ensure the effective implementation of the new legal and institutional structure of policy over the next three or four years to ensure that the full potential of the Government's reforms is achieved.

### 50 years of the MMC

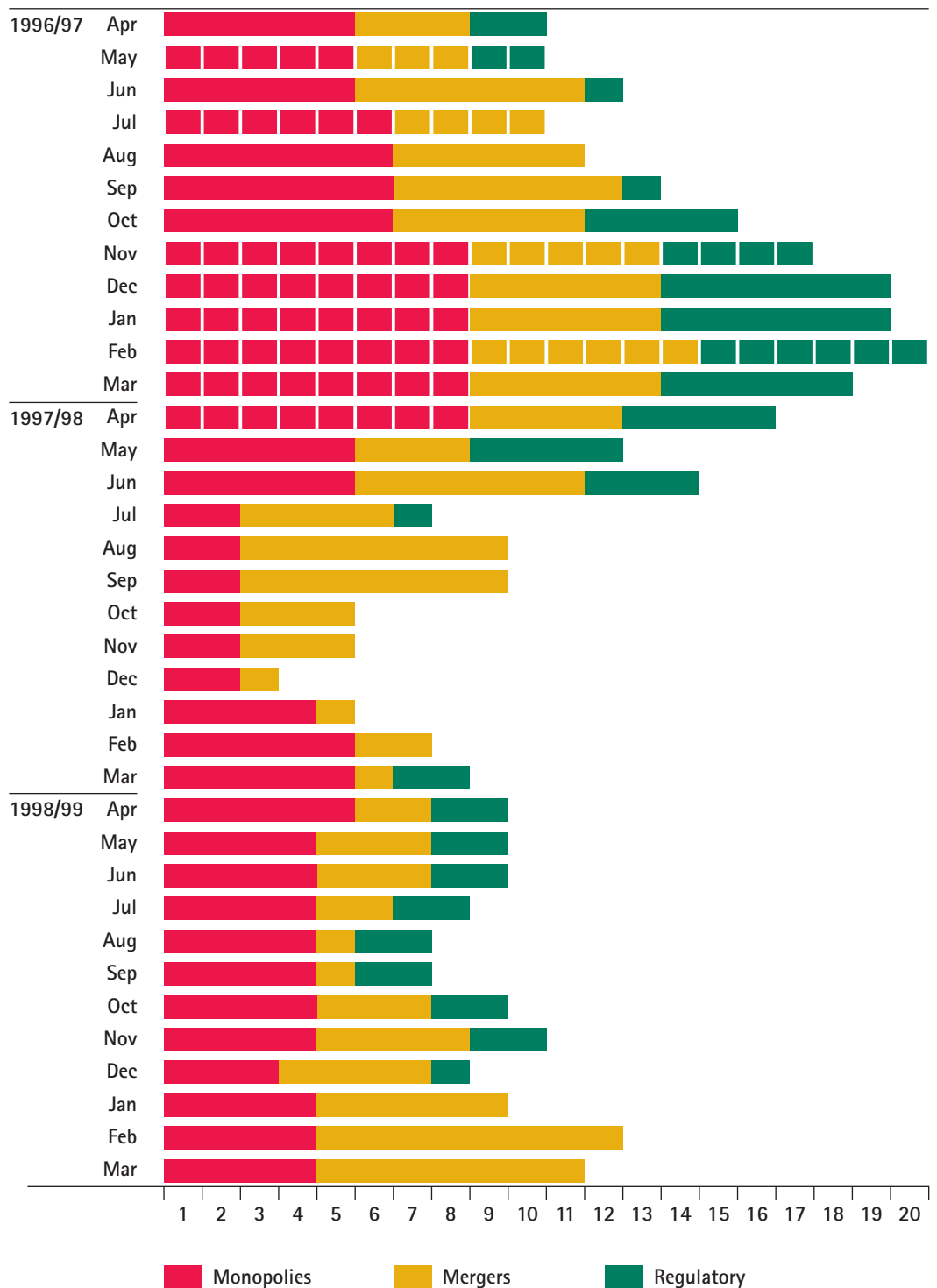
The MMC had a remarkable record and I much appreciated being its last Chairman. Later this year, Manchester University Press will be publishing a book by Professor Stephen Wilks, Professor of Politics at the University of Exeter, about the MMC and its work from 1949 to 1999. He has given his book the title *In the Public Interest*. Professor Wilks's views are independent: the book is not an authorised version, although we have co-operated with him and provided some support. I am delighted that Professor Wilks has contributed some thoughts on the MMC in this its final report.

As Professor Wilks points out, the continuation of the MMC in one guise or another for 50 years is rather extraordinary. He provides a number of reasons for this but, at a fundamental level, the institution worked and worked well. This was in no small measure due to the commitment, expertise and integrity of the members and staff, and I thank all of them, past and present, for their dedication and the excellence of their work.

Dr Derek Morris



### April 1996 to March 1999 – Units



### Chairman

**Dr Derek Morris** was from 1970 to 1998 the Fellow and Tutor in Economics, Oriel College, Oxford and latterly a Reader in Economics, Oxford University. He was Economic Director at the National Economic Development Office (1981–1984), and from 1984 until recently was Chairman of Oxford Economic Forecasting Ltd. He has published a number of books and articles on economic topics, primarily in industrial economics and on corporate control and performance. He has published work on economic reform in Chinese enterprises, and was adviser to the Asian Development Bank on enterprise reform in Central Asia.

### Deputy Chairmen

**Graham Corbett CBE** was a director and Chief Financial Officer of Eurotunnel and previously Senior Partner of Peat Marwick (now KPMG) Continental Europe. He is a non-executive director of Kier Group plc, Chairman of RICA, a charity which tests goods and services for disabled people, and a trustee of the Franco-British Council. He has an honorary doctorate from Brunel University.

**Denise Kingsmill** is a solicitor. She has been a partner in a number of city firms and is currently a consultant to Denton Hall in employment law and corporate governance. The early part of her career was spent in marketing with ICI and the International Wool Secretariat. She is a non-executive director of MFI Furniture Group and of the Norwich and Peterborough Building Society.

### Other members

**Hugh Aldous**, a chartered accountant, is a partner in Robson Rhodes and was the firm's Managing Partner from 1987 to 1997. He is Chairman of RSM International and a director of First Russian Frontiers Trust and of Gartmore Venture Capital Trust. He has served as an Inspector for investigations under the Companies and Financial Services Acts.

**Jack Beatson QC** is Rouse Ball Professor of English Law at Cambridge University and Fellow of St John's College. He was called to the Bar in 1972, was a Law Commissioner (1989–1994) and has been a Recorder of the Crown Court since 1994.

**Robert Bertram** was a company law partner in a leading Scottish legal firm and a member of the Scottish Law Commission. He serves on the governing bodies of Edinburgh University, the UK Central Council for Nursing, Midwifery and Health Visiting and the David Hume Institute. He is a non-executive director of the Weir Group plc and a member of the DTI's Company Law Review Steering Group.

**Sarah Brown** is a member of the Friendly Societies Commission, a non-executive director of Remploy Ltd and a board member of Look Ahead Housing and Care Ltd. Formerly, she was Director of Company Law at the DTI.

**Martin Cave** is Vice-Principal and Professor of Economics at Brunel University. He has held these posts since 1996 and 1987 respectively. He has been adviser to a number of organisations including OFTEL and the OFT.

**Anthony Clothier** is an international consultant and owner and operator of woodlands. Formerly Chairman of OFWAT Regional Customer Services Committee, President of the European Shoe Federation and Director of C&J Clark Ltd, he has also been involved in assessing effectiveness of international aid programmes.

**Roy Croft CB** is a non-executive director of Morgan Stanley Dean Witter Bank Ltd. From 1985 to 1993, he was Chief Executive and Executive Director of the Securities and Investments Board, and before that a Deputy Secretary in the DTI.

**Christopher Darke** has been General Secretary of the British Air Line Pilots Association since 1992 and was previously a National Officer with the Manufacturing Science and Finance Union.

**Nicholas Finney OBE** is Chairman and Managing Director of The Waterfront Partnership Ltd. Formerly Director of the British Ports Federation and National Association of Port Employees, he is a Fellow of the Chartered Institute of Transport, and member of the Association of International Maritime Economists.

**Paul Geroski** is Professor of Economics at the London Business School. He was President of the European Association for Research in Industrial Economics from 1995 to 1997 and is currently a member of the Council of the Royal Economic Society.

**David Hammond** is presently Chairman of Integrated Transport Systems Limited and a non-executive director of Bridgestreet Accommodations, Inc., Carlisle Holdings Limited and Provant, Inc. (which does not operate in the UK). He is also Chairman of a family company and Chairman or director of several companies involved in charity work, education and rugby union.

**Judith Hanratty** is Company Secretary of BP Amoco plc. She is currently a nominated-member of the Council of Lloyd's of London, a member of the Listing Authority Committee at the London Stock Exchange and an alternate member of the Takeover Panel. She was a non-executive director of London Electricity plc (1995-1997) and a Government nominee on the Insurance Brokers Registration Council (1992-1998). She is a Governor of the College of Law and a Fellow of Lucy Cavendish College Cambridge.

**Charles Henderson CB** was Director General of Energy at the DTI until 1996. He is Chairman of TotalFina's UK businesses and he holds a number of part-time appointments advising on energy matters. He is a Fellow of the Institute of Actuaries.

**David Jenkins MBE** has been General Secretary of Wales TUC since 1983. He is a member of the National Disability Council, and a member of the Employment Appeal Tribunal.

**Roger Lyons** is General Secretary of the Manufacturing, Science and Finance Union; a member of the TUC's General Council Executive Committee; and an executive member of the European Metalworkers Federation and the Confederation of Shipbuilding and Engineering Unions. He is a trustee of the Charities Aid Foundation and Fellow of University College London.

**Peter Mackay CB** is a director of the British Linen Bank, a visiting Professor at Strathclyde Graduate Business School, and a board member of Scottish Natural Heritage and the Northern Lighthouse Board.

**Kate Mortimer** has had a varied career in the Civil Service and the City. She is a non-executive director of British Nuclear Fuels plc, Crown Agents Financial Services Ltd and Crown Agents Asset Management Ltd. She is a member of the Royal Commission for the Exhibition of 1851 and of the Crown Agents Foundation Council.

**Roger Munson** is a chartered accountant. He was formerly a partner with Coopers & Lybrand and a member of the Accounting Standards Board.

**David Newbery FBA** is Professor of Applied Economics and Director of the Department of Applied Economics at the University of Cambridge. He is a Fellow of the Centre for Economic Policy Research and a member of the Environmental Economics Academic Panel at the Department of the Environment, Transport and the Regions.

**Dr Gill Owen** is an energy policy consultant, Chair of the Public Utilities Access Forum, a member of both the Director General for Electricity and Gas Supply's Advisory Board and the Bedfordshire Police Authority. She has been Specialist Adviser to the House of Commons Environment Committee and Expert Adviser to the Economic and Social Committee of the European Communities.

**Richard Prosser** is Chairman/director of Aluminium Products Ltd, Director of WQC Ltd, Managing Director of Hurley Hall Farms Ltd, and has other small business interests.

**Arthur Pryor CB** was Head of Competition Policy at the DTI until 1996. He is now an independent consultant on competition policy issues and government affairs.

**Richard Rawlinson** is a director of Monitor Company where he has been a strategy consultant since 1984. Previously he was a banking executive and an Associates Fellow at Harvard Business School.

**Judith Rees** is Pro-Director and Professor of Environmental and Resources Management at the London School of Economics. She is a member of the Technical Advisory Committee of the Global Water Partnership and the Link/TCS Board and was previously Chairman of OFWAT's Southern Customer Service Committee and a member of the Training Board of the Economic and Social Research Council. She has extensive research and consultancy experience in environmental and resources management and has published widely in this area.

**Timothy Richmond MBE TD DL** is a chartered accountant and accredited mediator. Formerly International Chairman of a major accountancy firm, he is a consultant in business direction and strategy. He is non-executive Chairman of Huthwaite International Limited and Littlemaxim Limited and a non-executive director of The Nottingham Law School Limited.

**Jonathan Rickford** is a solicitor and independent consultant on regulation and European law and policy, Project Director of the Government's Company Law Review and a Council member of the European Policy Forum. He was formerly the Solicitor to the DTI, and Solicitor, Director of Regulation and Director of Corporate Strategy at British Telecommunications plc.

**Dr Ann Robinson** has been Director General of the National Association of Pension Funds Ltd since 1995. She was Head of the Policy Unit at the Institute of Directors for six years after relinquishing her post as Senior Lecturer in Politics at the University of Wales, College of Cardiff. She was a member of the Economic and Social Committee of the European Community (1986-1993), Chairman of its Industry Section (1990-1992) and a director of Great Western Holdings (1996-1998).

