

# Competition Appeal Tribunal and Competition Service Accounts 2012-13

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## Introduction

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

### Principal functions of the Tribunal

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

Further powers have been given to the Tribunal to hear appeals from decisions of the OFT under the Payment Services Regulations 2009. Pursuant to Schedule 2 of the Energy Act 2008 the Tribunal may also hear appeals in respect of determinations made by the Gas and Electricity Markets Authority (GEMA) in respect of property schemes. Under the Energy Act 2010, the Tribunal is also able to hear appeals in relation to decisions taken by GEMA in respect of the application of a market power licence condition to particular types of exploitative behaviours in electricity markets. The Tribunal may also hear appeals in respect of certain decisions taken by Ofcom pursuant to the Mobile Roaming (European Communities) Regulations 2007 and the Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010. The Postal Services Act 2011 provides for an appeal to the Tribunal in respect of certain decisions taken by Ofcom in relation to the regulation of postal services.

In the last year, the Tribunal has been given two additional functions. First, the Civil Aviation Act 2012 provides for a right of appeal to the Tribunal in respect of market power determinations made by the Civil Aviation Authority. Secondly, under the Health and Social Care Act 2012, Monitor, the regulator for health and adult social care services in England, has concurrent powers with the OFT to enforce provisions of the Competition Act 1998 and the TFEU, and to make market investigation references to the CC under the Enterprise Act 2002 in relation to the provision of healthcare services in England. Such decisions may be appealed to the Tribunal.

Pursuant to the Enterprise and Regulatory Reform Act 2013 (when the relevant provisions come into force) the Tribunal's powers will also be extended to granting warrants under the Competition Act 1998 and the Enterprise Act 2002 to enter premises. Further, the government's response to the Department for Business, Innovation & Skills' (BIS) April 2012 consultation on private actions in competition law signalled the enhancement of the Tribunal's role in relation to private damages claims, including an expanded jurisdiction to hear standalone damages claims. That has now been followed up with the publication of the draft Consumer Rights Bill (June 2013) which provides for the necessary legislative changes to be made.

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

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

## Membership of the Tribunal

The Tribunal's membership comprises:

### **President**

The Honourable Mr Justice Barling\*

\* The current President's term of office will expire in November 2013 and his successor will be appointed by the Lord Chancellor on the recommendation of the Judicial Appointments Commission.

### **Panel of Chairmen**

The Honourable Mr Justice Peter Smith\*  
The Honourable Mr Justice David Richards\*  
The Honourable Mr Justice Mann\*  
The Honourable Mr Justice Warren  
The Honourable Mr Justice Briggs  
The Honourable Mr Justice Henderson  
The Honourable Mr Justice Morgan  
The Honourable Mr Justice Norris  
The Honourable Mr Justice Floyd  
The Honourable Mr Justice Sales  
The Honourable Mrs Justice Proudman  
The Honourable Mr Justice Arnold  
The Honourable Mr Justice Roth  
The Honourable Mr Justice Vos  
The Honourable Mr Justice Newey  
The Honourable Mr Justice Hildyard  
The Honourable Mrs Justice Asplin  
The Honourable Mr Justice Birss  
The Honourable Mrs Justice Rose  
Lord Carlile CBE, QC  
Heriot Currie QC (Scotland)  
Peter Freeman CBE, QC (Hon)  
Andrew Lenon QC  
Hodge Malek QC  
Marcus Smith QC

\* These Chairmen reached the end of their terms during 2012-13 as Tribunal Chairmen although they remain Judges of the Chancery Division.

### **Ordinary Members**

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

### **Ordinary Members who completed their term of office during the year**

Dr Adam Scott OBE, TD  
Dr Vindelyn Smith-Hillman  
David Summers OBE, JP

### **Registrar**

Charles Dhanowa OBE, QC (Hon)

### **Recruitment**

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

### **The Competition Service (CS)**

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

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

### **Register of interests**

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

### **Premises**

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

### **Finance and workload**

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

## President's Statement

### Introduction

This will be my last statement as President of the Competition Appeal Tribunal, a position I have been privileged to hold since November 2007. My current term expires in November 2013. Thereafter I shall continue to sit as a judge of the Chancery Division of the High Court of England & Wales.

The Judicial Appointments Commission's (JAC's) selection exercise to appoint my successor in this challenging and rewarding role began in March 2013 and is expected to identify the successful candidate shortly.

Reflecting on my time as President, I am struck by how much the Tribunal has evolved over that period. It has been faced with ever more complex and voluminous cases (or collections of cases), such as the *Construction*, *Pay TV*, *Tobacco* and *Dairy* appeals, and is now on the cusp of the most significant changes to its jurisdiction and powers since it was created. I will return to these potential developments later.

Over the twelve months covered by this review, the Tribunal has dealt with a number of particularly complex cases. The period has seen the Tribunal make its first ever awards of damages in follow-on claims under the Competition Act 1998, in the cases of *2 Travel* and *Albion Water*. The former case also saw the first award of exemplary damages in England & Wales in connection with an infringement of competition law.

The 17-day hearing in *Tesco Stores Limited v Office of Fair Trading* presented a number of logistical challenges for the Tribunal, including re-locating to another hearing venue at short notice to hear a witness give evidence by video-link from New Zealand over the course of several days. The trend of complex cases and substantial hearings is set to continue, with the three appeals against OFCOM's determinations of certain disputes relating to ethernet services (the *Ethernet Determinations*) listed for November 2013 before a panel chaired by Mr Justice Roth.

### Chairmen

Shortly after my term as President expires, the terms of Lord Carlile CBE, QC and Dame Vivien Rose DBE as fee-paid Chairmen of the Tribunal will also come to an end. The loss of their much valued services as Chairmen is the direct result of the statutory bar on serving in that capacity for longer than eight years. Throughout my Presidency we have been seeking to have this anomalous and unhelpful provision repealed. Its effect is to deprive the Tribunal of its judges at the point when they are most experienced. By the end of June 2013 no fewer than four of our Chairmen from among the judges of the Chancery Division of the High Court will have ceased to be eligible to sit in the Tribunal, and we will lose five more in the next couple of years, not including Lord Carlile and Dame Vivien Rose. However, I am glad to report that the Government is now minded to legislate to remove that limit in so far as it applies to serving High Court judges (and equivalent in Scotland and Northern Ireland – see below), and is currently consulting on such removal, and on the question whether the limit should also cease to apply in respect of fee-paid Chairmen.<sup>1</sup> For my part, I earnestly hope that it will be removed for both categories. There is no logic in retaining it at all. While it is normal for fee-paid judicial office holders to be appointed for a fixed term – often four or five years, it is highly unusual for such term to be incapable of renewal (except where the office holder has reached seventy years of age).

I would like to take this opportunity to pay tribute to Alex Carlile and Vivien Rose. During their time with the Tribunal, they have determined some of the most complicated and challenging cases in the Tribunal's history. They each chaired panels in the multiple *Construction* appeals litigation, which presented the Tribunal with considerable logistical as well as legal challenges. In addition, Vivien Rose chaired the panel that determined the appeals against the OFT's Tobacco Decision, and Alex Carlile chaired the panel which grappled with wide-ranging issues of fact and law in the recent appeal by Tesco against the Dairy retail price initiatives decision. As I have said, the *2 Travel* and *Albion Water* cases represented the first damages awards made by the Tribunal, and these cases too were chaired by Alex and Vivien respectively.

<sup>1</sup> Streamlining Regulatory and Competition Appeals – Consultation on Options for Reform, 19 June 2013, paragraphs 5.12 and 5.15.

Through the quality of their judicial work and their extensive extra-judicial activities on behalf of the Tribunal, both Vivien and Alex have made a huge contribution to the Tribunal's reputation as an effective specialist judicial body hearing appeals and other proceedings in the areas of competition and regulation. I should like to express my gratitude to them for their unstinting hard work and support. It is a fitting tribute to Vivien's dedication and talent that, in May 2013, she was appointed to the High Court Bench and now sits as a judge of the Chancery Division. I offer my warm congratulations and best wishes to Mrs Justice Rose, as she now is, on this entirely appropriate appointment. Alex's untiring work in Parliament, in his practice at the Bar and in all his many other distinguished roles will, of course, continue after he leaves the Tribunal. Both he and Vivien will be sorely missed here and, with the entire staff and members of the Tribunal, I wish them both well in all their future endeavours.

I must also thank Marcus Smith QC, who I am glad to say will be continuing as a Chairman of the Tribunal, for shouldering the burden of many demanding proceedings before the Tribunal, and for supporting the Tribunal's work in so many other ways over the last twelve months. His leading contribution to the Tribunal's judgment in *2 Travel*, to which his colleagues on the panel drew attention in the judgment, deserves particular mention.

Conscious that we would be losing two experienced Chairmen, and conscious also of the real possibility that the Tribunal's jurisdiction in private enforcement would be expanded, last year I requested the JAC to conduct a competition with a view to the Lord Chancellor appointing additional members of the Tribunal's panel of Chairmen. The selection process (in which I participated as the judicial member of the panel) bore fruit, and I am delighted to announce the recent appointment of four new and extremely distinguished fee-paid Chairmen: Heriot Currie QC, Peter Freeman CBE, QC (Hon), Andrew Lenon QC and Hodge Malek QC. I congratulate each of them and welcome them to the Tribunal. Their varied experience and well-known expertise will be of enormous benefit to the Tribunal in the years to come, and will ensure that it is well-equipped to fulfill the enhanced role now mapped out for it.

In Heriot Currie the Tribunal, which has a United Kingdom-wide jurisdiction, can at last boast a Scottish lawyer among its Chairmen. Moreover, I am also pleased to report that the Government has recently announced that it is minded to legislate to enable the heads of the three United Kingdom judiciaries to nominate appropriate members of the existing judiciary to sit as Chairmen of the Tribunal, where they are High Court judges (or equivalent in Scotland and Northern Ireland). This proposal, for which both the Tribunal and the Lord President of the Court of Session have long been pressing, forms part of the same current consultation to which I have referred.<sup>2</sup> As and when it comes into effect, the legislation will resolve the current highly unsatisfactory situation in which the Tribunal has no practical means of access to judges of the Court of Session or High Court of Northern Ireland.

Congratulations are also due to Mrs Justice Asplin and Mr Justice Birss upon their appointment to the High Court Bench and as Chairmen of the Tribunal, in October 2012 and May 2013 respectively. In the past year three Chancery Division Judges (in addition to myself) have sat in the Tribunal: Mr Justice Henderson chaired the appeal in *Telefónica UK Limited v Office of Communications*; Mr Justice Norris chaired the application for review in *Akzo Nobel N.V. v Competition Commission*; and Mr Justice Roth is presiding over the three interlinked appeals against OFCOM's Ethernet Determinations.

We very much value the assistance which the Tribunal receives from the Judges of the Chancery Division, and we have already established with the new Chancellor of the High Court, the Right Honourable Sir Terence Etherton, the same close working relationship which the Tribunal enjoyed with his predecessor, the Right Honourable Sir Andrew Morritt, who retired from the bench last year. I take this opportunity to express my thanks for all the help Sir Andrew provided to the Tribunal in many different ways over the years, and to wish him a long and happy retirement.

## Members

All the Ordinary Members appointed in January 2011 have now had the opportunity to sit in cases, and I am hugely grateful to each of them for the experience and dedication that they have brought to bear in their case work, as well as in the support that they have given in a host of other ways to the Chairmen, the Registrar and me over the past year.

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<sup>2</sup> *Ibid*, at paragraphs 5.13 and 5.14.

I should also like to congratulate Dr Adam Scott OBE, TD, who retired as a Member of the Tribunal during the year, on assuming the newly-created role of the Tribunal's Director of Studies. In this position, Adam will continue his valuable work coordinating the training programme for the Tribunal's Chairmen and Members, and ensuring the effective operation of the Association of European Competition Law Judges.

## Cases

New cases registered during the period covered by this review include five follow-on actions for damages under section 47A of the Competition Act 1998, six appeals under section 192 of the Communications Act 2003, including three separate appeals in relation to OFCOM's Ethernet Determinations, and two applications for extension of time in which to appeal the Office of Fair Trading's 2010 Tobacco decision.

Although the number of sitting days during the period under review is less than for the previous period (during which the Tribunal heard several substantial appeals against OFCOM's Pay TV Statement and the OFT's Tobacco decision), the overall number of hearings increased, and substantial hearings took place in Tesco's appeal from the OFT's Dairy decision, and in the action for damages brought by Albion Water.

The Tribunal handed down 29 judgments and rulings in the period under review. Cases of particular interest that were heard or decided during this time are mentioned at the end of my statement.

## New functions

There has been no let up in the number of institutional, jurisdictional and other significant developments and proposals for change arising during the period of review. Some of these have brought new areas within the Tribunal's statutory jurisdiction.

The Enterprise and Regulatory Reform Act 2013 brings about the merger of the OFT and the CC into a single entity called the Competition and Markets Authority (CMA). That Act also gives the Tribunal a new jurisdiction to grant entry, search and seizure warrants in competition investigations, both civil and criminal, in England & Wales and Northern Ireland.

The Civil Aviation Act 2012, the relevant parts of which came into force on 6 April 2013, creates a new right of appeal to the Tribunal in respect of certain determinations of the Civil Aviation Authority, namely determinations that a person is an operator of an airport and that a person has market power in respect of an airport area.

Monitor, the regulator for health and adult social care services, now has concurrent functions with the OFT in the enforcement of competition law in respect of the provision of health services, pursuant to the Health and Social Care Act 2012. Decisions made by Monitor using its new competition powers are subject to appeal in the Tribunal. The Act also extends the OFT's powers to carry out merger investigations (under the Enterprise Act 2002) to mergers involving NHS foundation trusts. Such decisions are subject to challenge before the Tribunal on judicial review grounds.

## Reform of private enforcement

In my last Annual Statement, I welcomed the Government's consultation on possible reforms to the procedures for private enforcement of the competition rules with a view to enhancing the protection available to victims of infringements of those rules, particularly consumers and SMEs. In January 2013, the Government published its response to that consultation and signalled its intention to make the Tribunal a 'major venue' for private enforcement of the competition rules in the United Kingdom. Among other measures, the Government proposes to establish a collective redress regime including, for the first time in the United Kingdom, the possibility of an 'opt-out' claim procedure. This new procedure is aimed at providing an effective remedy in respect of mass claims for relatively small amounts of loss suffered by victims of cartel or other anti-competitive conduct. The Tribunal is to be given the exclusive jurisdiction to hear claims for collective redress brought under the new regime.

In addition, it is proposed that the Tribunal should have jurisdiction to entertain 'stand-alone' claims for damages and to grant interim and final injunctions, thus removing the existing limitations attaching to the Tribunal's 'follow-on' claims jurisdiction and providing claimants with a choice whether to begin such proceedings in the High Court or Tribunal. There is also to be a fast-track procedure for straightforward cases. Draft legislation, in the form of the Consumer Rights Bill, was published by the Government on 13 June 2013. The measure is apparently going to be subject to pre-legislative scrutiny, and Royal Assent is unlikely to be given until well into 2014.

If and when implemented, these developments are likely to bring about a very considerable change to the nature and scale of the Tribunal's operations, and will necessitate significant revision of and addition to the Tribunal's Rules of Procedure. We will be working closely with BIS in this regard.

Further detail and commentary on the proposals in question are contained in a lecture given by me recently.<sup>3</sup>

## Possible changes to regulatory and Competition Appeals

The most recent of a virtually incessant stream of BIS initiatives, reviews and consultations which have marked my period as President, is a consultation announced by the Government on 19 June 2013. It concerns a number of possible changes to the systems of regulatory and competition appeals.

Although outside the period to which this Annual Statement principally relates, this consultation raises some very important issues. These include, for example, whether there should be changes to lower the standard of review and/or to restrict the permissible grounds of appeal that apply to challenges to competition and regulatory decisions heard by the Tribunal and other appeal bodies; whether there should be statutory restrictions on the admissibility of evidential material on appeal, where that material was not before the regulator or authority at the administrative stage; and whether there should be a rule that, in the absence of unreasonable conduct, regulators should not normally be subject to adverse costs orders where a successful appeal has been brought against their decision. In addition, whilst acknowledging that the Tribunal currently deals with cases efficiently and is well-placed in relation to domestic and overseas comparators, the Government proposes to consult on a number of procedural and case management issues aimed at achieving speedier resolution of proceedings. Some of these proposals represent steps which the Tribunal already takes as a matter of routine procedure, such as laying down case-specific procedural timetables at the outset of proceedings, and resolving matters on the papers without an oral hearing wherever appropriate. More positively, the Government is also consulting on whether there should be some rationalisation of the 'patchwork' of regulatory appeal routes which exists across different regulated sectors.

We anticipate that the consultation will elicit substantial interest from stakeholders, and the Tribunal will in due course publish a formal response to it on its website. In the meantime some preliminary comments of my own are contained in a recent speech.<sup>4</sup>

## Other activities

### Conferences and seminars

In January 2013 the Tribunal, in partnership with the Judicial College, organised and hosted a major one-day competition law training seminar for members of the Senior Judiciary (High Court and Court of Appeal). A wide-ranging series of presentations on law and economics were delivered by both internal and external speakers, including several of the Tribunal's Chairmen and Members, alongside external speakers such as Professor Richard Whish, Jon Turner QC and Helen Davies QC. The event was extremely well received by the judicial delegates, and doubtless will lead to similar events in the future.

3 'Competition litigation: what the next few years may hold': The David Vaughan CBE, QC/Clifford Chance Annual Lecture on Anti-trust Litigation, 19 June 2013. Available at: [www.catribunal.org.uk/247-8078/Competition-litigation-what-the-next-few-years-may-hold.html](http://www.catribunal.org.uk/247-8078/Competition-litigation-what-the-next-few-years-may-hold.html)

4 See previous footnote.

As in previous years, my colleagues and I have received numerous requests to speak at a variety of conferences and seminars over the past twelve months. Unfortunately it is only ever possible to accept a small proportion of these invitations. However, in view of the Tribunal's specialist role and its reputation within the EU and beyond, it is important that we should endeavour to participate in appropriate events related to the subject areas in which we work.

