

Presented to Parliament pursuant to Schedule 3, Section 12(4) of the Enterprise Act 2002

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# Competition Appeal Tribunal and Competition Service Account 2008-2009

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# Competition Appeal Tribunal and Competition Service Account 2008-2009

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## Introduction

The Enterprise Act 2002 provided for the establishment of the Competition Appeal Tribunal (the Tribunal) and the Competition Service (the Service).

### Principal activities of the Tribunal

To hear appeals against: decisions of the Office of Fair Trading (OFT) under Chapters I and II of the Competition Act 1998 and Articles 81 and 82 of the EC Treaty; decisions of regulators in the main utility, railway and air traffic service sectors under those provisions; decisions made by the Office of Communications (OFCOM) under the Communications Act 2003; and decisions of the OFT, the Competition Commission or the Secretary of State concerning merger cases and market investigations under the Enterprise Act 2002. The Tribunal may also hear certain claims for damages arising out of an infringement of UK or EC competition law.

New powers have recently 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 in respect of property schemes made under that Act.

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

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

### Membership of the Tribunal

The Tribunal comprises: the President, Sir Gerald Barling; the panel of Chairmen (comprising Judges of the Chancery Division of the High Court and two other members, namely Lord Carlile of Berriew QC and Vivien Rose); and a panel of 17 Ordinary Members.

The Tribunal membership in 2008-2009 comprised:

#### President

The Honourable Mr Justice Barling

### **Panel of Chairmen**

The Honourable Mr Justice Blackburne  
 The Honourable Mr Justice Patten  
 The Honourable Mr Justice Peter Smith  
 The Honourable Mr Justice Lewison  
 The Honourable Mr Justice David Richards  
 The Honourable Mr Justice Mann  
 The Honourable Mr Justice Warren  
 The Honourable Mr Justice Kitchin  
 The Honourable Mr Justice Briggs  
 The Honourable Mr Justice Henderson  
 The Honourable Mr Justice Morgan  
 The Honourable Mr Justice Norris  
 The Honourable Mr Justice Floyd  
 The Honourable Mr Justice Sales  
 The Honourable Mrs Justice Proudman  
 The Honourable Mr Justice Arnold  
 Lord Carlile of Berriew QC  
 Vivien Rose

### **Ordinary Members**

Professor Andrew Bain OBE  
 Michael Blair QC  
 Peter Clayton  
 Michael Davey  
 Peter Grant-Hutchison  
 Professor Peter Grinyer  
 Sheila Hewitt  
 Ann Kelly  
 The Honourable Antony Lewis  
 Graham Mather  
 Professor John Pickering  
 Richard Prosser OBE  
 Dr Arthur Pryor CB  
 Adam Scott OBE TD  
 Vindelyn Smith-Hillman  
 Professor Paul Stoneman  
 David Summers

### **Recruitment**

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

### **The Service**

The Service 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.

### **Membership and senior staff of the Service**

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

## Register of Interests

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

## Premises

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

## Finance and workload

The work of the Tribunal is financed entirely through grant-in-aid from the Department of Business, Enterprise and Regulatory Reform (BERR) and administered by the Service. The Registrar is the Accounting Officer and is responsible for the proper use of these funds.

## President's Statement

This is my second annual statement and at the time of writing I have served nearly a year and a half as President of the Tribunal. The early months of my tenure were overshadowed by the illness and death of Marion Simmons QC who, as noted in the tribute in last year's review, was a much valued Chairman of the Tribunal. The widespread respect and affection for her was reflected in the large attendance at a memorial concert organised by her family and held at Gray's Inn last September.

Recruitment of a part-time Chairman to fill the vacancy resulting from Marion's death has not proved straightforward but the Judicial Appointments Commission recently confirmed that the process is underway. It is therefore likely that the Tribunal will be back up to strength by the late autumn. Until then additional responsibilities will continue to fall on our existing fee-paid Chairmen Lord Carlile QC and Vivien Rose. I would like to record how grateful I am for the indispensable support they have given to the Tribunal and to me.

### Cases

Although the number of new cases registered over the last period is less than in some years, as far as the cases actually heard are concerned, a number of these have been quite significant. Of particular note are four cases which concerned the Tribunal's judicial review jurisdiction under sections 120 and 179 of the Enterprise Act 2002 in respect of merger and market investigation cases.

In *British Sky Broadcasting Group Plc ('Sky') v Competition Commission & Secretary of State* and a related case (*'Virgin Media'*), Sky and Virgin Media challenged a report of the Competition Commission and the final decision of the Secretary of State in relation to Sky's acquisition of a 17.9 per cent shareholding in ITV. These were the first applications for review under the Enterprise Act 2002 involving a consideration of the concept of material influence arising out of an acquisition of shares. They were also the first cases concerning the Secretary of State's power to intervene in mergers on a public interest ground, namely to protect the plurality of the media. The Tribunal's decision dismissing Sky's application is currently under appeal.

*Merger Action Group ('MAG') v Secretary of State* concerned an application by MAG for judicial review of the Secretary of State's decision not to refer the proposed HBOS/Lloyds TSB merger to the Competition Commission. This case was a demanding test of the Tribunal's capacity to deal with the logistical and judicial challenges of hearing and determining an important and very urgent judicial review within a matter of a few days from the filing of the application to final judgment. The Tribunal's members and staff rose magnificently to the occasion, working late in order to receive and distribute case papers long after normal working hours and coming in at the weekend to ensure that all was in readiness for the hearing. The Tribunal itself had to draft its full decision under considerable time pressure and I am grateful to my colleagues Michael Blair QC and Professor Peter Grinyer for their willingness to embrace this demanding task. The case was one of comparatively few so far to have been heard by the Tribunal under Scottish law. In the normal course of events it would have been the Tribunal's intention to hold the hearing in Scotland but the exceptionally tight timescale meant that, as an urgent measure, the hearing had to take place at the Tribunal's headquarters in London. This case was also noteworthy because it involved a consideration of whether MAG as an unincorporated association of business people based in Scotland and others had standing to seek judicial review of the proposed merger.

In *Tesco Plc v Competition Commission* the Tribunal dealt with the first application for a judicial review of a Competition Commission report in relation to a market investigation (the supply of groceries in the UK). Tesco's application challenged the validity of one of the Competition Commission's recommendations, namely that a competition test be imposed as part of land planning procedures applicable to proposals to build large grocery stores. This measure, along with others, had been proposed in order to remedy the adverse effects of certain highly concentrated local retail markets identified in the Competition Commission's report. The Tribunal made an order quashing the relevant part of the Commission's decision and referred the matter back to the Commission for reconsideration.



In relation to the Tribunal's jurisdiction under the Communications Act 2003, the appeals brought by Hutchison 3G UK Limited ('H3G') and British Telecommunications Plc ('BT') relating to *mobile call termination* were of particular importance. These were the first appeals against controls set by OFCOM in relation to the prices which mobile network operators are permitted to charge for the supply of mobile call termination services. Since the appeals raised matters relating to the setting of price controls, these cases were also the first involving the use of a procedure by which the Tribunal has to refer certain aspects of the matter to the Competition Commission for investigation before the Tribunal can reach its final decision. The Tribunal confirmed the Commission's determination that two of the price control matters raised in BT's appeal were well founded. As a result, the Tribunal gave directions to OFCOM that the wholesale mobile phone voice termination charges should be reduced by 2010-11.

The appeals lodged by T-Mobile (UK) Limited, H3G, BT and Cable & Wireless & Others against determinations made by OFCOM to resolve disputes concerning charges for mobile call termination ('*Termination Rate Disputes*') are also of interest. The case involved challenges in respect of OFCOM's exercise of its dispute resolution powers under the Communications Act 2003. Having upheld the appeals, the Tribunal subsequently determined the rates to be paid for termination charges in each of the seven disputes at issue.

Another significant case under the Communications Act was *T-Mobile (UK) Limited & Others v Office of Communications* in which the Tribunal ruled that it did not have jurisdiction to hear the appeal. The Tribunal considered that the appellants' route of redress, if any, was via judicial review proceedings before the Administrative Court in relation to OFCOM's decisions as to how and when it intended to proceed with the licensing of electromagnetic spectrum for telecommunications purposes. The Court of Appeal dismissed appeals against the Tribunal's ruling in December 2008.

In relation to appeal proceedings under the Competition Act 1998, the main hearing of National Grid's appeal from a decision of the Gas and Electricity Markets Authority finding infringements of Article 82 and the Chapter II prohibition and imposing fines, took place over two weeks in January of this year (*National Grid Plc v The Gas and Electricity Markets Authority*). A judgment was handed down in April in which the Tribunal upheld the Authority's finding of infringement but reduced the fine imposed on National Grid from £41.6million to £30 million.

Just outside the period under review, the Tribunal's decisions in *Albion Water Limited & Others v Water Services Regulation Authority* ([2008] CAT 31 and [2009] CAT 12) brought to an end proceedings which have raised a number of highly important and complex regulatory issues including the appropriate methodology for measuring costs, the legal test for abusive pricing and the interaction between sector-specific regulation and competition law.

In *Independent Media Support Limited v Office of Communications* the Tribunal agreed with OFCOM's findings that BBC Broadcast did not hold a dominant position in the market when it entered into a contract with Channel 4 and that the contract did not have an appreciable anti-competitive effect. As this was the first case in which the Tribunal has been called upon to decide the application of Articles 81(1) and 82 of the EC Treaty, the Tribunal's judgment was notified to the European Commission pursuant to Article 15(2) of Regulation No.1/2003.

Five follow-on claims for damages under the Competition Act 1998 were made in the Tribunal during the period under review. In *BCL Old Co & Others v BASF AG & Others* the Tribunal decided, as a preliminary issue, that the two year time limit for bringing a claim for damages under the Competition Act 1998 could run from the expiry of the period during which an appeal may be made against the penalty imposed. Hence the claimants were not time-barred. The Court of Appeal has recently reversed this decision, holding that the relevant date from which the two year time limit started to run was the expiry of the period for appealing the infringement decision. In *Enron Coal Services Limited (in liquidation) v English Welsh & Scottish Railway Limited* the Tribunal handed down a judgment on an application by the Defendant to reject parts of the claim.

In all the Tribunal has handed down 42 judgments in the period under review compared to 26 in the previous year.

## Judicial links

The close association between the Tribunal and the Chancery Division has continued over the last year. The Chancellor of the High Court has kindly allowed us to call upon the services of Mr Justice Warren as Chairman of a panel to hear an appeal brought under the Communications Act 2003 (*The Number (UK) Limited and Conduit Enterprises Limited v Office of Communications*). Later this year Mr Justice Briggs will chair a panel hearing an application under the Enterprise Act 2002 for review of a market investigation by the Competition Commission (*Barclays Bank Plc v Competition Commission*). I am also informed that it is now the case that candidates applying for appointment to the Chancery Division are treated as applying also to become Chairmen of the Tribunal. The new system was first applied in the 2008 competition for appointment to the High Court Bench. We regard this link to the senior judiciary as contributing greatly to the expertise and standing of the Tribunal. As I said in my annual statement for 2007-2008, it is important that corresponding connections are forged with the judiciary in Scotland and Northern Ireland given that the Tribunal is a United Kingdom-wide body. Following that statement the Lord President of the Court of Session, Lord Hamilton, was kind enough to offer us his assistance in achieving this so far as Scotland is concerned. We will be exploring this further with him later this year and it is also our intention to reach a satisfactory arrangement for Northern Ireland as soon as possible.

For my part I continue to sit in the High Court when my duties at the Tribunal permit. I mentioned in last year's statement that, until a certain amount of time had elapsed, I did not feel it appropriate for me to sit on new cases, whether in the Tribunal or elsewhere, which involved or were likely to involve the participation of a particular client on whose behalf I had often appeared as counsel prior to my appointment to the Bench. Although I will of course continue to consider each new case in order to see whether there are particular reasons for my not chairing the relevant panel, the lapse of time is now such that the original reason for recusing myself is much less likely to have any validity.

## Training

One of my responsibilities as President is to ensure the provision of an ongoing training programme for members in the subject areas falling within the Tribunal's jurisdiction. Here I am very ably assisted by the Tribunal's Training Committee chaired by Adam Scott OBE TD. Over the last year the Training Committee has devised and arranged a programme of internal seminars here at the Tribunal dealing with such matters as developments in European competition law, the interface between intellectual property law and competition law and recent competition law decisions in the civil courts. As well as calling upon presenters from within the Tribunal itself, we have been lucky enough to enlist the services of distinguished external speakers. These have included Sir Andrew Park, Lord Neuberger of Abbotsbury and Lord Justice Jacob.

## Other activities

The Tribunal continues to receive many requests to provide a speaker or representative at the various competition and regulatory law conferences and seminars, organised by distinguished academic and professional bodies both here and abroad. It is important for both the national and international public understanding of the work of the Tribunal that a reasonable number of these invitations to speak are accepted by us. In the last 12 months I have addressed and/or chaired about ten such gatherings. Most of these were in London, but two were abroad. The latter included the annual meeting of the Association of European Competition Law Judges, of which the Tribunal is a founder member and for which it continues (through the good offices of our Registrar) to provide the secretariat. In addition to active participation in these conferences, I attended another seven similar seminars as well as judging a student moot in Oxford. As I have said, the task of representing the Tribunal at such events is shared by other Tribunal representatives and during the year Lord Carlile QC chaired a conference for legal practitioners on competition litigation whilst Vivien Rose took part in several seminars on subjects related to competition law, public law and telecommunications issues organised by, amongst others, the European Commission, Blackstone Chambers and Monckton Chambers. Vivien has also published an article in the CPI Journal on the concept of 'margin of appreciation' in European and national case law. The Tribunal's referendaires have also been active in this regard. Stephen Hurley spoke at a practitioners' conference on Tribunal practice and procedure. Meanwhile David Bailey was the UK rapporteur on The Modernisation of the European Competition Law – First Experiences with Regulation 1/2003 at the FIDE XXIII Congress held in Linz in May 2008. Amongst other speaking engagements, David also took part in the second "Antitrust Marathon" jointly organised by the British Institute of International and Comparative Law and the Institute of Consumer Antitrust Studies, Loyola University Chicago School of Law, which took place at the Tribunal in April 2008.

The Tribunal is often asked to host visits by foreign judges, lawyers and competition enforcement agencies. In November 2008 we were visited by the President and Members of the Trade and Industry Appeals Tribunal which is our counterpart in the Netherlands. The President and his colleagues were able to observe part of the main hearing in *Tesco Plc v Competition Commission*. In mid-February of this year we were very pleased to receive a delegation of 25 competition officials from the People's Republic of China. In the course of their half day visit the delegation were given a presentation by the Registrar on the Tribunal's work and on the wider UK competition regime. This was followed by a question and answer session and a lively discussion which touched on the constitutional issues arising when courts and tribunals declare a government or its agencies to have acted unlawfully. We also had an informal visit from a representative of the US Federal Trade Commission.

## Future developments

Liaison at various levels between the Tribunal and external authorities and bodies relevant to its work, including in particular BERR and the Ministry of Justice, has been a regular feature of the past year. The Tribunal continues to press for the removal, or at least the diminution, of certain anomalies in its jurisdiction and to encourage other developments to facilitate the private enforcement of the competition rules. By no means the least of the jurisdictional anomalies is the Tribunal's inability to entertain "stand-alone" claims for damages and other remedies for infringement of those rules, notwithstanding that the Tribunal is empowered to make the very same findings of infringement or non-infringement when hearing an appeal from a decision of a national competition authority. I pointed out in my previous annual statement that the position would be improved to some extent by bringing into force section 16 of the Enterprise Act 2002, thereby allowing competition aspects of actions to be transferred by the High Court to the Tribunal. Further, it is apparent that, while the representative action provided by section 47B of the Competition Act 1998 is useful, there are certain limitations in its scope. In particular it can only be used on behalf of consumers, only where a finding of infringement has already been made by a competition authority and only on behalf of named individuals. It remains to be seen whether there is any appetite to widen its scope so as to extend it to small business claimants, or even to allow for a form of opt-out class action in appropriate cases. The absence of a class action of that kind in our system has been criticised as leaving certain victims of infringements without any realistic remedy, in particular where many individuals sustain very small amounts of loss as a result of an infringement.

One development which, unlike the above, is within our power to achieve ourselves, is the formation of a user group. This was foreshadowed in last year's statement, and I am happy to report that it has now come into being and held its first meeting. The newly-formed group met towards the end of February this year at the Tribunal's premises in London. The membership comprises both sides of the legal profession in England and Wales, Scotland and Northern Ireland<sup>1</sup>, together with representatives from the Competition Commission, OFCOM and the OFT (representing itself and the other concurrent regulators). The group will meet about twice a year regularly and will have ad hoc meetings as required. I am sure that the user group will prove invaluable in helping us to provide a first rate service to the public. Information about the user group and its meetings will, in due course, appear in a section of the Tribunal website.

## Envoi

I would like to finish by congratulating Adam Scott on the OBE which he has been awarded for the public service he has carried out through his involvement over many years in the Armed Forces, the Church, several charitable bodies and, of course, the Tribunal. I would also like to express my sincere thanks to our Members (including the independent member of the Competition Service, Janet Rubin), the Registrar and all the Tribunal staff for their unstinting work over the last year.

*Sir Gerald Barling*  
President  
Competition Appeal Tribunal

30 June 2009

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<sup>1</sup> A Northern Ireland representative(s) has not yet been appointed, but it is hoped that this will be remedied before the next meeting.

## Registrar's statement

### The Competition Service

The President, Janet Rubin and I are members of the Competition Service (the Service) which constitutes the support organisation for the Tribunal and is more fully described in the Introduction to this Review. The membership of the Service meets four times a year and is supported by Jeremy Straker, the Service's Director of Operations, who acts as secretary to the meetings.