**Dame Helena Shovelton DBE** is Chair of the National Association of Citizens Advice Bureaux and of the Audit Commission. She is a member of the Better Regulation Task Force and the Independent Review Body for banking and mortgage lending codes, a Commissioner at the National Lottery Commission and a Trustee of the Royal Airforce Benevolent Fund. She is a non-executive director of the Energy Saving Trust.

**Graham Stacy CBE** is a chartered accountant and spent most of his career as a partner with Price Waterhouse. He was a founder member of the UK Accounting Standards Board. He is currently honorary treasurer of The United Reformed Church in the United Kingdom and also of Sanctuary Housing Association.

**David Stark** is a chartered engineer and was a main board director of Tomkins plc until his retirement in 1997. He is a non-executive director of Norcross plc and non-executive Chairman of Glentay Ltd.

**Anthony Steele** is a chartered accountant and Professor of Accounting at Warwick University. His current research concerns issues of audit support and assessment of business performance.

### Utility Panel Members

**Michael Bromwich** is the Chartered Institute of Management Accountants' Professor of Accounting and Financial Management at the London School of Economics. He was a member of the Accounting Standards Committee and is a past President of the Chartered Institute of Management Accountants.

**David Fairbairn OBE** is Chairman of James Martin Worldwide plc and a member of the Patent Office Steering Board. He was formerly CEO of Texas Instruments Information Engineering Ltd and James Martin Associates Ltd. Prior to that he was director of the National Computing Centre.

**Stephen Finch OBE** is an independent consultant. Formerly the Assistant Co-ordinator in BP's Information Systems Administration and a BP Group Telecommunications Manager, he is a Fellow and past Chairman of the Telecommunications Managers Association, a non-executive director of the London Diocesan Fund and a trustee of the Dick Lucas Trust.

**Nicholas Garthwaite** has been an independent consultant at Cicero Strategy since 1996. He was Director of Telecommunications at Price Waterhouse Corporate Finance (1994-1996) and a Managing Consultant in the telecommunications group at Touche Ross (1986-1994). He spent his early career at the Department of Energy holding various posts in oil, electricity, European policy and energy efficiency divisions.

**Cosmo Graham** is Professor of Law at the University of Leicester and Director of the Centre for Utility Consumer Law.

**Tony Hadfield** is Deputy Chairman of BCN Data Systems Ltd and Chief Executive of Teesside Power Limited. Formerly Chief Executive of Northern Electric (1991-1997) and Chief Executive of Northern Ireland Electricity (1985-1991), he is a member of Council and the Public Affairs Board of the Institution of Electrical Engineers.

**Graham Hadley** has been an Energy Consultant and part-time Senior Adviser to the National Economic Research Association since 1996. He was a Board Director of National Power (1990-1995) and Board Secretary of the Central Electricity Generating Board (1983-1990). Previously he held a wide range of Civil Service posts.

**Patricia Henton** has been Director of Environmental Strategy for the Scottish Environment Protection Agency since 1995. She is a member of the Secretary of State for Scotland's Advisory Committee on Sustainable Development, past President of the Chartered Institution of Water and Environmental Management and a Council member of the Natural Environment Research Council.

**Gilbert Hogg** is a solicitor (LLB) and former Director of Regulatory Operations, Director of Legal Services, and Company Secretary of British Gas Corporation and BG plc. He is Chair of Phoenix House, a national drugs rehabilitation charity, and a trustee/director of Charterhouse-in-Southwark community service charity.

**Dr Malcolm Kennedy** is Chairman of consulting engineers PB Power, including Merz and McLellan (which he joined in 1964) and Chairman of Parsons Brinckerhoff International Inc. He is a Fellow of the Royal Academy of Engineering and President Elect of the Institution of Electrical Engineers (assuming office in October 1999). He is a non-executive director of the Port of Tyne Authority.

**Tony Kennerley** is an independent management consultant and former director of Intermatrix Ltd, Management Consultants (1984-1991). He is the Complaints Commissioner for the Channel Tunnel Rail Link and a member of Council of the British Institute of Management. A Founding Director of the Strathclyde Business School, he is a Chartered Engineer and an arbitrator with ACAS.

**Nigel Macdonald** is a senior partner at Ernst & Young, a review panel member of the Financial Reporting Council, a member of the board of the British Standards Institute and a member of the DTI's Industrial Development Advisory Board. A past President of the Institute of Chartered Accountants of Scotland, he was a member of the Cadbury Committee on Corporate Governance (1991-1995) and a member of the Byatt Committee (1984-1986) on the appropriate accounting policies for nationalised industries.

**Dr Elizabeth Monck** was Chairman of the Thames Regional Customer Services Committee (1993-1997). She is a Research Fellow at the Institute of Education Thomas Coram Research Unit, a member of a Drinking Water Inspectorate Committee and a National Gallery Trustee.

**David Parker** has been Professor of Business Economics and Strategy at Aston Business School since 1997 and holds a visiting research post at the Centre for the Study of Regulated Industries. He has consulted on privatisation and regulation overseas and is a member of the Institute of Management and a Fellow of the Royal Society for the Encouragement of Arts, Manufactures & Commerce.

**Jeremy Seddon** was head of BZW's Privatisation and Government Advisory Unit and Vice-Chairman of BZW Corporate Finance (1987-1995). He is Chief Executive of British Invisibles, the company responsible for promoting the UK's financial services industry in overseas markets.

**Martyn Webster** was Group Managing Director of Southern Water plc (1993-1996) and Group Finance Director (1989-1992). Previously, he was Group Financial Controller at Laporte plc and Financial Controller at NCR Ltd. He is a member of the Institute of Chartered Accountants in England and Wales.

**Alan Young** is a non-executive director of the UK Atomic Energy Authority and of Energy Power Resources Limited, and a director of Webster Young Limited. He was Chairman of RMS Communications plc (1992-1997) and Commercial Director of Scottish Hydro-Electric plc (1989-1994).

#### Newspaper Panel Members

**Sarwar Ahmed** founded Eastern Eye in 1989 and is now Publisher of Ethnic Media Group (EMG), a subsidiary of Southnews plc. EMG publishes *Asian Times*, *Eastern Eye*, *New Nation* and *Caribbean Times*.

**Linda Christmas** has been a Senior Lecturer in Journalism and Director of the Post-Graduate Course in Newspaper Journalism at City University, London, since 1989. She was an editor and reporter for *The Guardian* (1971-1982) and a reporter for BBC Newsnight (1987-1988).

**Geoffrey Copeman DL** is Vice-Chairman of Eastern Counties Newspapers Group Ltd. Previously on the boards of Norwich Union Insurance Group and the Press Association, he is also a past President of the Newspaper Society.



**William Gibson** was Chairman and Chief Executive of Westminster Press Ltd (1995-1996) and Managing Director of Financial Times Business Information (1990-1995). He is now Chairman of Kato Communication and a director of MQ Publishing.

**Gerald Holbrook** MBE was Managing Director of Yorkshire Post Newspapers (1983-1995), Regional Director of United Provincial Newspapers Ltd (UPN) (1985-1995) and retired in 1996 as Executive Director of UPN. He was President of the Newspaper Society (1994-1995).

**Joyce Hopkirk** rose from reporter on the *Gateshead Post* to Launch Editor of *Cosmopolitan*, Assistant Editor of the *Daily Mirror*, Women's Editor of the *Sunday Times*, Assistant Editor of the *Sunday Mirror* and Editor-in-Chief of *She* magazine. She is co-Chair of the Periodical Publishers' Association's award committee.

**Robert Kernohan** OBE is a freelance writer and broadcaster. He retired as a member of the Broadcasting Standards Commission in May 1999. He is a former Editor of *Life and Work*, and a former London Editor of the *Glasgow Herald*.

**Caroline Marland** has been Managing Director of *The Guardian* and *The Observer* since 1995 and is a non-executive director of Arcadia Group plc.

**Eve Pollard** is Chairman of Parkhill Publishing and Honorary President and a founding member of Women in Journalism. Former Editor of both the *Sunday Express* newspaper and magazine and *Sunday Mirror* newspaper and magazine, she is now a regular TV and radio broadcaster and a member of the English Tourist Board.

**Donald Trelford** has been Head of the Department of Journalism Studies at the University of Sheffield since 1994. He was Editor and a director of *The Observer* (1975-1993) and Chief Executive (1992-1993).

**Charles Wilson** was Managing Director of Mirror Group plc (1992-1998) and Editorial Director of Mirror Group Newspapers. Formerly Editor of *The Times*, *Glasgow Evening Times*, *Glasgow Herald* and the *Scottish Sunday Standard*, he is a member of the Youth Justice Board and a trustee of the World Wildlife Fund.

NEWSPAPER PANEL

Sarwar Ahmed  
Linda Christmas  
Geoffrey Copeman  
William Gibson  
Gerald Holbrook MBE  
Joyce Hopkirk  
Robert Kernohan OBE  
Caroline Marland  
Eve Pollard  
Donald Trelford  
Charles Wilson

ELECTRICITY PANEL

Prof Michael Bromwich  
Prof Cosmo Graham  
Tony Hadfield  
Graham Hadley  
Gilbert Hogg  
Prof Tony Kennerley  
Nigel Macdonald  
Dr Elizabeth Monck  
Prof David Parker  
Jeremy Seddon  
Alan Young

TELECOMS PANEL

David Fairbairn OBE  
Stephen Finch OBE  
Nicholas Garthwaite  
Prof Cosmo Graham  
Dr Malcolm Kennedy  
Prof David Parker  
Jeremy Seddon

WATER PANEL

Prof Cosmo Graham  
Graham Hadley  
Patricia Henton  
Gilbert Hogg  
Dr Malcolm Kennedy  
Nigel Macdonald  
Dr Elizabeth Monck  
Prof David Parker  
Jeremy Seddon  
Martyn Webster

The following ceased to be members of the Commission during the period of this review:

MEMBERS

Roger Davies  
Sir Archibald Forster  
Sir Ronald Halstead CBE  
Patricia Hodgson CBE  
Prof John Pickering  
James Roe

PANEL MEMBERS

Timothy Bowdler  
Sir Peter Gibbings  
Mark Kersen  
Timothy Willis

This review covers the last 12 months of the Monopolies and Mergers Commission's (MMC) activities. The MMC was dissolved and its functions taken over by the Competition Commission (CC) on 1 April 1999. When the prohibition provisions of the Competition Act 1998 come into force, the CC will have the additional new functions of hearing appeals from certain decisions made under that Act by the Director General of Fair Trading and the utility regulators. In 1998/99, the MMC was involved in the early stages of planning for this work, but most of its activity related to its own main functions.

### MMC's Role and Objectives

The MMC's role and objectives were set out in the Role, Strategy and Targets document agreed with the Department of Trade and Industry. As an independent body, operating within the framework of UK competition legislation, the MMC's role was to investigate and report on matters referred to it by the Secretary of State, the Director General of Fair Trading and utility regulators. These matters mostly involved mergers, monopolies and anti-competitive practices and disputed licence conditions between the utility regulators and their licensees. The MMC's objectives were to produce thorough, accurate and rigorously argued reports within the deadline specified, or within agreed extensions. In meeting those objectives, the MMC had also to:

- operate within the powers conferred by legislation;
- act fairly and reasonably, have regard to all relevant matters and give those affected a fair opportunity to present their views; and
- maintain independence.

Because others (Ministers, the Director General of Fair Trading and utility regulators) determined the MMC's workload, it was important to maintain a flexible organisation capable of meeting objectives at reasonable cost.

### Results

The workload in 1998/99 was, at 108 units, a little higher than in the previous year. A unit is an assessment of the resource consumption in performing a month of an inquiry. A single unit counts as one month of a merger inquiry involving two main parties. Thus a three-month merger is three work units; a three-month merger involving more than two main parties would be six work units. Monopoly inquiries involving one main party are

counted as one unit per month; those involving multiple parties are counted as two units per month. Regulatory inquiries are counted as two work units per month. The figures below show the work units completed in the last five years:

1998/99	1997/98	1996/97	1995/96	1994/95
108	100	174	134	66

### Performance Measure

The MMC agreed with the DTI that it would aim for a 3 per cent efficiency gain in 1998/99, measured against the performance indicator derived from five years' experience of the cost characteristics (which averaged £6 million + £10,500 per work unit), uprated by an agreed inflation factor. With 108 work units completed, this meant containing expenditure to £7,125,000. Actual expenditure was £6,483,000 which, after allowing for planning costs for the establishment of the Competition Commission, beat the target by 9 per cent. Flexible staffing arrangements and tight control of consultancy expenditure helped to achieve this but the even flow of work throughout the year was also a main contributor.