I recently agreed to take part in a dialogue between senior Chinese judges and judges from the EU. The meeting, in Beijing, was organised by the EU-China Trade Project and the subject under discussion was private damages actions. Over the course of two days I made several presentations, including on evidence, standard/burden of proof, and causation/quantification of loss in competition cases. In the last year, I have also given speeches on competition-related subjects at conferences in Treviso, Barcelona, Edinburgh and London. In addition, I represented the Tribunal at conferences in London, Brussels, Helsinki and Cyprus. In the next few weeks, before the end of my term of office, I will be speaking at further events, including conferences organised by BIICL, the UKAEL, the Westminster Business Forum, and the Fordham Competition Law Institute's annual conference in September 2013.

My colleagues have similarly undertaken speaking engagements on the Tribunal's behalf. In October 2012, Alex Carlile delivered the keynote address at a competition litigation conference organised by Butterworths on the subject of 'The Evolving Role of the CAT'. Vivien Rose spoke at, and chaired, a number of conferences and seminars, including: presentations at the June 2012 ERA conference in London on the role of class actions in the future of private enforcement of competition law; at the May 2012 Academy of European Law conference in Paris on '*ne bis in idem* as a general principle of EU law'; and at the Florence School of Regulation in April 2013 on the 'perspective of a common law judge'. Marcus Smith spoke at a conference at the LSE in September 2012 in connection with an Arts & Humanities Research Council project in relation to comparative private enforcement and collective redress. He also spoke at King's College London in June 2012 on the subject of standards of review and appeal in cases before the Tribunal. Peter Freeman spoke at the Supreme Court of Arbitration of the Russian Federation in May 2012 about evidence and standards of proof in cartel investigations. He also contributed to a panel discussion on the reform of the competition institutions at the Antitrust Enforcement Symposium in Oxford in September 2012 and spoke at the 2013 summer conference of the Centre for Competition Policy at the University of East Anglia. Adam Scott visited the Broadcasting Council of Macedonia as well as ANCOM, the national regulatory authority of Romania. George Lusty, one of the Tribunal's referendaires, visited the College of Law, Bristol, in May 2012 to deliver a presentation to students on the UK competition regime.

## **AECLJ**

In its capacity of *de facto* Secretariat for the Association of European Competition Law Judges (AECLJ), the Tribunal continues to play an active role in stimulating dialogue and debate between members of the judiciary in the EU Member States, and in bringing together judges and officials from competition enforcement agencies. The AECLJ's annual conference in June 2012 took place in Helsinki with a theme of 'Competition law in a changing context', and welcomed a number of distinguished guest speakers, including the European Commission's Director-General for Competition, Alexander Italianer, as well as Professor Richard Whish of King's College London and Judge Heikki Kanninen of the General Court.

## **Visitors to the Tribunal**

The Tribunal continues to receive visits by competition judges and enforcement authorities from other jurisdictions. In September 2012, a large delegation from the Stockholm City Court visited the Tribunal to gain an understanding of its practice and procedure and to meet a number of the Tribunal's chairmen, members and staff.

In January 2013 we were delighted to host once again the Junior Competition Practitioners' Conference, which considered the reform of the UK's regime for private actions in competition law.

We have also received a number of visits from academics and students, including delegations from Newcastle University and the Centre for Transnational Legal Studies.

## User group

The regular meetings of the Tribunal's user group continue to provide an important forum for sharing information and ideas about the Tribunal's practice and procedure and discussing important policy developments and their impact on the Tribunal. We are most grateful to the members of the group for their regular feedback and constructive suggestions. Minutes of the user group's meetings are available on the Tribunal's website.

## Comings and goings

2012 saw the departure from the Tribunal of our Senior Referendaire, David Bailey, who left us to do a pupillage at Brick Court Chambers. It is a great pleasure to record that David has recently been awarded a tenancy by those chambers, and on behalf of all of us at the Tribunal I warmly congratulate him on this latest step in a remarkable career. We wish him every success for the future. The vacancy resulting from David's departure has now been filled by Jenny Reeves, whom we were very pleased to welcome here in March of this year. Before joining the Tribunal Jenny practised as a solicitor at Freshfields.

We are all delighted to have Ilia Bowles back with us after her maternity leave, and also delighted that Jeremy Straker is still with us. Jeremy, our Director of Operations, retired this year but could not bear to leave completely- he continues to help us on a part-time basis.

Mark Collyer is not leaving, but I would like to take this opportunity to congratulate him heartily on his splendid achievement in qualifying as a solicitor whilst working full time for the Tribunal. We are all extremely happy for him.

Finally, I wish to say a huge thank you to Janet Rubin, who has been the non-executive member of the Board of the Competition Service since it came into being more than a decade ago. Janet is leaving us in September 2013 at the end of her current term. Through her work on the Board and the Audit Committee the Tribunal has benefited enormously. Her wise advice and ready assistance are going to be missed by all of us at the CAT. We wish her well in the exciting projects on which she is engaged.

## Valete

It only remains for me to say what a pleasure it has been to work at the Tribunal for the last few years. The Tribunal is a tiny organisation compared with the regulatory bodies and very large undertakings that typically litigate here, but in the Tribunal's case small really is beautiful. It functions efficiently, and with the minimum of bureaucracy, thanks to the dedication and skill of its Registrar and staff, as well as its judicial members.

My thanks go to all of them for their untiring work and support throughout my time as President. I shall certainly miss them.

However, the likely developments in the Tribunal's jurisdiction in several areas, particularly in the realm of private enforcement, seem set to ensure that its future role will remain as stimulating and challenging as in the past.

*Sir Gerald Barling*  
President  
Competition Appeal Tribunal

11 July 2013

## Notable cases

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

### Competition Act 1998

#### *Dairy retail price initiatives: Tesco Stores Limited & Ors v Office of Fair Trading*

In December 2012, following a lengthy hearing, the Tribunal handed down its judgment allowing in part Tesco's appeal against the OFT's Dairy retail price initiatives decision. The OFT had found that, on a number of occasions in 2002 and 2003, Tesco and a number of its UK competitors had indirectly exchanged their future retail pricing intentions in respect of certain cheeses, via their common suppliers. It concluded that these amounted to two single, overall concerted practices.

On appeal, the Tribunal concluded that there was insufficient evidence to support a number of the findings made by the OFT and, in particular, set aside the entirety of the OFT's findings as against Tesco in 2003. It did, however, uphold the OFT's findings that Tesco had infringed the Chapter I prohibition on three occasions in 2002. The judgment contains a discussion of the appropriate legal test to be applied in order to establish a concerted practice consisting of hub-and-spoke information exchanges.

After the judgment was handed down, the parties applied for a consent order under rule 57 of the Tribunal's Rules, which disposed of the outstanding matters and reduced Tesco's penalty.

#### *Tobacco pricing – requests for extension of time to appeal: Somerfield Stores Limited & Or v Office of Fair Trading; Gallaher Group Limited & Or v. Office of Fair Trading*

In December 2011 the Tribunal handed down its judgment in an appeal brought by Imperial Tobacco Group and others against the OFT's Tobacco decision. That judgment ([2011] CAT 41) quashed the decision in its entirety as against the appellants. Thereafter, two addressees of the OFT's decision, which had originally chosen not to appeal, sought permission to appeal out of time.

The Tribunal's ruling, handed down in March 2013, afforded another opportunity to consider the principles applicable under rule 8(2) of the Tribunal Rules. The Tribunal, in granting the applications, sets out a comprehensive review of the Tribunal's jurisprudence on extensions of time and discusses the applicable principles by reference to the unusual facts of this case.

### Enterprise Act 2002

#### *Ryanair Holdings plc v Competition Commission*

In August 2012, the Tribunal handed down its judgment on Ryanair's application for a review of the Competition Commission's decision to continue its investigation of Ryanair's completed acquisition of a minority shareholding in its competitor Aer Lingus. It was argued that, because the European Commission was at the same time investigating Ryanair's bid for the entirety of Aer Lingus, the Competition Commission should halt its investigation.

The Tribunal dismissed Ryanair's application holding that, as a matter of law, the Competition Commission was not precluded from continuing its investigation into the minority shareholding. Ryanair's appeal against the Tribunal's judgment was dismissed by the Court of Appeal in December 2012.

#### *John Lewis plc v Office of Fair Trading*

In March 2013, the Tribunal dismissed an application by John Lewis for review of a decision of the Office of Fair Trading in relation to the content of a price comparison website relating to extended warranties for domestic electrical goods. The Tribunal concluded that the decision that John Lewis was seeking to challenge was, in reality, taken by the OFT in June 2012 when it published its decision in relation to the market investigation reference regarding extended warranties, and accepted undertakings from certain retailers in lieu of a reference to the Competition Commission. Accordingly, the Tribunal found that John Lewis' application for review was brought out of time, and rejected a further ground of challenge by John Lewis by which it alleged a breach by the OFT of its duties in relation to the implementation of the undertakings in lieu.

## **Communications Act 2003**

### *Mobile Call Termination: Everything Everywhere Limited v Office of Communications and related cases [2012] CAT 11*

In May 2012, the Tribunal handed down a judgment dismissing challenges brought by Everything Everywhere and Vodafone to the Competition Commission's determination of certain price control matters raised in appeals against OFCOM's Wholesale Mobile Voice Call Termination Statement.

The Tribunal's judgment, upheld on appeal to the Court of Appeal, addresses in detail the Competition Commission's role in determining price control matters under the Communications Act 2003 and the nature of challenges under section 193(7) of that Act against such a determination.

### *Pay TV: British Sky Broadcasting Limited v Office of Communications and related cases [2012] CAT 20*

In August 2012, the Tribunal handed down judgment in a number of interlinked appeals relating to OFCOM's 2010 decision in its Pay TV Statement to vary Sky's licences under the Broadcasting Act 1990 so as to require the wholesale supply of certain premium pay television channels upon specified terms, in particular at a regulated price. The Tribunal's judgment followed the longest hearing in the Tribunal's history, which involved very substantial evidence and submissions, both written and oral.

The Tribunal determined that, whilst OFCOM had jurisdiction under section 316 of the Communications Act 2003 to take the decision in the Pay TV Statement, it had erred in a number of material respects in its interpretation of the factual evidence on which it based that decision. The Tribunal concluded that the core competition concerns outlined by OFCOM in the Pay TV Statement were unfounded.

## **Claims for damages**

### *2 Travel Group PLC (in liquidation) v Cardiff City Transport Services Limited [2012] CAT 19*

Having held a ten-day hearing in Cardiff, (the first time the Tribunal has sat in Wales) and after a further day's hearing in London, the Tribunal handed down this judgment. This is the first award of damages by the Tribunal and the first award of exemplary damages in England and Wales for an infringement of competition law.

The judgment contains a detailed discussion of the principles applicable to an award of exemplary damages in the competition law context.

### *Albion Water Limited v Dŵr Cymru Cyfyngedig [2013] CAT 6*

In March 2013, the Tribunal handed down another judgment in a follow-on damages claim. The claim followed on from the Tribunal's own finding (on appeal from decisions of the Water Services Regulation Authority) that Dŵr Cymru had infringed the Chapter II prohibition in connection with the terms of its wholesale supply of non-potable water to Albion Water.

The Tribunal considered in detail the principles relevant to the construction of the counterfactual scenario for calculating compensatory damages and awarded Albion Water a total of £1,854,493.16 (before interest). The claim for exemplary damages was dismissed.

### **Court of Appeal and Supreme Court authority on follow-on actions**

In the period under review, a number of important judgments were issued by the Court of Appeal and Supreme Court in connection with the Tribunal's jurisdiction under section 47A of the Competition Act 1998.

#### *Deutsche Bahn AG & Others v Morgan Crucible Company plc & Others*

In July 2012, the Court of Appeal allowed the claimants' appeal against the Tribunal's May 2011 judgment, which granted Morgan Crucible's application to strike out the claim on the basis that it had been brought out of time. The Court of Appeal reasoned that, pursuant to section 47A(8)(a) of the Competition Act 1998, a 'decision' meant a decision that there has been an infringement of competition law. Therefore, the claim was not out of time as the limitation period for bringing such a claim did not start to run until all appeals against the infringement decision had been resolved. In December 2012, the Supreme Court granted Morgan Crucible permission to appeal the Court of Appeal's judgment. The claims are currently stayed in the Tribunal pending the determination of Morgan Crucible's appeal by the Supreme Court.

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

In November 2012, the Court of Appeal upheld the Tribunal's judgment of March 2011, in which the Tribunal struck out the claim against one defendant on the basis that there was no infringement decision applicable to that party upon which the claimants could base their claim.

#### *BCL Old Co Limited & Others v BASF SE & Others*

In October 2012, the Supreme Court dismissed an appeal by the claimants from the Court of Appeal's judgment of 12 November 2010 in these proceedings. The Supreme Court rejected the claimants' submission that the operation of the two-year limitation period under section 47A of the Competition Act 1998 and Rule 31 of the Tribunal's Rules (in particular as regards its commencement) and the lack of any power to extend the limitation period were legally uncertain matters, which rendered it 'excessively difficult' for the claimants to pursue their claim.

## Registrar's Statement

### The Tribunal and the Competition Service (CS)

In formal terms, the Tribunal and the CS are two separate bodies. In practice the CS provides the means by which the Tribunal manages itself - the CS's entire staff, premises and other resources being effectively deployed on a daily basis in the work of the Tribunal. The President and myself, together with an independent member, Janet Rubin, constitute the membership of the CS. Jeremy Straker and Ilia Bowles (who share the post of Tribunal/CS Director, Operations) act as the secretary to our meetings. Together we ensure that the resources formally vested in the CS are fully and efficiently utilised in the work of the Tribunal and that the Tribunal/CS functions as a single integrated organisation.

### Resources

The running costs of the Tribunal/CS for 2012-13 were £3,882,000 (£3,909,000 in 2011-12). Fixed costs comprised £3,283,000 or 85 per cent of the total. Thus only £599,000 of expenditure could be flexed during the year. During 2013-14 £3,870,000 has been allocated to us.

In that respect, and as we have made clear to BIS, it does have to be borne in mind that our working practices are dictated by the specialised judicial functions of the Tribunal and the particular demands of hearing large scale complex competition and economic regulatory cases, often to very tight timescales. We have no control over the number and nature of cases which are received during the year and this increases the uncertainty for planning and budgeting resources. Although costs are regularly examined for savings, we also have to ensure that we do not jeopardise the efficient working of the organisation. Achieving that balance with a reducing allocation is becoming increasingly perilous, particularly in the face of other matters arising over which we have no control. For example, in the last financial year, increases in rates, rent and service charges have put extra pressures on our financial situation. To date though, through careful management and reductions in staffing levels, we have kept our overall cost increases to less than 2 per cent per year since the Tribunal/CS was established in 2003.

This year has again shown good utilisation of the courtrooms as we continue our practice of making them available to other tribunals and organisations.

In accordance with government restrictions currently in place, no consultants were used in the year and no recruitment of staff was undertaken (other than to replace one key post). In accordance with government measures staff pay was kept to an average increase of 1 per cent, while remuneration of the President and Registrar, being linked to judicial pay scales (with no provision for bonuses), remained frozen for the third successive year. The per diem rate for Ordinary Members has not been increased since 2006 and the per diem rate for Chairmen remains at the level originally set in 2003.

### Administration

As mentioned last year, we now have to bear a greater burden of administration caused by requests from central government for information and various types of organisational, accounting and other analyses. This year we have continued the work of implementing the BIS 'Clear Line of Sight' (CLOS) project. This has required a detailed reformatting of our accounting records in order to assist BIS in producing consolidated accounts recording its position along with its agency and partner organisations. I am grateful to the single member of staff we have for finance matters, our Finance Manager, Madhuri Yagnik, for continuing to bear the burden of this work.

The last year has also seen a plethora of more wide ranging enquiries from central government concerning the performance of our judicial functions. These have included an 'informal' inquiry regarding particular procedural aspects such as the need for witness evidence in cases and the introduction of new evidence in appeals; a detailed dialogue with BIS (in conjunction with other Government departments) concerning the Tribunal's role in communications and other regulatory appeals and concerning the standard of review in competition cases; and a 'triennial review' under the auspices of the Cabinet Office's rolling review of non-departmental public bodies. These inquiries have overlapped considerably and have created additional pressure on top of the performance of our statutory duties. It also appears that these inquiries and the public consultation exercises they will result in will ensure that we have to devote substantial resources to these matters well into 2013-14.

## Members

As two of our Chairmen are due to complete their terms of office later this year, we asked the Judicial Appointments Commission to facilitate an open competition for the recruitment of new Tribunal Chairmen. Given the likely increase in work flowing from the greater role envisaged for the Tribunal in private actions, it was decided to slightly increase the membership of the panel of Chairmen. The appointments made by the Lord Chancellor, following the conclusion of the competition, were announced in January of this year and I join the President in being very pleased to be able to welcome Heriot Currie QC, Peter Freeman CBE, QC (Hon), Andrew Lenon QC and Hodge Malek QC to the Tribunal.

In order to assist the President in his statutory duty to provide suitable training for the members of the Tribunal, we have asked one of our former members, Dr Adam Scott, to act as a training provider. Adam has a great deal of experience and expertise in all areas of the Tribunal's work which I am sure will prove very useful to members.

## Staff

During 2012-13 our senior referendaire, David Bailey left to join a leading barristers chambers. David had been with us for about 5 years and he will be greatly missed by his colleagues and members. Of course we wish him well for the future in his new role. We have recently welcomed Jennifer Reeves as a new referendaire who joins us from a major law firm in the City of London. Ilia Bowles, our HR Information Manager, returned from maternity leave in March and is job-sharing the duties of the Director, Operations as Jeremy Straker has taken partial retirement and is working reduced hours in that role. Ranbhinder Banwait, who covered for Ilia while the latter was on maternity leave, is staying on as HR Information Manager.

The staff team that continues in place, being around 14 people (with four of them working part-time), is extremely small when compared with the demands upon us and the necessity for multi-tasking is a daily requirement. Generally, when we are particularly busy, with hearings running in both courtrooms, everyone has to lend a hand regardless of their usual responsibilities or role. It would not be possible for us to function effectively without this high level of flexibility on the part of staff. The President, Members and I highly value the obvious commitment of the staff to the work of the Tribunal and, although it does not appear on the balance sheet, it represents our biggest asset.

Once again, the staff absence rate (1.5 per cent of working days) is far below the average for both the private and public sectors.