### Resources

The number of cases registered this year was less than in some previous years but several of those new cases were of great significance for the markets affected. The Tribunal must, of course, be in position to decide those cases swiftly and efficiently, in a time-frame that makes sense in the context in which the case has arisen. As an extreme example of this, the challenge by the Merger Action Group against the Secretary of State's decision not to refer the Lloyds Bank/HBOS merger to the Competition Commission took 12 days in December 2008 from registration to final judgment, so as to ensure a decision was available before the relevant shareholders extraordinary general meeting to decide whether to approve the transaction. To be able to cope with this type of pressurised scenario, it is important that the Tribunal has the appropriate resources (in terms of members, staff, technology and facilities) to be able to handle these cases of enormous significance for not only the undertakings concerned but also the wider economy and public interest.

As in previous years the Service keeps the whole range of its expenditure under review, seeking ways to keep costs down without affecting performance. However, as noted last year the scope for savings is now slight, having reduced costs over the last 3 years we are left in the position where nearly all our major costs are fixed in nature. During the last year our net expenditure was £3.99 million and overall we came in slightly under budget. A significant rise in rent occurred in September representing the five yearly increase due under our tenancy agreement and this accounts for a significant proportion of the difference in total costs between this and the previous year.

The Service is continuing to generate income from hiring out its hearing room facilities, when not in use by the Tribunal, to other public bodies. In addition the Service recently concluded an agreement with Bloomberg, a US publisher, providing for an annual fee to be payable to the Service in connection with publication of the Tribunal's decisions in the publisher's electronic news service.

### Information technology

The decision in early 2008 to begin work on upgrading the Tribunal website proved to be opportune since, later on in the year, our old website, set up on a low cost basis in the early days of the internet, became the target of a malicious attack which dramatically impaired its functionality. Apparently such attacks on public sector websites are becoming more frequent.

Upon discovering that the website had been compromised, it was necessary to shut it down until suitable safeguards against further attacks had been put in place. Thus a good part of the year was spent on working out solutions to shore up the old website whilst the project to create a new site proceeded to completion. In financial terms this meant that more had to be spent on the website than envisaged at the start of the last financial year. It also meant that in terms of staff time our small team was considerably stretched in having to both repair and support the old site whilst at the same time readying the new one to go live.

The new website is now in place and provides access to extensive documentation concerning all the Tribunal's cases. The functionality is far greater than the previous website with several ways of searching for information – including free text and keyword searching.

However our experience over the last year, together with the importance which the website has assumed in disseminating case information, means that security of the website is now a critical issue for us. Whilst it is impossible to provide complete protection against all outside threats, the new website is in many respects more secure than the old site and will, we hope, prove its worth with users. Thanks are due to our information staff, Iliia Bowles and Denice Dever, for the efforts they have made over the last year to overcome these difficulties and develop the new website.

Data security, particularly in government bodies, has been of major concern in recent months and there have been many detailed initiatives and requirements coming from central government with which we are currently working on achieving compliance. That work is likely to continue well into the next year. I am able to report that we have not experienced any incidents of breach of data security in the year.

## Accommodation

During the year part of our premises suffered significant damage caused by flooding. A failure in the air conditioning system allowed water under pressure to escape into the ceiling void above our larger courtroom and in a very short time water had spread over an extensive area. It was fortuitous that the building management system registered a problem and building maintenance staff were able to shut off the water very quickly even though this happened outside office hours. Funds had to be found from within our budget to repair the damage. The courtroom affected was vital to our normal operations and had to be up and running as soon as possible. This was achieved in about 6 weeks and we are grateful to our facilities manager, Julie Hamilton, for organising the speedy repairs. Unfortunately, we have learned that the defect in the air conditioning system that caused this incident is replicated in other parts of not only our office area but possibly the whole building and investigations are underway to determine the best way forward in these circumstances.

In accordance with our rental agreement we have completed all necessary redecoration of painted surfaces as is required every five years.

## Personnel

This year I am pleased to report that staff turnover has been at a very low level. The rate of turnover is subject to wide fluctuations every few years as is to be expected in such a small organisation. Opportunities for career development are inevitably restricted and so once people have reached a certain stage in their careers it is sensible for them to use the training and experience gained with us in pursuing wider long term opportunities elsewhere.

This year we welcomed Brian McGivney, who is a case worker in the Registry and he also assists part time in the finance department.

We continue to monitor staff training needs closely and provide suitable training where appropriate and taking account of prevailing economic conditions. In particular we have assisted several staff in obtaining professional qualifications. We regard our willingness to identify and invest in the training needs of staff as a means of attracting and retaining for a reasonable period, highly motivated personnel committed to delivering a high standard of service in the public interest.

As in previous years the staff absence rate of 1% has been far below the average for both the private and public sectors and we take this as an indicator of the motivation shown by all the staff in the performance of their duties.

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

Looking ahead to next year a major exercise will have to be undertaken to recruit and train new ordinary members of the Tribunal to replace the current cadre of ordinary members whose terms of appointment are due to expire in 2011. The recruitment will be carried out in collaboration with the Department for Business, Enterprise and Regulatory Reform.

## Pensions

Present and past employees of the Service 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 Nuvo schemes). Liability for payment of future benefits is a charge on the PCSPS. Employer contributions are charges to the Service'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 Service's accounts.

## The Audit Committee

The Service's Audit Committee meets four times a year under the chairmanship of Janet Rubin, who has held various non-executive director roles in other organisations including having chaired remuneration committees and been a member of several audit committees. The other members of the Audit Committee are Peter Clayton, who is a Tribunal Member as well as being a Chartered Accountant with extensive experience of operating with audit committees of FTSE 100 companies; and David Summers, also a Tribunal Member, who has many years experience of being a board member of several public limited companies.

## Format of accounts

The accounts for the Tribunal and for the Service have been prepared in accordance with the 2008-2009 Government Financial Reporting Manual (FRM) and the separate Accounts Directions for the Tribunal and the Service given by the Secretary of State for Business, Enterprise and Regulatory Reform with the consent of the Treasury in accordance with Schedule 3 of the Enterprise Act 2002.

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

The Tribunal's accounts include only the direct costs specifically attributable to the Tribunal. All support costs are included in the Service accounts in accordance with its statutory purpose set out in the Introduction.

I am pleased to be able to report that the accounts were approved without the need for the issue of an external audit management letter. Next year, in accordance with government policy, the accounts will be drawn up according to the International Financial Reporting Standards (IFRS).

The 2007 Budget announced that, from 2008-2009, the accounts of central government departments and entities in the wider public sector will be produced using IFRS, as interpreted for the public sector in the IFRS-based Financial Reporting Manual (IFReM). Ministers deferred the implementation of IFRS to 2009-2010. However, HM Treasury has introduced a 'Trigger Point' process to manage the transition to IFRS.

The matters of most relevance for the Service and the Tribunal arising out of the change of accounting standards concern the treatment of employee leave entitlement and operating leases.

## Auditors

The financial statements of the Tribunal and the Service 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 £5,500 for the Tribunal (2007-2008: £5,500) and £21,500 for the Service (2007-2008: £21,000). Additional fees of £1,000 for the Tribunal and £2,000 for the Service were paid for the dry-run audit on the IFRS restated balance sheet as at 31 March 2008.

In 2008-2009 BERR's Internal Audit Directorate continued to provide internal audit services to the Service. The cost of providing this function was £13,000 (2007-08: £17,500).

## Charitable donations

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

## Payment of creditors

The Service 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 new government guidelines aimed at assisting suppliers with their cashflow. Throughout the year the average payment period was five days (2007-2008: ten days) and 99.7 per cent of (undisputed) invoices were settled within 30 days (2007-2008: 96.4 per cent).

## Disclosure of relevant audit information

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

*Charles Dhanowa OBE*  
Registrar and Accounting Officer  
Competition Service

30 June 2009

## President

### Sir Gerald Barling

Sir Gerald Barling is a judge of the Chancery Division of the High Court of England and Wales. He is an acting deemster in the Isle of Man Court of Appeal. 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 and Brussels, where he specialised in European Community (EC) law until appointed to the High Court.

Whilst at Brick Court Chambers he was frequently instructed by both government and private clients, appearing regularly in the courts in this country (including the Competition Appeal Tribunal) and in the European Court of Justice in Luxembourg.

His work at the Bar encompassed virtually every field of European law, including competition law. He worked extensively in the fields of sectoral regulation (particularly telecommunications regulation), pharmaceutical licensing, state aids and public procurement. He was instructed over several years in the well-known *Factortame* litigation and appeared in many cases involving the impact of EC 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 Blackburne

The Honourable Mr Justice Patten

The Honourable Mr Justice Peter Smith

The Honourable Mr Justice Lewison

The Honourable Mr Justice David Richards

The Honourable Mr Justice Mann

The Honourable Mr Justice Warren

The Honourable Mr Justice Kitchin

The Honourable Mr Justice Briggs

The Honourable Mr Justice Henderson

The Honourable Mr Justice Morgan

The Honourable Mr Justice Norris

The Honourable Mr Justice Floyd

The Honourable Mr Justice Sales

The Honourable Mrs Justice Proudman

The Honourable Mr Justice Arnold



## Vivien Rose

Vivien Rose was called to the Bar in 1984 and was a member of Monckton Chambers, London, for ten years specialising in domestic and EC 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 is co-editor (with Peter Roth QC) of the sixth edition of Bellamy & Child European Community Law of Competition (2008). In 2008 she was appointed as a legally qualified member of the Charity Tribunal set up under the Charities Act 2006 to hear appeals from decisions of the Charity Commission.

## Lord Carlile of Berriew QC

Alex Carlile was called to the Bar by Gray's Inn in 1970 and became a QC 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 has been the Independent Reviewer of Terrorism Legislation since 2001. He is the President of the Howard League for Penal Reform. He is a Fellow of King's College London, and a fellow of the Industry and Parliament Trust.

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

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

## Members

### Professor Andrew Bain OBE

Andrew Bain has held full professorships in economics at the Universities of Glasgow, Strathclyde and Stirling, was for six years group economic adviser at Midland Bank and has also worked as an economic consultant. Previous public appointments include membership of the Committee to Review The Functioning of Financial Institutions (the Wilson Committee on the City), the Monopolies and Mergers Commission, the Secretary of State for Scotland's Panel of Economic Consultants and the Board of Scottish Enterprise.

### Michael Blair QC

Michael Blair is a practising barrister with chambers in 3 Verulam Buildings, Gray's Inn, specialising in financial services and financial regulation. He is the Chairman of SWX Europe Ltd, the London exchange where the major Swiss equities are traded, and a member of the board of the Dubai Financial Services Authority. He was for 2008 the treasurer of his Inn of Court, the Middle Temple, and also President of the Guernsey Financial Services Tribunal. Until 2000 he was general counsel to the Financial Services Authority. He served on the Bar Council for nine years (including as treasurer for four years) and had earlier been employed as a civil servant in the Lord Chancellor's Department for 20 years. He is the author or editor of a number of textbooks on financial services.

### Peter Clayton

Peter Clayton is a Fellow of the Institute of Chartered Accountants in England and Wales. He has held senior financial management positions in FTSE 100 companies such as group general manager Finance of General Accident Plc and group financial controller of Forte Plc. He is a director of Walking on Air Ltd – a charity providing gliding training for disabled people.

### Michael Davey

Michael Davey is a solicitor of the Supreme Court of Northern Ireland and former Chief Executive of the Law Society of Northern Ireland. He has extensive experience of private commercial practice and is a chairman of Industrial Tribunals and of Social Security Appeal Tribunals.

### Sheila Hewitt

Sheila Hewitt is a JP, a member of the Fitness to Practice Panel of the General Medical Council and the Nursing & Midwifery Council. She is also a member of the Asylum and Immigration Tribunal. She is an Associate of the Chartered Institute of Bankers and an independent assessor for OCPA (the Office of the Commissioner for Public Appointments).

### Ann Kelly

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

### Peter Grant-Hutchison

Peter Grant-Hutchison is a Scottish advocate specialising in employment law. He also holds appointments as a part-time sheriff, immigration judge, Mental Health Tribunal convenor and Social Security Appeal Tribunal chairman.

### Professor Peter Grinyer

Peter Grinyer is Emeritus Professor at the University of St Andrews, was Esmee Fairbairn Professor of Economics, founded the School of Management, and was in the 1980s vice-principal and, in 1985, acting principal. Prior to St Andrews he held the FME Chair in Business Strategy at City University. He has been a visiting professor at New York University and Erskine Fellow at the University of Canterbury, New Zealand. He has also been a member of the Scottish Legal Aid Board, a non-executive director of Ellis and Goldstein Plc, Don Brothers Buist Plc, John Brown Plc and Mclroy Coates. He is on the editorial boards of several journals on managerial economics and strategy.

### The Honourable Antony Lewis

Antony Lewis is a Barrister and Chairman of the Community Foundation in Wales and the Mid Wales Food and Land Trust Ltd. From 1996 to 2003 he was Chairman of Powys Health Care NHS Trust and prior to that, Chairman of Powys Family Health Services Authority. He has been a lecturer in law at University College, Cardiff and a JP. He is widely involved in the charity sector, as a Trustee of The Institute of Rural Health, Rekindle – a mental health charity, and the Powys Association of Voluntary Organisations.

## Graham Mather

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

## Professor John Pickering

John Pickering is an economic and business consultant. Former appointments have included: Dean, Vice-Principal and Professor of industrial economics at UMIST; Deputy Vice-Chancellor of the University of Portsmouth; Professor of business strategy at the University of Bath School of Management; and Visiting Professor at the Universities of Durham and Southampton. He served for nine years as a member of the Monopolies and Mergers Commission. He has also held various external positions of responsibility including as Church Commissioner and director of several companies and he is a member of the Strategic Advisory Board on Intellectual Property Policy.

## Richard Prosser OBE

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

## Dr Arthur Pryor CB

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

## Adam Scott OBE TD

Adam Scott has held fellowships at the University of St Andrews since 1994. His academic interests include scenario planning and economic and legal regulation of competition and utilities. He has been a consultant in these fields. After qualifying at the Bar with an intellectual property background, he worked mainly in telecommunications, being corporate planner in the creation and privatisation of British Telecommunications Plc, then heading BT's international affairs and, until 1994, chairing its apparatus business. He is a Fellow of the Institution of Engineering and Technology.

## 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 where she also held a number of external examiner positions. Prior to that she was a senior economist at the Bank of Jamaica in Kingston (Jamaica). She is a listed assistant examiner with Cambridge and London Examining boards and an assessor with the Government Economic Service. She also sits on several editorial boards and advisory bodies.

## Professor Paul Stoneman

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

## David Summers

David Summers is a publishing and media consultant and a JP. He is non-executive Chairman of Wilmington Group Plc. He also serves on The Lord Chancellor's Advisory Committee for Kent. He used to be managing director of Butterworths, the publisher, and was formerly a member of the Restrictive Practices Court. He is a governor and former chairman of St Bede's School Trust, Sussex.

## 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 Bonmarche Limited, the Strategic Rail Authority and SHL Group Plc.

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

She is currently undertaking senior HR/OD interim assignments in the legal and health sectors. She is also a non-executive director on the Fair Markets Board of the Department for Business, Enterprise and Regulatory Reform.

## Judgments

Judgments handed down within the period 1 April 2008 to 31 March 2009

	Judgment	Tribunal	Summary
1	<p><b>British Sky Broadcasting Group Plc v (1) Competition Commission (2) Secretary of State for Business, Enterprise and Regulatory Reform</b></p> <p>[2008] CAT 7 23-Apr-08</p>	<p>The President Professor Peter Grinyer Peter Clayton</p>	<p>Ruling of the President (sitting alone) on an application Sky for disclosure, within a confidentiality ring, of certain material provided to the Competition Commission ('the Commission') by ITV Plc and its financial advisers during the course of the Competition Commission's investigation.</p> <p>In order to deal fairly with Sky's contention that the Commission could not properly make the findings in relation to its overall conclusions on jurisdiction and effects on competition on the material before it the President ruled that the Tribunal should have sight of the material relied on by the Commission.</p>
2	<p><b>Emerson Electric Co and others v Morgan Crucible Company Plc and others</b></p> <p>[2008] CAT 8 28-Apr-08</p>	<p>Marion Simmons QC Adam Scott OBETD Vindelyn Smith-Hillman</p>	<p>Judgment on two applications by the claimants, made pursuant to section 47A of the Competition Act 1998 and Rule 31(3) of the Tribunal's Rules, for permission to make a claim for damages, one against Schunk GmbH and Schunk Kohlenstofftechnik GmbH ('Schunk'), and SGL Carbon AG, and the other against Le Carbone Lorraine SA ('Carbone Lorraine') (together 'the proposed defendants').</p> <p>In deciding whether to grant permission to bring the proposed claims, the Tribunal had regard to all the relevant circumstances, including the nature and scope of the proceedings brought before the European Court of First Instance; the nature and extent of particular prejudice that either party will suffer as a result of granting permission; and the observations of the proposed defendants. The overriding consideration was whether granting permission enabled a case to be dealt with justly.</p> <p>The applications for permission to make a claim for damages against each of the proposed defendants were refused.</p> <p>The Tribunal found that the claimants had failed to establish that they were likely to suffer particular prejudice if permission is refused. The various concerns expressed by the claimants about delay were likely to exist in any follow-on action.</p>