### Finance

The MMC was financed through a grant-in-aid from the DTI. Grant-in-aid was drawn down in line with forecast costs, quarter by quarter, reflecting the workload. The total grant-in-aid drawn was £5,956,000, less than expenditure because of reductions in working capital (mainly a change in the phasing of rent payments) and lower cash balances.

### Members

On 31 March 1999, there were 34 regular members of the MMC, including the Chairman and two Deputy Chairmen. This compared with 40 on 31 March 1998. The DTI held further competitions for recruitment to the newspaper panel and the utility panels. As a result, membership of those panels stood at 11 newspaper panellists and 17 utility panellists on 31 March 1999.





The size of the groups dealing with inquiries varied between four and five, depending on the availability of members and the workload. Two members (in addition to the Chairman and Deputy Chairmen) chaired inquiries: Professor Pickering chaired the ARRIVA/Lutonian merger inquiry in the late summer of 1998 and Sir Archibald Forster chaired the IMS/PMS merger inquiry in the first quarter of 1999. Having capable members who can chair inquiries is a great strength and enabled the MMC to handle its workload effectively with only two Deputy Chairmen.

A programme of seminars was held throughout the year covering economic and accounting concepts and the legal framework which underpinned the MMC's work. An increasing emphasis was placed on understanding EC competition law and its interaction with inquiries under the Fair Trading Act 1973.

#### Staff

On 31 March 1999, the total number of full-time equivalent core staff was 72.6 (73.5 on 31 March 1998). Staff on short-term contracts (additional reference secretaries, accountants, lawyers and industrial advisers) were drawn on to meet peaks of work. Turnover amongst core staff was 3.35 per cent.

David Fisher was promoted to the role of team manager in February 1999, combining this with duties as Head of Secretariat. The number of team managers thus rose from five to six. Inquiry support teams were restructured to enable staff to be used more flexibly and to encourage the development of their skills.

#### Consultants

Consultants were used to provide specialist expertise which would not otherwise be available. Because the workload was evenly spread, it was unnecessary to use consultants to help deal with peaks in the workload. Expenditure on consultants was £448,000 (£459,000 in 1997/98).

#### Environmental Initiatives

The MMC continued to adopt an environmentally friendly programme. Recycled paper, printer cartridges, and the disposal of waste through recycling, were used wherever possible.

#### Records Management

The MMC overhauled its records management system and started to develop an electronic files register and archives database.

#### Planning for the Competition Commission

A small internal planning group was set up to ensure that the transition to the Competition Commission on 1 April 1999 was handled smoothly. Preparations (resource estimates, liaison with the DTI over the recruitment of the President of the Appeal Tribunals, reorganisation of accommodation, research into possible models for the tribunals' rules of procedure) were made for the Competition Commission's new functions. A total of £121,000 was spent on this.

Penny Boys

#### Secretary

Penny Boys

#### Division Heads

Tim Head  
Jane Richardson  
Dr Clive Rix  
Geoffrey Sumner

#### Team Managers

John Banfield  
Clive Brewer  
Malcolm Field  
David Fisher  
Margaret Smith  
Alan Williams



## A history of the Monopolies and Mergers Commission

Like royalty, organisations often enjoy more than one birthday and, for the MMC, 1999 is as plausible a fiftieth anniversary as was 1998. The Act which created the Commission was passed in 1948 but the first members were appointed from 1 January 1949 and the first references were made on 1 March. The publication of a history of the MMC later this year will therefore still have an anniversary flavour. I have been working on an independent, scholarly study of the Commission and have kindly been invited to contribute some reflections. These, I have to stress (and have stressed in the book), are solely my own observations and should not be taken as reflecting the views of the Commission.

From the viewpoint of an administrative historian the extraordinary characteristic of the Commission is its longevity. It began life as the Monopolies and Restrictive Practices Commission in 1948–49, became the Monopolies Commission in 1956 and the Monopolies and Mergers Commission in 1973 when Sir Geoffrey Howe slipped the words 'and mergers' into the title at the last minute. From April 1999 it has, of course, undergone its most profound transformation to become the Competition Commission. Compared with the American authorities the MMC is a youngster. In Europe, however, it is the longest established anti-trust agency in continuous operation. It has displayed a genius for survival and has sustained some striking continuities.

In addition to the Darwinian perspective, work on the history presented the puzzle of a mismatch between the low profile of the Commission in the early 1980s, and the high profile of the body I was examining in the late 1990s. Economic historians and contemporary commentators throughout the 1960s and the 1970s tended not to be flattering about the MMC. At the end of each decade there were proposals to merge the Commission—with the National Board for Prices and Incomes (in 1969) and with the Price Commission (in 1979). In 1970 the legislation was actually on its way into Committee and the MMC was only saved by the general election. But by the end of the 1980s the Commission was a different body with a new range of responsibilities, much tighter management, and greatly increased activity. It is a telling statistic that during the two years 1989–90 the Commission signed more reports than in the first twenty-one years of its existence.

In explaining the survival of the MMC there are many factors to disentangle—from the whims of ministers and the coincidence of elections, to the Europeanisation of the British economy and developments in the theories of competitive markets. In straightforward terms, however, we could suppose that an organisation's chances of survival would increase if, first, it was successful; second, it fought for its survival; third, it had many friends; fourth, it had few enemies.

First, has the MMC been successful? The easy responses to this difficult question are that it all depends what you mean by success and, that if you mean improving economic efficiency, then no one knows. It is impossible to determine the impact which individual micro-economic interventions have on macro-economic trends such as economic productivity or efficiency in the economy at large. The MMC has helped to increase competitive pressures but in this it has been in partnership with the OFT and the DTI and as much depends on demonstration and deterrence as on specific reports. On a more practical level, the MMC has been increasingly successful over the past two decades. It has taken on important new functions in respect of the privatised utilities and its output has increased remarkably. By March 1999 it had completed 419 reports with an increase in every decade (1950s: 23; 1960s: 33; 1970s: 65; 1980s: 144; 1990s: 154). This speaks of a body that has become a reliable long-stop, available to investigate those difficult merger and utility cases which face government with irreconcilable dilemmas. It is as an administrative partner that the Commission has scored clear success.

It could be expected that the Commission would defend its record and lobby against abolition, but the historical record provides relatively little evidence of active campaigning. The Commission has come under threat at four junctures. In 1956 it was reduced in size and powers following the Restrictive Trade Practices Act and in the late 1950s it was put by Cabinet on a care and maintenance basis. Then there were the threatened mergers of 1969 and 1979 and, more recently, the debate over a 'unitary authority' during 1994–96. In the three earlier episodes the Commission was perturbed but relatively phlegmatic about its fate. There was little public lobbying and restrained private lobbying within Whitehall. In 1956 Sir David





Cairns refused to continue as Chairman of the shrunken Monopolies Commission but Sir Ashton Roskill in 1969 and Sir Godfray Le Quesne in 1979 appeared content to accept the priorities of ministers. In the mid-1990s the Commission defended its corner more proactively and in newspaper articles and evidence to the Trade and Industry Committee Sir Graeme Odgers advanced the argument that was eventually accepted by government—namely that a credible, accountable and equitable administrative process required a separation of powers.

The arguments in favour of retaining the MMC have been advanced as much by its friends as by the Commission itself. Oddly, in the light of regular business criticism of the Commission's procedures and its reports, the collective view of business has been much in favour of the Commission since the early 1960s. The CBI quickly became disenchanted with the Restrictive Practices Court and found itself to be very much in favour of the case-by-case pragmatism of the Commission. From the mid-1960s onwards it lobbied forcefully for the abolition of the Court and for the retention and strengthening of the MMC. Another group of potential friends is the economists. It would be foolhardy to try to identify a single view of the MMC and in fact there has been a regular vein of criticism from economists, but the Commission has become distinctly more congenial to the discipline. The 1960s saw more economists join as members. They were followed by economists on the staff in the 1970s and by a more systematic adoption of an economic approach in the 1980s as the Commission began to stress the 'effect on competition' as the dominant element in the public interest judgement. Not only has the Commission provided economists with a wealth of case studies—it has, in its careful case-specific analysis of competitive circumstances, offered an approach compatible with economists' increased inclination to consider the particularities of each case. The Commission is not dogmatic, it is flexible—it has avoided the error of applying the same legal rules to differing economic circumstances.

A further group of Commission supporters which have emerged from the history as particularly influential are the officials of the Board of Trade and then of the DTI. As far as the DTI is concerned the MMC has been reliable, has displayed sound judgement, has not rocked the political boat and has commanded respect through the thoroughness of its procedures and the integrity of its members. The MMC was the creation of the BoT and, repeatedly across the years, key BoT/DTI officials have seen that it was good and have argued the case for retaining an administrative agency.

What of the MMC's critics? Individual reports have sometimes provoked storms of protest but systematic opposition has been ephemeral. The most dangerous predicament for an administrative agency is to become embroiled in inter-party ideological conflict. In Britain's two-party system agencies closely associated with the industrial politics of the rival party have been vulnerable. The MMC has remained insulated from the ideological debate, partly because aspects of competition policy have appealed to both main parties, partly because it has restricted itself to the task in hand and to the dispassionate production of reports. The result has been that the MMC is one of the few supply-side agencies to have avoided the wholesale restructurings which have been associated with nationalisation versus privatisation; indicative planning versus liberalisation; selective intervention versus disengagement; and prices and incomes policy versus free bargaining.

In each decade the MMC has owed its continued existence to varying causes. Board of Trade support in the 1950s, CBI support in the 1960s and the 1970s, a fortuitous expansion of its functions in the 1980s and a marked increase in the importance of competition itself in the 1980s and the 1990s. These decades have produced an organisation that is in part investigator, in part tribunal, in part a body of experts. What should be emphasised are the continuities which have built a series of historically derived principles into the operation of the Commission. I will touch on five.

First is the principle of producing a full report which considers all aspects of the issues referred and which contains the entirety of the Commission's analysis and recommendations. This provides remarkable thoroughness and remarkable openness. Second, the principle of part-time membership. The Commission has operated on the basis of a cadre of part-time members (187 in total since 1949). The only full-time member has been the Chairman. There are advantages and disadvantages to this principle but it does provide a representative, expert and independent Commission. Third, the Commission bases its reports on a judgement of the 'public interest'. This is a principle which is wide, flexible and specific to each case. Nowadays there is felt to be a strong 'public interest' in encouraging competition but the criteria which the Commission applies on the reporting side remain unfettered by a strict economic calculus. In practice all jurisdictions make such a judgement. It could be argued that the explicit public interest judgement made by the Commission is at least open and honest. Fourth, the Commission has, since its inception, adopted procedures which stress the principles



of natural justice. The procedures are relatively elaborate and relatively time-consuming but they allow all parties to make their case and they are steeped in thoroughness and impartiality. Parties get a fair hearing and are usually willing to acknowledge this virtue of the procedures. An indication of the lack of preconceptions is provided by the fact that of the 211 merger references reported on by the Commission between 1965 and 1997, in only 48 cases did the Commission recommend that they should not, under any circumstances, be allowed. (The rest were allowed, allowed with conditions, or abandoned.) Finally there is the case-by-case principle. Each case is different. The Commission seeks for consistency in procedures and analysis but it is not bound by precedent. Of course, this introduces an element of unpredictability but it also reassures the parties that the case will be appraised on its merits. False analogies and ingenious legal precedents will not overwhelm the specifics of the issue.

Examination of the history of the MMC offers some fascinating continuities and some ingenious adaptations over the years. The first of the eight Chairmen, Sir Archibald Carter, the first Secretary, Dame Alix, Lady Meynell, and the first Secretary of State, Harold Wilson, would all have seen in the current Commission features that they recognised. But the Commission of 1999 is a very different creature from that of 1949. In its range of functions, in its analytical approaches, in the criteria it employs, the experience it has accumulated and in the integration of staff and members, and of law and economics it has become a sophisticated regulatory agency. 1999 has also, of course, seen the most radical transformation in the Commission's history as it gains a new appeals arm, a new managing council and a new salience. It is likely that the sum of the new Commission will be greater than its parts. And it is to be hoped that the weight of its history will not inhibit the new Commission from building on its unique and distinguished legacy.