## Information Technology

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

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

Regular risk assessment and data handling returns to BIS have also been completed. These returns have, to date, provided assurance that sufficient processes and systems are in place to ensure that the Tribunal/CS is able to handle security and information assurance effectively – although this is a matter where there can be no resting on laurels.

Last year I mentioned that our IT system is now ageing and we will need to consider some updating and further investment. The need to deal with the various enquiries from central government mentioned above and the uncertainty over the position of our current IT services provider, the Competition Commission, has meant that it has been difficult to progress this matter in the last year. However, now it has been confirmed that the new Competition and Markets Authority (CMA) will be based in Victoria House, we intend to explore the extent to which we can obtain IT services under a shared services agreement with the IT department of the CMA. As a technical matter this should be possible subject, of course, to an operational and contractual framework that respects the independence and confidentiality of the Tribunal's work.

## Pensions

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

## The Tribunal/CS Audit Committee

The Tribunal/CS Audit Committee meets four times a year under the chairmanship of Janet Rubin, who has held various non-executive director roles in other organisations including having chaired remuneration committees and been a member of several audit committees. Stephen Harrison and Brian Landers, both Tribunal members with considerable accounting experience, are also members of the committee.

David Summers OBE stood down from the committee when his membership of the Tribunal came to an end in 2012. I would like to thank David for his dedicated service to the committee and for providing us all with invaluable and very practical advice on a wide range of matters arising in the work of the committee over the years.

## Format of accounts

The accounts for the Tribunal/CS have been prepared in accordance with the 2012-13 Government Financial Reporting Manual (FReM) and the separate Accounts Directions for the Tribunal and the CS given by the Secretary of State with the consent of HM Treasury in accordance with Schedule 3 of the Enterprise Act 2002.

The Accounts Directions for the Tribunal provides for the Statement of Accounting Officer's Responsibilities and Corporate Governance Statement to be combined with those of the CS.

The Tribunal's accounts include only the direct costs specifically attributable to the Tribunal. All support costs are included in the CS accounts in accordance with its statutory purpose set out in the introduction to this review. Whilst it is necessary to make this division for accounting purposes, it should always be borne in mind that in its day to day operations the Tribunal/CS acts as a single integrated organisation.

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

## Auditors

The financial statements of the Tribunal and the CS are audited under Schedule 3 paragraph 12(4) of the Enterprise Act 2002 by the Comptroller and Auditor General. The cost of the external statutory audit was £6,000 for the Tribunal (2011-12: £6,000) and £18,000 for the CS (2011-12: £18,000).

In 2012-13 BIS's Internal Audit Directorate continued to provide internal audit services to the CS. The cost of providing this function was £8,000 (2011-12: £7,650).

### Charitable donations

The Tribunal/CS does not make any charitable donations.

### Payment of creditors

The Tribunal/CS aims to pay all supplier invoices by the due date or within ten working days of receipt if no due date has been agreed. This accords with government guidelines aimed at assisting suppliers with their cashflow. Throughout the year the average payment period was five days (2011-12: 11 days) and 98 per cent of (undisputed) invoices were settled within 30 days (2011-12: 98 per cent).

### Disclosure of relevant audit information

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

*Charles Dhanowa OBE, QC (Hon)*  
Registrar and Accounting Officer

11 July 2013

## Membership

### President

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

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

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

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

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

### Chairmen

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

The Honourable Mr Justice Warren  
The Honourable Mr Justice Briggs  
The Honourable Mr Justice Henderson  
The Honourable Mr Justice Morgan  
The Honourable Mr Justice Norris  
The Honourable Mr Justice Floyd  
The Honourable Mr Justice Sales  
The Honourable Mrs Justice Proudman  
The Honourable Mr Justice Arnold  
The Honourable Mr Justice Roth  
The Honourable Mr Justice Vos  
The Honourable Mr Justice Newey  
The Honourable Mr Justice Hildyard  
The Honourable Mrs Justice Asplin  
The Honourable Mr Justice Birss  
The Honourable Mrs Justice Rose

### Chairmen

#### **Lord Carlile CBE, QC**

Alex Carlile was called to the Bar by Gray's Inn in 1970 and appointed Queen's Counsel in 1984. He is a Bencher of Gray's Inn. He sits as a Recorder of the Crown Court and as a Deputy High Court Judge. He was the Independent Reviewer of terrorism legislation from 2001 to 2011. He was until 2013 the President of the Howard League for Penal Reform. He is a fellow of King's College London and a fellow of the Industry and Parliament Trust and holds British and foreign Honorary Doctorates of Law.

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

He specialises in the civil and criminal aspects of commercial fraud, and in the development of counter-terrorism legislation internationally. He is involved in numerous charities, including the Royal Medical Foundation of Epsom College and The White Ensign Association. He has a particular interest in mental health issues and was a co-founder of the Welsh charity Rekindle. He chaired the Select Committee of both Houses of Parliament on recent mental health legislation. His major report for the Howard League on the use of restraints on children in custody was published in February 2006. He is a non-executive director of a listed agricultural merchanting company, Wynnstay Group Plc; and a founder and director of the strategic consultancy SC Strategy Ltd.

### **Dame Vivien Rose DBE**

Vivien Rose was called to the Bar in 1984 and was a member of Monckton Chambers, London, for ten years specialising in domestic and EU competition law. In 1995 she left private practice and joined the Government Legal Service working for several years in HM Treasury advising on financial services regulation, at the Ministry of Defence advising on international humanitarian law and in the Legal Services Office of the House of Commons. She joined the Tribunal as a Chairman in 2005 and has chaired panels dealing with cases covering the whole range of the Tribunal's work including against findings of competition law infringement, appeals against penalty, telecoms cases and follow-on damages claims. She is co-editor of the 7<sup>th</sup> edition of Bellamy & Child European Union Law of Competition (March 2013). She was appointed a Judge of the Chancery Division of the High Court in May 2013.

### **Marcus Smith QC**

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

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

### **Heriot Currie QC (Scotland)**

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

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

Peter Freeman is a solicitor who has held senior posts in public service after a long career in professional practice. He is a Member of the Lloyd's Enforcement Appeal Tribunal Panel and, prior to his appointment as Chairman, was an Ordinary Member of the Competition Appeal Tribunal. From 2005 to 2011, he was Chairman of the UK Competition Commission and for two years prior to that he was a Deputy Chairman. His professional career comprised 30 years in the law firm Simmons & Simmons, 25 of them as a partner, managing the Commercial Department and heading the EC and Competition Law practice group. He is currently a senior consultant to the law firm Cleary Gottlieb Steen & Hamilton, a position he will relinquish following his appointment as Chairman of the Competition Appeal Tribunal. He was for many years Chairman of the Regulatory Policy Institute, Oxford, and has written and spoken widely on competition and regulatory law. He is a member of the advisory boards of the Economic and Social Research Centre for Competition Policy at the University of East Anglia and the International Competition Forum, University of St Gallen, the Scientific Board of Concurrenca e Regulacao, Lisbon, and the Council of the University of Bath.

### **Andrew Lenon QC**

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

### **Hodge Malek QC**

Hodge Malek was called to the Bar in 1983 and appointed Queen's Counsel in 1999. He is a member of Thirty Nine Essex Street chambers and his practice has covered many areas of commercial law and dispute resolution including banking and financial services, fraud, professional disciplinary cases, energy, insurance and reinsurance and procurement. He is the general editor of the leading book on the law of evidence, Phipson on Evidence (17<sup>th</sup> edition, 2010) and the joint author of Disclosure (4<sup>th</sup> edition, 2012). He is also a contributor to Mithani, Directors Disqualification (Human Rights chapters) and various volumes of Atkins Court Forms (Human Rights, Disclosure and Information Requests, and Administrative Court). He was a member of the Commercial Court working party chaired by Lord Justice Cresswell on Electronic Disclosure and has been a Chairman of the Bar Disciplinary Tribunals. He sits as a Recorder in both civil and criminal cases, is a Member of the Inns of Court Conduct Committee and a Bencher of Gray's Inn.

## **Ordinary Members**

### **William Allan**

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

### **Professor John Beath**

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

**Michael Blair QC (Hon)**

Michael Blair is a practising barrister with chambers in 3 Verulam Buildings, Gray's Inn, specialising in financial services and financial regulation. He has been in independent practice since 2000. He was a member of the Board of the Dubai Financial Services Authority until April 2013. He was until 2009 the Chairman of SWX Europe Limited, the London exchange where the major Swiss equities were traded, and was the Treasurer of his Inn of Court, the Middle Temple, in 2008. Until 2000 he was General Counsel to the Financial Services Authority. He served on the Bar Council for nine years (including as Treasurer for four years) and had earlier been employed as a civil servant in the Lord Chancellor's Department for 20 years. He is the author or editor of a number of textbooks on financial services.

**Timothy Cowen**

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

**Margot Daly**

Margot Daly has extensive experience in digital media, pay television, intellectual property and copyright, with a heavy emphasis on disruptive technology. She has held Chief Executive Officer and Chief Operating Officer positions in both FTSE and privately held companies. She was non-executive chair of the European Digital Media Association and as former President of AIESEC U.S. has roots in youth leadership development. She is a qualified CEDR dispute resolution mediator, an affiliate member of the Chartered Institute of Legal Executives, a non-executive director of Sports Resolutions and an adjudicator for CISAS, the Communication and Internet Service Adjudication Scheme.

**Dr Clive Elphick**

Clive Elphick is a board member of the Environment Agency and a non-executive director of Perceptive Engineering Limited. His former roles include being a board member of the Northern Ireland Authority for Utility Regulation, Managing Director at United Utilities Group Plc, Chairman of the CBI for the North West of England and a non-executive director of a department of state and of a regional development agency. He is also a trustee of the Lancashire Wildlife Trust and the National Museums Liverpool.

**Dermot Glynn**

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

**Stephen Harrison**

Stephen Harrison retired from PwC in 2010, following a career with them of 37 years. In PwC he held numerous management roles during his career, after being admitted to partnership in 1983. At the time of his retirement he was one of seven regional chairmen. During his professional career, he was actively involved in advising a wide range of businesses. In particular, he has been involved in undertaking due diligence assignments for some of the major global acquisitions that have occurred in recent years. He has also been involved in lecturing on financial matters. He has also been actively involved in local organisations encouraging economic growth and promoting skills and employment. He is currently involved as chairman of a charity, director of a building society and a non-executive director/advisor to a number of private companies.

### **Brian Landers**

Brian Landers is Chairman of Companies House and an Audit Commissioner. He has served on the boards of various companies in the UK and overseas including Habitat, Waterstone's and Penguin Books and was finance director of HM Prison Service. He was also Chief Internal Auditor of Sainsbury's, Deputy Chairman of the Financial Ombudsman Service and Treasurer of Amnesty International UK. He has an MBA from the London Business School.

### **Jonathan May**

Jonathan May has been closely involved in the development of competition and regulatory policy and its practical delivery over the last 20 years, working in HM Treasury, Department of Trade and Industry and, from 2001, the OFT. As a board member, from 2006 until his retirement in 2010, he was responsible for delivery and policy on most competition and consumer issues. Currently he is a board member of Consumer Focus and a member of the Financial Services Consumer Panel.

### **Professor Colin Mayer**

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

### **Clare Potter**

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

### **Professor Gavin Reid**

Gavin Reid is Professor of Economics in the School of Economics & Finance at the University of St Andrews and a visiting professor in accounting and finance at the Strathclyde University Business School. He is founder/director of the Centre for Research into Industry, Enterprise, Finance and the Firm (CRIEFF), which specialises in industrial organisation, corporate finance, intellectual property, corporate governance, entrepreneurship and innovation. He has held visiting professorships in the USA, Canada and France, several presidencies of learned bodies, and has chaired several research networks. The author of ten books on industrial organisation, entrepreneurship and venture capital, and over 70 academic articles, he is an adviser to the Centre for Business Research, Judge Business School, Cambridge University. He recently graduated with a DBA (Hon) from the University of Abertay Dundee, and DLitt from the University of Aberdeen.

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

Adam Scott has academic and professional roots in engineering, economics and law. His doctoral research was in an area where economic regulation intersects with psychology and social science. After being called to the Bar, his specialisation in intellectual property and competition law brought him into electronic communications as a lawyer in ITT and the British Post Office. After being corporate planner in the creation and privatisation of British Telecommunications PLC, and then other senior roles in BT, in 1994, he became a fellow at the University of St Andrews, whilst being a consultant in scenarios and economic regulation. In 2000, he was a founding member of the Competition Commission Appeal Tribunals. Having completed his subsequent term as a member of the Tribunal in 2012, he is serving as its Director of Studies. He is a fellow of the Institution of Engineering and Technology and a member of the Institute of Telecommunications Professionals.

**Dr Vindelyn Smith-Hillman**

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

**Joanne Stuart OBE**

Joanne has worked in the technology sector for over 20 years and is Director of Attrus Limited which supports businesses and entrepreneurs both in the private and social enterprise sectors. A former chairman of the Institute of Directors, Northern Ireland Division, she chaired the independent review on University fees in Northern Ireland leading to a published report in February 2011. She currently chairs the government and business steering group tasked with driving forward the Northern Ireland Science, Technology, Engineering and Mathematics (STEM) strategy. She is a non-executive director of the Northern Ireland Science Park, Chairman of Arts & Business Northern Ireland and a trustee of the Integrated Education Fund as well as holding a number of other voluntary roles.

**David Summers OBE**

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

**Professor Stephen Wilks**

Stephen Wilks is Professor of Politics at the University of Exeter where he also served for four years as Deputy Vice Chancellor. From 2001 to 2005 he was a member of the Economic and Social Research Council and chaired its Research Strategy Board. He has written extensively on the politics, administration and enforcement of UK and European competition policy and on British and comparative public policy. His latest book, published in March 2013, is *The Political Power of the Business Corporation*. From 2001 to 2009 he was a member of the Competition Commission and served on 12 merger inquiries.

**Competition Service: Appointed Member****Janet Rubin**

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

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

A Henley trained coach, she has her own executive coaching business and carries out HR consultancy work. More recently she has been appointed as a member of the NHS Pay Review Body.