Judgment	Tribunal	Summary
<p>3 <b>British Sky Broadcasting Group Plc v (1) Competition Commission (2) Secretary of State for Business, Enterprise and Regulatory Reform</b></p> <p>[2008] CAT 9 30-Apr-08</p>	<p>The President Professor Peter Grinyer Peter Clayton</p>	<p>The Tribunal also found that the proceedings instituted by Schunk and Carbone Lorraine in the European Court of First Instance were challenging the scope of the infringement found by the Commission. In these circumstances, the ambit of the prior findings of infringement on which the claimants base their follow-on action and the extent of their alleged losses could differ from those originally found by the Commission. Until the European proceedings were determined, there was no sure foundation for the proposed claims.</p> <p>Ruling of the President (sitting alone) in respect of an application by Sky for the confidentiality ring to be extended to include two external financial advisers (instructed by Sky) so that they could review two documents submitted by a third party, ITV, to the Competition Commission.</p> <p>In reaching his decision, the President noted that the documents in question were highly sensitive and that their disclosure to non-legal advisers was not necessary to enable Sky to mount its challenge to the rationality of the Competition Commission's findings</p> <p>Accordingly, the application was refused.</p>
<p>4 <b>Hutchison 3G UK Limited v Office of Communications (Mobile Call Termination) British Telecommunications Plc v Office of Communications (Mobile Call Termination)</b></p> <p>[2008] CAT 10 20-May-08</p>	<p>Vivien Rose Professor Andrew Bain OBE Adam Scott OBE TD</p>	<p>Ruling of the Tribunal on the admissibility of parts of Hutchison 3G UK's ('H3G') pleadings in its appeal against OFCOM's decision in its 2007 Mobile Call Termination Statement to impose price controls on the mobile network operators and on the admissibility of parts of H3G's statement of intervention in BT's appeal against the same OFCOM decision.</p> <p>The Tribunal ruled that parts of H3G's pleadings, both in its own appeal and in BT's appeal, were inadmissible.</p> <p>In relation to H3G's own appeal, the Tribunal held that the arguments which H3G was seeking to advance had not formed part of its original case as set out in its notice of appeal. The Tribunal considered whether to grant permission to H3G to amend its pleading to introduce the new arguments and/or new grounds of appeal, but refused permission as none of the conditions of rule 11(3) of the Tribunal Rules for the introduction of new grounds of appeal was met.</p> <p>In relation to BT's appeal, the Tribunal ruled that parts of H3G's pleading were inadmissible in so far as they duplicated issues properly included in H3G's own appeal but which were not raised in BT's appeal, raised issues which H3G had sought to raise in H3G's appeal but which the Tribunal had ruled should be excluded, or raised issues which were reliant on passages in evidence adduced by BT which were not properly in support of issues raised by BT's notice of appeal.</p>

	Judgment	Tribunal	Summary
5	<p><b>Hutchison 3G UK Limited v Office of Communications (Mobile Call Termination)</b></p> <p>[2008] CAT 11</p> <p>20-May-08</p>	<p>Vivien Rose</p> <p>Professor Andrew Bain OBE</p> <p>Adam Scott OBE TD</p>	<p>Judgment of the Tribunal disposing of those aspects of Hutchison 3G UK's ('H3G') appeal which did not comprise 'specified price control matters' within the meaning of section 193 of the Communications Act 2003 and the Tribunal Rules, the specified price control matters raised in the appeal having been referred to the Competition Commission for determination on 18 March 2008 ([2008] CAT 5).</p> <p>The main issues considered in the judgment were H3G's challenges to OFCOM's findings that H3G had significant market power in the market for termination of voice calls on H3G's network and to OFCOM's decision that a charge control should be imposed on the supply of mobile call termination on H3G's network for the 2007-2011 period as a result.</p> <p>The Tribunal held that OFCOM was correct in concluding that the availability of its dispute resolution powers under section 185 of the Communications Act 2003 did not constrain H3G's market power to a degree sufficient to preclude a finding of significant market power.</p> <p>The Tribunal also held that OFCOM was correct to conclude that the evidence of initial negotiations between H3G and BT in 2001 and 2002 did not indicate that BT had sufficient countervailing buyer power during the period covered by the decisions under appeal (2004 onwards).</p> <p>In the judgment of the Tribunal, OFCOM was entitled to conclude that H3G had (and continued to have) significant market power because of its 100 per cent market share, the existence of absolute barriers to entry and the absence of sufficient countervailing buyer power on the part of its main customer, BT.</p> <p>The Tribunal also concluded that none of the reasons put forward by H3G as to why it was inappropriate to impose a price control remedy on H3G were well founded. The Tribunal held that OFCOM were correct in deciding to set a price control for H3G, as well as for the other mobile network operators, in its 2007 Mobile Call Termination Statement.</p> <p>Accordingly, the Tribunal dismissed H3G's appeal in so far as it comprised matters which were not specified price control matters which had been referred to the Competition Commission.</p>

	Judgment	Tribunal	Summary
6	<p><b>T-Mobile (UK) Limited and British Telecommunications Plc and Hutchison 3G UK Limited and Cable &amp; Wireless UK and Others v Office of Communications (Termination Rate Disputes)</b></p>	<p>Vivien Rose</p>	<p>Judgment on an appeal by a number of communications providers under section 192 of the Communications Act 2003 against several determinations by OFCOM to resolve disputes about wholesale charges for mobile call termination.</p>
		<p>Professor Andrew Bain OBE</p>	<p>The Tribunal found that OFCOM had made a number of errors of law in the way it went about determining the disputes. Accordingly, the Tribunal held that the four appeals were well founded in so far as they related to certain issues in the appeals, referred to as the 'core issues'.</p>
	<p>[2008] CAT 12</p>	<p>Adam Scott OBE TD</p>	<p>In particular the Tribunal found that OFCOM must approach dispute resolution having regard to all its statutory obligations and not focus unduly on the existence of other regulatory constraints imposed on one or other of the parties to the dispute, such as BT's end-to-end connectivity obligation.</p>
	<p>20-May-08</p>		<p>The Tribunal also found that OFCOM erred in drawing too rigid a boundary between the exercise of its dispute resolution powers and its SMP-related powers. The Tribunal held that OFCOM had erred in rejecting any form of cost based analysis of the reasonableness of the price comparison.</p>
			<p>The Tribunal held that OFCOM had placed too much weight on the need for consistency and erred in relying on the conclusions in its statement dated 1 June 2004 on Wholesale Mobile Call Termination without properly weighing the factors which the appellants argued meant that these conclusions were no longer valid.</p>
			<p>The Tribunal held that OFCOM's interpretation of the purpose of the end-to-end connectivity obligation was too narrow. The purpose of that obligation was not just to achieve interconnection, but to do so in a manner which promotes, or at least is not inconsistent with, other regulatory objectives.</p>
			<p>Furthermore, the Tribunal concluded that the 'gains from trade test' applied by OFCOM was seriously flawed and should not have been used in resolving the disputes. It was not an appropriate test for determining what was reasonable as between the parties or from OFCOM's perspective as a regulator.</p>
			<p>The Tribunal provided guidance on how OFCOM should approach the task of resolving disputes in future.</p>



	Judgment	Tribunal	Summary
7	<p><b>Independent Media Support Limited v Office of Communications</b></p> <p>[2008] CAT 13</p> <p>20-May-08</p>	<p>Vivien Rose</p> <p>Michael Blair QC</p> <p>Professor Paul Stoneman</p>	<p>Judgment in respect of an appeal by Independent Media Support Limited ('IMS') against a decision of OFCOM finding that an agreement between BBC Broadcast Limited ('BBCB') and Channel 4 for the provision of television access services ('the Channel 4 Contract') had not infringed Articles 81 or 82 of the EC Treaty or the equivalent provisions of the Competition Act 1998.</p> <p>The Tribunal held that OFCOM was correct to determine whether or not BBCB was dominant by considering its market position in the first half of 2004. In determining whether BBCB was dominant in the first half of 2004, the Tribunal upheld OFCOM's view that market developments occurring at some point in the future were irrelevant. A finding of dominance must be based on the evidence available at the appropriate time.</p> <p>The Tribunal concluded that OFCOM did not make a material error of assessment when it found that BBCB did not hold a dominant position in the market for the supply of access services to UK broadcasters in the first half of 2004.</p> <p>The Tribunal also found that OFCOM's conclusion that the Channel 4 Contract did not infringe Article 81(1) or the Chapter I prohibition after 1 January 2007 was correct.</p>
8	<p><b>Rapture Television Plc v Office of Communications</b></p> <p>[2008] CAT 14</p> <p>19-Jun-08</p>	<p>Lord Carlile QC</p> <p>Professor Paul Stoneman</p> <p>David Summers</p>	<p>Decision of the Tribunal refusing Rapture Television Plc ('Rapture') permission to appeal against the Tribunal's judgment of 31 March 2008 ([2008] CAT 6).</p> <p>Rapture's application for permission to appeal and request that its appeal be re-heard were refused on the basis that the grounds of appeal raised by Rapture had no real prospects of success.</p>
9	<p><b>T-Mobile (UK) Limited (Sequencing Decision) and Telefónica O2 UK Limited v Office of Communications</b></p> <p>[2008] CAT 15</p> <p>10-Jul-08</p>	<p>Vivien Rose</p> <p>Dr Arthur Pryor CB</p> <p>Adam Scott OBE TD</p>	<p>Judgment setting out the Tribunal's reasons for deciding it did not have jurisdiction under section 192 of the Communications Act 2003, or otherwise, to hear appeals by T-Mobile and O2 challenging the way in which OFCOM decided to conduct the auction of two bands of spectrum to be used in providing telecommunications services.</p> <p>The Tribunal concluded that the challenged decision was made effective by regulations made under section 14 of the Wireless Telegraphy Act 2006 and fell outside the jurisdiction conferred on the Tribunal by section 192(1)(a) of the Communications Act 2003. The Tribunal further concluded that a right to bring judicial review proceedings against the challenged decision was capable of being fully compliant with the appellants' directly effective rights under Article 4 of the Framework Directive.</p>

	Judgment	Tribunal	Summary
10	<p><b>Hutchison 3G UK Limited v Office of Communications (Mobile Call Termination)</b></p> <p>[2008] CAT 16</p> <p>23-Jul-08</p>	<p>Vivien Rose</p> <p>Professor Andrew Bain OBE</p> <p>Adam Scott OBE TD</p>	<p>Ruling of the Tribunal setting out its reasons for granting Hutchison 3G UK Limited ('H3G') permission, in part, to appeal against the Tribunal's judgment of 20 May 2008 ([2008] CAT 11).</p> <p>The Tribunal concluded that it was right to grant permission in this case in relation to certain of the grounds advanced by H3G. Those grounds raised points of law on the proper construction of the Communications Act 2003 and fundamental points on the inter-relationship of different aspects of the electronic communications regulatory framework.</p> <p>Furthermore, the points raised were key to the proper conduct by OFCOM of all future analyses carried out under these statutory provisions not only of the markets in question in this case but of other markets which OFCOM is required by Community law to investigate.</p> <p>The Tribunal limited H3G's permission to appeal to three of the five grounds advanced, on the basis that the other two grounds did not raise points of law and did not have a real prospect of success.</p>
11	<p><b>T-Mobile (UK) Limited and British Telecommunications Plc and Hutchison 3G UK Limited and Cable &amp; Wireless UK &amp; Others v Office of Communications (Termination Rate Disputes)</b></p> <p>[2008] CAT 17</p> <p>23-Jul-08</p>	<p>Vivien Rose</p> <p>Professor Andrew Bain OBE</p> <p>Adam Scott OBE TD</p>	<p>Ruling of the Tribunal refusing a request by Orange Personal Communications Services Limited ('Orange') for permission to appeal against the Tribunal's judgment on the 'core issues' in four appeals brought by T-Mobile, BT, Hutchison 3G UK and a group of fixed network operators ([2008] CAT 12).</p> <p>The Tribunal found the request did not adequately identify a point of law which could properly be the subject of an appeal. In so far as Orange raised a point of law as to the correct test to be applied under section 185 of the Communications Act 2003, the Tribunal found that the challenge had no real prospect of success.</p> <p>The Tribunal also found that there was no other compelling reason why permission to appeal should be granted.</p>
12	<p><b>Independent Media Support Limited v Office of Communications</b></p> <p>[2008] CAT 18</p> <p>24-Jul-08</p>	<p>Vivien Rose</p> <p>Michael Blair QC</p> <p>Professor Paul Stoneman</p>	<p>Ruling refusing Independent Media Support Limited ('IMS') permission to appeal against the finding in the Tribunal's judgment [2008] CAT 13 that the Channel 4 Contract did not infringe Article 81(1) EC or the Chapter I prohibition on the ground that the points raised in the request for permission had no real prospect of success.</p>

	Judgment	Tribunal	Summary
13	<p><b>T-Mobile (UK) Limited and British Telecommunications Plc and Hutchison 3G UK Limited and Cable &amp; Wireless UK &amp; Others v Office of Communications (Termination Rate Disputes)</b></p> <p>[2008] CAT 19</p> <p>15-Aug-08</p>	<p>Vivien Rose</p> <p>Professor Andrew Bain OBE</p> <p>Adam Scott OBE TD</p>	<p>Judgment of the Tribunal determining the rates to be paid for mobile call termination between BT and each of T-Mobile, O2, Hutchison 3G UK's ('H3G'), Orange Personal Communications Services Limited ('Orange') and Vodafone Limited ('Vodafone'), and between H3G and each of O2 and Orange, so that it could remit the matter back to OFCOM with a direction specifying the rates to be applied.</p> <p>The Tribunal upheld BT's rejection of the Operator Charge Change Notices ('OCCNs') served by T-Mobile and O2. The Tribunal held that, even if 3G termination charges should be higher than 2G termination charges, neither T-Mobile nor O2 made a realistic assessment of the additional costs in the prices that they proposed to charge BT.</p> <p>The Tribunal also concluded that neither Vodafone nor Orange justified their disputed rates by reference to any assessment of costs. The proposed rates were not reasonable in comparison with the rate set in the first year of the mobile call termination statement dated 27 March 2007. The Tribunal therefore upheld BT's OCCNs served on Vodafone and Orange.</p> <p>The Tribunal considered that the dispute between BT and H3G should be resolved by setting the average mobile call termination price chargeable to BT on H3G's network, from 1 November 2006 to 31 March 2007, at 9.64 pence per minute.</p> <p>As regards the disputes between H3G and Orange and between H3G and O2, the Tribunal concluded that the set of rates that it fixed for the supply of mobile call termination by respectively Orange and O2 to BT should also prevail for the supply of mobile call termination by Orange and O2 to H3G.</p>
14	<p><b>Tesco Plc v Competition Commission</b></p> <p>[2008] CAT 20</p> <p>31-Jul-08</p>	<p>The President</p> <p>Professor John Pickering</p> <p>Graham Mather</p>	<p>Ruling of the Tribunal granting the Association of Convenience Stores (i) an extension of time to apply for permission to intervene and (ii) permission to intervene.</p>
15	<p><b>T-Mobile (UK) Limited and Telefónica O2 UK Limited v Office of Communications</b></p> <p>(Sequencing Decision)</p> <p>[2008] CAT 21</p> <p>3-Sept-08</p>	<p>Vivien Rose</p> <p>Dr Arthur Pryor CB</p> <p>Adam Scott OBE TD</p>	<p>Ruling refusing T-Mobile and O2 permission to appeal the Tribunal's judgment [2008] CAT 15 on the ground that the appellants did not have a real prospect of establishing that the proper construction of section 192 was inconsistent with their rights under Article 4 of the Framework Directive.</p> <p>The Tribunal considered that the point of law relating to the question of whether it is possible for OFCOM to take a decision under section 14 Wireless Telegraphy 2006 would have a real prospect of success. However, given the potential impact of any decision granting permission to appeal might have on the further progress of parallel judicial review proceedings, the Tribunal decided the most appropriate course was to refuse permission to appeal.</p>

	Judgment	Tribunal	Summary
16	<p><b>Vodafone Limited v Office of Communications</b></p> <p>[2008] CAT 22</p> <p>18-Sept-08</p>	<p>Lord Carlile QC</p> <p>Dr Arthur Pryor CB</p> <p>Professor Paul Stoneman</p>	<p>Judgment of the Tribunal on an appeal by Vodafone Limited under section 192 of the Communications Act 2003 against a decision of OFCOM to modify the current system regarding telephone number portability.</p> <p>The Tribunal concluded that the essential question for it to address in assessing the decision was whether OFCOM had equipped itself with a sufficiently cogent and accurate set of inputs to enable it to perform a reliable and soundly based cost benefit analysis.</p> <p>The Tribunal found that the process by which the decision was reached did not allow stakeholders consulted on proposals to provide realistic estimates of the likely costs of adopting the modifications and that OFCOM had deprived themselves of the opportunity properly to inform their analysis of the potential costs of their proposals. The Tribunal also found that the stated key objective of the decision, the protection of consumers from the effects of network failure, was not a sufficient ground on which to base the decision. Having found that the decision to require implementation of direct routing was flawed, the Tribunal did not need to reach a conclusion regarding the move to recipient-led two hour porting.</p> <p>Accordingly, the Tribunal held that the appeal against the decision was well founded and remitted the matter to OFCOM.</p>
17	<p><b>Hutchison 3G UK Limited v Office of Communications (Mobile Call Termination)</b></p> <p><b>British Telecommunications Plc v Office of Communications (Mobile Call Termination)</b></p> <p>[2008] CAT 23</p> <p>23-Sept-08</p>	<p>Vivien Rose</p> <p>Professor Andrew Bain OBE</p> <p>Adam Scott OBE TD</p>	<p>Ruling of the Tribunal on an application by an intervener, Vodafone Limited ('Vodafone'), seeking a direction from the Tribunal that the Competition Commission in considering the price control matters that had been referred to it by the Tribunal should take account of Vodafone's arguments in respect of an issue referred to by the parties as the 'Depreciation Point' (involving the depreciation of 3G Spectrum in OFCOM cost models) and an application by T-Mobile (UK) Limited (another intervener) to amend its statement of intervention so as to include a similar argument.</p> <p>The Tribunal considered that both applications should be treated as applications to amend Vodafone's and T-Mobile's respective statements of intervention.</p> <p>The Tribunal refused permission to amend under rule 11(1) of the Tribunal Rules (in conjunction with rule 16). The Tribunal held that, in the context of these complicated multi-party proceedings involving a reference to the Competition Commission, the 'Depreciation Point' had been raised at too late a stage.</p>