*Stephen Wilks is Professor of Politics and Deputy Vice Chancellor of the University of Exeter. He acknowledges the aid of the Economic and Social Research Council in undertaking research for this study. His book, 'In the Public Interest: competition policy and the Monopolies and Mergers Commission', will be published by Manchester University Press in November.*

#### PAST CHAIRMEN

**Sir Archibald Carter GCMG KCB KCIE**  
(1 Jan 1949 – 31 Dec 1953)

**Sir David Cairns QC**  
(1 Jan 1954 – 30 Nov 1956)

**Richard Levy QC**  
(1 Dec 1956 – 30 Nov 1965)

**Sir Ashton Roskill QC**  
(1 Dec 1965 – 30 Nov 1975)

**Sir Godfray Le Quesne QC**  
(1 Dec 1975 – 31 Dec 1987)

**Sir Sydney Lipworth QC**  
(1 Jan 1988 – 18 Apr 1993)

**Sir Graeme Odgers**  
(19 Apr 1993 – 31 Dec 1997)

**Dr Derek Morris**  
(1 Feb 1998 – )



Reports published between 1 April 1998 and 31 March 1999



During this period 11 Commission reports were published. The following section describes briefly the key points in those reports. For a full account the reader should refer to the published reports.



**Referred**

20 November 1997

**Completed**

18 November 1998

**Published**

24 February 1999

**Inquiry Group**

Denise Kingsmill  
 Professor Martin Cave  
 Roy Croft CB  
 Roger Lyons  
 Kate Mortimer

## Underwriting services for share offers

This inquiry concerned the supply of underwriting services for share offers. When a company makes a share issue, it usually seeks to guarantee the proceeds by getting the issue underwritten. A lead underwriter undertakes to subscribe, at the issue price, to any part of a share issue not taken up by others, and it may lay off its risk with sub-underwriters.

The MMC found that there had been a long-standing practice of using standard fees for underwriting services. Companies making rights issues (and some other types of share offer) were charged a fee of 2 per cent for an underwriting period of up to 30 days; 0.5 per cent of this was retained by the lead underwriter, 0.25 per cent paid to brokers for arranging sub-underwriting and 1.25 per cent paid to sub-underwriters. Since October 1996 the sub-underwriting for many larger rights issues had been tendered, leading to some reduction in sub-underwriting fees.

The Commission found two complex monopoly situations to exist. The first concerned the supply of lead underwriting services at standard fees and was in favour of lead underwriters who used those fees. The second concerned the supply of sub-underwriting services at standard fees and was in favour of lead underwriters, brokers and sub-underwriters who used those fees.

The MMC noted that competition among financial advisers and brokers was reasonably vigorous and saw no grounds to conclude that the fees retained by lead underwriters and those paid to brokers were higher than they would be in the absence of standard fees. On sub-underwriting, the MMC concluded from the data on actual returns of sub-underwriters in the 1986 to 1996 period and from the results of tendering that the use of standard fees resulted in sub-underwriting costs being higher for some companies than they otherwise would be, at any rate up to October 1996. The MMC also concluded that there would be times in the future when standard fees would be used in cases where tendering would have resulted in lower fees. It therefore found that the practice of using standard sub-underwriting fees operated against the public interest.

The MMC examined the possible conflict of interest faced by financial advisers who also acted as lead underwriters and, in particular, whether the lack of non-underwritten deep discounted issues was a consequence of financial advisers advising companies against such issues because they wanted to earn an underwriting fee. They found that the lack of these issues was better explained by the preferences of companies.

The MMC received many submissions both attacking and defending the guidelines to institutional investors about voting on resolutions to waive the statutory pre-emption requirement, that is the requirement that a company must not offer shares to any person unless the offer has first been made to shareholders in proportion to their existing holding. The MMC concluded that institutional investors chose to adhere to the pre-emption guidelines not for reasons connected with earning sub-underwriting fees but because they want to protect their rights as shareholders. The MMC considered whether a relaxation of the guidelines might be a remedy for the adverse effect of sub-underwriting fees being too high. It concluded that it would not, as it did not believe that issuing costs would be lower, on average, for non-pre-emptive share issues. More fundamentally, it thought that the pre-emption guidelines were primarily a corporate governance rather than a competition issue and should be considered in that context.

The MMC recommended that:

- (a) The Securities and Futures Authority Limited should issue guidance to corporate financial advisers reminding them of the application of the Financial Services Authority's principle on information for customers and recommending that they should advise their clients of alternatives to underwriting at standard fees.
- (b) The London Stock Exchange should amend listing rules to the effect that, when companies undertake an underwritten share issue in which less than two-thirds of the sub-underwriting is to be offered for tender, the directors should be required to explain to their shareholders in the offer document and in their annual report why they have chosen this route.
- (c) The Bank of England should publish guidance for companies on share issuing good practice. Among other things, it should encourage the use of tendering and explain when deep discounting was likely to be advantageous.

The MMC also recommended that the DTI should examine the scope for reducing the minimum length of the rights period, and that the Chancellor of the Exchequer should consider taking steps to amend the Capital Gains Tax rules to remove a disincentive to the use of deep discounting.





## Birds Eye Wall's Ltd

This inquiry, under the provisions of the Competition Act 1980, concerned four courses of conduct in relation to the distribution of wrapped ice cream which the Director General of Fair Trading (DGFT) believed had been carried out by Birds Eye Wall's Ltd (BEW). BEW supplied almost 70 per cent of wrapped ice cream in the UK. It distributed wrapped ice cream primarily through its dedicated distributors which it appointed on contractual terms. These terms did not allow them to handle products which competed with BEW products.

The MMC found no evidence that BEW had refused to supply other wholesalers. The MMC did find that BEW had supplied certain regional wholesalers on terms which were less favourable than those which it granted to its dedicated distributors. The MMC also found that BEW had supplied wholesalers on a basis which provided them with other benefits less favourable than the benefits which BEW conferred upon dedicated distributors. Finally, the MMC found that BEW had also granted discounts to retailers who purchased BEW wrapped ice cream from dedicated distributors, but not to retailers who purchased from other suppliers.

The MMC found that each of the three courses of conduct which were being pursued by BEW had restricted and distorted competition between wholesalers, thereby reducing the ability of wholesalers (who were not dedicated distributors) to compete to supply BEW's ice cream. Given that BEW was the leading brand, the particular importance of distribution in the supply of wrapped ice cream and the dependence of other suppliers on national and regional wholesalers, the MMC also found that each of the courses of conduct being pursued by BEW had restricted and distorted competition between manufacturers. The MMC concluded that by pursuing each of the courses of conduct, BEW was engaging in an anti-competitive practice. The MMC found no offsetting benefits to the public interest from these anti-competitive practices and believed that they each operated against the public interest by reducing competition between BEW's dedicated distributors and wholesalers, and by reducing competition between manufacturers, and consequently by reducing choice and competition at the retail level in the supply of wrapped ice cream. The MMC concluded that the anti-competitive practices each operated against the public interest.

The MMC recommended that BEW be required to supply wholesalers on the same terms as dedicated distributors from 1 March 1999 and that those terms should be fully transparent; that BEW should not offer any discounts to retailers available only on purchases from dedicated distributors; and that it should not increase the remuneration of dedicated distributors for delivery to direct accounts. During the inquiry, however, a number of concerns about the industry were expressed to the MMC which were much wider than the specific courses of conduct which had been referred to it under the Competition Act 1980. The MMC suggested that if the DGFT believed the matters giving rise to these concerns were or might be distorting competition and were not being resolved, then he should give immediate and serious consideration to whether a wider review into the industry was necessary.

### Referred

22 December 1997

### Completed

30 April 1998

### Published

29 July 1998

### Inquiry Group

Graham Corbett CBE  
Robert Bertram  
David Hammond  
Dr Gill Owen  
Richard Rawlinson



## Fresenius AG and Caremark Limited

### Referred

2 December 1997

### Completed

9 March 1998

### Published

30 April 1998

### Inquiry Group

Dr Derek Morris  
 Prof Jack Beatson QC  
 Peter Mackay CB  
 Prof Judith Rees  
 Prof Anthony Steele

This inquiry concerned the proposed acquisition of Caremark Limited (Caremark) by Fresenius AG (Fresenius). Caremark provided services to patients who suffered from serious medical conditions but were treated at home. Fresenius was a large, fast-growing German healthcare company.

The NHS was virtually the sole purchaser of homecare services for the ten main treatments dealt with by Caremark. Services for five of the treatments in England and Wales, and all ten in Scotland, were provided in response to GP prescriptions, the cost of the services required being included in the price of the drugs or feeds. For the other five treatments in England and Wales, Health Authorities entered into contracts for the provision of the services.

The five services bought through contracts (contracted services) were analysed as a single market, although separate scrutiny was also necessary for some of them. For services bought through prescriptions (prescribed services), the suppliers of the drugs and feeds determined who would supply the services associated with each treatment, so each had to be considered separately.

In contracted services Caremark had 58 per cent of private sector supply measured by number of patient-days and 69 per cent by sales revenue. Among prescribed services, Caremark had had a substantial but declining share in enteral nutrition (EN—nutrition administered direct to the gut); about one-third of services for patients on immunoglobulin treatment; and effectively 100 per cent for the other three prescribed services.

Fresenius was one of only three other private sector suppliers with a significant share of the contracted services market. It was an important competitor in the supply of services for patients on parenteral nutrition (PN—nutrition administered other than to the gut) and in the absence of the merger was likely to become more active in the other areas. There was therefore a clear loss of competition in this market. Barriers

to entry were significant. The Group did not consider it satisfactory that the NHS should have to rely on own-provision in order to offset weakness in private sector competition caused by the merger. NHS purchasing practice was evolving but in the short to medium term the Group did not expect developments which would offset the effect of reduced competition. They considered that the merger would make it harder for the NHS to obtain value for money in purchasing PN services and would lead to a significant reduction in competition for the supply of other contracted services.

In prescribed services the key role played by the drug and feed suppliers led the Group to the view that the merger would not have an adverse effect.

The merger entailed an element of vertical integration. The Group believed that Fresenius would seek to use the acquisition of Caremark to increase sales of its products and that in the contracted services market, as a result, the merger would reduce purchasers' freedom to choose the products and services they wanted.

The Group did not identify any benefits and concluded that the merger was against the public interest because prices for the supply of contracted services, particularly for PN patients, would be higher, quality of service lower and choice of products and service supplier for the NHS reduced compared with what would happen otherwise.

The Group considered that there were no remedies short of prohibiting the merger which would be practicable and effective. In the absence of initiatives to deploy NHS purchasing power in a more active and co-ordinated way, they recommended that the merger be prohibited.



## Johnston Press plc and Home Counties Newspapers Holdings plc

This inquiry concerned the proposed transfer to Johnston Press plc (Johnston) of the 48 local newspapers owned by Home Counties Newspapers Holdings plc (HCN).

Johnston was the fifth largest publisher of regional and local newspapers in the UK. HCN was much smaller. It published a mix of paid-for and free weekly newspapers in London, Essex, Hertfordshire, Bedfordshire and Buckinghamshire.

The MMC was satisfied that the increase in concentration that would arise from the transfer at national level would not give rise to public interest concerns. It was also satisfied that the transfer gave rise to no regional concerns that were distinct from the issues arising in local markets.

At local level, Johnston's and HCN's operations overlapped in Milton Keynes and four localities in Bedfordshire. The MMC noted that, if the transfer were to proceed, Johnston's share of the circulation and distribution of weekly newspapers in these areas would rise to between 51 and 72 per cent. In all the overlap areas there was some competition from free Sunday newspapers and the MMC was satisfied that, where these were sufficiently established, they would provide real choice for local readers and ensure that the interests of advertisers generally were adequately protected. It took the view that this was the position in three of the overlap areas but not in two others—Luton and Dunstable and Milton Keynes—where the free Sunday newspapers were not sufficiently well-established to provide effective competition in the event of the transfer. It considered that competition from other media or the general threat of entry by other publishers was not by itself adequate to protect the interests of readers and advertisers in these localities.

However, HCN's titles in Luton and Dunstable and Milton Keynes were making substantial losses and the MMC concluded that, if Johnston were not to acquire HCN, these titles would close, producing competitive conditions almost identical to those arising from the transfer. It also believed that Johnston would, if the merger went ahead, retain and develop some of HCN's paid-for weekly newspapers, and that this could be of particular value to readers in rural areas. Accordingly it concluded that the transfer may be expected not to operate against the public interest.

### Referred

23 February 1998

### Completed

12 May 1998

### Published

10 June 1998

### Inquiry Group

Dr Derek Morris  
Sarah Brown  
Mark Kersen  
Richard Prosser  
Timothy Willis

**Referred**

31 March 1998

**Completed**

23 July 1998

**Published**

23 September 1998

**Inquiry Group**

Graham Corbett CBE

Robert Bertram

Nicholas Finney OBE

Prof John Pickering

Dame Helena Shovelton DBE

## Ladbroke Group PLC and the Coral betting business

The MMC was asked to investigate the acquisition by Ladbroke Group PLC (Ladbroke) of the Coral betting business from Bass PLC.