## Cases

### Judgments handed down within the period 1 April 2012 to 31 March 2013

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

	Judgment	Tribunal	Subject Matter
1	Albion Water Limited v Dŵr Cymru Cyfyngedig [2012] CAT 10 23 Apr 2012	Vivien Rose Timothy Cowen Brian Landers	<p>Ruling of the Tribunal on various applications heard at a case management conference held on 30 March 2012.</p> <p>First, the Tribunal refused Dŵr Cymru Cyfyngedig's ('Dŵr Cymru') application for security for costs under rule 45 of the Tribunal's Rules. The Tribunal concluded that, whilst Albion Water Limited ('Albion') had admitted that it was impecunious at the time of the application, taking all the other factors into account, it would not be just to order security. In particular, the Tribunal was concerned that making an order for security for costs would risk extinguishing a genuine claim by an impecunious company in circumstances where it could not be excluded that the Tribunal might ultimately conclude that Albion's impecuniosity had been caused by Dŵr Cymru. Secondly, the Tribunal ruled on applications by the parties in respect of the award of costs in two earlier contested applications. In respect of the costs incurred in relation to [2011] CAT 18, the Tribunal held that there should be no order as to costs. In relation to [2011] CAT 42, the Tribunal determined that Dŵr Cymru was the substantially successful party and entitled to the bulk of its costs, which were summarily assessed. Thirdly, the Tribunal declined to order disclosure of certain documents referred to in a witness statement filed in support of Dŵr Cymru, but indicated certain categories of documents which it expected to see disclosed if that witness's evidence were to be more helpful to the Tribunal's deliberations on one of the matters in dispute. Fourthly, the Tribunal directed that one of the witness statements lodged in support of Albion be withdrawn in its entirety and reserved. It gave guidance as to the matters that should properly be included in that statement.</p> <p>In addition to making directions to give effect to the Ruling, the Tribunal established the timetable for the future conduct of the claim.</p>
2	British Telecommunications plc v Office of Communications (Mobile Call Termination) Everything Everywhere Limited v Office of Communications (Mobile Call Termination)	Marcus Smith QC Brian Landers Professor Colin Mayer	<p>British Telecommunications plc, Vodafone Ltd ('Vodafone'), Hutchison 3G (UK) Limited and Everything Everywhere Ltd ('EE') appealed to the Tribunal against the price control conditions contained in OFCOM's 2011 Statement on mobile termination rates ('MTRs') ('the Statement'). Those price control conditions had set a target average charge for each mobile network operator for each of the years of the price control, covering the period from 2011 to 2015. The level of the price control imposed by OFCOM was based on its estimates of the long-run incremental cost ('LRIC') of providing wholesale mobile call termination services in 2014-15, which it derived from its cost model.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
2	<p>Hutchison 3G (UK) Limited v Office of Communications (Mobile Call Termination)</p> <p>Vodafone Limited v Office of Communications (Mobile Call Termination)</p> <p>[2012] CAT 11</p> <p>3 May 2012</p>		<p>All of the appeals raised price control matters which, in accordance with section 193 of the Communications Act 2003 ('the 2003 Act'), the Tribunal was required to refer to the Competition Commission ('the CC') for determination. By an order of 30 June 2011, the Tribunal, therefore, referred seven questions to the CC ('the Reference Questions'), which required the CC to determine, on the merits, whether OFCOM had erred in its approach to setting the price controls.</p> <p>On 9 February 2012, the CC notified the Tribunal of its determination of those price control matters ('the Determination'). Broadly, the CC determined that OFCOM had erred in relation to the matters raised in Reference Questions 3, 4 and 6. The CC concluded that OFCOM had erred in using a four-year (rather than three-year) glide path for achieving LRIC-level MTRs and in relying on overstated radio equipment costs in its costs model. In answering Reference Question 3, the CC also found that Vodafone had identified certain errors in OFCOM's analysis but the CC did not consider that these allegations had been properly pleaded. As it was requested to do by the Tribunal's Reference Question 7, the CC set out how the charge controls should be adjusted to reflect the errors that it had identified. It dismissed the remainder of the arguments relating to Reference Questions 1, 2 and 5, and upheld OFCOM's decision to adopt a LRIC model for setting the price control and the level of the price control based on LRIC.</p> <p>Vodafone and EE applied to the Tribunal under section 193(7) of the 2003 Act for a direction that the Determination was one that would fall to be set aside, applying the principles applicable on an application for judicial review. For the reasons given in the Judgment, the Tribunal unanimously dismissed those grounds. In particular, the Tribunal rejected EE's argument that the CC had misunderstood its function under section 193 of the 2003 Act, which had allegedly led it to endorse OFCOM's conclusions on points when it should not have done. The Tribunal further held that the CC had a sufficient evidential basis for its decision and that the CC had acted properly, rationally, and in accordance with its statutory duties, in determining the Reference Questions on the evidence before it. The Tribunal considered that many of Vodafone's criticisms of the Determination used the language of judicial review only in order to support what was, in substance, an impermissible attempt to challenge the Determination on the merits. The Tribunal did, however, hold that those errors identified by Vodafone's unpleaded ground of appeal ought properly to be corrected and, accordingly, it gave permission for Vodafone to amend its notice of appeal.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
2			Pursuant to section 193(6) of the 2003 Act, the Tribunal decided the price control matters arising in each of the appeals in accordance with the Determination, save that the CC's conclusions with respect to the unpleaded points applied as if they had been pleaded by Vodafone. Further, pursuant to section 195(4) of the 2003 Act, the Tribunal proposed to make an order remitting the matter to OFCOM with appropriate directions that OFCOM implement the Statement, as corrected by the Determination.
3	(1) Tesco Stores Ltd (2) Tesco Holdings Ltd (3) Tesco Plc v Office of Fair Trading [2012] CAT 12 3 May 2012	Lord Carlile CBE, QC Margot Daly Clare Potter	Order of the Chairman in respect of the Appellants' oral application for disclosure of certain redacted material at the hearing on 2 May 2012.
4	(1) Tesco Stores Ltd (2) Tesco Holdings Ltd (3) Tesco Plc v Office of Fair Trading [2012] CAT 13 23 Apr 2012	Lord Carlile CBE, QC Margot Daly Clare Potter	Order of the Chairman in respect of the Appellants' application for a direction permitting them to deal in the witnesses' evidence-in-chief with new issues said to arise from the OFT's skeleton argument dated 4 April 2012.
5	SRCL Limited v Competition Commission [2012] CAT 14 24 May 2012	Vivien Rose Jonathan May Professor Colin Mayer	<p>Judgment of the Tribunal in connection with an application by SRCL Limited ('Stericycle') for review of a decision by the Competition Commission ('the CC') dated 21 March 2012 ('the Report'), which sets out the CC's conclusions as regards the completed acquisition by Stericycle of Ecowaste Southwest Limited ('Ecowaste').</p> <p>For the reasons set out in the Judgment, the Tribunal dismissed Stericycle's application. In particular, the Tribunal concluded that:</p> <ul style="list-style-type: none"> <li>■ There was no basis for impugning the procedure which the CC had adopted to assess the appropriate remedy in this case or for concluding that the CC had erred in the test that it had applied. There was nothing in the CC's procedure that suggested that the CC had assumed that only full divestment would be an effective remedy or that it had failed to give proper consideration to other options proposed. Nor did the Report indicate that the CC had applied the wrong test by focusing on the counterfactual rather than on the substantial lessening of competition that the CC had identified.</li> <li>■ The CC had not acted irrationally in rejecting a remedy proposed by Stericycle (described at paragraph 29 of the Judgment) ('Option 2') as an effective alternative to full divestment. The CC was entitled to conclude that the purchaser would be a stronger competitor if all the main contracts with customers currently using the Avonmouth plant were included in the divestment package than it would be if Option 2 were accepted.</li> </ul>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
5			<ul style="list-style-type: none"> <li>■ There was no reason for the CC in this case to have considered the costs of Option 2 as compared with full divestment, as the CC's conclusion (which had not been undermined by Stericycle's argument) was that Option 2 was not an effective alternative to full divestment.</li> <li>■ The CC's decision to encourage Stericycle to proceed speedily with divestment by announcing the backstop of the appointment of a divestment trustee and sale without a minimum price was within its discretion.</li> </ul>
6	TalkTalk Telecom Group Plc (Wholesale Broadband Access Charge Control) v Office of Communications [2012] CAT 15 30 May 2012	Marcus Smith QC Dr Clive Elphick Jonathan May	Ruling of the Tribunal in connection with applications by TalkTalk Telecom Group Plc and by OFCOM for the payment of their respective costs.
7	British Telecommunications plc v Office of Communications (Mobile Call Termination) Everything Everywhere Limited v Office of Communications (Mobile Call Termination) Hutchison 3G (UK) Limited v Office of Communications (Mobile Call Termination) Vodafone Limited v Office of Communications (Mobile Call Termination) [2012] CAT 16 7 Jun 2012	Marcus Smith QC Brian Landers Professor Colin Mayer	Order of the Tribunal in which Everything Everywhere Limited was granted limited permission to appeal the Tribunal's Judgment of 3 May 2012 ([2012] CAT 11).
8	Albion Water Limited v Dŵr Cymru Cyfyngedig [2012] CAT 17 22 Jun 2012	Vivien Rose Timothy Cowen Brian Landers	Ruling of the Tribunal in respect of Albion Water Limited's ('Albion') application to re-amend the Particulars of Claim and on costs. In respect of Albion's application for permission to re-amend its amended particulars of claim, the Tribunal granted permission save that it struck out paragraphs 50 and 51 pursuant to rule 40 of the Tribunal's Rules, and gave permission for the inclusion of paragraphs 70 and 78 only in the forms prescribed by the Tribunal's Ruling.

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
8			In respect of Albion's costs of defending the application for security for costs, which was decided by the Tribunal's Ruling of 23 April 2012 ([2012] CAT 10), the Tribunal held that Albion was entitled to its reasonable costs. Dŵr Cymru Cyfyngedig ('Dŵr Cymru') was ordered to make an interim payment to Albion in the amount of £30,000 in respect of those costs, with the remainder to be assessed. There was no order as to the remaining costs incurred and sought by Dŵr Cymru in respect of the other matters determined by the Tribunal's Ruling of 23 April 2012.
9	<p>British Telecommunications plc v Office of Communications (LLU/ WLR Charge Control March 2012)</p> <p>(1) British Sky Broadcasting Limited (2) TalkTalk Telecom Group PLC v Office of Communications (LLU/ WLR Charge Control March 2012)</p> <p>[2012] CAT 18</p> <p>26 Jun 2012</p>	<p>Vivien Rose</p> <p>Jonathan May</p> <p>Professor Stephen Wilks</p>	Ruling of the Tribunal in relation to Everything Everywhere Limited's renewed application to intervene.
10	<p>2 Travel Group PLC (in liquidation) v Cardiff City Transport Services Limited</p> <p>[2012] CAT 19</p> <p>5 Jul 2012</p>	<p>Lord Carlile CBE, QC</p> <p>Peter Freeman CBE, QC (Hon)</p> <p>Marcus Smith QC</p>	<p>Judgment of the Tribunal in connection with a claim for damages by 2 Travel Group PLC (in liquidation) ('2 Travel') against Cardiff City Transport Services Limited, trading as Cardiff Bus ('Cardiff Bus'), under section 47A of the Competition Act 1998. The claim was based on a finding by the Office of Fair Trading that Cardiff Bus had infringed the Chapter II prohibition by engaging in predatory conduct against 2 Travel which amounted to an abuse of its dominant position in the relevant markets ('the Infringement').</p> <p>By its claim for damages, 2 Travel contended that it had suffered loss and damage by reason of the Infringement. The claim comprised six broad heads: (i) loss of profits; (ii) loss of a capital asset, namely the business of 2 Travel as a going concern; (iii) loss of a commercial opportunity, namely the ability to benefit from the increase in value and development potential of certain land in Swansea; (iv) wasted staff and management time expended by 2 Travel during the Infringement; (v) costs relating to 2 Travel's liquidation; and (vi) exemplary damages. 2 Travel claimed interest on these damages.</p>

	Judgment	Tribunal	Subject Matter
10			<p>For the reasons given in the Judgment, the Tribunal:</p> <ul style="list-style-type: none"> <li>■ Awarded damages to 2 Travel in respect of its claim for lost profits in the amount of £33,818.79, together with interest on this sum at a rate of 2 per cent above the Bank of England base rate from 1 August 2004.</li> <li>■ Rejected 2 Travel's claims for loss of a capital asset, loss of a commercial opportunity, wasted staff and management time and liquidation costs.</li> <li>■ Awarded exemplary damages to 2 Travel in the sum of £60,000.</li> </ul>
11	<p>Virgin Media, Inc. v Office of Communications</p> <p>The Football Association Premier League Limited v Office of Communications</p> <p>British Sky Broadcasting Limited v Office of Communications</p> <p>British Telecommunications plc v Office of Communications</p> <p>[2012] CAT 20</p> <p>8 Aug 2012</p>	<p>The President</p> <p>Professor John Beath</p> <p>Michael Blair QC (Hon)</p>	<p>Judgment of the Tribunal in relation to the appeals brought by each of British Sky Broadcasting Limited ('Sky'), The Football Association Premier League, Virgin Media, Inc. ('VM') and British Telecommunications plc against a decision of the Office of Communications ('OFCOM'), contained in a document entitled 'Pay TV Statement' and published on 31 March 2010 to vary, pursuant to section 316 of the Communications Act 2003 ('the 2003 Act'), the conditions in the licences granted to Sky under Part I of the Broadcasting Act 1990 for certain of Sky's pay television channels, namely Sky Sports 1, Sky Sports 2, Sky Sports 1 HD and Sky Sports 2 HD ('the CPSCs'). The new licence conditions required Sky to offer to wholesale its CPSCs to retailers on other broadcasting platforms and, in the case of the standard definition versions of those channels, offer them at wholesale prices set by OFCOM ('the WMO obligation').</p> <p>The Tribunal dismissed part of Sky's appeal, finding that OFCOM did have jurisdiction, under the sections 316 and 317 of the 2003 Act, to impose the WMO obligation on Sky.</p> <p>The Tribunal concluded, however, that OFCOM's core competition concern (that Sky had deliberately withheld from other retailers wholesale supply of its CPSCs in pursuit of strategic incentives unrelated to normal commercial considerations of revenue/profit-maximisation) was unfounded. OFCOM had misinterpreted the evidence in respect of the commercial negotiations between Sky and other retailers who sought access to Sky's CPSCs. The Tribunal found that Sky had engaged constructively in negotiations. Moreover, the Tribunal concluded that OFCOM's other competition concerns, relating specifically to the prices for the existing wholesale supply of the CPSCs to VM, and the non-supply to the cable companies of certain new services, were also unfounded. The Tribunal could find no evidence to justify OFCOM's finding that Sky had (or had acted upon) an incentive to weaken VM or its corporate predecessors as competitors. It therefore allowed Sky's appeal against the WMO obligation.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
12	Ryanair Holdings plc v Competition Commission [2012] CAT 21 8 Aug 2012	Marcus Smith QC Dr Clive Elphick Dermot Glynn	Judgment of the Tribunal in respect of an application by Ryanair Holdings plc ('Ryanair') for a review under section 120 of the Enterprise Act 2002 of the decision of the Competition Commission ('the CC') to continue its investigation of Ryanair's completed acquisition ('the Acquisition') of a minority shareholding in respect of one of its competitors, Aer Lingus Group Plc ('Aer Lingus').  The Tribunal concluded that, as a matter of law, the CC was not precluded from continuing its investigation of the Acquisition. The Acquisition was not a concentration with a Community dimension caught by the EU Merger Regulation and so did not fall within the European Commission's exclusive jurisdiction. Furthermore, the duty of sincere co-operation in Article 4(3) of the Treaty on European Union did not mean that the CC could not take further steps in its investigation at the same time as the European Commission was investigating Ryanair's bid for the entire issued share capital of Aer Lingus. The Tribunal noted, however, that the CC remained subject to the duty of sincere co-operation and must avoid taking any decision running counter to a decision adopted, or which might be adopted, by the European Commission in relation to the public bid by Ryanair for the entirety of Aer Lingus.
13	Ryanair Holdings plc v Competition Commission [2012] CAT 22 20 Aug 2012	Marcus Smith QC Dr Clive Elphick Dermot Glynn	Order of the Tribunal in which the Tribunal refused Ryanair Holdings plc permission to appeal the Tribunal's decision of 8 August 2012 ([2012] CAT 21).
14	Albion Water Limited v Dŵr Cymru Cyfyngedig [2012] CAT 23 23 Aug 2012	Vivien Rose Timothy Cowen Brian Landers	Reasoned Order of the Chairman in respect of Dŵr Cymru Cyfyngedig's applications for an extension of time in which to file reply evidence and permission to adduce expert evidence.
15	Deutsche Bahn AG & Others v Morgan Crucible Company PLC & Others [2012] CAT 24 13 Sep 2012	Marcus Smith QC Margot Daly Dermot Glynn	Reasoned Order of the Chairman in which the Chairman extended the stay to the proceedings pending consideration by the Supreme Court of an application for permission to appeal (and determination of any ensuing appeal).
16	Albion Water Limited v Dŵr Cymru Cyfyngedig [2012] CAT 25 25 Sep 2012	Vivien Rose Timothy Cowen Brian Landers	Reasoned Order of the Chairman in respect of Albion Water Limited's application to admit further witness evidence in response to Dŵr Cymru Cyfyngedig's reply witness evidence.

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
17	(1) British Sky Broadcasting Limited (2) TalkTalk Telecom Group PLC v Office of Communications (LLU/WLR Charge Control March 2012)  [2012] CAT 26 28 Sep 2012	Vivien Rose Jonathan May Professor Stephen Wilks	Reasoned Order of the Tribunal in which the Tribunal referred to the Competition Commission (pursuant to section 193 of the Communications Act 2003 and rule 3 of the Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004) the specified price control matters raised in the appeal by British Sky Broadcasting Limited and TalkTalk Telecom Group PLC.
18	(1) Association of Convenience Stores (2) National Federation of Retail Newsagents v Office of Fair Trading  [2012] CAT 27 24 Oct 2012	Vivien Rose Clare Potter Joanne Stuart OBE	<p>Judgment of the Tribunal in respect of an application by the Applicants for a review under section 179 of the Enterprise Act 2002 ('the 2002 Act') of the decision of the Office of Fair Trading ('the OFT'), taken on 1 March 2012, not to conduct a short update review to determine whether to make a reference to the Competition Commission ('the CC') of the market for newspaper and magazine distribution in the UK ('the 2012 Decision').</p> <p>The short update review being debated in the 2012 Decision followed a decision of the OFT taken in September 2009 ('the 2009 Decision') in which it had decided not to refer the market to the CC pursuant to section 131 of the 2002 Act but indicated that it would consider, after a period of two years from the publication of the 2009 Decision, whether to undertake a short update review of the sector. The OFT had stated in the 2009 Decision that such a review would only take place where it would be justified following an assessment under the OFT's prioritisation principles undertaken at that future time.</p> <p>Having considered both the 2009 Decision and the 2012 Decision, the Tribunal concluded that its task was to consider whether, looking at the 2012 Decision against the background of the 2009 Decision, the OFT could reasonably have concluded, on the basis of the evidence before it, that it was not appropriate to carry out a short update review to determine whether the market should be referred to the CC. The Tribunal rejected the Applicants' challenge to the OFT's finding in the 2012 Decision that the likely consumer benefit did not justify it undertaking the short update review envisaged at the end of the 2009 Decision. The Tribunal also rejected the Applicants' submission that the OFT's assessment of its priorities as regards the strategic significance of any update review was flawed. Accordingly, the Tribunal dismissed the Applicants' application for review.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
19	<p>Telefónica UK Limited v Office of Communications [2012] CAT 28 30 Oct 2012</p>	<p>Mr Justice Henderson William Allan Professor Stephen Wilks</p>	<p>Judgment of the Tribunal in connection with an appeal brought by Telefónica UK Ltd ('Telefónica') under section 192(1)(a) and (2) of the Communications Act 2003 ('the 2003 Act') against a determination by the Office of Communications ('OFCOM') of a dispute between Telefónica and each of Hutchison 3G UK Ltd ('H3G') and Vodafone Ltd ('Vodafone') dated 14 September 2011 ('the Determination').</p> <p>The dispute related to termination charges levied by Vodafone and H3G in October 2010 ('the October 2010 charges'), and in particular a practice known as 'flip-flopping', a means by which mobile communications providers exploited the way in which average call termination charges were calculated under OFCOM's mobile call termination statement published on 27 March 2007.</p> <p>For the reasons set out in the Judgment, the Tribunal rejected each of Telefónica's grounds of appeal, and concluded that:</p> <ul style="list-style-type: none"> <li>■ OFCOM had clearly understood that dispute resolution constituted a separate limb of regulation, distinct from the pre-existing charge control regime.</li> <li>■ OFCOM had given consideration to the question of whether the October 2010 charges were fair and reasonable in the light of all of its regulatory duties and objectives, and in light of the prevailing regulatory regime.</li> <li>■ Section 190(2A) of the 2003 Act was inapplicable to the dispute as it was referred to OFCOM prior to 26 May 2011.</li> <li>■ Given that the terms of the relevant statutory question determined the information that the decision-maker had to obtain during the administrative process and the nature of the analysis that it had to conduct, the Tribunal formed that section 190(2A) could only apply to those disputes that were conducted as well as determined once that section was in operation. Further, disputes that appeared to satisfy the criteria of both sections 185(1) and 185(1A) of the 2003 Act were to be treated, for the purposes of both sections 186 and 190, as falling within section 185(1A) with the specific consequence that the requirements of section 190(2A) did not apply to them.</li> <li>■ There was no error of law on OFCOM's part in giving predominant weight to Vodafone's and H3G's putative compliance with the significant market power ('SMP') regime, and, in the absence of any error of law, the weight to be attached to relevant factors was a matter for OFCOM alone.</li> </ul>
			<ul style="list-style-type: none"> <li>■ In the absence of any specific complaint of non-compliance with the SMP regime, OFCOM was free to decide whether to investigate that aspect of the matter, or whether to proceed on the assumption that the disputed charges, viewed in the context of the financial year as a whole, complied with the charge control. In the Tribunal's judgment, it was eminently reasonably for OFCOM to decide to proceed on the latter basis.</li> </ul>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
20	Ryanair Holdings plc v Competition Commission [2012] CAT 29 8 Nov 2012	Marcus Smith QC  Dr Clive Elphick  Dermot Glynn	Order of the Chairman in which the Chairman granted the Competition Commission's application for its costs but refused.  Aer Lingus's application for its costs.
21	British Telecommunications plc v Office of Communications (Mobile Call Termination)  Everything Everywhere Limited v Office of Communications (Mobile Call Termination)  Hutchison 3G (UK) Limited v Office of Communications (Mobile Call Termination)  Vodafone Limited v Office of Communications (Mobile Call Termination)  [2012] CAT 30 12 Nov 2012	Marcus Smith QC  Brian Landers  Professor Colin Mayer	Ruling of the Tribunal in respect of an application made by the Competition Commission ('the CC') for the payment by Everything Everywhere Limited ('EE') and Vodafone Limited ('Vodafone') of its costs of, and arising out of, its defence of its determination of certain price control matters dated 9 February 2012 ('the Determination') before the Tribunal. EE and Vodafone had challenged the Determination pursuant to section 193(7) of the Communications Act 2003 ('the 2003 Act').  Rule 55(2) of the Tribunal's Rules provides that the Tribunal may, at its discretion, make an order 'in relation to the payment of costs by one party to another'. The Tribunal held that, in defending the Determination against the challenges brought pursuant to section 193(7) of the 2003 Act, the CC was not a 'party' to the proceedings, within the meaning of rule 55(2). On that basis, the Tribunal lacked jurisdiction to make an order for the payment of the CC's costs. Nevertheless, in cases where a challenge was brought against a determination made by the CC in relation to price control matters, the CC was entitled to appear before the Tribunal in order to actively, but neutrally, assist the Tribunal. The Tribunal also accepted that, if an appropriate application were made in a future case, it would have a discretion to join the CC as a 'party' but held that that discretion would be exercised only rarely.  As such, the CC's application for its costs was refused for lack of jurisdiction.