Judgment	Tribunal	Summary
<p>18 <b>BCL Old Co Limited (2)</b> <b>DFL Oldco Limited (3)</b> <b>PFF Old Co Limited (4)</b> <b>Deans Foods Limited v</b> <b>(1) BASF SE (2) BASF Plc</b> <b>(3) Frank Wright Limited</b></p> <p>[2008] CAT 24</p> <p>25-Sept-08</p>	<p>The President</p> <p>Ann Kelly</p> <p>Michael Davey</p>	<p>Judgment of the Tribunal on a preliminary issue setting out its reasons for finding that the claimants' claim for damages under section 47A of the Competition Act 1998 was not time-barred under rule 31(2) of the Tribunal Rules.</p> <p>The Tribunal unanimously found that the 'relevant date' for the purposes of rule 31(2) fell on the expiry of the period during which an appeal against the judgment of the European Court of First Instance in respect of a decision of the European Commission could have been instituted in the European Court of Justice.</p>
<p>19 <b>British Broadcasting</b> <b>Group Plc v (1)</b> <b>Competition Commission</b> <b>(2) Secretary of State for</b> <b>Business, Enterprise and</b> <b>Regulatory Reform</b></p> <p><b>Virgin Media, Inc. v (1)</b> <b>Competition Commission</b> <b>(2) Secretary of State</b></p> <p>[2008] CAT 25</p> <p>29-Sept-08</p>	<p>The President</p> <p>Professor Peter Grinyer</p> <p>Peter Clayton</p>	<p>Judgment of the Tribunal on applications by Sky and Virgin Media, for a review under section 120 of the Enterprise Act 2002 of the decisions of the Competition Commission ('the Commission') and the Secretary of State in relation to the acquisition by Sky of 17.9 per cent of the shares in ITV.</p> <p>The Tribunal considered its approach to applications under section 120 and made a number of preliminary observations before dealing with the individual pleas of the parties.</p> <p>The Tribunal rejected Sky's arguments relating to the findings of the existence of a 'relevant merger situation' and 'substantial lessening of competition', holding that Sky had identified no defect in the Commission's approach to the material before it or in the adequacy of that material which was such to render any of the relevant findings of the Commission perverse or irrational or unsupported by the evidence.</p> <p>In respect of Virgin's application, the Tribunal upheld Virgin's submissions relating to the 'public interest' provisions of the Enterprise Act 2002 (sections 58 and 58A). The Tribunal held that the Commission had misdirected itself as to the meaning and effect of the legislation in question, and in particular section 58A(5) of the Act and, as a result, had taken irrelevant considerations into account in reaching its decision. Having identified errors with the Commission's decision in this respect, the Tribunal found that the corresponding decision of the Secretary of State could not be sustained and must be set aside.</p> <p>Each of Sky and Virgin also challenged the remedial action proposed by the Commission, and accepted by the Secretary of State, that Sky must divest its shareholding in ITV down to a level of below 7.5 per cent.</p> <p>The Tribunal rejected Sky's submissions that: the Commission had misdirected itself as to the correct approach to remedial action; acted irrationally in selecting the divestiture level of 7.5 per cent; wrongly rejected the alternative remedies proposed by Sky; and that the remedy was disproportionate.</p>

Judgment	Tribunal	Summary
<p>20 <b>National Grid Plc v The Gas and Electricity Markets Authority</b> [2008] CAT 26 8-Oct-08</p>	<p>Vivien Rose Professor Paul Stoneman David Summers</p>	<p>Virgin submitted that the Commission should have required complete divestiture of Sky's shareholding in ITV. The Tribunal rejected Virgin's first two arguments that the Commission had misinterpreted the applicable legal provisions and had failed to apply its own guidelines. Virgin's third line of argument on remedies was that the Commission had failed to have regard to the adverse effect on the public interest arising from the specified media public interest consideration. Having already concluded that the Commission and the Secretary of State had misdirected themselves as to the meaning and effect of the statutory provisions in relation to that issue, the Tribunal invited the parties to submit further observations on the question of what, if any, relief was appropriate.</p> <p>Ruling of the Chairman (sitting alone) on an application by National Grid to exclude certain passages in the statements of intervention and supporting evidence lodged by the interveners on the grounds that they went outside the proper scope of the appeal.</p> <p>The Chairman ruled that certain passages contained in the statements of intervention raised additional and separate matters to those set out by the Authority in its Decision and should be excluded. However, to the extent that the Interveners were responding to points raised by National Grid in its Notice of Appeal on its own initiative and going beyond the matters covered in the Decision under appeal, such passages would be permitted to the extent that National Grid still intended to rely upon the original paragraphs of its Notice of Appeal.</p>
<p>21 <b>Independent Media Support Limited v Office of Communications</b> [2008] CAT 27 15-Oct-08</p>		<p>Ruling that Independent Media Support Limited ('IMS') pay OFCOM's costs in respect of its appeal. The Tribunal also ruled that IMS should pay 35 per cent of the costs of an intervener, BBC Broadcast Limited. Another intervener, the BBC had to bear its own costs.</p> <p>The Tribunal noted that it had accepted most of OFCOM's arguments in support of its defence; that OFCOM had been required to make a number of detailed responses to points raised in IMS's appeal; and that there was nothing in OFCOM's conduct which would make it unfair for them to be awarded costs. OFCOM's submissions had been germane to the issues and did not involve unnecessary prolixity or duplication. The Tribunal did not consider that the appellant was entitled to any special protection from a costs order in favour of the successful respondent. The fact that it was in IMS's commercial interests to seek to have OFCOM's decisions overturned did not give rise to a basis for reducing its liability to pay costs for its unsuccessful appeal. Further, there were no policy reasons for not requiring IMS to pay OFCOM's costs.</p>

Judgment	Tribunal	Summary
<p>22 <b>Emerson Electric Co and others v Morgan Crucible Company Plc and others</b> [2008] CAT 28 17-Oct-08</p>	<p>The President Adam Scott OBE TD Vindelyn Smith-Hillman</p>	<p>As regards BBCB's and the BBC's applications for costs, the Tribunal recognised that there is a public benefit in not discouraging legitimate intervention as well as in not unduly encouraging intervention. The Tribunal noted that the BBC had played a limited role in the proceedings and saw no reason to depart from the general principle that the interveners costs should fall where they lie. The position was different in relation to BBCB, who had been the subject of OFCOM's investigation and was particularly and directly affected by IMS's challenge to OFCOM's findings. Further, BBCB's submissions had not duplicated those of OFCOM and had been helpful to the Tribunal, particularly in relation to the issue of dominance. Therefore, the Tribunal concluded that it was appropriate to exercise its discretion to order IMS to pay BBCB 35 per cent of its costs.</p> <p>Judgment of the Tribunal in respect of applications by proposed defendants SGL Carbon AG, Schunk Kohlenstofftechnik GmbH and Le Carbone Lorraine SA to recover their costs occasioned by the claimants' application for permission to commence a follow-on action for damages under section 47A of the Competition Act 1998.</p> <p>The Tribunal held that it had jurisdiction to award costs under rule 55 of the Tribunal Rules in respect of an application for permission to bring a follow-on damages action. The Tribunal ruled in particular that there was no reason in principle why a proposed defendant who had exercised its statutory right to be heard, and had successfully resisted a permission application, should be denied the right to apply to recover some or all of the costs incurred in making those observations to the Tribunal.</p> <p>The Tribunal concluded that it was appropriate to make an order for costs in favour of the proposed defendants in this case. The Tribunal determined that the claimants should pay the proposed defendants' sums representing 50% of the proposed defendants' costs of and incidental to the applications for permission; the 50 per cent discount reflected the amount of time and costs incurred in relation to jurisdictional issues.</p>
<p>23 <b>BCL Old Co Limited (2) DFL Oldco Limited (3) PFF Old Co Limited (4) Deans Foods Limited v (1) BASF SE (2) BASF Plc (3) Frank Wright Limited</b> [2008] CAT 29 17-Oct-08</p>	<p>The President Ann Kelly Michael Davey</p>	<p>Ruling of the Tribunal refusing the Defendants permission to appeal against the Tribunal's judgment of 25 September 2008 ([2008] CAT 24).</p> <p>The Defendants' application for permission to appeal was refused on the basis that the grounds of appeal raised had no real prospect of success. The Tribunal also decided that there was no other compelling reason why the appeal should be heard.</p>

	Judgment	Tribunal	Summary
24	<p><b>National Grid Plc v The Gas and Electricity Markets Authority</b></p> <p>[2008] CAT 30</p> <p>17-Oct-08</p>	<p>Vivien Rose</p> <p>Professor Paul Stoneman</p> <p>David Summers</p>	<p>Further ruling of the Chairman (sitting alone) on an application by National Grid to exclude certain passages in the statements of intervention and supporting evidence lodged by the Interveners following the withdrawal of certain passages in the Notice of Appeal.</p> <p>In light of the withdrawals by National Grid following handing down of an earlier ruling ([2008] CAT 26), the Chairman ruled that certain additional passages contained in the statements of intervention should be excluded. The ruling also settled the timetable for the remaining steps in the appeal leading up to the hearing.</p>
25	<p><b>Albion Water Limited &amp; Albion Water Group Limited v Water Services Regulation Authority (formerly the Director General of Water Services)(Dŵr Cymru/ Shotton Paper)</b></p> <p>[2008] CAT 31</p> <p>7-Nov-08</p>	<p>Lord Carlile QC</p> <p>The Honourable Antony Lewis</p> <p>Professor John</p>	<p>Judgment of the Tribunal concluding that the access price which Dŵr Cymru proposed to charge Albion for common carriage of non-potable water through part of its water pipe network (known as the 'Ashgrove system') was so excessive as to amount to an unfair price and thus an abuse of a dominant position.</p> <p>In making this finding, the Tribunal found that the quoted access price materially exceeded the costs reasonably attributable to the service of the transportation and partial treatment of water by Dŵr Cymru, generally and through the Ashgrove system in particular, i.e. that it was excessive.</p> <p>The Tribunal also found that the 'economic value' of the services to be supplied was not more, or not significantly more, than the costs reasonably attributable to the service of the transportation and partial treatment of water by Dŵr Cymru, generally and through the Ashgrove system in particular.</p> <p>The Tribunal decided that the access price bore no reasonable relation to the economic value of the services to be supplied, and had both an exclusionary and exploitative effect. On this basis, the Tribunal concluded that the access price was unfair in itself and therefore an abuse of Dŵr Cymru's dominant position contrary to the Chapter II prohibition.</p>
26	<p><b>Virgin Media, Inc. v (1) Competition Commission (2) Secretary of State</b></p> <p>[2008] CAT 32</p> <p>30-Oct-08</p>	<p>The President</p> <p>Professor Peter Grinyer</p> <p>Peter Clayton</p>	<p>Judgment on further relief in Virgin Media's application for review pursuant to section 120 of the Enterprise Act 2002. The judgment addressed two questions.</p> <p>The first question concerned the validity of the existing remedy in respect of the substantial lessening of competition ('SLC') finding (i.e. divestiture of Sky's shareholding in ITV to below 7.5 per cent) and whether it was affected by the Tribunal's findings or the relief already granted in respect of the error of law made by the Competition Commission ('the Commission') and the Secretary of State as to the meaning and effect of the statutory provisions in relation to the relevant media public interest consideration (contained in section 58(2C)(a) of the 2002 Act) (the 'plurality issue').</p>



Judgment	Tribunal	Summary
<p>27 <b>The Number (UK) Limited and Conduit Enterprises Limited v Office of Communications</b> [2008] CAT 33 24-Nov-08</p>	<p>Mr Justice Warren Michael Blair QC Shelia Hewitt</p>	<p>The Tribunal considered that the defects in the Commission's Report and the Secretary of State's Decision on the plurality issue did not affect the lawfulness of the Report and the Decision so far as concerns the remedy for the SLC and any consequent adverse effects to the public interest. The Tribunal noted that it had already examined and rejected each of Sky's and Virgin Media's challenges to the SLC remedy ([2008] CAT 25). Consequently, the validity of the existing SLC remedy was unaffected by the Tribunal's findings or the relief already granted in respect of the plurality issue.</p> <p>The second question concerned whether the Tribunal should remit the plurality issue for reconsideration. In respect of that question, the Tribunal concluded that remitting the plurality issue to the Commission and/or the Secretary of State for further investigation would serve no useful purpose, as whatever their subsequent findings on that issue, no additional or different remedy would be recommended or imposed. The Tribunal was satisfied that the position which existed prior to Sky's acquisition of 17.9 per cent of the shares in ITV would be restored by the existing remedy as far as the plurality of media controllers was concerned. The existing SLC remedy would therefore remove any effects of the assumed insufficiency of plurality. The Tribunal also noted that referring the plurality issue back to the Commission and Secretary of State would involve a very considerable further period of uncertainty for ITV and other interested parties, as well as further substantial consumption of the Commission's, the Secretary of State's and other people's time and financial resources. The Tribunal therefore refused applications by Virgin Media and Sky that the plurality issue be remitted to the Commission and the Secretary of State.</p> <p>Judgment of the Tribunal on an appeal by The Number (UK) Limited and Conduit Enterprises Limited ('the Appellants') under section 192 of the Communications Act 2003 against a decision of OFCOM in relation to the resolution of price disputes concerning the supply of certain directory information by British Telecommunications Plc ('BT') to the Appellants ('the Determinations').</p> <p>The Determinations concluded that Universal Service Condition 7 ('USC7'), which requires BT to supply the contents of a database containing subscriber information to undertakings following a reasonable request, is unlawful and, as a result, BT is not required to provide access to the database under USC7. Therefore, OFCOM decided that no issues arose under USC7 in relation to the charges paid by the Appellants to BT for the supply of the contents of the database.</p>

## Judgment

## Tribunal

## Summary

The Appellants argued that OFCOM erred in law in deciding that USC7 is unlawful and that, contrary to OFCOM's findings in the Determinations, USC7 is lawfully made under the domestic statutory framework and entirely consistent with the requirements of the Universal Service Directive ('USD').

The Tribunal concluded that USC7 was validly imposed. The Tribunal found that the imposition of an obligation at the wholesale level on an undertaking is capable (depending on the factual context) of being a designation of that undertaking to guarantee the provision of universal service, as that concept is set out in Article 8 USD. The designation of an undertaking to provide a service required under USD means no more than the imposition of an obligation to ensure the provision of that service; it is not a requirement that the undertaking enter into a guarantee that the services will be provided. Further, an undertaking which has been designated to provide universal services ought to be able to rely on markets for the actual delivery of those services. USC7, together with the general words of designation in the 2003 Designation, designate BT to guarantee the provision of services falling under Article 5 USD (ie the provision of a directory and directory enquiry services) while, at the same time, impose on BT obligations which may validly be imposed on an undertaking which is designated for the purposes of that guarantee.

Accordingly, the Tribunal upheld the appeal against OFCOM's conclusion that USC7 was unlawful.

The Appellants also raised the possibility that a reference to the European Court of Justice under Article 234 EC Treaty may be required in order to establish the true meaning of Article 8(1) USD and its impact on the construction of Articles 3 and 5 USD. The Tribunal refused to exercise its discretion to refer a question to the ECJ and decided that, while the matter addressed in these proceedings was not 'acte clair', there was no real doubt as to the validity of USC7. In addition, the Tribunal noted that an appeal against the judgment of the Tribunal was far from certain but that the parties would remain free to ask for a reference again if the matter goes any further.

This was the first occasion in which the Tribunal considered substantively the question of a reference under Article 234 EC Treaty.

	Judgment	Tribunal	Summary
28	<p><b>Merger Action Group v Secretary of State for Business, Enterprise and Regulatory Reform</b></p> <p>[2008] CAT 34</p> <p>3-Dec-08</p>	<p>The President</p> <p>Michael Blair QC</p> <p>Professor Peter Grinyer</p>	<p>Judgment of the Tribunal in respect of the venue for the substantive hearing of the application for review made by the Merger Action Group in respect of a decision by the Secretary of State not to refer the proposed merger of Lloyds TSB Group and HBOS to the Competition Commission. The judgment also concerned the jurisdiction of the dispute. The Tribunal held that, given the truncated nature of the procedure and the urgency of reaching a decision prior to a proposed general meeting of the target company, HBOS Plc, it was necessary for logistical reasons for the hearing to take place where the Tribunal was based, i.e. in London. This decision was purely dependent upon the fact that in the Tribunal's estimation there would not be time for a hearing and reach a decision if valuable time were taken up by travelling and setting up in Edinburgh.</p> <p>In respect of the jurisdiction issue, the Tribunal held that, in light of the parties' submissions and Rule 18 of the Tribunal Rules, the forum for the proceedings should be Scotland. The factors that were most persuasive in making the Tribunal select Scotland were as follows: the identity of the known applicants all being residents in Scotland, the head of steam generated by the case related largely to Scotland in the sense that there had been considerable feeling on the part of various interests in Scotland that (a) the competition effects, including the lack of choice, will be felt particularly there in some respects; and (b) that a well known and well respected Scottish banking institution will be affected. Also of relevance was the fact that the undertakings concerned were all Scottish companies with their registered offices in Scotland.</p>
29	<p><b>British Sky Broadcasting Group Plc v (1) Competition Commission (2) Secretary of State for Business, Enterprise and Regulatory Reform</b></p> <p><b>Virgin Media, Inc. v (1) Competition Commission (2) Secretary of State</b></p> <p>[2008] CAT 35</p> <p>4-Dec-08</p>	<p>The President</p> <p>Professor Peter Grinyer</p> <p>Peter Clayton</p>	<p>Ruling of the Tribunal setting out its reasons for (i) refusing Sky's application for permission to appeal from the Tribunal's judgment of 29 September 2008 ([2008] CAT 25), and (ii) refusing Virgin Media's application for permission to appeal from the Tribunal's judgment of 30 October 2008 ([2008] CAT 32).</p> <p>Both Sky's and Virgin Media's applications were refused on the basis that the grounds of appeal raised had no real prospect of success and there were no other compelling reasons to allow the appeals to go forward.</p>