Ladbroke was the largest firm in the UK off-course betting industry with a chain of some 1,900 licensed betting offices (LBOs). Coral was number three with 833 LBOs. The only other national chain was the William Hill Organization Limited (William Hill).

Ladbroke argued that its acquisition of Coral did not present problems for the public interest for the following reasons:

- competition was essentially a local matter;
- since most racing betting was at prices determined by on-course markets in the form of board and starting prices, there was little scope for price variation in off-course LBOs;
- punters' choice of LBOs was determined primarily by location and secondarily by quality of outlet and the service provided;
- possession of a well-known brand name brought little competitive advantage; and
- independent firms were fully capable of providing effective competition to outlets of national chains.

In order to address the situation where the merger would eliminate competition in local markets, Ladbroke had entered into a conditional agreement to sell 134 LBOs to Tote Bookmakers Limited.

The Group considered that there was an important national component to competition in the provision of off-course betting services through pricing, branding and quality of outlet. Steps taken to deregulate some aspects of the industry and its relations with its customers, together with the National Lottery's effect on attitudes to gambling, led them to the view that the further development of national competition was both practicable and to be encouraged.

The merger increased Ladbroke's share of LBOs from 21 to 30 per cent and its share of off-course betting turnover from 26 to 38 per cent. As a consequence Ladbroke had markedly increased its lead in the market and its size relative to William Hill. The merger had also removed Coral, which the Group regarded as an important third national competitive force.

In the Group's view the merger would lead to a weakening of price competition at national level to the detriment of punters. It would have a dampening effect on innovation and reduce punters' choice of major LBO chains. It would also have adverse effects in reducing local choice, going beyond the 134 local markets covered by Ladbroke's conditional agreement with Tote Bookmakers Limited.

There were a number of other aspects on which the merger had consequences which the Group regarded as undesirable. Although the Group made no formal findings with respect to these, two members believed that the strengthening of Ladbroke's position (a) in Bookmakers' Afternoon Greyhound Services Limited—which arranges for greyhound meetings to be held at times suitable for LBO punters to bet on—and (b) in the ownership of greyhound tracks would harm the public interest.

The Group as a whole considered that the adverse effects of the merger were not offset by benefits and concluded that the merger was against the public interest. They considered that the adverse effects could only effectively be remedied by restoring an industry structure conducive to the development of competition. They recommended that Ladbroke be required to divest the Coral business in a manner approved by the DGFT within six months of the report's publication.



## Tomkins plc and Kerry Group plc

This inquiry concerned the acquisition by Tomkins plc (Tomkins) of enterprises previously under the control of Kerry Group plc (Kerry). Before the merger, Tomkins, primarily through its subsidiary, Rank Hovis Ltd (RH), produced some 24 per cent of flour milled in the UK; the assets acquired from Kerry were primarily those of Spillers Milling which produced some 11 per cent of flour milled in the UK. Over half of RH's output was used by other subsidiaries of Tomkins, particularly in baking bread. The Spillers Milling mills which were acquired only supplied the free market in flour (which excludes in-house use of flour by the vertically integrated companies), to which it was the leading supplier. After the merger, RH accounted for about 39 per cent of supply to the free market.

The MMC concluded that the merger gave rise to a significant increase in concentration in the supply of flour, particularly of free flour (flour supplied to the free market) including free flour supplied to bakers. In the MMC's view, Spillers Milling had made an effective contribution to competition in the free flour market, and would in future have been an effective competitor nationally had it been acquired by a person other than Tomkins; the merger therefore removed a significant national competitor from the market and reduced competition in the supply of free flour. The MMC did not believe that competition from other millers, from new entrants or from imports would be sufficient to safeguard against that loss of competition. The MMC also did not believe that the countervailing strength of buyers of flour following the merger was likely to provide sufficient safeguard to maintain adequate competition in the industry. Spillers Milling was the largest non-vertically-integrated supplier of flour, and the only such supplier with national coverage. The merger increased the dependence of the non-vertically-integrated bakers on the major integrated millers, weakening the position of those non-vertically-integrated bakers, and adversely affecting competition in the supply of flour-using products, in particular bread.

The MMC believed that the reduction of competition in supply of free flour may be expected to result in higher prices for free flour and in higher prices and less choice of flour-using products, particularly bread, than would otherwise be the case. The MMC concluded that the merger operated against the public interest.

The MMC believed that only structural remedies would be appropriate. The MMC recommended that Tomkins should divest four of the six mills (acquired at Avonmouth, Liverpool, Newcastle and Tilbury) which produced hard flour for breadmaking, to a purchaser approved by the DGFT. That divestment would in the MMC's view reduce RH's share of the supply of free flour to a level at which the adverse effects specified would not be expected to arise. The MMC also recommended that Tomkins undertake, for a period of one year after the date of divestment, not to increase production of hard flour at the Spillers Milling Cambridge mill, which produced mainly soft flour.

### Referred

22 April 1998

### Completed

29 July 1998

### Published

24 September 1998

### Inquiry Group

Denise Kingsmill  
Hugh Aldous  
Dr Gill Owen  
Dr Ann Robinson  
James Roe

**Referred**

10 July 1998

**Completed**

22 October 1998

**Published**

18 November 1998

**Inquiry Group**

Prof John Pickering

Sarah Brown

Sir Ronald Halstead CBE

Arthur Pryor CB

Jonathan Rickford

## ARRIVA plc and Lutonian Buses Ltd

This inquiry concerned the acquisition by ARRIVA plc (ARRIVA) of Lutonian Buses Ltd (Lutonian). In 1997, ARRIVA was the third largest operator of bus services in Great Britain, its operations in Bedfordshire and Hertfordshire being carried out primarily by its subsidiary ARRIVA the Shires Ltd (ARRIVA the Shires). Within the borough of Luton, at the time of the merger ARRIVA the Shires accounted for 82 per cent of the market, measured in terms of bus miles, and Lutonian for 13 per cent. Between them, therefore, they accounted for almost all commercial bus mileage in Luton.

In October 1997, ARRIVA the Shires had introduced its own low-cost minibus operations—named Challenger—on exactly the same routes as the six most profitable Lutonian routes. Its services were timed to run shortly in front of those of Lutonian, and its fares were below those of Lutonian and of ARRIVA the Shires' other services with which it overlapped. Challenger was run at a significant loss, and with no effective plan for achieving profitability. In the MMC's view, it was primarily due to the unduly aggressive competition from Challenger that the owners of Lutonian chose to sell. The MMC regarded the purpose of Challenger as having been to drive Lutonian out of the market or to restrict its competitive development rather than to offer long-term competitive benefits to bus passengers in Luton.

In the MMC's view, Lutonian had been an effective competitor. There was, as a result of the merger, a clear loss of a separate competitor and the elimination of competition on many services in Luton. There was insufficient prospect of competition from new entry to discourage ARRIVA from taking advantage of its enhanced market power in Luton following the merger. The main barrier to entry was, in the MMC's view, the prospect of retaliation by the incumbent who, by controlling Lutonian, now occupied all the main niches in the Luton bus market. The MMC believed that the loss of competition and potential competition on commercial services in Luton may be expected to result in higher fares and/or lower choice and/or less innovation on routes and services and poorer levels of service. The MMC did not believe that any benefits from the merger were sufficient to offset the adverse effects identified, and concluded that the merger operated against the public interest.

The MMC believed the detriments identified would be effectively remedied only by requiring ARRIVA to divest Lutonian to a purchaser approved by the DGFT. The MMC recommended that divestment would need to be linked with behavioural controls to ensure that, in the short term, there would be no action by ARRIVA that would hinder the ability of the divested business to establish a financially viable operation in competition with ARRIVA; in the longer term, appropriate measures to protect the divested business from predatory or unduly aggressive conduct should apply.



## Cendant Corporation and RAC Holdings Limited

This inquiry concerned the proposed acquisition of RAC Motoring Services Limited (RACMS) by Cendant Corporation (Cendant), a US company. RACMS is the former motoring services arm of the Royal Automobile Club. Cendant already owned Green Flag Group Limited (Green Flag), another breakdown organisation.

The Group found that the supply of insured breakdown services for light vehicles in the UK was a single economic market but with significant differences between the various sales channels:

- (a) direct retail sales to individuals;
- (b) intermediary schemes, where an intermediary body bought breakdown services wholesale and sold them to its customers or members on an unbundled basis;
- (c) mandatory schemes, where financial institutions bought breakdown services wholesale and sold them to their customers bundled with motor insurance;
- (d) motor manufacturer schemes, where motor car manufacturers bought breakdown services wholesale and sold them to customers bundled with the sale of a car; and
- (e) fleet sales, where fleet operators bought breakdown services wholesale for the benefit of users of their vehicles.

The Group saw the first two of these channels as forming one distinct segment of the market (the discretionary segment); motor manufacturer and fleet sales as a second segment; and mandatory schemes as a separate small segment.

The Automobile Association (AA) was the biggest supplier with 48 per cent of sales in the market as a whole. RACMS had 29 per cent and Green Flag 12 per cent. No other supplier had more than 3.5 per cent. Shares of the discretionary segment were similar.

The Group regarded Green Flag as an important competitive force in the discretionary segment. They considered that RACMS had great strengths and expected that, managed in a commercial manner, it would be able to compete successfully with the AA whether the merger went ahead or not. Some other

suppliers were potentially effective competitors in their chosen areas but the Group did not expect them quickly to attain a position comparable with Green Flag's. The market was highly concentrated and the merger would make it more so. The Group expected that, in the longer term, the relationships between the AA and the merged group would become duopolistic and that their shared interest in maintaining a high-priced market would prevail.

The Group believed the merger would have effects in the mandatory segment similar to those in the intermediary channel. They had no major concerns about the motor manufacturer and fleet segment, however, where the buyers were in a strong position.

The Group concluded that the merger would be against the public interest in that prices would be higher, service quality lower and innovation reduced compared with the situation which would otherwise exist. These effects would apply in the discretionary and mandatory segments which together accounted for 85 per cent of total revenue from the supply of insured breakdown services.

The Group did not believe there were any behavioural undertakings which could remedy the loss of the dynamic benefits of competition: the only adequate remedy was for RACMS and Green Flag to be kept in separate ownership. They therefore recommended that, before acquiring RACMS, Cendant should undertake to divest Green Flag, in a manner and to a party approved by the DGFT, such divestment to take place within six months of the undertaking being given. If Cendant was not prepared to give such an undertaking, the merger should be prohibited.

### Referred

24 September 1998

### Completed

23 December 1998

### Published

4 February 1999

### Inquiry Group

Graham Corbett CBE

Prof Judith Rees

Dr Ann Robinson

James Roe

David Stark

**Referred**

14 October 1998

**Completed**

28 January 1999

**Published**

25 February 1999

**Inquiry Group**

Sir Archibald Forster  
 Hugh Aldous  
 Patricia Hodgson CBE  
 Richard Prosser  
 Prof Anthony Steele

## IMS Health Inc and Pharmaceutical Marketing Services Inc

This inquiry concerned the acquisition of Pharmaceutical Marketing Services Inc (PMSI) by IMS Health Inc (IMS). Both companies were providers of business information services to pharmaceutical manufacturers and healthcare companies, IMS being the leading global provider. Pharmaceutical business information enables manufacturers to monitor their competitive position, identify areas of product development, focus their sales and marketing activities and remunerate their sales staff. In the UK, such information was previously based mainly on data relating to the sales of pharmaceutical products by wholesalers to pharmacies. At the time of the acquisition, PMSI owned Source Informatics Inc, which was developing, in competition with IMS, data services based on prescriptions processed at pharmacies. These new services included information identifying individual GPs, which has particular value to pharmaceutical companies.

The MMC identified the relevant market as that for specialised pharmaceutical data services, based primarily on data from wholesalers and from prescriptions processed at pharmacies. Before the merger, IMS supplied about 85 per cent of these services in the UK and PMSI about 8 per cent. In the MMC's view, PMSI was an effective actual and potential competitor to IMS in this market and competition had been reduced as a result of the merger. The prospects of effective entry were limited, given barriers to entry, and insufficient to offset the loss of competition. Although the customers in this market were major pharmaceutical manufacturers, the value to them of the services and the market information provided by IMS was considerable and there were no other significant suppliers. The MMC found that the countervailing power of customers was therefore also insufficient to offset the loss of competition.