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
22	<p>(1) Tesco Stores Ltd (2) Tesco Holdings Ltd (3) Tesco Plc v Office of Fair Trading</p> <p>[2012] CAT 31</p> <p>20 Dec 2012</p>	<p>Lord Carlile CBE, QC</p> <p>Margot Daly</p> <p>Clare Potter</p>	<p>Judgment in respect of the liability aspect of an appeal brought by the Appellants ('Tesco') against a decision of the Office of Fair Trading ('the OFT') taken on 26 July 2011, entitled 'Dairy retail price initiatives' (Case CE/3094-03) ('the Decision'). In the Decision, the OFT found that a number of competing undertakings, including Tesco, had indirectly exchanged their future retail pricing intentions in respect of British-produced cheddar and territorial cheeses, via their common suppliers ('the hub and spoke exchanges'). The OFT concluded that Tesco, among others, had participated in two single overall concerted practices, one in 2002 ('the 2002 Cheese Initiative') and the other in 2003 ('the 2003 Cheese Initiative'), which had as their object the restriction of competition in breach of the Chapter I prohibition, contained in section 2(1) of the Competition Act 1998. As regards Tesco, the 2002 Cheese Initiative was found by the OFT to comprise nine separate hub and spoke exchanges. As regards Tesco, the 2003 Cheese Initiative was found to comprise five separate hub and spoke exchanges. During the course of the proceedings before the Tribunal, the different hub and spoke exchanges came to be referred to as 'Strands'.</p> <p>Before assessing the individual Strands, the Tribunal addressed a number of issues relating to the evidence relied upon by the OFT in the Decision and on appeal: including the evidential value of early resolution agreements entered into with the OFT by the addressees of the OFT's Statement of Objections (later, addressees of the Decision) other than Tesco; as well as the OFT's decision not to call witnesses of fact. The Tribunal also considered the appropriate legal test to be applied in order to establish a concerted practice consisting of hub and spoke exchanges in light of previous case law of the Tribunal, the Court of Appeal and the EU courts. In analysing whether the evidence relied upon by the OFT in relation to each Strand was sufficient to support the findings made in the Decision, the Tribunal considered that it was appropriate to have regard to all the circumstances and that it was important to consider the Strands in context, in particular in light of events that had gone before.</p> <p>For the reasons set out in the Judgment, the Tribunal dismissed Tesco's appeal as to liability as regards Strands 2, 3 and 7 of the 2002 Cheese Initiative. The Tribunal found that the evidence relied upon by the OFT was sufficient to establish, on the balance of probabilities, the concerted practices found in the Decision in which: (i) Sainsbury's had indirectly communicated its future retail pricing intentions for cheese to Tesco, via McLelland (Strand 2); (ii) Tesco had indirectly communicated its future retail pricing intentions for cheese to Sainsbury's, via Dairy Crest (Strand 3); and (iii) Tesco had indirectly communicated its future retail pricing intentions for cheese to Asda, via McLelland (Strand 7).</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
22			<p>For the reasons set out in the Judgment, the Tribunal dismissed Tesco's appeal as to liability as regards Strands 2, 3 and 7 of the 2002 Cheese Initiative. The Tribunal found that the evidence relied upon by the OFT was sufficient to establish, on the balance of probabilities, the concerted practices found in the Decision in which: (i) Sainsbury's had indirectly communicated its future retail pricing intentions for cheese to Tesco, via McLelland (Strand 2); (ii) Tesco had indirectly communicated its future retail pricing intentions for cheese to Sainsbury's, via Dairy Crest (Strand 3); and (iii) Tesco had indirectly communicated its future retail pricing intentions for cheese to Asda, via McLelland (Strand 7).</p> <p>The Tribunal found, however, that there was insufficient evidence to support the findings made by the OFT in the Decision in respect of Strands 1, 4, 5, 8 and 9 of the 2002 Cheese Initiative (Strand 6 was not found by the OFT to amount to an infringement). As such, the Tribunal set aside the OFT's findings that Tesco had infringed the Chapter I prohibition in those respects.</p> <p>As to the 2003 Cheese Initiative, the Tribunal found that there was insufficient evidence to support a number of the conclusions reached by the OFT and that none of the five Strands, as found in the Decision, were proved as against Tesco. The Tribunal, therefore, set aside the OFT's finding in the Decision that Tesco had participated in the single overall concerted practice referred to as the 2003 Cheese Initiative.</p> <p>In relation to those parts of the 2002 Cheese Initiative, which the Tribunal upheld as infringements by Tesco of the Chapter I prohibition, the Tribunal directed that it should receive further submissions as to: (i) whether those three Strands were sufficient to amount to participation by Tesco in the single overall concerted practice referred to in the Decision as the 2002 Cheese Initiative, or whether those instances should be viewed as three separate, isolated infringements; and (ii) the level of the financial penalty imposed on Tesco.</p>
23	British Telecommunications plc v Office of Communications (Ethernet Determinations) [2013] CAT 1 21 Jan 2013	The President	Ruling of the President, sitting alone, on an application by British Telecommunications plc ('BT'), which sought a prospective extension of time in which to file its notice of appeal against certain determinations by OFCOM pursuant to rule 8(2) of the Tribunal's Rules. For the reasons set out in the Ruling, the application was refused on the basis that the circumstances relied upon by BT did not constitute exceptional circumstances as required by rule 8(2).

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
24	<p>Virgin Media, Inc. v Office of Communications</p> <p>The Football Association Premier League Limited v Office of Communications</p> <p>British Sky Broadcasting Limited v Office of Communications</p> <p>British Telecommunications plc v Office of Communications</p> <p>[2013] CAT 2</p> <p>7 Feb 2013</p>	<p>The President</p> <p>Professor John Beath</p> <p>Michael Blair QC (Hon)</p>	<p>Ruling of the Tribunal in relation to an application by British Telecommunications plc ('BT') for permission to appeal the Tribunal's judgment of 8 August 2012 in cases 1156 1159/8/3/10 British Sky Broadcasting Limited &amp; Ors v Office of Communications ([2012] CAT 20). For the reasons set out in the Ruling, BT's application was refused.</p>
25	<p>Telefónica UK Limited v Office of Communications</p> <p>[2013] CAT 3</p> <p>15 Feb 2013</p>	<p>Mr Justice Henderson</p> <p>William Allan</p> <p>Professor Stephen Wilks</p>	<p>Ruling of the Tribunal in connection with the Office of Communications ('OFCOM') application for its external legal costs. For the reasons given in the Ruling, the Tribunal directed that Telefónica UK Limited pay OFCOM's costs of the appeal.</p>
26	<p>British Sky Broadcasting Limited v Office of Communications (Interim relief)</p> <p>Top Up TV Europe Limited v Office of Communications</p> <p>Virgin Media, Inc. v Office of Communications</p> <p>The Football Association Premier League Limited v Office of Communications</p> <p>British Sky Broadcasting Limited v Office of Communications</p> <p>British Telecommunications plc v Office of Communications</p> <p>British Sky Broadcasting Limited v Office of Communications (Linear-only Set Top Boxes)</p>	<p>The President</p> <p>Professor John Beath</p> <p>Michael Blair QC (Hon)</p>	<p>Ruling of the Tribunal in respect of certain matters consequential to the Tribunal's judgment in the Pay TV appeals ([2012] CAT 20), including British Telecommunications plc's application for a stay of certain provisions of the Tribunal's final order in these appeals.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
26	British Sky Broadcasting Limited v Office of Communications (Conditional Access Modules) [2013] CAT 4 27 Feb 2013		
27	(1) Somerfield Stores Limited (2) Co-operative Group Food Limited v Office of Fair Trading (1) Gallaher Group Limited (2) Gallaher Limited v Office of Fair Trading [2013] CAT 5 27 Mar 2013	Marcus Smith QC	Ruling of the Chairman, sitting alone, retrospectively extending the time in which the applicants in Cases 1197/1/1/12 and 1200/1/1/12 (together, 'the Applicants') were permitted to file their notices of appeal against a decision of the Office of Fair Trading. In the Chairman's judgment, the particular facts applicable to the Applicants were such as to give rise to exceptional circumstances for the purposes of rule 8(2) of the Tribunal's Rules. It was ordered that the Applicants had 28 days from the date of the Ruling in which to file their notices of appeal, if so advised.
28	Albion Water Limited v Dŵr Cymru Cyfyngedig [2013] CAT 6 28 Mar 2013	Vivien Rose Timothy Cowen Brian Landers	<p>Judgment of the Tribunal in connection with a claim for damages brought by Albion Water Limited ('Albion') against Dŵr Cymru Cyfyngedig ('Dŵr Cymru') under section 47A of the Competition Act 1998. The claim was based on the finding, made by a differently constituted panel of the Tribunal in Albion Water Limited &amp; Albion Water Group Limited v Water Services Regulation Authority (Case 1046/2/4/04), that Dŵr Cymru had infringed the Chapter II prohibition (Section 18 Competition Act 1998). In particular, that Tribunal panel had held that the price at which Dŵr Cymru was prepared to offer Albion a common carriage service to carry water through its pipes ('the First Access Price') amounted to an abuse by Dŵr Cymru of its dominant position in that it (i) imposed on Albion a margin squeeze, and (ii) was both excessive and unfair in itself (together, 'the Infringement').</p> <p>In its claim for damages, Albion contended that it had suffered loss and damage by reason of the Infringement. Albion's claim for damages comprised three heads: (i) if Dŵr Cymru had offered a lawful price for common carriage, rather than the abusive First Access Price, Albion would have been able to supply its customer, Shotton Paper, on the basis of common carriage, which would have been more profitable than the existing arrangements ('the Shotton Paper Claim'); (ii) as a result of the Infringement, Albion lost the chance to win a potentially lucrative contract to supply another business, Corus Shotton, and it was, therefore, deprived of further profits ('the Corus Claim'); and (iii) a claim for exemplary damages. In addition, Albion claimed interest on any sums awarded to it.</p>

	<b>Judgment</b>	<b>Tribunal</b>	<b>Subject Matter</b>
28			<p>For the reasons given in the Judgment, the Tribunal unanimously:</p> <ul style="list-style-type: none"> <li>■ Awarded Albion damages in the amount of £1,694,343.50 in respect of the Shotton Paper Claim, together with interest at the rate of 2 per cent above the Bank of England base rate from 26 January 2005 until payment.</li> <li>■ Awarded Albion damages in the amount of £160,149.66 in respect of the Corus Claim, together with interest at the rate of 2 per cent above the Bank of England base rate from 20 July 2006 until payment.</li> <li>■ Dismissed Albion’s claim for exemplary damages.</li> </ul>
29	<p>John Lewis plc v Office of Fair Trading [2013] CAT 7 28 Mar 2013</p>	<p>Vivien Rose Peter Freeman CBE, QC (Hon) Stephen Harrison</p>	<p>Judgment of the Tribunal in relation to an application by John Lewis plc (‘JLP’) under section 179 of the Enterprise Act 2002 (‘the 2002 Act’) for review of a decision of the Office of Fair Trading (‘the OFT’) in relation to the content of a price comparison website (‘the Website’) relating to extended warranties (‘EWs’) for domestic electrical goods.</p> <p>For the reasons set out in the Judgment, the Tribunal dismissed JLP’s application for review. In particular, the Tribunal concluded that the decision that JLP was seeking to challenge was, in reality, made by the OFT on 27 June 2012, on which date the OFT published its decision declining to make a market investigation reference regarding EWs, and accepted undertakings from certain retailers in lieu of a reference to the Competition Commission (‘the Undertakings in Lieu’).</p> <p>Accordingly, to the extent that two of JLP’s grounds of review related, in reality, to the decision made on 27 June 2012, JLP’s application for review was brought outside the time limit set out in rule 27 of the Tribunal’s Rules. The Tribunal rejected JLP’s secondary submission that it ought to be granted a retrospective extension of time under rule 8(2) of the Tribunal’s rules in which to appeal that decision.</p> <p>JLP’s further ground of review, namely that the OFT was in breach of its duties under sections 162 and 167(6) of the 2002 Act in relation to the implementation of the Undertakings in Lieu, was dismissed by the Tribunal. The Tribunal concluded that the Undertakings in Lieu were being implemented in accordance with their terms, such that no breach could be identified.</p>

## Activity by Case within the period 1 April 2012 to 31 March 2013

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days - excluding days limited to formal handing down of judgments)		Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2013	Comments
Emerson Electric Co and Others v Morgan Crucible Company Plc Case: 1077/5/7/07 9 Feb 2007	06-07									There have been a number of preliminary and interlocutory issues, for example with regards to jurisdiction, requiring the attention of the higher courts.
	07-08		1	3	4	2				
	08-09						2			
	09-10									
	10-11			1	1	1				
	11-12						1	1		
	12-13								Ongoing	
British Sky Broadcasting Limited v Office of Communications (Interim Relief) Case: 1152/8/3/10 (IR) 16 Apr 2010	10-11			2	5.5	1				The Interim Relief granted by the President in his Order of 29 April 2010 will continue in force until the Court of Appeal's decision in: Virgin Media, Inc. (Case: 1156/8/3/10); The Football Association Premier League Limited (Case: 1157/8/3/10); British Sky Broadcasting Limited (Case: 1158/8/3/10); and British Telecommunications Plc (Case: 1159/8/3/10).
	11-12									
	12-13								Ongoing	
Top Up TV Europe Limited v Office of Communications Case: 1155/3/3/10 27 May 2010	10-11	3								This case was stayed pending the determination of Virgin Media (Case: 1156/8/3/10) and its associated cases (see below). Following that determination, this case was dismissed pursuant to the Tribunal's order of 6 March 2013.
	11-12									
	12-13								Closed	

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days - excluding days limited to formal handing down of judgments)		Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2013	Comments
Virgin Media, Inc. v Office of Communications Case: 1156/8/3/10 28 May 2010	10-11	12	2	1	1	1				This case was heard concurrently with: The Football Association Premier League Limited (Case: 1157/8/3/10), British Sky Broadcasting Limited (Case: 1158/8/3/10); British Telecommunications Plc (Case: 1159/8/3/10); British Sky Broadcasting Limited (Linear only Set Top Boxes) (Case: 1170/8/3/10); and British Sky Broadcasting Limited (Conditional Access Modules) (Case: 1179/8/3/11). Figures for case management conferences, hearings and judgments have been recorded against this case only.
	11-12			1	37					
	12-13			1	1	3	8 Aug 2012 (26.4)	1	Ongoing as to costs	
The Football Association Premier League Limited v Office of Communications Case: 1157/8/3/10 1 Jun 2010	10-11	12								See the note to Virgin Media, Inc. (Case: 1156/8/3/10).
	11-12									
	12-13								Ongoing as to costs	
British Sky Broadcasting Limited v Office of Communications Case: 1158/8/3/10 1 Jun 2010	10-11	12								See the note to Virgin Media, Inc. (Case: 1156/8/3/10).
	11-12									
	12-13								Ongoing as to costs	
British Telecommunications Plc v Office of Communications Case: 1159/8/3/10 1 Jun 2010	10-11	12								See the note to Virgin Media, Inc. (Case: 1156/8/3/10). On 7 February 2013 the Tribunal refused BT permission to appeal the Tribunal's substantive judgment of 8 August 2012.
	11-12									
	12-13								Ongoing as to costs	

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days - excluding days limited to formal handing down of judgments)		Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2013	Comments
Albion Water Limited v Dŵr Cymru Cyfyngedig Case: 1166/5/7/10 18 Jun 2010	10-11			1	1	2				
	11-12		1			2				
	12-13			1	12	5			Ongoing as to costs	
British Sky Broadcasting Limited v Office of Communications (Linear-only Set Top Boxes) Case: 1170/8/3/10 11 Oct 2010	10-11	4								See the note to Virgin Media, Inc (Case 1156/8/3/10).
	11-12									
	12-13								Ongoing as to costs	
Deutsche Bahn AG and Others v Morgan Crucible Company Plc and Others Case: 1173/5/7/10 15 Dec 2010	10-11									This case is stayed pending the determination by the Supreme Court of Morgan Crucible's appeal with regard to a striking out application that had been allowed by the Tribunal but disallowed by the Court of Appeal.
	11-12			1	1	2		1		
	12-13					1			Ongoing	
D H Francis v Cardiff City Transport Services Limited Case: 1175/5/7/11 14 Jan 2011	10-11									This case had been stayed pending the Tribunal's determination in 2 Travel Group Plc (in liquidation) v Cardiff City Transport Services Limited (Case: 1178/5/7/11). On 19 October 2012, the Chairman made an Order granting the claimant permission to withdraw the claim.
	11-12									
	12-13								Withdrawn	
D B Fowles v Cardiff City Transport Services Limited Case: 1176/5/7/11 14 Jan 2011	10-11									This case had been stayed pending the Tribunal's determination in 2 Travel Group Plc (in liquidation) v Cardiff City Transport Services Limited (Case: 1178/5/7/11).
	11-12									
	12-13								Withdrawn	