	Judgment	Tribunal	Summary
30	<p><b>Merger Action Group v Secretary of State for Business, Enterprise and Regulatory Reform</b></p> <p>[2008] CAT 36</p> <p>10-Dec-08</p>	<p>The President</p> <p>Michael Blair QC</p> <p>Professor Peter Grinyer</p>	<p>Judgment of the Tribunal refusing an application for review under section 120 of the Enterprise Act against a decision of the Secretary of State for Business, Enterprise &amp; Regulatory Reform ('the Secretary of State') dated 31 October 2008 not to refer to the Competition Commission ('the Commission') under section 45 of the Act the proposed merger ('the Merger') between Lloyds TSB Group Plc ('Lloyds TSB') and HBOS Plc ('HBOS') ('the Decision').</p> <p>Given the circumstances of the proceedings and the requests by the Secretary of State and the Interveners, Lloyds TSB and HBOS, that the Tribunal hear and decide the matter with exceptional expedition so as to enable the result to be known prior to the general meeting of HBOS due to take place on 12 December 2008, the Tribunal ordered an expedited timetable. A hearing was held on 8 and 9 December 2008 with judgment handed down on 10 December.</p> <p>The Secretary of State, supported by HBOS and Lloyds TSB, submitted that the Applicants had failed to establish that they were 'persons aggrieved' by the Decision within the meaning of subsection 120(1) of the Act and that accordingly the application should be dismissed on that ground. The Tribunal considered that the Applicants' standing was borderline. However, the Tribunal found that the Applicants were 'persons aggrieved' in the 'wholly exceptional circumstances' of the case, particularly with regard to the specific interest and strong feeling that the Merger had aroused in Scotland.</p> <p>The Applicants' challenge to the lawfulness of the Decision was mainly based on certain statements attributed to the Prime Minister and the Chancellor of the Exchequer which had allegedly fettered the exercise of the Secretary of State's discretion to refer the Merger to the Competition Commission. The Applicants further submitted that there were manifestations of the fettering effect of those statements in the way the Decision was drafted.</p>

Judgment	Tribunal	Summary
<p>31 <b>Merger Action Group v Secretary of State for Business, Enterprise and Regulatory Reform</b> [2008] CAT 37 10-Dec-08</p>	<p>The President Michael Blair QC Professor Peter Grinyer</p>	<p>The Tribunal dismissed the Applicants' contention that the Decision was vitiated on the basis that the Secretary of State was fettered by the statements of the Prime Minister and Chancellor of Exchequer. While it was clear that the government was in favour of the merger and had committed itself to making legislative changes to enable the Secretary of State to intervene in respect of the Merger, the Applicants had not shown that the Secretary of State had failed to exercise his discretion independently. The Tribunal held that the unchallenged evidence of the Secretary of State clearly showed that he had met officials to discuss the advice and submissions received and, having satisfied himself that all the evidence and options had been fully examined, he reached the Decision. The Tribunal also referred to a statement by the Secretary of State to the House of Lords. The statement indicated that the Secretary of State would ensure that he received all available advice and views before reaching the Decision and that he had an "open mind" to both competition and public interest considerations.</p> <p>The Tribunal also found that there was no merit in any of the Applicants' arguments against the way in which the Decision had been drafted.</p> <p>Ruling of the Tribunal refusing the Applicants' request for permission to appeal from the Tribunal's judgment of 10 December 2008 ([2008] CAT 36)</p> <p>The Applicants' ground of appeal concerned the Tribunal's finding that the statements by the Prime Minister and the Chancellor of the Exchequer had not fettered the discretion of the Secretary of State in reaching his decision not to refer the HBOS/Lloyds TSB to the Competition Commission.</p> <p>The Tribunal refused permission to appeal on the basis that the ground of appeal did not disclose a point of law. In any event, the Tribunal held that the point had no real prospect of success and there were no other compelling reasons to allow an appeal to the Court of Session.</p>
<p>32 <b>Merger Action Group v Secretary of State for Business, Enterprise and Regulatory Reform</b> [2008] CAT 38 10-Dec-08</p>	<p>The President Michael Blair QC Professor Peter Grinyer</p>	<p>Ruling of the Tribunal refusing the Secretary of State's request for permission to appeal from the Tribunal's judgment of 10 December 2008 ([2008] CAT 36).</p> <p>The Secretary of State requested permission to appeal against the Tribunal's finding that the Applicants had standing to bring an application for review under section 120(1) of the Act.</p> <p>The Tribunal refused permission to appeal on the basis that the ground of appeal did not disclose a point of law. In any event, the Tribunal held that the point had no real prospect of success and there were no other compelling reasons to allow an appeal to the Court of Session.</p>

	Judgment	Tribunal	Summary
33	<p><b>Vodafone Limited v Office of Communications</b> [2008] CAT 39 18-Dec-08</p>	<p>Lord Carlile QC Dr Arthur Pryor CB Professor Paul Stoneman</p>	<p>Ruling of the Tribunal on applications by Vodafone Limited, Orange Personal Communications Limited ('Orange') and Telefónica O2 UK ('O2') Limited for their legal costs in respect of these proceedings following handing down of the Tribunal's judgment on 18 September 2008 ([2008] CAT 22). The Tribunal ordered that all parties should bear their own costs.</p> <p>In relation to Vodafone's application, the Tribunal concluded that the present case provided a useful opportunity to clarify the scope of OFCOM's responsibilities when undertaking policy decisions of the kind set down in the Decision, to the benefit of all industry participants, and in the wider public interest. It was also noted that, like any other court, the Tribunal is not a chamber designed for the hypothetical or superfluous hearing and, subject to the overriding objective shared by all civil courts to deal with cases justly, has an interest in cases before it being settled rather than contested unnecessarily. In appropriate cases a proper sanction against unnecessary contests is in costs and all parties before the Tribunal, including regulators, should be conscious of that risk. In the circumstances, while the Tribunal clearly found errors in the decision making procedure adopted by OFCOM, it did not find that the Decision had been arrived at in bad faith or in an unreasonable exercise of their public function.</p> <p>In relation to Orange's and O2's applications, the Tribunal did not consider that they raised sufficient reasons to award costs for the following reasons: helpful as the interventions were, none was critical to the Tribunal's understanding and analysis of the matters under consideration; in sectors such as telecommunications, interveners are likely to appear regularly before the Tribunal; and, absent special circumstances the Tribunal generally adopts a neutral approach to the question of interveners' costs.</p>
34	<p><b>British Telecommunications Plc v Office of Communications (Mobile Call Termination)</b> [2009] CAT 1 22-Jan-09</p>	<p>Vivien Rose Professor Andrew Bain OBE Adam Scott OBE TD</p>	<p>Judgment on the scope of the Tribunal's powers on disposal of the appeal.</p> <p>BT appealed against the price control conditions contained in OFCOM's 2007 statement on mobile call termination (MCT) rates (the 2007 Statement). Those price control conditions set a target average charge (TAC) for each mobile network operator for each of the years of the price control, covering the period from 2007 to 2011. The price control matters raised in the appeal were referred to the Competition Commission under section 193 of the Communications Act 2003 on 8 March 2008 (see [2008] CAT 5).</p>

Judgment	Tribunal	Summary
<p>35 <b>The Consumers Association v JJB Sports Plc</b> [2009] CAT 2 30-Jan-09</p>	<p>Lord Carlile QC Ann Kelly Richard Prosser OBE</p>	<p>During the course of the Competition Commission's investigation of the referred price control matters, the Tribunal was asked to rule on certain areas of dispute between the parties, including whether BT's Notice of Appeal encompassed the relief it was now seeking, whether an additional specified price control matter needed to be referred to the Competition Commission and what powers the Tribunal would have when it came to dispose of the appeal.</p> <p>The issues raised by the parties included the following: if the Competition Commission were to conclude that the TACs applicable during the elapsed period of the price control had been set too high, (i) whether BT's Notice of Appeal put in issue the TACs for all the years covered by the price control or just the final year, (ii) whether the Tribunal had the power to direct OFCOM to retake the decision in relation to the whole period covered by the 2007 Statement (namely, 2007-2011) or only in relation to the unelapsed part of that period and (iii) whether the Tribunal had the power to direct OFCOM to reduce the TACs applicable during the unelapsed period of the price control to counteract the effect of the overpayment during the elapsed period.</p> <p>The Tribunal unanimously concluded that BT's Notice of Appeal put in issue the TACs for all the years covered by the price control, not just the final year, and that the Tribunal would have power on disposing of the appeal to direct OFCOM to reset the price control for the whole of the period 2007-2011. The Tribunal further concluded by a majority that it would not, on disposing of the appeal, direct OFCOM to make an adjustment to the future years of a new price control to reflect the fact that the MCT prices charged in accordance with the 2007 Statement had been found to be too high.</p> <p>In March 2007, the Consumers Association brought a claim for damages against JJB Sports Plc on behalf of a number of consumers under sections 47A and 47B of the Competition Act 1998 as amended by the Enterprise Act 2002.</p> <p>The claim settled in January 2008 and the Tribunal, with the agreement of the parties, ordered the defendant to pay the claimant's reasonable costs, to be assessed if not agreed.</p> <p>The parties were unable to agree a figure for the claimant's reasonable costs. The claimant applied for its costs to be assessed and the defendant applied for the assessment of costs to be transferred to the Supreme Court Costs Office.</p> <p>The Tribunal in this judgment granted the defendant's application and directed that the assessment of the defendant's reasonable costs be transferred to the Supreme Court Costs Office for a detailed assessment.</p>

	Judgment	Tribunal	Summary
36	<p><b>The Consumers Association v JJB Sports Plc</b> [2009] CAT 3 30-Jan-09</p>	<p>Lord Carlile QC Ann Kelly Richard Prosser OBE</p>	<p>At the same time as directing that the assessment of the Consumers Association's costs be transferred to the Supreme Court Costs Office for detailed assessment (see [2009] CAT 2) the Tribunal directed JJB Sports Plc to pay the Consumers Association 30per cent of the costs claimed, by way of an interim payment.</p> <p>In addition, the Tribunal awarded JJB a portion of its costs relating to its application to transfer the assessment of costs to the Supreme Court Costs Office and directed that those costs recoverable by JJB could be set off against the costs recoverable by the Consumers Association.</p>
37	<p><b>The Number (UK) Limited and Conduit Enterprises Limited v Office of Communications</b> [2009] CAT 4 24-Feb-09</p>	<p>Mr Justice Warren Michael Blair QC Sheila Hewitt</p>	<p>Judgment of the Tribunal following an application by BT Plc for permission to appeal the Tribunal's judgment of 24 November 2008 ([2008] CAT 33). The Tribunal ordered that permission to appeal be refused.</p>
38	<p><b>The Number (UK) Limited and Conduit Enterprises Limited v Office of Communications</b> [2009] CAT 5 24-Feb-09</p>	<p>Mr. Justice Warren Michael Blair QC Sheila Hewitt</p>	<p>Judgment of the Tribunal following an application by the Appellants for their legal costs in respect of these proceedings following handing down of the Tribunal's judgment on 24 November 2008 ([2008] CAT 33). The Tribunal ordered that all parties should bear their own costs.</p>
39	<p><b>Tesco Plc v Competition Commission</b> [2009] CAT 6 4-Mar-09</p>	<p>The President Professor John Pickering Graham Mather</p>	<p>Judgment of the Tribunal on an application by Tesco Plc ('Tesco') for a review under section 179 of the Enterprise Act 2002 of part of the decision of the Competition Commission ('the Commission') contained in a report entitled 'The supply of groceries in the UK: market investigation' dated 30 April 2008 ('the Report').</p> <p>Tesco's application challenged the lawfulness of the Commission's decision to recommend the introduction of a new test ('the competition test') into the consideration of planning applications in respect of large grocery stores. The aim of the competition test was to ensure that local planning authorities withheld planning permission for the construction or expansion of a large grocery store if there was already a high level of concentration in the local market for large grocery stores, and the retailer applying for permission had (or would have had) a substantial part of the market. Tesco submitted that the Commission's decision in this regard failed properly to take account of relevant considerations which ought to have formed part of its assessment.</p>



Judgment	Tribunal	Summary
<p>40 <b>Enron Coal Services Limited (in liquidation) v English Welsh &amp; Scottish Railway Limited</b> [2009] CAT 7 12-Mar-09</p>	<p>Lord Carlile QC Graham Mather Richard Prosser OBE</p>	<p>The Tribunal unanimously concluded that the Commission, in the Report, had failed properly to consider certain matters which were relevant to its recommendation that the competition test be imposed as part of a package of remedies to address the adverse effect on competition identified by the Commission. None of the matters in question could be dismissed as incapable of affecting the Commission's recommendation in that regard.</p> <p>Judgment of the Tribunal on an application by the defendant, English Welsh and Scottish Railway Limited ('EWS'), that the Tribunal reject parts of the claim for damages pursuant to rule 40 of the Tribunal Rules.</p> <p>EWS provided coal haulage services to the Claimant, Enron Coal Services Limited ('ECSL'). ECSL alleged that it had been overcharged for coal haulage on certain rail routes. It relied on a decision of the Office of Rail Regulation (ORR) that EWS had abused its dominant position in the market for coal haulage in Great Britain. The ORR had found that EWS had pursued, without objective justification, selective and discriminatory pricing practices that placed ECSL at a competitive disadvantage.</p> <p>EWS argued that the Tribunal did not have jurisdiction to hear the overcharge claims. The Tribunal found that ECSL was entitled to advance a claim for an overcharge based on the premise that the lower prices that EWS offered to other customers should also have been offered to ECSL but that the price discrimination as established in the ORR Decision was limited to a particular period in time. Applying these findings to the claim as pleaded, the Tribunal rejected part of the overcharge claim but allowed part of the claim to stand.</p>
<p>41 <b>T-Mobile (UK) Limited and British Telecommunications Plc and Hutchison 3G UK Limited and Cable &amp; Wireless UK &amp; Others v Office of Communications (Termination Rate Disputes)</b> [2009] CAT 8 26-Mar-09</p>	<p>Vivien Rose Professor Andrew Bain OBE Adam Scott OBE TD</p>	<p>T-Mobile, BT, Hutchison 3G UK's ('H3G') and the 1092 Appellants (as defined in the Core Issues Judgment of 20 May 2008 [2008] CAT 11) applied for orders that OFCOM should pay their costs in full or, in the alternative, pay a substantial proportion of their costs. OFCOM resisted those applications submitting in essence that the Tribunal should not make any order as to costs. The Tribunal considered that it was appropriate to exercise its discretion to make a costs order against OFCOM in favour of BT, H3G and the 1092 Appellants for part of the costs reasonably incurred by those parties.</p>

Judgment	Tribunal	Summary
<p>42 <b>Enron Coal Services Limited (in liquidation) v English Welsh &amp; Scottish Railway Limited</b> [2009] CAT 10 30-Mar-09</p>	<p>Lord Carlile QC Graham Mather Richard Prosser OBE</p>	<p>BT's challenge to the BT Disputes Determinations was entirely successful in that the Tribunal accepted virtually all of its arguments in support of its appeal. This was not a case where, in the course of an 'on the merits' appeal, the Tribunal came to a different conclusion from a conclusion reasonably arrived at by the regulator. The Tribunal also considered that it was right to take account of the fact that all of the arguments raised by BT in its appeal were points which it had asked OFCOM to consider during the consultation process. The Tribunal therefore agreed with BT that this was one of the cases where the interests of justice lie in favour of awarding costs against OFCOM.</p> <p>The Tribunal also concluded that OFCOM should pay a proportion of the costs claimed by H3G. H3G was successful in appealing against both the BT Disputes Determinations and in its challenge to the H3G Disputes Determinations. Although it was, in a sense, the beneficiary of OFCOM's decision generally to uphold the levels of charge that the Mobile Network Operators set for BT, it adopted a principled stance in challenging OFCOM's methodology in its challenge both to its disputes with O2 and Orange and to its dispute with BT.</p> <p>The 1092 Appellants' application succeeded largely on the same grounds as BT's.</p> <p>The Tribunal considered that fairness would be achieved by an order that OFCOM pay £100,000 in respect of the costs claimed by BT, and sums of £40,000 and £20,000 to the 1092 Appellants and H3G respectively.</p> <p>As between T-Mobile and OFCOM, the Tribunal decided that each side should bear their own costs.</p> <p>Ruling of the Tribunal following an application by EWS and a cross-application by ECSL for permission to appeal the Tribunal's judgment of 12 March 2009 ([2009] CAT 7). The Tribunal ordered that permission to appeal be refused.</p>

## Activity by case within the period 1 April 2008 to 31 March 2009

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 2009	Notes
Wanadoo UK Plc (formerly Freeserve.com Plc) v Office of Communications Case No. 1026/2/3/04 20 January 2004	03-04 04-05 05-06 06-07	1	1		4 1				Adjourned generally at the request of the parties.
VIP Communications Limited (in administration) v Office of Communications Case No. 1027/2/3/04 20 February 2004	03-04 04-05 05-06 06-07 07-08 08-09			2 2	3 2	22 January 2006	35 1	Stayed     Ongoing	Prior to 06-07 this case was heard concurrently with Floe (case: 1024/2/3/04).  Proceedings in this appeal were stayed between 20 September 2005 and 13 September 2006
Albion Water Limited v Water Services Regulation Authority (formerly the Director General of Water Services) (Interim Relief) Case No. 1034/2/4/04 (IR) 28 May 2004	04-05 05-06 06-07 07-08 08-09	2	1		1 1	11 May 2005 20 November 2006	11.5 30		This case was largely heard concurrently with Albion (1046/2/4/04).  Interim Relief is in place pending the determination of the appeal in case 1046/2/4/04.
Albion Water Limited & Albion Water Group Limited v Water Services Regulation Authority (formerly the Director General of Water Services) (Dŵr Cymru / Shotton Paper) Case No. 1046/2/4/04 23 July 2004	04-05 05-06 06-07 07-08 08-09	3	2	1 3	2 5	21 December 2005 6 October 2006 18 December 2006	17 26.5 29		Ongoing

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 2009	Notes
British Telecommunications Plc v Office of Communications (The Number (UK) Limited) Case No. 1063/3/06 8 May 2006	06-07 07-08 08-09	1	1					Withdrawn	
British Telecommunications Plc v Office of Communications (Conduit Enterprises Limited) Case No. 1064/3/06 8 May 2006	06-07 07-08 08-09	1	1					Withdrawn	
Emerson Electric Co and others v Morgan Crucible Company Plc Case No. 1077/5/07 9 February 2007	06-07 07-08 08-09		1	3	4	2	2	Ongoing	
The Consumers' Association v JJB Sports Plc Case No. 1078/7/9/075 May 2007	06-07 07-08 08-09			1	1	2	2		Following the settlement of the claim in the previous year, activity in this case, in this year under review was limited to dealing with costs issues.
Rapture Television Plc v Office of Communications Case No. 1082/3/07 9 May 2007	07-08 08-09	1	2	1	2	2	1	Closed	
Hutchison 3G UK Limited v Office of Communications (Mobile Call Termination) Case No. 1083/3/07 23 May 2007	07-08 08-09	5	4	2	9	5	1	Ongoing	

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 2009	Notes
British Telecommunications Plc v Office of Communications (Mobile Call Termination) Case No. 1085/3/3/07 29 May 2007	07-08 08-09	5	1	1 1	1	22 Jan 2009 19.8		Ongoing	Up to 4 December 2008, this case proceeded concurrently with Hutchison 3G UK Limited (case: 1083/3/3/07). Activity which relates only to this case are recorded here.
Independent Media Support Limited v Office of Communications Case No. 1087/2/3/07 3 July 2007	07-08 08-09	2	1	1 1 2	1 3	20 May 2008 10.6	1	Closed	
T-Mobile (UK) Limited v Office of Communications (Termination Rate Dispute) Case No. 1089/3/3/07 September 2007	07-08 08-09	5	2	1 4	1 4	20 May 2008 8.4	1	Ongoing	The main issues in this case (and the other related Termination Rate Dispute cases: British Telecommunications Plc (case: 1090/3/3/07), Hutchison 3G UK Limited (case: 1091/3/3/07) and Cable & Wireless (case: 1092/3/3/07)) were heard at the same time as the main issues in the Mobile Call Termination cases (cases: 1083/3/3/07 and 1085/3/3/07).
British Telecommunications Plc v Office of Communications (Termination Rate Dispute) Case No. 1090/3/3/07 7 September 2007	07-08 08-09	5						Ongoing	This case is being heard at the same time as the other Termination Rate Dispute Cases (T-mobile (UK) Limited (case: 1089/3/3/07), Hutchison 3G UK Limited (case: 1091/3/3/07) and Cable & Wireless (case: 1092/3/3/07)).

Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding 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 2009	Notes
Hutchison 3G UK Limited v Office of Communications (Termination Rate Dispute) Case No. 1091/3/3/07 7 September 2007	07-08 08-09	5						Ongoing	This case is being heard at the same time as the other Termination Rate Dispute Cases (T-mobile (UK) Limited (case: 1089/3/3/07), British Telecommunications Plc (case:1090/3/3/07) and Cable & Wireless (case: 1092/3/3/07)).
Cable & Wireless and others v Office of Communications (Termination Rate Dispute) Case No. 1092/3/3/077 September 2007	07-08 08-09	5						Ongoing	This case is being heard at the same time as the other Termination Rate Dispute Cases (T-mobile (UK) Limited (case: 1089/3/3/07), British Telecommunications Plc (case:1090/3/3/07) and Hutchison 3G UK Limited (case:1091/3/3/07)).
T-Mobile (UK) Limited v Office of Communications (Donor Conveyance Charge) Case No. 1093/3/3/07 17 October 2007	07-08 08-09	2	1		1			Ongoing	
Vodafone Limited v Office of Communication Case No. 1094/3/3/08 29 January 2008	07-08 08-09	5	1	1 3	1 2	18 Sept 2008	7.7	Closed	
British Sky Broadcasting Group Plc v (1) Competition Commission (2) Secretary of State for Business, Enterprise and Regulatory Reform Case No. 1095/4/8/08 22 February 2008	07-08 08-09	1	1	2 4	1 4	29 Sept 2008	7.2 1	Ongoing	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 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 2009	Notes
Virgin Media Inc. v (1) Competition Commission (2) Secretary of State for Business, Enterprise and Regulatory Reform Case No. 1096/4/8/08 25 February 2008	07-08 08-09	1			1	30 October 2008	8.2 1	Ongoing	This case is being heard concurrently with British Sky Broadcasting Group Plc (case: 1095/4/8/08).  Ongoing as to costs
National Grid Plc v The Gas and Electricity Markets Authority (Interim Relief) Case No. 1097/1/2/08 (IR)5 March 2008	07-08 08-09							Ongoing	
BCL Old Co Limited (2) DFL Oldco Limited (3) PFF Old Co Limited (4) Deans Foods Limited v (1) BASF AG (2) BASF Plc (3) Frank Wright Limited Case No. 1098/5/7/08 13 March 2008	07-08 08-09			1 1	2	25 Sept 2008	6.4 1	Stayed	Proceeding are stayed pending the hearing of an appeal on a preliminary point by the Court of Appeal.
National Grid Plc v The Gas and Electricity Markets Authority Case No. 1099/1/2/08 21 April 2008	08-09	3		1 11	2			Ongoing	The main judgment in this matter was handed down on 29 April 2009 shortly after the period under review.
The Number (UK) Limited and Conduit Enterprises Limited v Office of Communications Case No. 1100/3/3/08 7 May 2008	08-09	1		1 2	3	24 Nov 2008	6.6 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 2009	Notes
(1) Grampian Country Food Group Limited (2) Grampian County Feeds Limited (3) Marshall Food Group Limited (4) Cymru Country Chickens Limited (5) Favor Parker Limited v (1) Sanofi-Aventis SA (2) Rhodia Limited (3) F. Hoffmann-La Roche AG (4) Roche Products Limited (5) BASF Plc (7) Frank Wright Limited Case No. 1101/5/7/08 14 May 2008	08-09							Stayed	Stayed pending the outcome of an appeal on a preliminary point to the Court of Appeal in BCL Old CO Limited & Others (case: 1098/5/7/08).
T-Mobile (UK) Limited v Office of Communications (Sequencing Decision) Case No. 1102/3/3/08 16 May 2008	08-09	1	1	2	2	10 July 2008	1.8	1	Ongoing
Telefonica O2 UK Limited v Office of Communications Case No. 1103/3/3/08 3 June 2008	08-09	1							Ongoing This case is being heard concurrently with T-Mobile (UK) Limited v Office of Communications (Sequencing Decision)(case: 1102/3/3/08).
Tesco Plc v Competition Commission Case No. 1104/6/8/08 2 July 2008	08-09	4	1	2	4	04 March 2009	8.1		Ongoing
(1) Freightliner Limited (2) Freightliner Heavy Haul Limited v English Welsh & Scottish Railway Limited Case No. 1105/5/7/08 26 August 2008	08-09		1						Withdrawn



Case name, number and date registered	Year (1 April to 31 March)	Applications to intervene	Case management conferences	Hearings (and sitting days – excluding 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 2009	Notes
Enron Coal Services Limited (in liquidation) v English Welsh & Scottish Railway Limited Case No. 1106/5/7/08 7 November 2008	08-09		1	1	2		2	Ongoing	
Merger Action Group v Secretary of State for Business, Enterprise and Regulatory Reform Case No. 1107/4/10/08 28 November 2008	08-09	3	1	2	4	10 Dec 2008	2	Ongoing	Ongoing as to costs.
N J and D M Wilson v Lancing College Limited Case No. 1108/5/7/08 3 December 2008	08-09								Withdrawn
Barclays Bank Plc v Competition Commission Case No. 1109/6/8/09 30 March 2009									
<b>Total for 08-09</b>		<b>10</b>	<b>13</b>	<b>36</b>	<b>42</b>		<b>13</b>		

## Overall Case Activity within the period 1 April 2008 to 31 March 2009

	2008-2009	2007-2008	2006-2007
<b>Appeals, applications and claims received</b>	<b>11</b>	19	20
<i>of which</i> section 46 Competition Act 1998 <sup>1</sup>	<b>1</b>	0	5
section 47 Competition Act 1998 <sup>2</sup>	<b>0</b>	1	4
section 47A Competition Act 1998 <sup>3</sup>	<b>4</b>	2	2
section 47B Competition Act 1998 <sup>4</sup>	<b>0</b>	0	1
section 120 Enterprise Act 2002 <sup>5</sup>	<b>1</b>	4	2
section 179 Communication Act 2002 <sup>6</sup>	<b>2</b>	0	0
section 192 Enterprise Act 2003 <sup>7</sup>	<b>3</b>	11	4
applications for interim relief	<b>0</b>	1	2
<b>Applications to intervene</b>	<b>10</b>	52	12
<b>Case management conferences held</b>	<b>13</b>	21	21
<b>Hearings held (sitting days)</b>	<b>16 (36)</b>	13 (24)	29 (35)
<b>Judgments handed down</b>	<b>42</b>	26	44
of which judgments disposing of main issue or issues	<b>11</b>	6	14
judgment on procedural and interlocutory matters	<b>11</b>	15	22
judgments on ancillary matters (eg. costs)	<b>20</b>	5	8
<b>Orders made</b>	<b>184</b>	139	105

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- 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 2009 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 81 or 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. In determining applications under this section the Tribunal applies the same principles as would be applied by a court on an application for judicial review.
  - 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. In determining applications under this section the Tribunal applies the same principles as would be applied by a court on an application for judicial review.
  - 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 communications matters set out in that section.

## Management Commentary in respect of the Tribunal and the Service

The principal activities of the Competition Appeal Tribunal (the Tribunal) and the Competition Service (the Service) are explained in the introduction to this Review. Similarly, the performance of the Tribunal and the Service in carrying out their respective functions is discussed in the statements of the President and Registrar.

The Tribunal and the Service aim to ensure that proceedings are conducted efficiently and economically whilst meeting the requirements of justice.

### Financial performance

The programme funding allocation from the Department for Business, Enterprise and Regulatory Reform (BERR) for 2008-2009 was £4,119,000 for resource expenditure (net of any income from other sources) and £77,000 for capital expenditure. The capital expenditure allocation is for the Service only.

Actual resource expenditure for the year was £4,063,000 and capital expenditure was £72,000.

The actual expenditure for the Tribunal increased from £615,000 (2007-2008) to £746,000 in 2008-2009. The increase in expenditure is mainly due to salary costs for the President for the full year, in comparison to 2007-2008 where the latter costs were for five months from appointment of the President on 5 November 2007.

The actual expenditure for the Service rose from £2,965,000 in 2007-2008 to £3,317,000 in 2008-2009. During the year operating leases and accommodation costs increased by £165,000 and IT consultancy costs by £90,000. This was due to a combination of factors: a rent increase of 2.5 per cent (pursuant to the lease) compounded for five years equating to 13 per cent, repairs and redecoration to court rooms and other office areas and increased power charges. Development of a new website, carrying out emergency repairs to the old website and an increased back charge under the IT Service Level Agreement contributed to the increased IT consultancy costs.

In 2008-2009 the Service obtained approval from BERR for a two-year staff pay proposal. The Service's pay remit, whilst remaining within Treasury limits, is intended to reward performance and attract and retain suitably qualified staff to the Service. The total pay bill for staff (excluding the Registrar whose pay is determined by the Secretary of State and is discussed in the Remuneration Report) increased by 6.6 per cent in 2008-2009 with an average staff pay increase of 3.5 per cent. This increase was due to staff costs for the full year 2008-2009 whereas for staff appointed in 2007-2008 there was often a delay between staff leaving the Service and new appointees taking up their posts.

### Financing of activities

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

### Balance sheet

The Tribunal's balance sheet shows only those liabilities at 31 March 2009 that are directly attributable to the Tribunal. There is a debtor balance of an equal amount representing the amount that the Service shall transfer to meet those liabilities. The liabilities in the Service's balance sheet therefore include the liabilities of the Tribunal.

The book value of the Service's fixed assets fell from £304,000 to £221,000, as most of the assets are being depreciated over three or five years and have been either fully depreciated or are in the last year of their useful economic life. Capital expenditure during the year amounted to £72,000 which was higher than incurred in 2007-2008. The Service invested in IT equipment to ensure that all the operating systems were secure. The main items of expenditure were firewall device, intrusion prevention appliance and hardware and software to increase security on the internal and external networks. Some printers, screens and computers were also replaced.

Net current assets reduced by £54,000 to £242,000. Closing cash balances were £408,000 (2007-2008: £488,000).

In 2008-09, the Service's general fund (which represents the total assets less liabilities of the Service to the extent that the total is not represented by other reserves and financing items) reduced by £121,000.

### Social, economic and environmental issues

The Tribunal is part of the UK justice system and also forms part of the UK's competition regime which works to improve the efficient functioning of the economy.

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

### Future developments

For the 2009-2010 resource request, the Service has continued to restrict expenditure and make savings wherever it is prudent to do so without impairing the Tribunal's and the Service's abilities to carry out their respective statutory functions.

The budget proposal for 2009-2010 was submitted to BERR in February 2009. For 2009-2010, the Tribunal and the Service have a combined Resource Departmental Expenditure Limit of £4,299,000 and a further £70,000 has been allocated for the capital expenditure programme. The budget was approved on 20th April 2009.

Resource costs for the Service are budgeted to rise by £143,000 when compared with the 2008-2009 outturn. However, when the outturn is adjusted to remove the effects of the Treasury's permitted uplift for annual inflation, costs are budgeted to rise by 1.8 per cent.

This increase can be attributed to two specific areas

- The Service had to include unpaid annual leave as required by the adoption of IFRS standard IAS 19 – Employee Benefits.
- The rent for the premises occupied by the Tribunal and the Service. As a result of a rent review – an increase of 2.5 per cent (pursuant to the lease) compounded over five years equating to 13 per cent – is applied on a straight line basis for the full year in 2009-2010. The Service has included sums in its budget proposal for 2009-2010 and beyond to meet the known additional cost.

The issue of the level of remuneration for Tribunal Members is still under consideration by BERR.

The Tribunal is unable to determine its own caseload and must therefore ensure that it is able to react to fluctuations. The Service, as the support organisation for the Tribunal, must ensure that the required resources are made available to meet the needs of the Tribunal.

# Remuneration Report for the Tribunal and the Service

## Remuneration policy

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

In determining the President's salary for 2008-2009, 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) were considered. The President's salary is paid by the Ministry of Justice and invoiced to the Service.

The salary of the Registrar is linked with the judicial salaries levels and revised to the percentage as approved by BERR and the Secretary of State. For 2008/09, the Secretary of State determined that the salary of the Registrar should be increased by 6 per cent being the last stage of the progression to the new pay scale agreed in 2006-2007.

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 Service's operating cost statement.

The non-executive member of the Service is remunerated on a per diem basis at a rate determined by the Secretary of State. The remuneration costs of the non-executive member are charged to the Service's operating cost statement.

## Remuneration Committee

The Service's Remuneration Committee which last met in 2005 comprised Janet Rubin and a former Tribunal member, Professor Graham Zellick.

There has been no change in the relevant remuneration arrangements for the financial year 2008-2009.

## Service 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 Service.

## Service contracts

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

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

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

The non-executive member of the Service is appointed by the Secretary of State under Schedule 3 of the Enterprise Act 2002. The term of appointment, which was due to expire in September 2007, was, with the approval of the Secretary of State, extended for a further four years and shall now expire in September 2011. The appointment carries no right of pension, gratuity or allowance on its termination.

## Remuneration

The following part of the Remuneration Report has been audited.

	2008-2009 Salary £'000	2008-2009 Benefits in kind (to nearest £100)	2007-2008 Salary £'000	2007-2008 Benefits in kind (to nearest £100)
President	170-175	0	65-70 165-170 (full year equivalent)	0
	2008-2009 Salary £'000	2008-2009 Benefits in kind (to nearest £100)	2007-2008 Salary £'000	2007-2008 Benefits in kind (to nearest £100)
Registrar	90-95	0	85-90	0

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

The non-executive member of the Service is remunerated at a rate of £350 per day (2007-2008: £350 per day). Total remuneration payable in 2008-2009 was £5,250 (2007-2008: £5,950).

### Benefits in kind

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

### President's pension benefits

	Accrued pension at age 60 as at 31 March 2009 and related lump sum £'000	Real increase in pension and related lump sum at age 60 £'000	CETV at 31 March 2009 £'000	CETV at 31 March 2008 £'000	Employee contributions and transfers in £'000	Real increase in CETV £'000
President	6 13	4 10	98	27	2	68

### Judicial pensions

The President is a member of the Judicial Pension Scheme (JPS). For 2008-2009, employer contributions of £55,000 were payable to the JPS at a rate of 32.15 per cent of pensionable pay.

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

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

The contribution rate required from the judicial appointing or administering bodies to meet the cost of benefits accruing in the year 2008-2009 has been assessed as 32.15 per cent of the relevant judicial salary. This includes an element of 0.25 per cent as a contribution towards the administration costs of the scheme.

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

**Registrar’s pension benefits**

	Accrued pension at age 60 as at 31 March 2009 and related lump sum £'000	Real increase in pension and related lump sum at age 60 £'000	CETV at 31 March 2008 £'000	CETV at 31 March 2007 £'000	Employee contributions and transfers in £'000	Real increase in CETV £'000
Registrar	20 – 25	0 – 2.5				
	60 – 65	5 – 7.5	326	275	13	21

The factors used in calculating Cash Equivalent Transfer Values ('CETVs') were updated in October 2008. As a result of this, the opening CETV of the 2008-2009 calculations is likely to be different from the closing CETV in the 2007-2008 calculations.

There are many reasons that could cause a negative value in the 'real increase in CETV' including

- A rise in pensionable salary less than the rate of inflation;
- Member joining or leaving mid year;
- Pension factors for the over 60s decreasing the value of the pension that could have been taken at 60.

The Registrar’s pension benefits are provided through the Civil Service Pension arrangements. For 2008-2009, employer contributions of £24,000 (2007-2008: £23,000) were payable to the PCSPS scheme at a rate of 25.5 per cent (2007-2008: 25.5 per cent) of pensionable pay.

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

Employee contributions are set at the rate of 1.5 per cent of pensionable earnings for classic and 3.5 per cent for premium, classic plus and nuvos. Benefits in classic accrue at the rate of 1/80th of final pensionable earnings for each year of service. In addition, a lump sum equivalent to three years’ pension is payable on retirement. For premium, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike classic, there is no automatic lump sum. Classic plus is essentially a hybrid with benefits in respect of service before 1 October 2002 calculated broadly as per classic and benefits for service from October 2002 calculated as in premium. In nuvos a member builds up a pension based on 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 RPI. In all cases members may opt to give up (commute) pension for 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 pension website: [www.civilservice.gov.uk/pensions/index.aspx](http://www.civilservice.gov.uk/pensions/index.aspx).