The MMC concluded that the merger might be expected to result in higher prices to pharmaceutical companies, weaker incentives to improve quality of data and service, less innovation and choice and lower rewards to data providers, thus weakening

the incentives to provide data and maintain the quality of data provided. The merger would thereby have adverse effects on the efficiency, effectiveness and costs of the management and marketing of pharmaceutical companies. In consequence, it might be expected to lead to higher costs to the NHS, higher prices to consumers of non-prescription pharmaceutical products and less choice. The MMC believed that the benefits of the merger were not sufficient to offset the adverse effects. The MMC concluded that the merger might be expected to operate against the public interest.

The MMC considered that certain measures to encourage competition into the market would be the most appropriate remedy, and in this case more effective than full divestment. It recommended that IMS should be required to undertake to divest PMSI's former business based on wholesale data and to license prescription data on reasonable terms to other parties. IMS should also undertake to price transparently; to refrain from selling services as a package; and to end exclusive contracts with its data providers. If satisfactory undertakings could not be obtained within three months, PMSI's business in the UK should be divested.



## Mobile phones

In two references under section 13 of the Telecommunications Act 1984, the Director General of Telecommunications (DGT) asked the MMC to investigate charges made by Cellnet and Vodafone for calls from fixed phones to their mobile phone networks, including their charges for unanswered and diverted calls. In a third reference, the DGT asked the Commission to investigate the charges made by BT to its own customers for calls to the Cellnet and Vodafone networks.

When making the references, the DGT said that he considered the charges made by Cellnet and Vodafone to be excessive in relation to their costs. He also considered that BT's mark-up, or 'retention', on calls to the Cellnet and Vodafone networks was too high and should be reduced to the level of its average retention on national and local calls.

The Commission looked in detail at the actual and potential competitive pressures both on Cellnet's and Vodafone's charges and on BT's retail charges. It found that competition was insufficient to constrain these charges and that this was likely to remain the position for the next three or four years. It noted, however, that the situation was not static and that there was not a sufficient basis to conclude that competition would remain inadequate after that period.

The Commission considered that, in principle, termination charges should be cost-oriented and that only efficiently incurred costs should be taken into account. It determined an appropriate allocation of costs across different call types using Vodafone's costs as these were substantially lower than those of Cellnet. However, it noted that, as Vodafone's relatively low costs reflected its higher market share and economies of scale, charges that strictly reflected those costs could inhibit other mobile network operators from making termination charges a competitive issue, to the longer-term detriment of consumers. To avoid this problem, the Commission used, as its public interest benchmark, the efficiently incurred costs of an operator assuming it had 25 per cent of the current and anticipated market, allowing also for a 16.5 per cent return on capital.

On this basis, the Commission found that the charges made by Vodafone and Cellnet at the end of 1998 were 22 per cent above the public interest benchmark for 1998/99 and 30 per cent above that for 1999/2000. It concluded that these charges operated against the public interest and that, given the expected absence of competitive constraints in the near future, they may be expected to do so until March 2002.

The Commission also found that the practice of charging for calls terminating on a recorded message, and of charging for unanswered calls that are diverted from the time the diversion is announced, was against the public interest.

As to BT's charges, the Commission found that BT's retention on calls to mobile phones was nearly 150 per cent higher than its retention on local calls and 30 per cent higher than its retention on national calls. Retail costs allocated to calls to mobile phones were eight times as high as those allocated to local calls and over four times as high as those allocated to national calls. The Commission considered that there were various bases for producing a more efficient allocation of these costs than BT's current methodology. After detailed analysis, it found that BT's retention in 1997/98 was some 50 per cent higher than could be justified by properly allocated costs and a reasonable rate of return. Accordingly, it concluded that BT's charges for calls to the Cellnet and Vodafone networks operated against the public interest.

The Commission considered that the only effective way of remedying or preventing the adverse effects identified would be to impose a price control on Cellnet's and Vodafone's charges and a control on BT's retention. It also believed that Cellnet and Vodafone should be prohibited from charging for unanswered and diverted calls but that the costs of these calls should be recoverable from successful callers. The Commission recommended that the licences of Cellnet and Vodafone should be modified to require them to reduce their average termination charges to 11.7 pence per minute for 1999/2000 with a further reduction of RPI-9 in each of the next two years. It further recommended that BT should be required to reduce its average retention to 3.40 pence per minute for 1999/2000 and that this should be reduced again by RPI-7 in each of the next two years.

The Commission estimated that, taken together, these proposals would reduce the average rate charged for calls by BT subscribers to the Cellnet and Vodafone networks at the time of its report by around 25 per cent.

### Referred

5 March 1998

### Completed

4 December 1998

### Published

21 January 1999

### Inquiry Group

Dr Derek Morris  
 Stephen Finch OBE  
 Judith Hanratty  
 Charles Henderson CB  
 Timothy Richmond MBE TD DL

## Foreword

**Competition Commission**

On 1 April 1999 the functions of the MMC were transferred to the Competition Commission and the MMC was dissolved. This report and accounts cover the last year of the MMC's activities up to 31 March 1999.

**Brief history and background of the MMC**

The body originally established in 1949 as the Monopolies and Restrictive Practices Commission became the MMC under the Fair Trading Act 1973. Its role was to investigate and report on matters which were referred to it. The MMC had no power to initiate its own investigations. From 1 April 1995 the MMC was funded by grant-in-aid from the DTI.



### Principal activities

References were made to the MMC by the Secretary of State for Trade and Industry, the Director General of Fair Trading, the regulators of privatised industries or, in cases referred under the terms of the Broadcasting Act, by the Independent Television Commission or the Channel 3 licensees.

There were nine main types of reference:

- (i) Mergers
- (ii) Newspaper mergers
- (iii) Monopolies
- (iv) General references
- (v) Restrictive labour practices
- (vi) Competition references
- (vii) Public sector references
- (viii) Utility licence references
- (ix) Broadcasting references

The first five types of reference were made under the provisions of the Fair Trading Act 1973, while the next two were made under the provisions of the Competition Act 1980. References concerning the licensing of utilities were made under the terms of the appropriate privatisation statutes. Broadcasting references were made under the provisions of the Broadcasting Act 1990.

At the end of each inquiry the MMC submitted a report, usually to the Secretary of State or in the case of a utility licence reference to the appropriate regulator, setting out its conclusions and the evidence upon which these were based.

### Membership

At 31 March 1999 the MMC comprised a Chairman, two Deputy Chairmen, 31 regular members and 28 members who served on specialist panels. All members were appointed by the Secretary of State for Trade and Industry. Each inquiry was conducted by a Group, normally consisting of from four to six members, appointed by the Chairman. Biographical details of Competition Commission members are given in the Review.

### Review of activities

The Secretary's statement in the Review outlines the MMC's workload in 1998/99. A table in the Review provides a summary of the inquiries completed and the work in hand.



### Financial performance

Activities of the MMC were funded by grant-in-aid provided by the DTI. In 1998/99 the MMC had an excess of expenditure over income (after adjustments) of £453,000 (1997/98 £58,000) after receiving a revenue grant-in-aid of £5,843,000 (1997/98 £6,346,000) and £84,000 deferred grant.

The deficit was financed in the main, first, by an increase in creditors of £256,000 of which £215,000 resulted from a change in the payment terms for the rent of New Court and second, by cash balances £162,000 lower than at the end of the previous year.

The Role, Strategy and Targets document agreed between the MMC and the DTI required the MMC to operate cost effectively within the budget for the year or, if that should prove impossible, to alert DTI to the need for an increase in the budget in good time. The MMC received £2,118,000 (1997/98 £1,581,000) less than its voted grant-in-aid of £8,074,000. (See note 3 to the financial statements.) Funds of £189,000 allocated for Competition Commission work were not called upon.

A financial performance measure for 1998/99 was agreed between the MMC and the DTI. The measure took into account the need to keep available capacity to meet a normal workload and recognised the lack of influence that the MMC had over its workload. It incorporated a flexible element to reflect variations in the workload. The measure included a target for efficiency improvements after allowing for inflation. The measure agreed allowed the MMC £6,000,000 to meet its core costs plus £10,500 for each unit of work completed, the total to be reduced by a 3 per cent efficiency gain. Work units are an assessment of the resources required to complete one month of an inquiry. A single unit is attributed to a merger involving only two main parties whereas two units are given to utility licence inquiries. Monopolies vary greatly in size and complexity and are assessed from one to four units.

In 1998/99 the MMC completed 108 work units (1997/98:100). The target cost under the performance measure was £7,125,000. The actual cost was £6,483,000 which was 9 per cent better than target. This result was achieved against an exceptional background of a level workload throughout the year leading to much lower expenditure on the external consultants usually employed to manage peaks of activity.

### Inquiry costs

The costs of each inquiry for which a report was published during the year are shown on page 1. All the costs of the MMC were attributed to inquiries or to the development costs of the Competition Commission.

### Income arising from MMC activities not reported in the financial statements

Under certain privatisation Acts a statement of costs incurred by the MMC in its inquiries was provided to the appropriate regulator, who is responsible for collecting these costs from the regulated body. The regulators collect these costs and surrender the proceeds directly to the Consolidated Fund. The MMC also provided a statement of the costs of merger inquiries to the OFT which is responsible for setting the level of merger clearance fees. The OFT included the MMC's costs of merger inquiries in the memorandum trading account used in accounting for merger fees.



### Employee involvement

The MMC maintained an open management style. The minutes of the Secretary's consultation group were made available to all staff. Employees were also invited to participate through the use of the staff suggestions scheme.

### Employment of the disabled

The MMC adhered to the DTI's policy statement set out in its code of practice on the employment of disabled people.

### Payment of creditors

The MMC agreed to pay all properly authorised invoices by the due date or within 30 days of receipt if no due date had been agreed. Throughout the year the average payment period was 19 days.

### Post balance sheet events

Statutory Instrument 1999 No. 506 which came into force on 1 April 1999 transferred all the property, rights, obligations and liabilities of the MMC on 31 March 1999 to the Competition Commission. The liability of the DTI to pay pensions of retired Chairmen and Deputy Chairmen was also transferred to the Competition Commission. The fixed assets owned by the DTI but used by the MMC (see note 2(c)(ii)) were separately transferred to the Competition Commission at their balance sheet values of 31 March 1999. In view of the above the accounts have been prepared on a going concern basis.

A handwritten signature in blue ink, appearing to read 'Penny Boys'.

Signed  
Penny Boys  
Secretary and Accounting Officer  
23 June 1999



## Statement of the Accounting Officer's responsibilities

Under the Memorandum of Understanding (MoU) between the MMC and the DTI dated 17 June 1998 the MMC agreed to prepare a statement of accounts in a prescribed form (see annex). The financial statements were to be prepared on an accruals basis and were to give a true and fair view of the MMC's state of affairs at the year end and income and expenditure and cash flow for the financial year.

In preparing the financial statements the MMC agreed to:

- observe the form and content of the financial statements set out in the MoU (and reproduced as an annex to these financial statements) and apply suitable accounting policies on a consistent basis;
- make judgements and estimates on a reasonable basis;
- state whether applicable accounting standards had been followed, and disclose and explain any material departures in the financial statements; and
- prepare the financial statements on a going-concern basis, unless it were inappropriate to presume that the MMC would continue in operation.

The Accounting Officer of the DTI appointed me as the Accounting Officer for the MMC. My relevant responsibilities as Accounting Officer, including my responsibility for the propriety and regularity of the public finances for which I was responsible and for the keeping of proper records, were set out in the letter designating me as Accounting Officer.

A handwritten signature in blue ink, appearing to read 'Penny Boys'.

Signed  
Penny Boys  
Secretary and Accounting Officer  
23 June 1999



## Statement on the system of internal financial control

As Accounting Officer, I acknowledge my responsibility for ensuring that an effective system of internal financial control was maintained and operated by the MMC.

The system could provide only reasonable and not absolute assurance that assets were safeguarded, transactions authorised and properly recorded, and that material errors or irregularities were either prevented or would have been detected within a timely period.

The system of internal financial control was based on a framework of regular management information, administrative procedures including the segregation of duties, and a system of delegation and accountability. In particular, it included:

- comprehensive budgeting systems with an annual budget which was reviewed and agreed by me;
- regular reviews by me of periodic and annual financial reports which indicated financial performance against the forecasts;
- setting targets to measure financial and other performance; and
- as appropriate, formal project management disciplines.

The MMC had a contract with Pannell Kerr Forster (PKF) to provide internal audit services. PKF operated to standards defined in the Government Internal Audit Manual. Their work was informed by an analysis of the risk to which the body was exposed, and annual internal audit plans were based on this analysis. The analysis of risk and the internal audit plans were endorsed by the MMC's Audit Committee and approved by me. PKF provided me annually with a report on internal audit activity in the MMC. The report included PKF's independent opinion on the adequacy and effectiveness of the MMC's system of internal financial control.