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days - excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2013	Comments
N V Short v Cardiff City Transport Services Limited Case: 1177/5/7/11 14 Jan 2011	10-11								This case had been stayed pending the Tribunal's determination in 2 Travel Group Plc (in liquidation) v Cardiff City Transport Services Limited (Case: 1178/5/7/11).
	11-12							Withdrawn	
	12-13								
2 Travel Group Plc (in liquidation) v Cardiff City Transport Services Limited Case: 1178/5/7/11 18 Jan 2011	10-11								
	11-12	3	1	9	4			Closed	
	12-13		1	1	1	5 Jul 2012 (17.6)			
British Sky Broadcasting Limited v Office of Communications (Conditional Access Modules) Case: 1179/8/3/11 14 Feb 2011	10-11	4							See the note to Virgin Media, Inc. (Case: 1156/8/3/10).
	11-12							Ongoing as to costs	
	12-13								
British Telecommunications Plc (Mobile Call Termination) v Office of Communications Case: 1180/3/3/11 16 May 2011	11-12	5	3		1				This case was heard concurrently with Everything Everywhere Limited (Mobile Call Termination) (Case: 1181/3/3/11); Hutchison 3G (UK) Limited (Case: 1182/3/3/11); and Vodafone Limited (Mobile Call Termination) (Case: 1183/3/3/11). Case management conferences, hearings and judgments activities recorded here relate to all cases.
	12-13			2	4	3 May 2012 (11.6)	1	Closed	

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days - excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2013	Comments
Everything Everywhere Limited v Office of Communications (Mobile Call Termination) Case: 1181/3/3/11 16 May 2011	11-12								See the note to British Telecommunications Plc (Case: 1180/3/3/11).
	12-13						Closed		
Hutchison 3G (UK) Limited v Office of Communications (Mobile Call Termination) Case: 1182/3/3/11 16 May 2011	11-12								See the note to British Telecommunications Plc (Case: 1180/3/3/11).
	12-13						Closed		
Vodafone Limited v Office of Communications (Mobile Call Termination) Case: 1183/3/3/11 16 May 2011	11-12								See the note to British Telecommunications Plc (Case: 1180/3/3/11).
	12-13						Closed		
TalkTalk Telecom Group Plc (Wholesale Broadband Access Charge Control) v Office of Communications Case: 1186/3/3/11 16 Sep 2011	11-12	2	1	1	1	2	10 Jan 2012 (3.8)		Case was closed in 2011-12 accounts. Judgment on costs of 3 May 2013.
	12-13					1		Closed	
British Telecommunications Plc (Wholesale Broadband Access Charge Control) v Office of Communications Case: 1187/3/3/11 19 Sep 2011	11-12	2							This case involved price control matters and was referred to the Competition Commission on 2 November 2011. On 11 June 2012, the Competition Commission made its final determination and upon BT confirming that it did not intend to challenge the Tribunal made an order on 22 June 2012 to dismiss the case.
	12-13							Closed	

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days - excluding days limited to formal handing down of judgments)		Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2013	Comments
(1) Tesco Stores Limited (2) Tesco Holdings Limited (3) Tesco Plc v Office of Fair Trading Case: 1188/1/1/11 10 Oct 2011	11-12		1	1	1	2		1		
	12-13			1	17	3	20 Dec 2012 (14.4)		Closed	
Telefónica UK Limited v Office of Communications Case: 1189/3/3/11 14 Nov 2011	11-12	2				1				
	12-13			1	2	2	30 Oct 2012 (11.5)		Closed	
SRCL Limited v Competition Commission Case: 1190/4/8/12 18 Apr 2012	12-13		1	1	1	1	24 May 2012 (1.2)		Closed	
(1) Association of Convenience Stores and (2) National Federation of Retail Newsagents v Office of Fair Trading Case: 1191/6/1/12 1 May 2012	12-13	1	1	1	1	1	24 Oct 2012 (5.8)		Closed	
(1) British Sky Broadcasting Limited (2) TalkTalk Telecom Group Plc v Office of Communications (LLU/WLR Charge Control March 2012) Case: 1192/3/3/12 8 May 2012	12-13	2	1			2			Ongoing	(1) This case was heard concurrently with British Telecommunications PLC (Case: 1193/3/3/12). The case management conference and judgments recorded here relate also to that case. (2) On 29 April 2013 (outside the period of this review) the Tribunal made a ruling on the disposal of this case and British Telecommunications PLC (Case: 1193/3/12).

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days - excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2013	Comments	
British Telecommunications Plc v Office of Communications (LLU/WLR Charge Control March 2012) Case: 1193/3/3/12 8 May 2012	12-13	3						Ongoing	See notes to British Sky Broadcasting Limited (Case: 1192/3/3/12).	
W.H. Newson Holding Limited and Others v IMI Plc and Others Case: 1194/5/7/12 17 May 2012	12-13							Closed	On 24 July 2012 an order was made, pursuant to section 16(5) of the Enterprise Act 2002 and rule 48(a) of the Tribunal's Rules, transferring the claim to the High Court.	
British Telecommunications Plc v Office of Communications (08x Nos: BT-Vodafone Dispute) Case: 1195/3/3/12 11 Jun 2012	12-13	1						Stayed	This case has been stayed since inception to await the decision of the higher courts in related cases. Currently the case is awaiting the decision of the Supreme Court in relation to those other cases.	
Ryanair Holdings Plc v Competition Commission Case: 1196/4/8/12 13 Jul 2012	12-13		1	1	1	3	8 Aug 2012 (0.9)	1	Closed	
(1) Somerfield Stores Limited (2) Co-operative Group Food Limited v Office of Fair Trading Case: 1197/1/1/12 13 Jul 2012	12-13			1	1	1			Ongoing	This case was heard concurrently with (1) Gallaher Group Limited (2) Gallaher Limited (Case: 1200/1/1/12). The hearing and ruling recorded here relates to both cases.
Siemens Plc v National Grid Plc Case: 1198/5/7/12 20 Jul 2012	12-13								Stayed	This case was stayed on 28 November 2012 by an Order of the Chairman.

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days - excluding days limited to formal handing down of judgments)	Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2013	Comments
Capital Meters Limited v National Grid Plc Case: 1199/5/7/12 24 Jul 2012	12-13							Stayed	This case was stayed on 28 November 2012 by an Order of the Chairman.
(1) Gallaher Group Limited (2) Gallaher Limited v Office of Fair Trading Case: 1200/1/1/12 25 Jul 2012	12-13							Ongoing	See note to (1) Somerfield Stores Limited (2) Co-operative Group Food Limited (Case: 1197/1/1/12).
Vion Food Group Limited and Others v (1) Tessenderlo Chemie N.V. (2) Britphos Limited Case: 1201/5/7/12 27 Sep 2012	12-13							Withdrawn	This case was withdrawn following an Order of the President on 19 December 2012.
Moy Park Limited and Others v Tessenderlo Chemie N.V. Case: 1202/5/7/12 28 Sep 2012	12-13							Stayed	This case was stayed on 14 December 2012 by an Order of the President.
John Lewis Plc v Office of Fair Trading Case: 1203/6/1/12 21 Dec 2012	12-13	2	1	1	1	28 Mar 2013 (3.2)		Ongoing as to costs	The Tribunal's ruling on costs was handed down on 29 May 2013, outside of the period covered by this review.
Akzo Nobel N.V. v Competition Commission Case: 1204/4/8/13 17 Jan 2013	12-13	2	1					Ongoing	Outside the period of this review, the main hearing in this matter took place on 18 and 19 April 2013 and the Tribunal's judgment was handed down on 21 June 2013.

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days - excluding days limited to formal handing down of judgments)		Judgments (including interlocutory rulings and final judgments)	Date of judgment(s) on the main issues (and months from registration to judgment)	Requests for permission to appeal	Status at 31 March 2013	Comments
British Telecommunications Plc v Office of Communications (Ethernet Determinations) Case: 1205/3/3/13 20 Feb 2013	12-13	3	1			1			Ongoing	This case is being heard concurrently with Cable & Wireless Worldwide plc and British Sky Broadcasting Limited (Cases: 1206/3/3/13 and 1207/3/3/13). Figures for case management conferences and judgments have been recorded only against this case.
(1) Cable & Wireless Worldwide plc (2) Virgin Media Limited and (3) Verizon UK Limited v Office of Communications (Ethernet Determinations) Case: 1206/3/3/13 19 Feb 2013	12-13	1							Ongoing	See the note to British Telecommunications Plc (Case: 1205/3/3/13) above.
(1) British Sky Broadcasting Limited and (2) TalkTalk Telecommunications Group Plc v Office of Communications (Ethernet Determinations) Case: 1207/3/3/13 20 Feb 2013	12-13	1							Ongoing	See the note to British Telecommunications Plc (Case: 1205/3/3/13) case 1205/3/3/13 above.
<b>Total</b>	12-13	16	7	12	42	29		6		

## Overall Case Activity within the period 1 April 2012 to 31 March 2013

	2012-13	2011-12	2010-11
<b>Appeals, applications and claims received of which:</b>	18	10	29
Section 46 Competition Act 1998 <sup>1</sup>	2	2	6
Section 47 Competition Act 1998 <sup>2</sup>	–	–	–
Section 47A Competition Act 1998 <sup>3</sup>	5	–	7
Section 47B Competition Act 1998 <sup>4</sup>	–	–	–
Section 120 Enterprise Act 2002 <sup>5</sup>	3	–	1
Section 179 Enterprise Act 2002 <sup>6</sup>	2	1	–
Section 192 Communications Act 2003 <sup>7</sup>	6	7	8
Section 317 Communications Act 2003 <sup>8</sup>	–	–	6
Applications for Interim Relief	–	–	1
<b>Applications to intervene</b>	16	12	89
<b>Case management conferences held</b>	7	12	7
<b>Hearings held (sitting days)</b>	12 (42)	10 (95)	39 (51)
<b>Judgments handed down of which:</b>	29	47	26
Judgments disposing of main issue or issues	10	14	9
Judgments on procedural and interlocutory matters	11	13	13
Judgments on ancillary matters (e.g. costs)	8	20	4
<b>Orders made</b>	106	118	133

1. An appeal by a party to an agreement or conduct in respect of which the Office of Fair Trading (or one of the other regulators with concurrent powers to apply the Competition Act 1998 ('the Competition Act')) has made an 'appealable decision'. During the period to 31 March 2012 appealable decisions included a decision as to whether the Chapter I prohibition or Chapter II prohibition of the Competition Act had been infringed, as to whether Articles 101 or 102 of the Treaty on the functioning of the European Union (formerly Articles 81 and 82 of the EC Treaty) had been infringed and the imposition of a penalty for infringement of those provisions or as to the amount of such penalty.
2. An appeal against an 'appealable decision' made by the Office of Fair Trading or other regulator with concurrent powers to apply the Competition Act and made by a third party with a sufficient interest in the decision not otherwise entitled to appeal the decision pursuant to section 46 of the Competition Act.
3. A claim for damages or other claim for a sum of money by a person who has suffered loss or damage as a result of the infringement of the Competition Act or of European competition law.
4. A claim for damages or other claim for a sum of money brought by 'a specified body' on behalf of two or more consumers.
5. An application by 'any person aggrieved' by a decision of the Office of Fair Trading, the Competition Commission or the Secretary of State in connection with a reference or possible reference in relation to a relevant merger situation or special merger situation under the Enterprise Act 2002.
6. An application by 'any person aggrieved' by a decision of the Office of Fair Trading, the Competition Commission or the Secretary of State in connection with a market investigation reference or possible market investigation reference.
7. An appeal by 'a person affected' by a decision of the Office of Communications or of the Secretary of State in relation to certain specified communication matters set out in that section.
8. An appeal by 'a person affected' by a decision of the Office of Communications to exercise its Broadcasting Act power for a competition purpose (pursuant to Section 317 of the Communications Act 2003).

## Accounts

### Competition Appeal Tribunal and Competition Service

## Management Commentary in respect of the Competition Appeal Tribunal and the Competition Service for the year ended 31 March 2013

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

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

#### Accounts direction

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

The accounts are prepared so as to give a true and fair view of the state of affairs of the Tribunal and the CS at the year end and provide disclosures and notes to the accounts in compliance with the accounting principles and disclosure requirements of the edition of the Government Financial Reporting Manual (FRM) issued by HM Treasury in force for the current financial year 2012-13.

#### Financial performance

The programme and administration funding allocation from BIS for 2012-13 was £3,932,000 for resource expenditure (net of any income from other sources) which was later revised to £3,985,000 including £50,000 for capital expenditure. The capital expenditure allocation was for the CS only.

Actual resource expenditure for the year was £3,882,000 and capital expenditure was £55,000.

The actual expenditure for the Tribunal was £609,000 in 2012-13 (£714,000 in 2011-12).

The expenditure of the CS increased to £3,273,000 in 2012-13, from £3,200,000 in 2011-12.

Cost Headings	Increase/(Decrease) in costs
	<b>2012-13</b> <b>£000</b>
Core Staff Payroll & Agency Staff	(20)
Case Variable	(28)
Accommodation	141
IT, Staff Training, Recruitment & Communications	(20)
Year on year increase	73

A staff absence rate of 1.5 per cent was achieved for 2012-13 against the target rate of 3 per cent.

## **Financing of activities**

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

## **Statement of financial position**

The Tribunal's statement of financial position shows only those liabilities at 31 March 2013 which relate to the activities of the Tribunal. The CS will meet those liabilities. The liabilities in the CS's statement of financial position therefore include those liabilities that relate to the activities of the Tribunal.

The book value of the CS's non current assets increased from £59,000 to £83,000. This was mainly due to capital investment in the Building Management System, security hardware and software, and a 3 year renewal of a licence agreement for Microsoft.

Capital expenditure during the year amounted to £55,000 which was £40,000 more than in the previous year. This expenditure included computer equipment, furniture and a coffee machine for use by court users.

Total assets of the CS increased to £554,000 from £511,000. Closing cash balances were £405,000 (2011-12: £320,000).

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

## **Pension liabilities**

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

## **Social, economic and environmental issues**

The Tribunal/CS operates a green policy and recycles materials such as paper, cardboard, toner cartridges and plastic, and, where possible, attempts to reduce energy consumption.

## **Risks and uncertainties**

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

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

- Budget cuts imposed by government could compromise the ability of the Tribunal/CS to function effectively. The Tribunal/CS reports on a monthly basis to BIS who will fund additional expenditure if the caseload rises beyond the predicted level. The Tribunal/CS meets BIS at quarterly intervals to discuss funding and workload.
- If the Registrar or the Finance Manager were to be away for a prolonged period of time disruption of the finance function could result in failure to pay staff and members and obtain funding from BIS. The risk has been mitigated by the delegation of financial authority principally to the Director, Operations who has delegated authority to make salary and other payments.

### **Future developments**

The Resource Departmental Expenditure Limit (RDEL) approved by BIS for 2013-14 is £3,820,000 and £50,000 for capital expenditure. Nearly 85 per cent of the resource costs for the Tribunal/CS are fixed costs. Accommodation costs (specialised courtrooms and associated facilities) are more than 54 per cent of the RDEL.

Resource costs for the CS are budgeted to rise by £78,000 due to a 13 per cent increase in rent from September 2013.

Resource costs for the Tribunal have been reduced by £206,000 in 2013-14 compared to the 2012-13 outturn. The reduction is made primarily in respect of budgetary assumptions concerning the number of days worked by Tribunal members in order to stay within currently applicable (RDEL) limits. Whether this reduction can be sustained is ultimately dependent on case activity over which the Tribunal/CS has no control.

# Remuneration Report for the Tribunal and the CS for the year ended 31 March 2013

## **Remuneration policy**

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

The President is a High Court Judge and his salary is set at the applicable level in the judicial salaries list. This was the third year of the government pay freeze and the President's salary therefore remained unchanged. The President's salary is subject to the recommendations of the Senior Salaries Review Body (which makes recommendations about the pay of the senior civil service, senior military personnel and the judiciary). The President's salary is paid by the Ministry of Justice and invoiced to the CS.

The salary of the Registrar is linked to judicial salaries as determined by the Secretary of State. For 2012-13, the salary of the Registrar remained unchanged in accordance with the government pay freeze mentioned above.

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

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

The Ordinary Members are remunerated at the rate of £350 per diem, which has remained unchanged since 2006.

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

## **CS contract, salary and pension entitlements**

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

### **CS contracts**

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

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

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

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

## Remuneration

The following part of the Remuneration Report has been audited.

	<b>2012-13</b>	2011-12
	<b>Salary</b>	Salary
	<b>band</b>	band
	<b>£000</b>	£000
President	<b>170-175</b>	170-175

The President is a High Court Judge and his services are invoiced to the CS.

Reporting bodies are required to disclose the relationship between the remuneration of the highest-paid officer in their organisation and the median remuneration of the organisation's workforce.

The Chairmen and the Ordinary Members are paid only when working on cases. The median payment cannot be compared to a full time equivalent.

	<b>2012-13</b>	2011-12
	<b>Salary</b>	Salary
Registrar (Highest Paid Officer's) Total Remuneration (£'000)	<b>95-100</b>	95-100
Median Total Remuneration (£)	<b>38,756</b>	40,476*
Ratio	<b>2.52</b>	2.41*

\* The 2011-12, median total remuneration and ratio has been restated. The performance related bonuses are included in the calculation of the median total remuneration as per the Hutton guidance.

For 2012-13, as there was an even number of employees, the median total remuneration was calculated as the average of the middle two employees' total remunerations. It is not appropriate to include the non-executive member who is paid on an ad hoc basis.

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

The remuneration for the President and Registrar consists of gross salary only. They do not receive any additional allowances, bonuses or benefits in kind.

The non-executive member of the CS is remunerated at a rate of £350 per day (2011-12: £350 per day and, as noted above, unchanged since 2003). Total remuneration in 2012-13 was £3,850 (2011-12: £3,325).