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

### Cash Equivalent Transfer Values

A 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 individual has transferred to the Civil Service pension arrangements. They also include any additional pension benefit accrued to the member as a result of their purchasing additional pension benefits at their own cost. CETVs are calculated in accordance with the Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 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 effectively funded by the employer. It does not include the increase in accrued pension due to inflation, contributions paid by the employee (including the value of any benefits transferred from another pension scheme or arrangement) and uses common market valuation factors for the start and end of the period.

*Charles Dhanowa OBE*  
Registrar and Accounting Officer  
Competition Service

30 June 2009



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

Under Paragraph 12 of Schedule 3 of the Enterprise Act 2002, the Service is required to prepare a statement of accounts for the Tribunal and the Service, for each financial year in the form and on the basis determined by the Secretary of State, with the consent of the Treasury. Each set of accounts is prepared on an accruals basis and must give a true and fair view of the state of affairs of the Tribunal and the Service 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 Service, the Service is required to

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

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

## Statement on Internal Control for the Tribunal and the Service

### Scope of responsibility

As Accounting Officer, I have responsibility for maintaining a sound system of internal control that supports the achievement of the Tribunal's and the Service's policies, aims and objectives, whilst safeguarding the public funds and departmental assets for which I am personally responsible, in accordance with the responsibilities assigned to me in Managing Public Money. The Service is the body which provides the staff, equipment, premises and finance that the Tribunal needs to enable it to carry out its functions.

I also have responsibility to BERR and ultimately to Parliament for the proper use of the Tribunal's and Service's finances in accordance with the responsibilities assigned to me as Accounting Officer in Government Accounting. The relationship with BERR is defined in a Memorandum of Understanding and the Management Statement and Financial Memorandum. The Service receives its funding solely from BERR in the form of grant-in-aid. Once the budget is agreed with BERR, the Service has discretion as to how funds are allocated for specific purposes within certain given limits. Financial and other relevant matters are discussed at regular meetings between the Service and BERR personnel.

### The purpose of the system of internal control

The system of internal control is designed to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide a reasonable and not absolute assurance of effectiveness. The system of internal control is based on an ongoing process designed to: identify and prioritise the risks to the achievement of the Service's and the Tribunal's policies, aims and objectives; evaluate the likelihood of those risks being realised and the impact should they be realised; and manage them efficiently, effectively and economically. The system of internal control for the Tribunal and the Service has been in place for the year ended 31 March 2009 and up to the date of approval of the annual review and accounts, and accords with Treasury guidance.

### Capacity to handle risk

The membership of the Service and the Audit Committee have continued to play an active role in supporting the Service staff and myself in the risk management process and in developing the Service's risk strategy by challenging current practices and putting forward practical solutions.

The Service is committed to promoting a strong understanding of risk throughout the organisation and for Tribunal members and Service staff to have a full awareness of risk considerations in the achievement of objectives.

The key measures that the Service has put in place to manage risk are

- i The Finance Committee, comprising the Registrar, the Director, Operations and the Finance Manager, meets throughout the year and discusses risk as part of its standing agenda.
- ii The Finance Manager presents the top ten risks on a regular basis at Audit Committee meetings and the members discuss the key risks and make recommendations.
- iii The Finance Manager maintains the risk register, which ranks risks in terms of impact and likelihood. Risks are assigned to individuals and necessary actions agreed.
- iv Groups focusing on specific organisational activities such as casework, information technology and accommodation meet throughout the year as and when the need arises.
- v The Director, Operations is a member of BERR Agencies Risk Management Group, a forum in which BERR's agencies can discuss risk and best practice.

- vi A Departmental Security Officer and an Information Technology Security Officer ensure that the Service complies with Cabinet Office and National Infrastructure Security Coordination Centre standards (BS 7799) on security procedures.
- vii Although the Service handles very little personal information, nonetheless a process of encryption of removable information storage devices is underway.

## Data handling

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

The Service has also implemented a series of actions to ensure that information risks are identified and managed and personal information is protected. These are the following

- i An information risk policy is in place setting out how the Service is to implement the minimum mandatory measures for its own activities and those of its key delivery partners.
- ii Risk assessments are being performed regularly to examine: forthcoming potential 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.
- iii The Office of Government Commerce (OGC) framework contract clauses are being used in new contracts as necessary.
- iv Actions are in place to ensure appropriate information handling is conducted across the Service's delivery chains.
- v SIRO and IAO responsibilities have been assigned.
- vi Performance in managing information risk is integrated into the Service's HR processes and all members of staff are aware of the new requirements.
- vii An incident management policy is in place.
- viii A forensic readiness policy is in place.
- ix PROTECT personal information is identified, clearly marked and subject to controlled disposal.
- x Controls are being put on the use of removable media for transfer of information between premises.
- xi Information risk awareness training is currently being undertaken.

## The risk and control framework

The following processes are in place to manage the risk and control framework

- i The Service's internal audit service is provided by BERR's Internal Audit Directorate, who make recommendations to the Service's management. The Service responds to these recommendations within agreed timescales. During the year to 31 March 2009 Internal Audit assessed the adequacy of the Service's financial and accounting system and IT security. Internal Audit have reported their findings to the Accounting Officer and the Audit Committee.
- ii Financial control is maintained by a monthly financial reporting system to senior management, the Audit Committee and the membership of the Service. BERR is informed of the Service's financial position through the submission of monthly returns and quarterly grant-in-aid requests.
- iii The Service maintains very good working relationships with BERR. Senior management meet officials from Consumer and Competition Policy Directorate regularly to share management and financial information.

- iv A business plan is produced annually, which identifies the objectives for the year ahead and is agreed with BERR.
- v Where specific services are outsourced to external contractors, senior management satisfy themselves that these organisations have appropriate risk management policies in place.

### Review of effectiveness

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

There are a number of processes and controls within the Tribunal and the Service that have been established to ensure that aspects of the system of internal control are constantly monitored and reviewed.

The following processes are in place to further maintain and review the effectiveness of the system of internal control:

- i The membership of the Service, which acts as the Board of the Service and comprises the President, Registrar and non-executive member supported by the Director, Operations, meets four times a year to discuss the strategic direction of the Tribunal and the Service. The Service receives reports on operations, caseload and from the Audit Committee as standing agenda items.
- ii The Audit Committee, chaired by the non-executive member of the Service, meets four times a year to scrutinise financial performance and the Annual Accounts before publication, the progress made in addressing the organisation's key risks and the adequacy of the internal and external audit arrangements.
- iii BERR's Internal Audit directorate was retained in 2008-2009. Internal Audit operates to requirements defined in the Government Internal Audit Standards. During the year its work programme included the security of the IT system apart from the usual finance and accounting audit.
- iv The Service participates in BERR's group corporate governance submission. This process involves Service personnel evaluating the risk management processes currently in place and identifying measures to promote awareness and understanding of issues under specific headings throughout the organisation.

*Charles Dhanowa OBE*  
Registrar and Accounting Officer  
Competition Service

30 June 2009

# 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 2009 under the Enterprise Act 2002. These comprise the Operating Cost Statement, the Balance Sheet, the Cash Flow Statement 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 being audited.

### Respective responsibilities of the Competition Service, Accounting Officer and Auditor

The Competition Service and the Registrar as Accounting Officer are responsible for preparing the Annual Review, which includes the Remuneration Report and the financial statements in accordance with the Enterprise Act 2002 and the Secretary of State for Business, Enterprise and Regulatory Reform's directions made thereunder and for ensuring the regularity of financial transactions. These responsibilities are set out in the Statement of Accounting Officer's responsibilities.

My responsibility is to audit the financial statements and the part of the Remuneration Report to be audited in accordance with relevant legal and regulatory requirements, and with International Standards on Auditing (UK and Ireland).

I report to you my opinion as to whether the financial statements give a true and fair view and whether the financial statements and the part of the Remuneration Report to be audited have been properly prepared in accordance with the Enterprise Act 2002 and the Secretary of State for Business, Enterprise and Regulatory Reform's directions made thereunder. I report to you whether, in my opinion, the information, which comprises the Introduction and the Management Commentary, included in the Annual Review is consistent with the financial statements. I also report whether in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

In addition, I report to you if the Competition Service has not kept proper accounting records, if I have not received all the information and explanations I require for my audit, or if information specified by HM Treasury regarding remuneration and other transactions is not disclosed.

I review whether the Statement on Internal Control reflects the Competition Service's compliance with HM Treasury's guidance, and I report if it does not. I am not required to consider whether this statement covers all risks and controls, or form an opinion on the effectiveness of the Competition Service's corporate governance procedures or its risk and control procedures.

I read the other information contained in the Annual Review and consider whether it is consistent with the audited financial statements. This information comprises the President's Statement, the Registrar's Statement, Membership, Cases and the unaudited part of the Remuneration Report. I consider the implications for my report if I become aware of any apparent misstatements or material inconsistencies with the financial statements. My responsibilities do not extend to any other information.

## Basis of audit opinions

I conducted my audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. My audit includes examination, on a test basis, of evidence relevant to the amounts, disclosures and regularity of financial transactions included in the financial statements and the part of the Remuneration Report to be audited. It also includes an assessment of the significant estimates and judgments made by the Competition Service and the Accounting Officer in the preparation of the financial statements, and of whether the accounting policies are most appropriate to the Competition Appeal Tribunal's circumstances, consistently applied and adequately disclosed.

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

## Opinions

In my opinion

- the financial statements give a true and fair view, in accordance with the Enterprise Act 2002 and directions made thereunder by the Secretary of State for Business, Enterprise and Regulatory Reform, of the state of the Competition Appeal Tribunal's affairs as at 31 March 2009 and of its deficit and cash flows for the year then ended;
- the financial statements and the part of the Remuneration Report to be audited have been properly prepared in accordance with the Enterprise Act 2002 and the Secretary of State for Business, Enterprise and Regulatory Reform's directions made thereunder; and
- information, which comprises the Introduction and the Management Commentary, included within the Annual Review is consistent with the financial statements.

### Opinion on regularity

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

## Report

I have no observations to make on these financial statements.

*Amyas C E Morse*  
Comptroller and Auditor General

3 July 2009

National Audit Office  
151 Buckingham Palace Road  
Victoria  
London SW1W 9SS

## Competition Appeal Tribunal

### Operating costs statement for the year ended 31 March 2009

	Notes	2008-2009 £'000	2007-2008 £'000
<b>Income</b>		<b>0</b>	0
<b>Administrative costs</b>			
Members' remuneration costs	3a	<b>(668)</b>	(557)
Other operating charges	4a	<b>(78)</b>	(58)
<b>(Deficit) for the financial year</b>		<b><u>(746)</u></b>	<u>(615)</u>

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

# Competition Appeal Tribunal

## Balance sheet as at 31 March 2009

	Notes	31 March 2009 £'000	31 March 2009 £'000	31 March 2008 £'000	31 March 2008 £'000
<b>Current assets</b>					
Debtors	5a	113		152	
Cash at bank and in hand		0		0	
<b>Total current assets</b>			<b>113</b>		152
Creditors: amounts falling due within one year	6a		<b>(106)</b>		(150)
<b>Net current assets</b>			<b>7</b>		2
<b>Total assets less current liabilities</b>			<b>7</b>		2
Creditors: amounts falling due after more than one year			0		0
Provisions for liabilities and charges	7		<b>(7)</b>		(2)
<b>Total assets less liabilities</b>			<b>0</b>		0
<b>Represented by</b>					
General fund	8		0		0
<b>Total</b>			<b>0</b>		0

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

Charles Dhanowa OBE  
Registrar and Accounting Officer  
Competition Appeal Tribunal

30 June 2009



## Competition Appeal Tribunal

### Cash flow statement for the year ended 31 March 2009

	Notes	2008-2009 £'000	2007-2008 £'000
<b>Net cash (outflow) from operating activities</b>	9	<b>(746)</b>	(615)
Financing			
Grant-in-aid from the Service	2	<b>746</b>	615
<b>Increase/(decrease) in cash in the period</b>		<b>0</b>	0

The Tribunal does not have a bank account and therefore does not hold any cash. Cash required to fund the activities of the Tribunal is paid into the Service's bank account.

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

# Competition Appeal Tribunal

## Notes to the accounts

### 1 Statement of accounting policies

These financial statements have been prepared in accordance with the 2008-2009 Government Financial Reporting Manual (FRM). The accounting policies contained in the FRM follow UK generally accepted accounting practice for companies (UK GAAP) to the extent that it is meaningful and appropriate to the public sector.

Where the FRM 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 Service's accounting policies have been applied consistently in dealing with items considered material in relation to the accounts.

#### *a Accounting convention*

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

#### *b Basis of preparation of accounts*

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

#### *c Pensions*

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

#### *d Going concern*

The accounts have been prepared on a going concern basis.

### 2 Grant-in-aid

	<b>2008-2009</b>	2007-2008
	<b>£'000</b>	£'000
Allocated by the Service	<b>746</b>	615
Total grant-in-aid	<b>746</b>	615

### 3 Members' remuneration

a The total cost of Members' remuneration is shown in the table below.

	<b>2008-2009</b>	2007-2008
	<b>£'000</b>	£'000
Members' remuneration (including the President and Chairmen)	<b>555</b>	484
Social security costs	<b>58</b>	51
Pension contributions for the President	<b>55</b>	22
Total members' remuneration	<b>668</b>	557

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

c Remuneration costs for members of the panel of Chairmen are shown in the table below.

	<b>2008-2009</b>	2007-2008
	<b>£</b>	£
Marion Simmons QC	<b>1,200</b>	111,964
Lord Carlile of Berriew QC	<b>55,800</b>	12,171
Vivien Rose	<b>80,529</b>	60,000

Marion Simmons QC, Lord Carlile QC and Vivien Rose were remunerated on a per diem basis at a rate of £600 per day (2007-2008: £600 per day). Their remuneration costs are included in note 3 (a).

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.

d The Ordinary Members are remunerated at a rate of £350 per day (2007-2008: £350 per day). The total remuneration payable to Ordinary Members of £247,574 (2007-2008: £232,208) is included in note 3 (a).

### 4 Other operating charges

a

	<b>2008-2009</b>	2007-2008
	<b>£'000</b>	£'000
Members travel and subsistence	<b>38</b>	39
Members PAYE and National Insurance on travel and subsistence expenses	<b>22</b>	7
Members training	<b>7</b>	4
Long service award	<b>5</b>	2
Audit fees*	<b>6</b>	6
Total other operating charges	<b>78</b>	58

\* Audit fees related only to statutory audit work.

b Members' PAYE and National Insurance on travel and subsistence expenses for the year amount to £22,000. The figure for the previous year took account of a tax refund of £13,000.

c The long service award relates to a provision of £5,000 for the President in his capacity as a judge of the High Court. The value of the award was calculated by the Government Actuary's Department and reflects the President's length of service and judicial grade.

## 5 Debtors

### a Analysis by type

	<b>31 March 2009 £'000</b>	31 March 2008 £'000
<b>Amounts falling due within one year</b>		
Debtor with the Service	<u>106</u>	<u>150</u>
<b>Amounts falling due after more than one year</b>		
Debtor with the Service	<u>7</u>	<u>2</u>

The debtor balance represents the total liabilities outstanding at the balance sheet date that are directly attributable to the activities of the Tribunal. The liabilities of the Tribunal are settled by the Service.

### b Intra-government balances

	<b>Amounts falling due within one year 2008-2009 £'000</b>	Amounts falling due within one year 2007-2008 £'000	<b>Amounts falling due after more than one year 2008-2009 £'000</b>	Amounts falling due after more than one year 2007-2008 £'000
Balances with other central government bodies	106	150	7	2
Balances with bodies external to government	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Total debtors at 31 March</b>	<u>106</u>	<u>150</u>	<u>7</u>	<u>2</u>

## 6 Creditors

### a Analysis by type

	<b>31 March 2009 £'000</b>	31 March 2008 £'000
<b>Amounts falling due within one year</b>		
Taxation and social security	37	24
Trade creditors	1	2
Accruals	<u>68</u>	<u>124</u>
<b>Total creditors</b>	<u>106</u>	<u>150</u>

*b Intra-government balances*

	<b>Amounts falling due within one year 2008-2009 £'000</b>	Amounts falling due within one year 2007-2008 £'000	<b>Amounts falling due after more than one year 2008-2009 £'000</b>	Amounts falling due after more than one year 2007-2008 £'000
Balances with other central government bodies	<b>58</b>	74	<b>0</b>	0
Balances with bodies external to government	<b>48</b>	76	<b>0</b>	0
<b>Total creditors at 31 March</b>	<b>106</b>	150	<b>0</b>	0

**7 Provisions for liabilities and charges**

	Long service award costs £'000
Balance at 1 April 2008	2
Provided in the year	5
Provisions utilised in the year	0
<b>Balance at 31 March 2009</b>	<b>7</b>

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

**8 General Fund**

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

	<b>2008-2009 £'000</b>	2007-2008 £'000
Balance at 1 April	<b>0</b>	0
Net operating cost for the year	<b>(746)</b>	(615)
Net financing from the Service	<b>746</b>	615
<b>Balance at 31 March</b>	<b>0</b>	0

**9 Notes to the cash flow statement: reconciliation of operating cost to operating cash flows**

	Notes	<b>2008-2009 £'000</b>	2007-2008 £'000
Net operating cost	8	<b>(746)</b>	(615)
Decrease/(increase) in debtors		<b>39</b>	(39)
(Decrease)/increase in creditors		<b>(44)</b>	37
Use of provisions		<b>0</b>	0
Increase in provisions		<b>5</b>	2
Net cash (outflow) from operating activities		<b>(746)</b>	(615)

## **10 Related party transactions**

All expenses of the Tribunal are paid by the Service.

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

## **11 Post balance sheet events**

On Friday 5 June 2009, the Government announced the creation of a new Department for Business, Innovation and Skills (BIS) by merging the Department for Business, Enterprise and Regulatory Reform (BERR) and the Department for Innovation, Universities and Skills (DIUS). From this date, BIS will take over the work previously undertaken by BERR.

There were no other post balance sheet events to report.