My review of the effectiveness of the system of internal financial control was informed by the work of the internal auditors, the Audit Committee which oversaw the work of the internal auditor, the executive managers within the body who had responsibility for the development and maintenance of the financial control framework, and comments made by the external auditors in their management letter and other reports.

A handwritten signature in blue ink, appearing to read 'Penny Boys'.

Signed  
Penny Boys  
Secretary and Accounting Officer  
23 June 1999



## Certificate and report of the Comptroller and Auditor General to the Chairman and Members of the Competition Commission

I certify that I have audited the financial statements on pages 35 to 46 under annex C to the Memorandum of Understanding between the MMC and the DTI dated 17 June 1998. These financial statements have been prepared under the historical cost convention as modified by the revaluation of certain fixed assets and the accounting policies set out on page 38.

### Respective responsibilities of the MMC, Accounting Officer and Auditor

As described on page 32 the MMC and its Accounting Officer were responsible for the preparation of financial statements and for ensuring the regularity of financial transactions. They were also responsible for the preparation of the other contents of the Annual Review. My responsibilities, as independent auditor, are established by statute and guided by the Auditing Practices Board and the auditing profession's ethical guidance.

I report my opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Memorandum of Understanding, and whether in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them. I also report if, in my opinion, the Foreword is not consistent with the financial statements, if the MMC have not kept proper financial accounting records, or if I have not received all the information and explanations I require for my audit.

I read the other information contained in the Annual Review and consider whether it is consistent with the audited financial statements. I consider the implications for my certificate if I become aware of any apparent mis-statements or material inconsistencies with the financial statements.

I review whether the statement on page 33 reflects the MMC's compliance with the Treasury's guidance, 'Corporate governance: statement on the system of internal financial control'. I report if it does not meet the requirements specified by the Treasury, or if the statement is misleading or inconsistent with other information of which I am aware from my audit of the financial statements.

### Basis of opinion

I conducted my audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts, disclosures and regularity of financial transactions included in the financial statements. It also includes an assessment of the significant estimates and judgements made by the MMC and the Accounting Officer in the preparation of the financial statements, and of whether the accounting policies are appropriate to the MMC's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations which I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements are free from material mis-statement, whether caused by error, or by fraud or other irregularity and that, in all material respects, the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them. In forming my opinion I have also evaluated the overall adequacy of the presentation of information in the financial statements.

### Opinion

In my opinion:

- the financial statements give a true and fair view of the state of affairs of the MMC at 31 March 1999 and of the deficit, total recognised gains and losses and cash flows for the year then ended and have been properly prepared in accordance with the Memorandum of Understanding with the DTI; and
- in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

I have no observations to make on these financial statements.

Signed  
**John McEwen**  
 for the Comptroller and Auditor General  
 28 June 1999

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



## Income and expenditure account for the year ended 31 March 1999



	Note	1998/99 £'000	1997/98 £'000
<b>Income</b>			
Government grant-in-aid	3	5,843	6,346
Transfer from deferred Government grant account	15	84	95
		5,927	6,441
<b>Expenditure</b>			
Members' salary costs	4	707	686
Staff salary costs	5	3,060	3,151
Depreciation	11	50	69
Permanent diminution in value of fixed assets	11	18	29
Other operating charges	6	2,596	2,619
Costs met by the DTI	7	47	46
Notional insurance	8	5	-
		6,483	6,600
<b>Operating deficit</b>		<b>(556)</b>	<b>(159)</b>
Interest receivable	9	66	69
Notional cost of capital	9	(6)	(21)
		60	48
<b>Deficit on ordinary activities before taxation</b>		<b>(496)</b>	<b>(111)</b>
Corporation tax	10	15	14
<b>Deficit for the financial year after taxation</b>		<b>(511)</b>	<b>(125)</b>
Add back – costs met by the DTI		47	46
– notional insurance		5	-
– notional cost of capital		6	21
		58	67
<b>(Deficit) for the financial year</b>		<b>(453)</b>	<b>(58)</b>

### Statement of total recognised gains and losses

There were no recognised gains and losses other than the deficit for the financial year shown above.

The notes on pages 38 to 46 are part of the financial statements.



## Balance sheet

as at 31 March 1999

	Note	1999 £'000	1998 £'000
<b>Fixed assets</b>			
Tangible fixed assets	11	160	115
<b>Current assets</b>			
Debtors	12	66	117
Cash at bank and in hand	13	98	260
		164	377
<b>Current liabilities</b>			
Creditors: amounts falling due within one year	14	(451)	(195)
<b>Net current (liabilities)/assets</b>		(287)	182
<b>Total assets less current liabilities</b>		(127)	297
<b>Financed by</b>			
Deferred Government grant reserve	15	192	163
Income and expenditure account	16	(319)	118
Insurance fund reserve	17	-	16
		(127)	297

Signed  
Penny Boys  
Secretary and Accounting Officer  
23 June 1999

The notes on pages 38 to 46 are part of the financial statements.

## Cash flow statement

for the year ended 31 March 1999



	1998/99 £'000	1997/98 £'000
Net cash (outflow) from operating activities (note (i))	(96)	(141)
Capital expenditure (note (ii))	(111)	(43)
Return on investments (note (ii))	60	48
Taxation	(15)	(14)
<b>(Decrease) in cash (note (iii))</b>	<b>(162)</b>	<b>(150)</b>
<b>Note (i) Reconciliation of operating deficit to operating cash flows</b>		
Operating (deficit)	(556)	(159)
<b>Movements not involving cash</b>		
Depreciation	50	69
Permanent diminution of value of computers	18	29
Deferred income—capital grant-in-aid	113	43
Surplus on disposal of fixed assets	(2)	–
Transfer from capital grant-in-aid	(84)	(95)
Notional insurance	5	5
Costs met by the DTI	47	46
Notional cost of capital	6	21
	(403)	(41)
Decrease/(Increase) in debtors	51	(10)
(Decrease)/Increase in creditors	256	(90)
<b>Net cash (outflow) from operating activities</b>	<b>(96)</b>	<b>(141)</b>
<b>Note (ii) Analysis of cash flows for headings netted in the cash flow statement</b>		
<b>Capital expenditure</b>		
Payments to acquire tangible fixed assets	(113)	(43)
Proceeds from the sale of fixed assets	2	–
	(111)	(43)
<b>Return on investments</b>		
Interest received	66	69
Notional cost of capital	(6)	(21)
	60	48

	At 1 April 1998 £'000	Cash flow £'000	At 31 March 1999 £'000
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**Note (iii) Analysis of changes in net funds**

Cash in hand, at bank	260	(162)	98
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The notes on pages 38 to 46 are part of the financial statements.



## Notes to the financial statements

### 1 Period of financial statements

These financial statements cover the MMC's operations from 1 April 1998 to 31 March 1999. The MMC was dissolved on 31 March 1999.

### 2 Accounting policies

#### (a) *Accounting convention*

The financial statements have been prepared under the modified historical cost convention. The main fixed asset of the MMC was its computer network which was subject to replacement on a four-year rolling basis. Assets were reviewed annually using relevant producer price indices and suppliers' replacement prices where appropriate. Without limiting the information given, the financial statements met the accounting and disclosure requirements of the Companies Acts and best commercial practice including accounting and financial reporting standards issued or adopted by the Accounting Standards Board. They were in accordance with the financial statements, audit and review framework contained in the MoU between the MMC and the DTI which is reproduced as an annex to these financial statements.

#### (b) *Income*

- (i) The MMC was financed by grant-in-aid from the DTI Class V Vote 1.
- (ii) The revenue portion of the grant-in-aid was credited to income in the year to which it related. The portion receivable for capital expenditure was credited to a deferred Government grant account and released to the income and expenditure account over the expected useful lives of the relevant assets.

#### (c) *Tangible fixed assets*

- (i) Expenditure on tangible fixed assets was capitalised.
- (ii) Although the legal ownership of the fixed assets remained with the DTI, they were accounted for in these financial statements since the costs and benefits of ownership accrued to the MMC (but see post balance sheet events in the Foreword).

#### (d) *Depreciation*

Depreciation was provided on all capitalised tangible fixed assets at rates calculated to write off the cost or valuation of each asset, less any estimated residual value, evenly over their expected useful life as follows:

Computer equipment	4 years
Other office equipment	4 to 5 years
Fixtures and furniture	5 to 10 years

#### (e) *Stocks*

Stock consisted only of consumable items which were charged to the income and expenditure account in the year of purchase. Therefore no stock was shown on the balance sheet.

#### (f) *Notional charges*

In accordance with Treasury requirements, notional charges were levied on the MMC as follows:

- (i) interest on capital was charged at a notional rate per annum on the average net capital employed in the business;
- (ii) notional insurance costs were assessed in accordance with Treasury guidelines;
- (iii) costs incurred by other Government bodies in respect of the MMC's activities.

#### (g) *Taxation*

- (i) The MMC was liable for corporation tax on interest earned on bank deposits.
- (ii) The MMC was not registered for VAT, and therefore did not recover VAT. Expenditure in the income and expenditure account was shown inclusive of VAT, and VAT on the purchase of fixed assets was capitalised.

#### (h) *Legal costs*

The MMC bore the cost of general legal advice and the DTI bore the cost of litigation. Any DTI costs were to be treated as notional costs in the accounts of the MMC.



## Notes to the financial statements



	1998/99 £'000	1997/98 £'000
<b>3 Government grant-in-aid</b>		
The total grant-in-aid from the DTI in the year was as follows:		
Allocated by the DTI from Class V Vote 1	8,074	7,970
Drawn down	5,956	6,424
Balance on account for 1998/99 ( <i>Note 14</i> )	-	(35)
<b>Net grant-in-aid</b>	<b>5,956</b>	<b>6,389</b>
Revenue - to income	5,843	6,346
Capital - to deferred Government grant reserve ( <i>Note 15</i> )	113	43
<b>Net grant-in-aid</b>	<b>5,956</b>	<b>6,389</b>
The reconciliation to the cash drawn from the DTI was:		
Net cash drawn from the DTI	5,921	6,304
Balance on account for 1998/99	35	120
Balance on account for 1999/00	-	(35)
<b>Net grant-in-aid</b>	<b>5,956</b>	<b>6,389</b>



## Notes to the financial statements

	1998/99 £'000	1997/98 £'000
<b>4 Members' salary costs</b>		
(a) The cost of members' remuneration was:		
Salaries	630	585
Social security costs	61	49
Pension costs	-	16
Pensions of retired members ( <i>Note 18</i> )	16	36
	<b>707</b>	<b>686</b>

(b) The salary and taxable expenses of the Chairman, Dr Derek Morris, were £127,897 in total. He is pensionable by analogy to the Principal Civil Service Pension Scheme to which no premiums are payable. On his retirement the cost of his pension will fall as a running cost of the Competition Commission in that and subsequent years. At 31 March 1999 the MMC and the DTI had a liability to pay an annual pension of £3,831 and a lump sum of £11,493.

(c) The following number of Deputy Chairmen and members received remuneration falling within the following ranges:

	1998/99 No	1997/98 No
£45,001 – £50,000	-	2
£50,001 – £55,000	1	1
£65,001 – £70,000	1	-

(d) Members of the MMC during the year are listed in the Review. Deputy Chairmen and members are usually appointed on a part-time basis, three to four days per week for Deputy Chairmen and one and a half days for members. Terms and conditions of appointment for members are determined by the Secretary of State with the approval of the Treasury. Appointments are normally for three years with the possibility of re-appointment in line with guidance issued by the Office of the Commissioner for Public Appointments.

## Notes to the financial statements



	1998/99 £'000	1997/98 £'000
<b>5 Staff salary costs</b>		
(a) The cost of staff remuneration was:		
Salaries	2,484	2,557
Social security costs	204	208
Pension costs	372	386
	<b>3,060</b>	<b>3,151</b>

(b) *Remuneration of Secretary*

The remuneration of the Secretary during the year comprised a salary of £78,239 (1997/98: £73,143), and pension contributions of £15,256 (1997/98: £14,263).