## Benefits in kind

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

## Untaken leave

The work of the Tribunal involves the conduct, within demanding timescales, of urgent, complex and novel cases of great importance to the parties concerned and the public interest. As the Tribunal/CS has a very small staff team, this can result, from time to time, in the unavoidable accumulation of untaken leave.

The Registrar's untaken leave liability accrual increased by £4,000 to £24,000 in 2012-13 and becomes payable by the CS when he leaves. The movement in this liability is reflected in the Net Expenditure Account and affects the Reserves.

## **Pensions applicable to the Tribunal and the CS**

### *Judicial pensions*

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

The Judicial Pensions Scheme (JPS) is an unfunded public service scheme, providing pensions and related benefits for members of the judiciary. Participating judicial appointing or administering bodies make contributions known as Accruing Superannuation Liability Charges (ASLCs), to cover the expected cost of benefits under the JPS. ASLCs are assessed regularly by the Scheme's Actuary – The Government Actuary's Department.

The contribution rate required from the judicial appointing or administering bodies to meet the cost of benefits accruing in the year 2012-13 has been assessed at 32.15 per cent of the relevant judicial salary. This includes an element of 0.25 per cent as a contribution towards the administration costs of the scheme.

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

### *Civil Service pensions*

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

Employee contributions are salary-related and range between 1.5 per cent and 3.9 per cent of pensionable earnings for classic, and 3.5 per cent and 5.9 per cent for premium, classic plus and nuvos. Increases to employee contributions will apply from 1 April 2013. Benefits in classic accrue at the rate of 1/80<sup>th</sup> of final pensionable earnings for each year of service. In addition, a lump sum equivalent to three years initial pension is payable on retirement. For premium, benefits accrue at the rate of 1/60<sup>th</sup> of final pensionable earnings for each year of service. Unlike classic, there is no automatic lump sum. Classic plus is essentially a hybrid with benefits for service before 1 October 2002 calculated broadly as per classic and benefits for service from October 2002 worked out as in premium. In nuvos a member builds up a pension based on his pensionable earnings during their period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3 per cent of their pensionable earnings in that scheme year and the accrued pension is uprated in line with Pensions Increase legislation. In all cases members may opt to give up (commute) pension for a lump sum up to the limits set by the Finance Act 2004.

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

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

Further details about the Civil Service pension arrangements can be found on the Civil Service website ([www.civilservice.gov.uk/pensions](http://www.civilservice.gov.uk/pensions)).

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

### Cash Equivalent Transfer Values

A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which disclosure applies.

The figures include the value of any pension benefit in another scheme or arrangement which the member has transferred to the Civil Service pension arrangements. They also include any additional pension benefit accrued to the member as a result of their buying additional pension benefits at their own cost. CETVs are worked out in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

### Real increase in CETV

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

#### a President's pension benefits

The President is a member of the JPS. For 2012-13, employer contributions of £56,000 were payable to the JPS at a rate of 32.15 per cent of pensionable pay.

	Accrued pension as at 31/03/13 and related lump sum £000	Real increase in pension and related lump sum as at 31/03/13 £000	CETV at 31/03/13 £000	CETV at 31/03/12 £000	Employee contributions and transfers £000	Real increase in CETV £000
President	20 – 25 50 – 55	2.5 – 5 7.5 – 10	470	372	5	74

#### b Registrar's pension benefits

The Registrar's pension benefits are provided through the Civil Service Pension arrangements. For 2012-13, employer contributions of £24,000 (2011-12: £24,000) were payable to the PCSPS at a rate of 24.3 per cent (2011-12: 24.3 per cent) of pensionable pay.

	Accrued pension at age 60 as at 31/03/13 and related lump sum £000	Real increase in pension and related lump sum at age 60 £000	CETV at 31/03/13 £000	CETV at 31/03/12 £000	Employee contributions and transfers £000	Real increase in CETV £000
Registrar	25 – 30 85 – 90	0 – 2.5 2.5 – 5	468	423*	17	6

\*The figures in the start of period CETV for 2012-13 are slightly different from the final period CETV 2011-12 shown in the accounts for 2011-12 due to certain factors being incorrect in last years CETV calculator.

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

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

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

- observe the accounts directions issued by the Secretary of State, including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis;
- make judgments and estimates on a reasonable basis;
- state whether applicable accounting standards have been followed and disclose and explain any material departures in the financial statements; and
- prepare the financial statements on a going concern basis, unless it is inappropriate to assume that the Tribunal and the CS will continue in operation.

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

# Corporate Governance Statement

## The purpose of the Governance Statement

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

## Scope of responsibility

As Accounting Officer, I have ensured that there is in place a sound system of governance and internal controls to support the performance of the CS's and the Tribunal's statutory functions, whilst safeguarding the public funds and departmental assets for which I am responsible (in accordance with the responsibilities assigned to me in the HM Treasury publication *Managing Public Money*). I have been assisted in this by the CS's Board and Audit Committee to which reports are regularly made. In addition, our internal auditors (BIS Internal Audit Directorate) provide advice and guidance on risk management, governance and accountability issues. They work in conjunction with our external Auditors (NAO) to ensure that the CS properly accounts for and uses its financial resources efficiently, effectively and economically. Further advice and guidance is available from our sponsors in the Department for Business, Innovation and Skills (BIS). In my role as Accounting Officer, I am directly responsible to the Accounting Officer of BIS and, ultimately, to Parliament.

## The CS's Governance Structure

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

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

The non-executive member of the Board chairs the Audit Committee, which also comprises two members of the Tribunal with financial and business experience. Meetings of the Audit Committee are attended by representatives of both the CS's internal and external auditors and often by a representative of our sponsoring department. The Audit Committee reviews the financial performance of the organisation and examines the Annual Report prior to publication. The CS's risk register is a standing agenda item for Audit Committee meetings. At each meeting, the auditors and the committee members are offered the opportunity of a private meeting without CS personnel being present so that management performance can be discussed. The Director, Operations is also secretary to the Audit Committee.

Audit work during the year included the usual finance and accounting audit.

As part of BIS's group corporate governance assessment process, the CS completes an annual governance return based on an evaluation of risk management processes. The CS's Internal Audit team reviews this return as part of their audit work.

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

## The Risk and Internal Control Framework

The CS's Finance Manager compiles a risk register and discusses each risk with the relevant risk owner. Risks are rated according to impact and likelihood. The register is kept under review by myself, the Director, Operations and the Finance Manager and is also examined four times a year by the Audit Committee.

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

The CS uses BIS Internal Audit Directorate as its internal auditors. They make recommendations to the senior management, who undertake to respond within agreed timescales.

In the financial year ended 31 March 2013, an internal audit service was provided by BIS Internal Audit Directorate. The internal auditors work to standards defined in the Public Sector Internal Audit Standards. The Head of Internal Audit reports on the adequacy and effectiveness of the CS's system of internal control and provides recommendations for improvement.

In the financial year ended 31 March 2013, Internal Audit reviewed the CS's financial systems. Findings were reported to me and to the Audit Committee.

The Head of Internal Audit provided a satisfactory opinion on the adequacy and effectiveness of the CS's system of internal control.

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

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

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

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

The CS is also participating in the HM Treasury's Managing Risk of Financial Loss project and has completed the Financial Processes Assessment and the Roles and Accountability Assessment.

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

## Information Security

All staff are required to complete the online information awareness training made available by Civil Service Learning once every year.

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

In accordance with Cabinet Office information handling requirements aimed at improving the framework within which government departments and their agencies manage their information, the CS has appointed a Senior Information Risk Owner and an Information Asset Owner.

An information risk policy is in place setting out how the CS is to implement the minimum mandatory measures for its own activities and those of its key delivery partners. Processes have been agreed to ensure that appropriate information handling is conducted across the CS's activities. Managing information risk is integrated into the CS's HR processes and all members of staff are aware of the requirements. The new security classifications are yet to be finalised, and OFFICIAL is likely to be the future category that will provide the baseline set of personnel, physical and information security controls and an appropriate level of protection against a typical threat profile. Until then, PROTECT information will be identified, clearly marked and subject to controlled disposal.

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

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

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

### Review of effectiveness

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

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

*Charles Dhanowa OBE, QC*  
Accounting Officer

11 July 2013

# Competition Appeal Tribunal

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

I certify that I have audited the financial statements of the Competition Appeal Tribunal for the year ended 31 March 2013 under the Enterprise Act 2002. The financial statements comprise: the Statements of Comprehensive Net Expenditure, Financial Position, Cash Flows, Changes in Taxpayers' Equity and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration Report that is described in that report as having been audited.

### Respective responsibilities of the Accounting Officer and Auditor

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

### Scope of the audit of the financial statements

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

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

### **Opinion on regularity**

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

### **Opinion on financial statements**

In my opinion:

- the financial statements give a true and fair view of the state of the Competition Appeal Tribunal's affairs as at 31 March 2013 and of the net expenditure for the year then ended;
- and the financial statements have been properly prepared in accordance with the Enterprise Act 2002 and Secretary of State directions issued thereunder.

### **Opinion on other matters**

In my opinion:

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

### **Matters on which I report by exception**

- I have nothing to report in respect of the following matters which I report to you if, in my opinion:
  - adequate accounting records have not been kept or returns adequate for my audit have not been received from branches not visited by my staff; or
  - the financial statements and the part of the Remuneration Report to be audited are not in agreement with the accounting records and returns; or
- I have not received all of the information and explanations I require for my audit; or
- the Governance Statement does not reflect compliance with HM Treasury's guidance.

### **Report**

I have no observations to make on these financial statements.

*Amyas C E Morse*  
Comptroller and Auditor General

11 July 2013

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

## Competition Appeal Tribunal: Statement of Comprehensive Net Expenditure for the year ended 31 March 2013

	Note	2012-13 £000	2011-12 £000
<b>Expenditure:</b>			
Members' remuneration costs	3d	<b>(531)</b>	(624)
Other operating charges	4a	<b>(78)</b>	(90)
<b>Total expenditure</b>		<b>(609)</b>	(714)
<b>Income</b>		-	-
<b>Net expenditure for the financial year</b>		<b>(609)</b>	(714)

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

*The notes on pages 66 to 69 form part of these accounts.*

## Competition Appeal Tribunal: Statement of Financial Position as at 31 March 2013

	Note	31 March 2013 £000	31 March 2012 £000
<b>Current assets:</b>			
Trade receivables and other receivables	5a	112	139
Cash and cash equivalents		—	—
<b>Total current assets</b>		<b>112</b>	<b>139</b>
<b>Current liabilities:</b>			
Trade payables and other payables	6a	(64)	(109)
<b>Total current liabilities</b>		<b>(64)</b>	<b>(109)</b>
<b>Net current assets</b>		<b>48</b>	<b>30</b>
<b>Non current liabilities:</b>			
Other financial liabilities		—	—
Provisions	7	(48)	(30)
<b>Total non current liabilities</b>		<b>(48)</b>	<b>(30)</b>
<b>Assets less liabilities</b>		<b>—</b>	<b>—</b>
<b>Taxpayers' equity:</b>			
General fund		—	—
<b>Total taxpayers' equity</b>		<b>—</b>	<b>—</b>

*The notes on pages 66 to 69 form part of these accounts.*

Charles Dhanowa OBE, QC  
Registrar and Accounting Officer

11 July 2013

## Competition Appeal Tribunal: Statement of Cash Flows for the year ended 31 March 2013

	Note	2012-13 £000	2011-12 £000
<b>Cash flows from operating activities:</b>			
Net operating cost		(609)	(714)
Decrease/(Increase) in receivables		27	(6)
(Decrease)/Increase in payables		(45)	(6)
Use of provisions		-	-
Increase in provisions		18	12
Net cash (outflow) from operating activities		<u>(609)</u>	<u>(714)</u>
<b>Cash flows from financing activities:</b>			
Grant-in-aid from the CS	2	609	714
<b>Increase/(decrease) in cash in the period</b>		<u>-</u>	<u>-</u>

*The notes on pages 66 to 69 form part of these accounts.*

## Competition Appeal Tribunal: Statement of Changes in Taxpayers' Equity for the year ended 31 March 2013

The Tribunal does not have reserves. The Tribunal's activities are funded by the CS.

# Competition Appeal Tribunal: Notes to the accounts

## **1 Basis of Preparation and Statement of accounting policies**

These financial statements have been prepared in accordance with the 2012-13 Government Financial Reporting Manual (FReM). The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector. The accounting policies contained in the FReM follow International Accounting Standards to the extent that it is meaningful to do so and appropriate to the public sector.

The Tribunal does not enter into any accounting transactions in its own right, as the CS has the responsibility, under the Enterprise Act 2002, to meet all the expenses of operating the Tribunal. Accordingly, the Tribunal has no assets, liabilities, reserves or cash flows.

Under an accounts directive from HM Treasury (the 2012-13 Government Financial Reporting Manual), the Tribunal is to prepare accounts on the basis that it had directly incurred the expenses relating to its activities. Accordingly, the accounts of the Tribunal are prepared on this basis, which includes those assets, liabilities and cash flows of the CS, which relate to the Tribunal's activities.

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

### *a Accounting convention*

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

### *b Basis of preparation of accounts*

The FReM requires non-departmental public bodies to account for grant-in-aid received for revenue purposes as financing. The CS draws down grant-in-aid on behalf of the Tribunal to fund the Tribunal's activities. There is a debtor balance of an equal amount representing the amount that the CS shall transfer to meet those liabilities.

### *c Pensions*

The pension arrangements for the President are discussed separately in the remuneration report. The appointment of Tribunal chairmen and ordinary members is non-pensionable.

### *d Going concern*

The accounts have been prepared on a going concern basis.

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

## **2 Grant-in-aid**

Total grant-in-aid allocated by the CS in financial year 2012-13 was £609,000 (2011-12: £714,000).

### 3 Members' remuneration

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

b Remuneration costs for members of the panel of chairmen are shown in the table below.

	<b>2012-13</b>	2011-12
	£	£
Lord Carlile QC	<b>43,757</b>	27,593
Heriot Currie QC	<b>600</b>	–
Peter Freeman QC	<b>9,000</b>	–
Hodge Malek QC	<b>600</b>	–
Andrew Lenon QC	<b>600</b>	–
Dame Vivien Rose DBE	<b>47,299</b>	53,270
Marcus Smith QC	<b>51,043</b>	72,043

Lord Carlile QC, Heriot Currie QC, Hodge Malek QC, Andrew Lenon QC, Dame Vivien Rose DBE and Marcus Smith QC were remunerated on a per diem basis at a rate of £600 per day (2011-12: £600 per day) or pro rata. Peter Freeman QC was appointed as Chairman on 9 January 2013 and was remunerated from that date on a per diem basis at a rate of £600 per day or pro rata. Their remuneration costs are included in note 3d.

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

c The Ordinary Members are remunerated at a rate of £350 per day (2011-12: £350 per day). The total remuneration payable to ordinary members of £100,474 (2011-12: £185,126) is included in note 3d.

d The total cost of members' remuneration is shown in the table below.

	<b>2012-13</b>	2011-12
	£000	£000
Members' remuneration (including the President, chairmen and ordinary members)	<b>426</b>	511
Social security costs	<b>49</b>	57
Pension contributions for the President	<b>56</b>	56
<b>Total members' remuneration</b>	<b>531</b>	624

### 4 Other operating charges

a Other operating charges are shown in the table below.

	<b>2012-13</b>	2011-12
	£000	£000
Members' travel and subsistence	<b>21</b>	45
Members' PAYE and National Insurance on travel and subsistence expenses	<b>8</b>	24
Members' training	<b>25</b>	3
Long service award	<b>18</b>	12
Audit fees*	<b>6</b>	6
<b>Total other operating charges</b>	<b>78</b>	90

\*Audit fees related only to statutory audit work.

b The long service award relates to a provision of £18,000 for the President in his capacity as a judge of the High Court. The value of the award was calculated by the Government Actuary's Department (GAD) and reflects the President's length of service and judicial grade. The level of the long service award is dependent on the tax paid by the member on his retirement lump sum. For this year's disclosures, the GAD have assumed tax is paid on his lump sum at 50 per cent, reflecting the top income rate prevailing at 31 March 2013. However, if the President pays tax on the lump sum at a different rate, the long service award will differ.

## 5 Trade receivables and other receivables

a *Analysis by type*

	<b>31 March 2013 £000</b>	31 March 2012 £000
<b>Amounts falling due within one year:</b>		
Trade receivables and other receivables with the CS	<b>112</b>	109
<b>Amounts falling due after more than one year:</b>		
Trade receivables and other receivables with the CS	–	30
<b>Total trade receivables and other receivables</b>	<b>112</b>	<b>139</b>

b *Intra-government balances*

	<b>Amounts falling due within one year</b>		<b>Amounts falling due after more than one year</b>	
	<b>31 March 2013 £000</b>	31 March 2012 £000	<b>31 March 2013 £000</b>	31 March 2012 £000
Balances with other central government bodies	<b>112</b>	109	–	30
<b>Total trade receivables and other receivables</b>	<b>112</b>	109	–	30

## 6 Trade payables and other payables

a *Analysis by type*

	<b>31 March 2013 £000</b>	31 March 2012 £000
<b>Amounts falling due within one year:</b>		
Taxation and social security	<b>14</b>	34
Trade payables	–	5
Accruals	<b>50</b>	70
<b>Total trade payables and other payables</b>	<b>64</b>	<b>109</b>

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

*b Intra-government balances*

	<b>Amounts falling due within one year</b>	
	<b>31 March 2013</b>	31 March 2012
	<b>£000</b>	£000
Balances with other central government bodies	<b>40</b>	59
Balances with bodies external to government	<b>24</b>	50
<b>Total trade payable and other payables</b>	<b>64</b>	109

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

**7 Provisions for liabilities and charges**

	<b>Long service award costs</b>
	<b>£000</b>
<b>Balance at 31 March 2012</b>	<b>30</b>
Provided in the year	<b>18</b>
<b>Balance at 31 March 2013</b>	<b>48</b>

The provision made in the year relates to the expected cost of the President's long service award which becomes payable on retirement and will be met by the CS. The liability was calculated by the GAD and is based on his judicial grade and length of service. The level of the long service award is dependent on the tax paid by the member on his retirement lump sum. For this year's disclosures the GAD have assumed tax is paid on his lump sum at 50 per cent, the prevailing tax rate as at 31 March 2013. However, if the member paid tax on the lump sum at a different rate the long service award would differ. The value of the long service award payable will reduce to £44,000 as at 4 November 2013 due to the top tax rate reduction to 45 per cent.