(c) *Senior staff*

The following number of other staff received remuneration falling within the following ranges:

	1998/99 No	1997/98 No
£40,001-£45,000	9	8
£45,001-£50,000	5	5
£50,001-£55,000	-	2
£55,001-£60,000	4	3
£60,001-£65,000	2	-
£65,001-£70,000	2	2

(d) *Number of employees*

The average monthly number of employees, including secondees from Government departments and other organisations and including staff employed on short-term contracts, is shown below:

	1998/99 No	1997/98 No
Employed on references	51	57
Administration and support	27	27
<b>Total</b>	<b>78</b>	<b>84</b>



## Notes to the financial statements

	1998/99 £'000	1997/98 £'000
<b>6 Other operating charges</b>		
Consultants' fees	448	459
Accommodation	1,232	1,341
Travel, subsistence and hospitality:		
Members	92	69
Staff and contractors	33	23
General administration	781	707
Profit on the sale of fixed assets	(2)	-
Audit fee	12	15
Notional insurance ( <i>Notes 8 and 17</i> )	-	5
	<b>2,596</b>	<b>2,619</b>

	1998/99 £'000	1997/98 £'000
<b>7 Costs met by the DTI</b>		
Pension costs	47	46

*Pension costs*

The DTI pays the pension costs of Chairmen and Deputy Chairmen who retired before 1 April 1995 (see note 18 and post balance sheet events in the Foreword).

The above costs are included in the income and expenditure account as notional costs to show the total operating costs of the MMC.

*Legal costs*

The DTI did not incur any legal costs on behalf of the MMC.

	1998/99 £'000	1997/98 £'000
<b>8 Notional insurance</b>		
Notional insurance	5	-

Treasury guidance and FRS12 has changed the accounting for notional insurance. In 1997/98 the charge was credited to a reserve account (see note 17). In 1998/99 the charge has been shown and recovered in the income and expenditure account so that the full costs of the MMC can be determined. The premium was calculated in accordance with Treasury guidelines as 0.1 per cent of the replacement cost of fixed assets plus 0.15 per cent of payroll costs.



## Notes to the financial statements

	1998/99 £'000	1997/98 £'000
<b>9 Interest</b>		
Interest receivable	66	69
Notional cost of capital	(6)	(21)
	<b>60</b>	<b>48</b>

Interest was received on funds deposited with the office of HM Paymaster General. In accordance with Treasury guidelines, notional interest payable on capital employed was calculated at 6 per cent on the average capital employed by the MMC for the year.

	1998/99 £'000	1997/98 £'000
<b>10 Taxation</b>		
Corporation tax payable	15	14

Corporation tax payable was based on 21 per cent (1997/98: 21 per cent) of gross interest receivable.

	Computer equipment £'000	Other office equipment £'000	Fixtures and furniture £'000	Total £'000
<i>Current cost</i>				
At 1 April 1998	211	14	182	407
Additions at cost	104	–	9	113
Disposals	(15)			(15)
Revaluation	(52)			(52)
<b>At 31 March 1999</b>	<b>248</b>	<b>14</b>	<b>191</b>	<b>453</b>
<i>Depreciation</i>				
At 1 April 1998	133	13	146	292
Provision for the year	32	1	17	50
Released on disposal	(15)			(15)
Revaluation	(34)			(34)
<b>At 31 March 1999</b>	<b>116</b>	<b>14</b>	<b>163</b>	<b>293</b>
<i>Net book value</i>				
At 1 April 1998	77	2	36	115
At 31 March 1999	132	–	28	160

The revaluation related to a permanent diminution in the value of computer equipment.



## Notes to the financial statements

	1999 £'000	1998 £'000
<b>12 Debtors and prepayments</b>		
Debtors falling due within one year at the end of the year were:		
Advances to staff	25	18
Payments in advance	21	41
Sundry debtors	18	56
Interest accrued	2	2
<b>Total</b>	<b>66</b>	<b>117</b>

	1999 £'000	1998 £'000
<b>13 Cash at bank and in hand</b>		
Paymaster General	93	257
Other account and cash in hand	5	3
	<b>98</b>	<b>260</b>

The MMC kept as its main account an interest-bearing current account with the Paymaster General's Office.

	1999 £'000	1998 £'000
<b>14 Creditors and accruals</b>		
Amounts falling due within one year at the end of the year were:		
Sundry creditors	437	146
Government grant-in-aid received on account	–	35
Tax on interest received	14	14
	<b>451</b>	<b>195</b>

The sundry creditors figure in 1999 included an accrual of £215,182 for a quarter's rent on New Court. This was a result of a change in the terms of payment.

	1998/99 £'000	1997/98 £'000
<b>15 Deferred Government grant reserve</b>		
The movements on the deferred Government grant reserve were:		
Balance at 1 April 1998	163	215
Add: capital grant received ( <i>Note 3</i> )	113	43
Less: transferred to income and expenditure account	(84)	(95)
<b>Balance at 31 March 1999</b>	<b>192</b>	<b>163</b>



## Notes to the financial statements

	1999 £'000	1998 £'000
<b>16 Income and expenditure account</b>		
Balance at 1 April 1998	118	176
Transfer from insurance fund reserve	16	-
(Deficit) for the year	(453)	(58)
<b>Balance at 31 March 1999</b>	<b>(319)</b>	<b>118</b>

	1999 £'000	1998 £'000
<b>17 Insurance fund reserve</b>		
Balance at 1 April 1998	16	11
Less: written back to income and expenditure account	(16)	5
<b>Balance at 31 March 1999</b>	<b>-</b>	<b>16</b>

The accumulated reserve has been credited to the income and expenditure account in accordance with FRS12.

### 18 Staff and members' pension costs

Staff of the MMC were covered by the Principal Civil Service Pension Scheme (PCSPS). In the year to 31 March 1999 contributions of £372,391 (1997/98: £385,512) were paid to the Paymaster General at rates determined from time to time by the Government Actuary and advised by the Treasury. The rates for the year were dependent upon the salary of each employee and varied from 11 to 19.5 per cent of salary.

Deputy Chairmen of the MMC were not members of the PCSPS but were pensioned by analogy to that scheme, gaining benefits commensurate with their salary and service. During the year ended 31 March 1999 payments of £63,315 (1997/98: £81,926) were made to retired Chairmen and Deputy Chairmen of which £15,955 (1997/98: £36,212) was paid by the MMC, the balance being paid by the DTI. Other MMC members were not in receipt of pension benefits. At 31 March 1999 the MMC and the DTI had a liability to pay annual pensions of £69,673 (1998: £62,423) and lump sum payments of £20,043 (1998: £7,477). The MMC was satisfied that any obligation it was unable to meet in the normal course of its activities in respect of members' pensions would be met by the Secretary of State for Trade and Industry.

### 19 Capital commitments and contingent liabilities

The MMC had no material capital commitments at 31 March 1999 and no contingent liabilities except those shown in note 18.

### 20 Related party transactions

The MMC was a Non-Departmental Public Body (NDPB) sponsored by the DTI and funded by a grant-in-aid from that Department. The DTI was regarded as a related party. During the year, the MMC had various material transactions with the DTI all of which were conducted at arm's length prices. In addition, the MMC had a small number of material transactions with other Government Departments and other central government bodies, all conducted at arm's length prices. Other than as disclosed in these financial statements none of the MMC members or key managerial staff undertook any material transactions with the MMC during the year.



## Notes to the financial statements

### 21 Financial targets

The Foreword includes a statement on performance measures.

### 22 Urgent Issues Task Force (UITF) Abstract 20 – compliance with millennium date changes

The UITF of the Accounting Standards Board issued Abstract 20 which required the MMC to disclose the risks and uncertainties associated with the year 2000 problem, any general plans to address the issues and, where the costs have been quantified, to indicate the total costs likely to be incurred.

The software systems in use at the MMC were millennium compliant or were planned to be so before 31 December 1999. There were no mainframe legacy systems in operation. The MMC had a policy of replacing computer hardware every four years. All hardware now running is millennium compliant.

All external service providers had been identified and the MMC was satisfied that insofar as they affected the MMC's operations, or those of the Competition Commission, no year 2000 problems will arise from the supply of these services.

The MMC did not incur any significant costs other than those associated with the regular replacement and update of its existing facilities.

The Audit Committee of the MMC received reports on compliance at each of its meetings.

## Annex

**Accounts, audit and the review framework (extract from MoU)**

The MMC will produce an annual report and accounts. They will be presented to the DTI by the end of July in any year. DTI will arrange for copies to be placed in the Libraries of both Houses of Parliament, and for publication. The accounts for the year ended 31 March 1997 will be the first for which an audit certificate will be sought.

**Form and content of the Accounts (Schedule to Annex C of the MoU)**

- A** The accounts which the MMC prepare in respect of the financial year ended 31 March 1996 and any subsequent financial year will comprise:
- (a) a foreword (including a brief history and the statutory background of the MMC);
  - (b) a balance sheet;
  - (c) an income and expenditure account;
  - (d) a cash flow statement;
  - (e) a statement of total recognised gains and losses; and
  - (f) a statement of accounting policies,
- including in each case such notes as may be necessary for the purposes referred to in the following paragraphs.
- B** The accounts referred to at (b), (c), and (d) in paragraph A will give respectively a true and fair view of the state of affairs, income and expenditure and cash flow of the MMC. Subject to that and paragraphs C to H below, the accounts will also meet, insofar as they are appropriate to the MMC:
- (a) the accounting requirements of the Companies Acts; and
  - (b) the best commercial accounting practices including accounting standards issued or adopted by the Accounting Standards Board with the exception of the requirement contained in FRS3 for the inclusion of a note showing historical cost profits and losses.
- C** The accounts referred to in paragraph A will contain such further information as may be agreed with the DTI.
- D** The foreword and balance sheet will be signed by the Secretary and dated.
- E** In preparing their income and expenditure account and balance sheet, the MMC will adopt respectively format 2 and format 1 prescribed in Schedule 4 to the Companies Act 1985 to the extent that such requirements are appropriate to the MMC. The income and expenditure account and balance sheet will be prepared under the historical cost convention modified by the inclusion of:
- (a) fixed assets at their value to the business by reference to current costs; and
  - (b) stocks valued at the lower of cost, or current replacement cost where materially different, and net realisable value.
- The MMC need not provide the additional information required by paragraph 33 (3) of Schedule 4 of the Companies Act 1985.

## Annex



- F The income and expenditure account will show, inter alia:
- (a) the total amount of grant in aid or any other grants received;
  - (b) the net surplus or deficit on any revenue earnings activities that may be initiated;
  - (c) any other income (detailed as appropriate); and
  - (d) the surplus or deficit arising from normal activities.
- G The balance sheet will show, inter alia, the balance on the income and expenditure account, separately, under the heading 'Financed by'.
- H Notes to the accounts will show, inter alia:
- (a) an analysis of 'other operating charges' over appropriate headings (bad debts, audit fee, leasing charges, etc, travel, subsistence and hospitality costs for staff and MMC members should be separately identified); and
  - (b) the amounts committed in respect of capital expenditure.

**MONOPOLY INQUIRIES**

Underwriting services for share offers	Published
Supply of raw cows' milk in Great Britain	Awaiting publication
Supply of impulse ice cream	In hand
Supply of new motor cars	In hand

**MERGER INQUIRIES**

Fresenius AG and Caremark Limited	Published
Johnston Press plc and Home Counties Newspapers Holdings plc	Published
Ladbroke Group PLC and the Coral betting business	Published
Tomkins plc and Kerry Group plc	Published
More Group plc and New Decaux plc	Laid aside
ARRIVA plc and Lutonian Buses Ltd	Published
Cendant Corporation and RAC Holdings Limited	Published
IMS Health Inc and Pharmaceutical Marketing Services Inc	Published
British Sky Broadcasting Group plc and Manchester United PLC	Awaiting publication
Rockwool Limited and Owens-Corning Building Products (UK) Limited	In hand
British Airways Plc and CityFlyer Express Limited	In hand
Air Products and Chemical Inc and De Vilbiss Medequip Limited	Laid aside
Johnston Press PLC and Portsmouth & Sunderland Newspapers plc	In hand
Newsquest (Investments) Limited and Portsmouth & Sunderland Newspapers plc	In hand
News Communications and Media plc and Portsmouth & Sunderland Newspapers plc	In hand
Trinity plc and Mirror Group PLC	In hand
Regional Independent Media Holdings Limited and Mirror Group PLC	In hand
Hepworth plc and Naylor Industries plc	In hand

**COMPETITION ACT 1980 INQUIRY**

Supply of ice cream by Birds Eye Wall's Ltd	Published
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**REGULATORY INQUIRIES**

Cost of calls to mobile phones (two reports)	Published
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Competition Commission

New Court, 48 Carey Street,

London WC2A 2JT

Tel: 0207 271 0100

Fax: 0207 271 0367

e-mail: [info@competition-commission.gov.uk](mailto:info@competition-commission.gov.uk)

Website: [www.competition-commission.gov.uk](http://www.competition-commission.gov.uk)