**8 Related party transactions**

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

**9 Events after the reporting period**

There were no events after the reporting period to report.

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

## Competition Service

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

I certify that I have audited the financial statements of the Competition Service for the year ended 31 March 2013 under the Enterprise Act 2002. The financial statements comprise: the Statements of Comprehensive Net Expenditure, Financial Position, Cash Flows, Changes in Taxpayers' Equity and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration Report that is described in that report as having been audited.

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

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

#### Scope of the audit of the financial statements

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

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

#### **Opinion on regularity**

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

#### **Opinion on financial statements**

In my opinion:

- the financial statements give a true and fair view of the state of Competition Service's affairs as at 31 March 2013 and of the net expenditure for the year then ended; and
- the financial statements have been properly prepared in accordance with the Enterprise Act 2002 and Secretary of State directions issued thereunder.

### **Opinion on other matters**

In my opinion:

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

### **Matters on which I report by exception**

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

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

### **Report**

I have no observations to make on these financial statements.

*Amyas C E Morse*  
Comptroller and Auditor General

11 July 2013

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

## Competition Service: Statement of Comprehensive Net Expenditure for the year ended 31 March 2013

	Note	2012-13 £000	2011-12 £000
<b>Expenditure:</b>			
Funding the activities of the Tribunal		(609)	(714)
CS and Audit Committee Members' remuneration	3a	(9)	(9)
Staff Costs	4a	(824)	(845)
Other expenditure	6	(2,409)	(2,306)
Depreciation	6	(31)	(40)
<b>Total expenditure</b>		<b>(3,882)</b>	<b>(3,914)</b>
<b>Income:</b>			
Other income	7	5	5
<b>Net expenditure</b>		<b>(3,877)</b>	<b>(3,909)</b>
Interest received	7	4	1
<b>Net expenditure after interest</b>		<b>(3,873)</b>	<b>(3,908)</b>
Taxation	8	(1)	–
<b>Net expenditure after taxation</b>		<b>(3,874)</b>	<b>(3,908)</b>

All activities were continuing during the year.

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

*The notes on pages 76 to 85 form part of these accounts.*

## Competition Service: Statement of Financial Position as at 31 March 2013

	Note	31 March 2013 £000	31 March 2012 £000
<b>Non current assets:</b>			
Property, plant & equipment	9	61	44
Intangible assets	10	22	15
<b>Total non current assets</b>		<b>83</b>	59
<b>Current assets:</b>			
Trade receivables and other receivables	11a	66	132
Cash and cash equivalents	12	405	320
<b>Total current assets</b>		<b>471</b>	452
<b>Total assets</b>		<b>554</b>	511
<b>Current liabilities:</b>			
Trade payables and other payables	13a	(193)	(255)
Provisions	14	(48)	–
<b>Total current liabilities</b>		<b>(241)</b>	(255)
<b>Non current assets plus net current assets</b>		<b>313</b>	256
<b>Non current liabilities:</b>			
Financial liabilities	13a	(1,846)	(1,791)
Provisions	14	–	(30)
<b>Total non current liabilities</b>		<b>(1,846)</b>	(1,821)
<b>Assets less liabilities</b>		<b>(1,533)</b>	(1,565)
<b>Taxpayers' equity:</b>			
General fund		(1,533)	(1,565)
Revaluation reserve		–	–
<b>Total taxpayers' equity</b>		<b>(1,533)</b>	(1,565)

*The notes on pages 76 to 85 form part of these accounts.*

Charles Dhanowa OBE, QC  
Registrar and Accounting Officer

11 July 2013

## Competition Service: Statement of Cash Flows for the year ending 31 March 2013

	Note	2012-13 £000	2011-12 £000
<b>Cash flows from operating activities:</b>			
<b>Net deficit/surplus after interest</b>		<b>(3,873)</b>	(3,908)
Adjustments for non-cash transactions	6	31	40
Decrease/(Increase) in receivables		66	(52)
(Decrease)/Increase in payables		(10)	67
Investment income	7	(4)	(1)
Use of provisions	14	–	–
Increase in provisions	14	18	12
<b>Net cash (outflow) from operating activities</b>		<b>(3,772)</b>	(3,842)
<b>Cash flows from investing activities:</b>			
Interest received	7	4	1
Taxation	8	1	–
Property, plant and equipment purchases	9	(32)	(14)
Intangible asset purchases	10	(22)	(1)
Proceeds of disposal of non current assets		–	–
<b>Net cash generated from/(used in) investing activities</b>		<b>(49)</b>	(14)
<b>Cash flows from financing activities:</b>			
Grant-in-aid from BIS	2	3,906	3,902
<b>Net cash generated from/(used in) financing activities</b>		<b>3,906</b>	3,902
<b>Net (Decrease)/Increase in cash and cash equivalents in the period</b>	12	<b>85</b>	46
<b>Cash and cash equivalents at the beginning of the period</b>	12	<b>320</b>	274
<b>Cash and cash equivalents at the end of the period</b>	12	<b>405</b>	320

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

The payables amount is net of non-operating expenses relating to corporation tax accrued at 31 March 2013.

*The notes on pages 76 to 85 form part of these accounts.*

## Competition Service: Statement of Changes in Taxpayers' Equity for the year ending 31 March 2013

	General Fund £000	Revaluation Reserve £000	<b>Total £000</b>
<b>Balance at 31 March 2011</b>	<b>(1,560)</b>	<b>1</b>	<b>(1,559)</b>
Net operating cost for 2011-12	(3,908)		(3,908)
Transferred to general fund in respect of realised element of revaluation reserve	1	(1)	–
Net financing from BIS for 2011-12	3,902	–	3,902
<b>Balance at 31 March 2012</b>	<b>(1,565)</b>	<b>–</b>	<b>(1,565)</b>
Net operating cost for 2012-13	(3,874)	–	(3,874)
Net financing from BIS for 2012-13	3,906	–	3,906
<b>Balance at 31 March 2013</b>	<b>(1,533)</b>	<b>–</b>	<b>(1,533)</b>

*The notes on pages 76 to 85 form part of these accounts.*

# Competition Service: Notes to the accounts

## 1 Statement of accounting policies

These financial statements have been prepared in accordance with the 2012-13 Government FReM. The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector. The accounting policies contained in the FReM follow International Accounting Standards to the extent that it is meaningful to do so and appropriate to the public sector.

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

### *a Going concern*

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

Although the CS is mentioned in the Public Bodies Act 2011, it is understood by the CS that Ministers have accepted that there shall be no change in its status. Accordingly, it is appropriate to adopt a going concern basis for the preparation of these financial statements.

The statement of financial position indicates a negative balance because of timing differences between consumption and payment. The CS draws grant-in-aid to cover its cash requirements and not to represent income. The operating lease liability includes the full cost of annual rent increments from September 2008 of 2.5 per cent calculated every five years and compounded to 13 per cent spread on a straight line basis over the 20 years of the lease. Therefore although the operating lease liability is recognised, the increase will be paid from future grant-in-aid receipts.

### *b Accounting convention*

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

### *c Basis of preparation of accounts*

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

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

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

### *d Grant-in-aid*

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

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

*e Non current assets*

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

*f Depreciation*

Depreciation is provided on all non current assets using the straight line method at rates calculated to write off, in equal instalments, the cost at the beginning of the year over the expected useful life. Non current assets are depreciated from the month following acquisition and not depreciated in the year of disposal.

*i Property, plant and equipment assets:*

## Information Technology:

Desktop/laptop computers and printers	three years
Servers and audio visual equipment	five years
Office equipment	five years
Furniture	seven years

*i Intangible non current assets:*

## Information Technology:

Software licences	one to three years
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*g Taxation*

- i* The CS is liable for corporation tax on interest earned on bank deposits.
- ii* The CS is not registered for VAT and therefore cannot recover any VAT. Expenditure in the income and expenditure account is shown inclusive of VAT, and VAT on the purchase of non current assets is capitalised.

*h Pension costs*

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

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

*i Income*

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

*j Operating leases*

Rentals payable under operating leases are charged to the income and expenditure account on a straight line basis over the 20 year term of the lease, which the CS pays for its and the Tribunal's accommodation in Victoria House. Operating lease estimates are based on VAT remaining at 20 per cent for the remaining term of the lease.

*k Financial instruments*

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

*i Financial assets*

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

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

*ii Financial liabilities*

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

*l Reserves*

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

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

*m Provisions*

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

Specific assumptions are given in note 14.

**2 Government grant-in-aid**

	<b>2012-13</b>	2011-12
	<b>£000</b>	£000
Allocated by BIS	<b>3,985</b>	4,058
<b>Drawn down:</b>		
Resource	<b>3,853</b>	<b>3,887</b>
Capital	<b>53</b>	<b>15</b>
<b>Total drawn down</b>	<b>3,906</b>	<b>3,902</b>

**3 The CS and Audit Committee Members' remuneration**

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

	<b>2012-13</b>	2011-12
	<b>£000</b>	£000
CS and Audit Committee Members' remuneration	<b>9</b>	9
Social security costs	-	-
<b>Total CS and Audit Committee Members' remuneration</b>	<b>9</b>	9

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

Mrs Janet Rubin is the non-executive member of the CS. Mrs Rubin is also Chairman of the CS's Audit Committee. Mrs Rubin's appointment runs until September 2013. Her appointment is not pensionable. Mrs Rubin is remunerated at a rate of £350 per day.

Her remuneration of £3,850 in the year (2011-12: £3,325) is included in note 3a above.

#### 4 Staff related costs and numbers

- a Staff costs are shown in the table below.

	<b>Total</b>	<b>Permanently employed staff</b>	<b>Total</b>
	<b>2012-13</b>	<b>2012-13</b>	<b>2011-12</b>
	<b>£000</b>	<b>£000</b>	<b>£000</b>
Wages and salaries	<b>634</b>	634	653
Social security costs	<b>58</b>	58	61
Other pension costs	<b>132</b>	132	131
<b>Total employee costs</b>	<b>824</b>	824	845

No severance payments were made in 2012-13.

- b The average number of full-time staff employed during the year is shown in the table below.

	<b>Total</b>	<b>Permanently employed staff</b>	<b>Total</b>
	<b>2012-13</b>	<b>2012-13</b>	<b>2011-12</b>
<b>Full-time staff</b>	<b>16</b>	<b>16</b>	15

#### 5 Pension costs

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

For 2012-13, employer contributions of £132,000 (2011-12: £131,000) were payable to the PCSPS at one of four rates in the range 16.7 to 24.3 per cent (2011-12: 16.7 to 24.3 per cent) of pensionable pay, based on salary bands. The Scheme's Actuary reviews employer contributions every four years following a full scheme valuation. The salary bands were revised for 2012-13. The contribution rates reflect benefits as they are accrued, not when the costs are actually incurred, and reflect past experience of the scheme.

## 6 Other expenditure

	2012-13 £000	2011-12 £000
Hire of plant and machinery	23	22
Other operating leases	1,243	1,243
Non case related expenditure including internal audit fees	9	9
IT service fees	100	106
Accommodation and utilities	764	623
Travel, subsistence and hospitality	17	25
Other administration including case related expenditure	235	260
Audit fees	18	18
<b>Non cash items:</b>		
Depreciation	31	40
<b>Total other expenditure</b>	<b>2,440</b>	<b>2,346</b>

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

Consequent upon the merger of the CC and the OFT, the new organisation Competition Markets Authority (CMA) will be based at Victoria House, but there is nothing to suggest that the Tribunal and the CS will not continue to occupy the office space at Victoria House for the remainder of the 20-year lease.

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

Audit fees related only to statutory audit work.

## 7 Tribunal/CS's Income

	2012-13 £000	2011-12 £000
Gross interest received	4	1
Courtroom rental income	-	-
Website service income	5	5
<b>Total income</b>	<b>9</b>	<b>6</b>

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

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

## 8 Taxation

	2012-13 £000	2011-12 £000
Corporation tax payable	1	-

Corporation tax payable is based on 20 per cent of gross interest receivable (2011-12: 20 per cent).

**9 Property, plant and equipment**

	<b>Information Technology £000</b>	<b>Furniture and Fittings £000</b>	<b>Office Machinery £000</b>	<b>Total £000</b>
<b>Cost or valuation:</b>				
<b>At 31 March 2012</b>	<b>309*</b>	<b>334</b>	<b>14</b>	<b>657</b>
Additions	12	2	19	33
Disposals	(2)	–	(1)	(3)
<b>At 31 March 2013</b>	<b>319</b>	<b>336</b>	<b>32</b>	<b>687</b>
<b>Depreciation:</b>				
<b>At 31 March 2012</b>	<b>290</b>	<b>313</b>	<b>10</b>	<b>613</b>
Charged in year	10	5	1	16
Disposals	(2)	–	(1)	(3)
<b>At 31 March 2013</b>	<b>298</b>	<b>318</b>	<b>10</b>	<b>626</b>
<b>Net book value at 31 March 2012</b>	<b>19</b>	<b>21</b>	<b>4</b>	<b>44</b>
<b>Asset financing:</b>				
Owned	19	21	4	44
<b>Net book value at 31 March 2013</b>	<b>21</b>	<b>18</b>	<b>22</b>	<b>61</b>
<b>Asset financing:</b>				
Owned	21	18	22	61

\* Included in the cost of fixed assets, shown in the table above, are Information Technology assets with a value of £255,787, which have been fully written down but are still in use.

**10 Intangible assets**

	<b>Purchased software licences £000</b>
<b>Cost or valuation:</b>	
<b>At 31 March 2012</b>	<b>219</b>
Additions	22
<b>At 31 March 2013</b>	<b>241</b>
<b>Amortisation:</b>	
<b>At 31 March 2012</b>	<b>204</b>
Charged in the year	15
<b>At 31 March 2013</b>	<b>219</b>
<b>Net book value at 31 March 2012</b>	<b>15</b>
<b>Net book value at 31 March 2013</b>	<b>22</b>

## 11 Trade and other receivables

### a Analysis by type

	<b>31 March 2013 £000</b>	31 March 2012 £000
<b>Amounts falling due within one year:</b>		
Deposits and advances	7	7
Other receivables	–	66
Prepayments and accrued income	<b>59</b>	59
<b>Total trade receivables and other receivables</b>	<b>66</b>	132

### b Intra-government balances

	<b>Amounts falling due within one year</b>	
	<b>31 March 2013 £000</b>	31 March 2012 £000
Balances with other central government bodies	7	73
Balances with bodies external to government	<b>59</b>	59
<b>Total trade and other receivables</b>	<b>66</b>	132

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

## 12 Cash and cash equivalents

	<b>31 March 2013 £000</b>	31 March 2012 £000
Balance at 1 April	<b>320</b>	274
Net change in cash balances	<b>85</b>	46
<b>Balance at 31 March</b>	<b>405</b>	320
The following balances were held at 31 March:		
Commercial banks and cash in hand	<b>405</b>	320
<b>Balance at 31 March</b>	<b>405</b>	320

**13 Trade payables and other current/non-current liabilities***a Analysis by type*

	<b>31 March 2013 £000</b>	31 March 2012 £000
<b>Amounts falling due within one year:</b>		
Payables representing activities of the Tribunal at 31 March	<b>64</b>	109
Taxation and social security	<b>18</b>	19
Trade payables	<b>6</b>	5
Accruals	<b>44</b>	61
Untaken leave accrual	<b>38</b>	38
Deferred income rent free	<b>23</b>	23
<b>Total amounts falling due within one year</b>	<b>193</b>	255
<b>Amounts falling due after more than one year:</b>		
Deferred income rent free	<b>216</b>	239
Operating lease liability	<b>1,630</b>	1,552
<b>Total amounts falling due after more than one year</b>	<b>1,846</b>	1,791

*(b) Intra-government balances*

	<b>Amounts falling due within one year</b>		<b>Amounts falling due after more than one year</b>	
	<b>31 March 2013 £000</b>	31 March 2012 £000	<b>31 March 2013 £000</b>	31 March 2012 £000
Balances with other central government bodies	<b>125</b>	181	<b>1,846</b>	1,791
Balances with bodies external to government	<b>68</b>	74	–	–
<b>Total trade and other payables</b>	<b>193</b>	255	<b>1,846</b>	1,791

*c Deferred income and operating lease liability*

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

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

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

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

## 14 Provisions for liabilities and charges

	Tribunal's long service award costs £000
<b>Balance at 31 March 2012</b>	<b>30</b>
Provided in the year	<b>18</b>
<b>Balance at 31 March 2013</b>	<b>48</b>

The provision made in the year relates to the Tribunal's expected cost of the President's long service award which becomes payable on retirement. The CS will provide the finances to settle the Tribunal's liability. The liability was calculated by the GAD and is based on the President's judicial grade and length of service. The level of the long service award is dependent on the tax paid by the member on the retirement lump sum. For this year's disclosures, the GAD have assumed tax is paid on the lump sum at 50 per cent, the prevailing tax rate as at 31 March 2013. However, if the member paid tax on the lump sum at a different rate, then the long service award would differ. The value of the Long service award payable will reduce to £44,000 as at 4 November 2013 due to the top tax rate reduction to 45 per cent.

## 15 Commitments under operating leases

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

	31 March 2013 £000	31 March 2012 £000
<b>Obligations under operating leases comprise:</b>		
Buildings		
Not later than one year	<b>1,266</b>	1,188
Later than one year and not later than five years	<b>5,375</b>	5,297
Later than five years	<b>8,268</b>	9,611
<b>Other:</b>		
Not later than one year	<b>11</b>	21
Later than one year and not later than five years	<b>3</b>	15
Later than five years	-	-
<b>Total obligations under operating leases</b>	<b>14,923</b>	16,132

The obligations under operating leases include an increase of 2.5 per cent compounded over every five years equating to 13 per cent applied from September 2008 for land and buildings.

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

## 16 Financial instruments

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

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

There was no difference between the book values and fair values of the CS's financial assets. Cash at bank was £405,000 as at 31 March 2013.

### **17 Related party transactions**

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

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

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

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

### **18 Events after the reporting period**

There were no events after the reporting period to report.

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

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