The financial statements were authorised 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 2009 under the Enterprise Act 2002. These comprise the Operating Cost Statement, the Balance Sheet, the Cash Flow Statement 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 being audited.

#### Respective responsibilities of the Competition Service, Accounting Officer and Auditor

The Competition Service and Registrar as the Accounting Officer are responsible for preparing the Annual Review, which includes the Remuneration Report and the financial statements in accordance with the Enterprise Act 2002 and the Secretary of State for Business, Enterprise and Regulatory Reform's directions made thereunder and for ensuring the regularity of financial transactions. These responsibilities are set out in the Statement of Accounting Officer's responsibilities.

My responsibility is to audit the financial statements and the part of the Remuneration Report to be audited in accordance with relevant legal and regulatory requirements, and with International Standards on Auditing (UK and Ireland).

I report to you my opinion as to whether the financial statements give a true and fair view and whether the financial statements and the part of the Remuneration Report to be audited have been properly prepared in accordance with the Enterprise Act 2002 and the Secretary of State for Business, Enterprise and Regulatory Reform's directions made thereunder. I report to you whether, in my opinion, the information, which comprises the Introduction and the Management Commentary, included in the Annual Review is consistent with the financial statements. I also report whether in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

In addition, I report to you if the Competition Service has not kept proper accounting records, if I have not received all the information and explanations I require for my audit, or if information specified by HM Treasury regarding remuneration and other transactions is not disclosed.

I review whether the Statement on Internal Control reflects the Competition Service's compliance with HM Treasury's guidance, and I report if it does not. I am not required to consider whether this statement covers all risks and controls, or form an opinion on the effectiveness of the Competition Service's corporate governance procedures or its risk and control procedures.

I read the other information contained in the Annual Review and consider whether it is consistent with the audited financial statements. This information comprises the President's Statement, the Registrar's Statement, Membership, Cases and the unaudited part of the Remuneration Report. I consider the implications for my report if I become aware of any apparent misstatements or material inconsistencies with the financial statements. My responsibilities do not extend to any other information.

#### Basis of audit opinions

I conducted my audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. My audit includes examination, on a test basis, of evidence relevant to the amounts, disclosures and regularity of financial transactions included in the financial statements and the part of the Remuneration Report to be audited. It also includes an assessment of the significant estimates and judgments made by the Competition Service and Accounting Officer in the preparation of the financial statements, and of whether the accounting policies are most appropriate to the Competition Service's circumstances, consistently applied and adequately disclosed.

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

## Opinions

In my opinion

- the financial statements give a true and fair view, in accordance with the Enterprise Act 2002 and directions made thereunder by the Secretary of State for Business, Enterprise and Regulatory Reform, of the state of the Competition Service's affairs as at 31 March 2009 and of its deficit and cash flows for the year then ended;
- the financial statements and the part of the Remuneration Report to be audited have been properly prepared in accordance with the Enterprise Act 2002 and the Secretary of State for Business, Enterprise and Regulatory Reform's directions made thereunder; and
- information, which comprises the Introduction and the Management Commentary, included within the Annual Review is consistent with the financial statements.

### **Opinion on regularity**

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

## Report

I have no observations to make on these financial statements.

*Amyas C E Morse*  
Comptroller and Auditor General

3 July 2009

National Audit Office  
151 Buckingham Palace Road  
Victoria  
London SW1W 9SS



## Competition Service

### Operating cost statement for the year ended 31 March 2009

	Notes	2008-2009 £'000	2007-2008 £'000
<b>Expenditure</b>			
Funding the activities of the Tribunal		(746)	(615)
The Service and Audit Committee Members' remuneration	3a	(12)	(12)
Staff salary costs	4a	(877)	(835)
Other administrative expenses	6	(2,437)	(2,128)
<b>Total expenditure</b>		<b>(4,072)</b>	<b>(3,590)</b>
<b>Income</b>			
Interest received	7a	24	45
Courtroom rental income	7b	40	21
Website service income	7c	5	0
<b>Total income</b>		<b>69</b>	<b>66</b>
<b>Net expenditure on ordinary activities before taxation</b>		<b>(4,003)</b>	<b>(3,524)</b>
Taxation	8	(5)	(9)
<b>Net expenditure on ordinary activities after taxation</b>		<b>(4,008)</b>	<b>(3,533)</b>
Reversal of notional cost of capital included above	6	9	10
<b>Net expenditure for the financial year</b>		<b>(3,999)</b>	<b>(3,523)</b>

All activities were continuing during the year.

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

# Competition Service

## Balance sheet as at 31 March 2009

	Notes	31 March 2009 £'000	31 March 2009 £'000	31 March 2008 £'000	31 March 2008 £'000
<b>Fixed assets</b>					
Tangible fixed assets	9	<b>163</b>		211	
Intangible fixed assets	10	<b>58</b>		93	
<b>Total fixed assets</b>			<b>221</b>		304
<b>Current assets</b>					
Debtors	11a	<b>79</b>		70	
Cash at bank and in hand	12	<b>408</b>		488	
<b>Total current assets</b>			<b>487</b>		558
Creditors: amounts falling due within one year	13a		<b>(245)</b>		(262)
<b>Net current assets</b>			<b>242</b>		296
<b>Total assets less current liabilities</b>					
Creditors: amounts falling due after more than one year	13a		<b>(262)</b>		(281)
Provisions for liabilities and charges	14		<b>(7)</b>		(2)
<b>Total assets less liabilities</b>			<b>194</b>		317
<b>Represented by</b>					
General fund	15		<b>188</b>		309
Revaluation reserve	16		<b>6</b>		8
<b>Total</b>			<b>194</b>		317

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

Charles Dhanowa OBE  
Registrar and Accounting Officer  
Competition Service

30 June 2009

## Competition Service

### Cash flow statement for the year ending 31 March 2009

	Notes	2008-2009 £'000	2007-2008 £'000
<b>Net cash (outflow) from operating activities</b>	17a	<b>(3,899)</b>	(3,424)
<b>Returns on investment and servicing of finance</b>			
Interest received		24	45
<b>Taxation</b>		<b>(9)</b>	(6)
<b>Capital expenditure and financial investment</b>	17b	<b>(72)</b>	(8)
<b>Financing</b>			
Grant-in-aid from BERR	17c	<b>3,876</b>	3,589
<b>(Decrease)/increase in cash</b>	12	<b>(80)</b>	196

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

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

# Competition Service

## Notes to the accounts

### 1 Statement of accounting policies

These financial statements have been prepared in accordance with the 2008-2009 FReM. The accounting policies contained in the FReM follow UK generally accepted accounting practice for companies (UK GAAP) to the extent that it is meaningful 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 Service for the purpose of giving a true and fair view has been selected. The Service's accounting policies have been applied consistently in dealing with items considered material in relation to the accounts.

#### *a Accounting convention*

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

#### *b Basis of preparation of accounts*

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

Schedule 3 of the Enterprise Act 2002 requires the Service to prepare separate statements of accounts in respect of each financial year for itself and for the Tribunal. There is therefore a statutory requirement to produce separate statements of accounts for the Tribunal and for the Service.

In accordance with Accounts Directions issued by the Secretary of State with the approval of the Treasury, the Tribunal and the Service have prepared a joint Statement of Accounting Officer's Responsibilities and Statement on Internal Control.

#### *c Grant-in-aid*

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

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

#### *d Fixed assets*

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

#### *e Depreciation*

Depreciation is provided on all fixed 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. Fixed assets are depreciated from the month following acquisition.

### **Tangible fixed assets**

#### Information Technology

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

### **Intangible fixed assets**

#### Information Technology

■ Software licences	1 to 3 years
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#### *f Capital charge*

In accordance with Treasury requirements, a charge reflecting the cost of capital utilised by the Service is included in operating costs. The charge is calculated at the Government's standard rate of 3.5 per cent (2007-2008: 3.5 per cent) on the average value of items comprising capital employed over the year.

#### *g Taxation*

- i The Service is liable for corporation tax on interest earned on bank deposits.
- ii The Service 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 fixed 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 Service 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 Service recognises contributions payable in the year.

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

#### *i Operating leases*

Rentals payable under operating leases are charged to the income and expenditure account on a straight line basis over the term of the lease.

#### *j Going concern*

There is no reason to believe that future sponsorship from BERR will not be forthcoming within the capital and resource budgets set by Spending Review settlements and fluctuations in the level of workload. It has accordingly been considered appropriate to adopt a going concern basis for the preparation of these financial statements.

*k Provisions*

The Service 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.

## 2 Government grant-in-aid

	<b>2008-2009</b> <b>£'000</b>	2007-2008 £'000
Allocated by BERR	<b>4,119</b>	4,072
Drawn down	<b>3,876</b>	3,589

## 3 The Competition Service and Audit Committee Members' remuneration

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

	<b>2008-2009</b> <b>£'000</b>	2007-2008 £'000
The Service and Audit Committee Members' remuneration	<b>11</b>	11
Social security costs	<b>1</b>	1
<b>Total Service and Audit Committee Members' remuneration</b>	<b>12</b>	12

b The President's salary costs are included in note 3 (a) of the Tribunal's accounts. The Registrar is also a member of the Service. His salary costs are included in note 4 (a) below.

Mrs Janet Rubin is a non-executive member of the Service. Mrs Rubin is also Chairman of the Service's Audit Committee and a member of the Service's Remuneration Committee. Mrs Rubin's appointment runs for four years until September 2011. Her appointment is not pensionable. Mrs Rubin is remunerated at a rate of £350 per day. Her remuneration of £5,250 in the year (2007-2008: £5,950) is included in note 3 (a) above.

The Audit Committee's two other Members are Mr Peter Clayton and Mr David Summers. Both are Tribunal Ordinary Members. Mr Clayton and Mr Summers are remunerated at a rate of £350 per day (2007/08: £350 per day). The total remuneration payable in 2008-2009 of £5,600 (2007-2008: £5,600) is included in note 3 (a) above.

## 4 Staff numbers and related costs

a *Staff costs comprise:*

	<b>Total</b> <b>2008-2009</b> <b>£'000</b>	<b>Permanently</b> <b>employed</b> <b>staff</b> <b>2008-2009</b> <b>£'000</b>	<b>Others</b> <b>2008-2009</b> <b>£'000</b>	Total 2007-2008 £'000
Wages and salaries	680	669	11	649
Social security costs	54	54	-	55
Other pension costs	143	143	-	131
<b>Total employee costs</b>	<b>877</b>	<b>866</b>	<b>11</b>	<b>835</b>

b The average number of whole-time persons employed during the year was as follows:

	<b>Total 2008-2009</b>	<b>Permanently employed staff 2008-2009</b>	<b>Others 2008-2009</b>	<b>Total 2007-2008</b>
	<b>£'000</b>	<b>£'000</b>	<b>£'000</b>	<b>£'000</b>
Employed on cases	9	8	1	8
Support staff	9	9	0	9
<b>Total</b>	<b>18</b>	<b>17</b>	<b>1</b>	<b>17</b>

## 5 Pension costs

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

For 2008-2009, employer contributions of £143,000 (2007-2008: £131,000) were payable to the PCSPS at one of four rates in the range 17.1 to 25.5 per cent (2007-2008: 17.1 to 25.5 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 and contribution rates were revised for 2005/06 and will remain unchanged until 2008-2009, but will change from 2009-2010. 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 administration costs

	<b>2008-2009</b>	<b>2007-2008</b>
	<b>£'000</b>	<b>£'000</b>
Hire of plant and machinery	14	13
Other operating leases	1,089	1,028
Consultants fees – not case related	42	25
Consultants fees– IT	171	81
Accommodation and utilities	579	476
Travel, subsistence and hospitality	28	24
Audit fees	24	21
Other administration including case related expenditure	326	307
<b>General administrative costs</b>	<b>2,273</b>	<b>1,975</b>
<i>Non cash items</i>		
Depreciation	154	143
Loss on disposal of fixed assets	1	0
Notional cost of capital	9	10
Total non cash	164	153
<b>Total costs</b>	<b>2,437</b>	<b>2,128</b>

Audit fees related only to statutory audit work.

In accordance with Treasury guidelines, notional interest payable on capital employed was calculated at 3.5 per cent on the average capital employed by the Service for the year (2007-2008: 3.5 per cent).

**7a Interest**

	<b>2008-2009</b> <b>£'000</b>	2007-2008 £'000
Gross interest received	<u>24</u>	<u>45</u>

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

**7b Courtroom rental income**

	<b>2008-2009</b> <b>£'000</b>	2007-2008 £'000
Courtroom rental income	<u>40</u>	<u>21</u>

**7c Website service income**

	<b>2008-2009</b> <b>£'000</b>	2007-2008 £'000
Website service income	<u>5</u>	<u>0</u>

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**

	<b>2008-2009</b> <b>£'000</b>	2007-2008 £'000
Corporation tax payable	<u>5</u>	<u>9</u>

Corporation tax payable is based on 21 per cent of gross interest receivable (2007-2008: 20 per cent).

**9 Tangible fixed assets**

	Information technology £'000	Furniture and fittings £'000	Office Machinery £'000	<b>Total</b> <b>£'000</b>
<b>Cost or valuation</b>				
At 1 April 2008	307	313	7	<b>627</b>
Additions	47	5	4	<b>56</b>
Disposals	(1)	(2)	(1)	<b>(4)</b>
<b>At 31 March 2009</b>	<u>353</u>	<u>316</u>	<u>10</u>	<b>679</b>
<b>Depreciation</b>				
At 1 April 2008	238	173	5	<b>416</b>
Charged in year	56	45	2	<b>103</b>
Disposals	(1)	(1)	(1)	<b>(3)</b>
<b>At 31 March 2009</b>	<u>293</u>	<u>217</u>	<u>6</u>	<b>516</b>
<b>Net book value at 31 March 2009</b>	<u>60</u>	<u>99</u>	<u>4</u>	<b>163</b>
<b>Net book value at 1 April 2008</b>	<u>69</u>	<u>140</u>	<u>2</u>	<b>211</b>
Asset financing				
Owned	<u>60</u>	<u>99</u>	<u>4</u>	<b>163</b>
<b>Net book value at 31 March 2009</b>	<u>60</u>	<u>99</u>	<u>4</u>	<b>163</b>



## 10 Intangible fixed assets

	Purchased software licences £'000
<b>Cost or valuation</b>	
At 1 April 2008	154
Additions	16
Disposals	0
<b>At 31 March 2009</b>	<u>170</u>
<b>Amortisation</b>	
At 1 April 2008	61
Charged in the year	51
Disposals	
<b>At 31 March 2009</b>	<u>112</u>
<b>Net book value at 31 March 2009</b>	<u><b>58</b></u>
<b>Net book value at 1 April 2008</b>	<u><b>93</b></u>

## 11 Debtors

### a Analysis by type

	31 March 2009 £'000	31 March 2008 £'000
Amounts falling due within one year		
Deposits and advances	9	5
Other debtors	19	3
Prepayments and accrued income	51	62
Total debtors	<u>79</u>	<u>70</u>

### b Intra-government balances

	Amounts falling due within one year 2008-2009 £'000	Amounts falling due within one year 2007-2008 £'000	Amounts falling due after more than one year 2008-2009 £'000	Amounts falling due after more than one year 2007-2008 £'000
Balances with other central government bodies	13	12	0	0
Balances with bodies external to government	<u>66</u>	<u>58</u>	<u>0</u>	<u>0</u>
<b>Total debtors at 31 March</b>	<u><b>79</b></u>	<u><b>70</b></u>	<u><b>0</b></u>	<u><b>0</b></u>

**12 Cash at bank and in hand**

	<b>2008-2009</b> <b>£'000</b>	2007-2008 £'000
Balance at 1 April	<b>488</b>	292
Net change in cash balances	<b>(80)</b>	196
<b>Balance at 31 March</b>	<b>408</b>	488
<i>The following balances at 31 March were held at</i>		
Office of HM Paymaster General	<b>0</b>	8
Commercial banks and cash in hand	<b>408</b>	480
<b>Balance at 31 March</b>	<b>408</b>	488

**13 Creditors***a Analysis by type*

	<b>31 March</b> <b>2009</b> <b>£'000</b>	31 March 2008 £'000
<b>Amounts falling due within one year</b>		
Creditors of the Tribunal at 31 March	<b>106</b>	150
Taxation and social security	<b>25</b>	27
Trade creditors	<b>10</b>	4
Accruals	<b>85</b>	62
Deferred income	<b>19</b>	19
	<b>245</b>	262
<b>Amounts falling due after more than one year</b>		
Deferred income	<b>262</b>	281

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

In accordance with the principles of SSAP21 (Accounting for leases and hire purchase contracts) and the supplementary guidance specified in UITF abstract 28 (Operating lease incentives) the Service 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.

*b Intra-government balances*

	<b>Amounts falling due within one year 2008-2009 £'000</b>	Amounts falling due within one year 2007-2008 £'000	<b>Amounts falling due after more than one year 2008-2009 £'000</b>	Amounts falling due after more than one year 2007-2008 £'000
Balances with other central government bodies	<b>209</b>	236	<b>262</b>	281
Balances with bodies external to government	<b>36</b>	26	<b>0</b>	0
Total creditors at 31 March	<b>245</b>	262	<b>262</b>	281

#### 14 Provisions for liabilities and charges

	Tribunal's long service award costs £'000
Balance at 1 April 2008	2
Provided in the year	5
Provisions utilised in the year	0
<b>Balance at 31 March 2009</b>	<u>7</u>

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

#### 15 General fund

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

	2008-2009 £'000	2007-2008 £'000
Balance at 1 April	309	240
Net operating cost for the year	(3,999)	(3,523)
Transferred to general fund in respect of realised element of revaluation reserve	2	3
Net financing from BERR	3,876	3,589
<b>Balance at 31 March</b>	<u>188</u>	<u>309</u>

#### 16 Revaluation reserve

The revaluation reserve reflects the unrealised element of the cumulative balance of indexation and revaluation adjustments.

	2008-2009 £'000	2007-2008 £'000
Balance at 1 April	8	11
Transferred to general fund in respect of realised element of revaluation reserve	(2)	(3)
<b>Balance at 31 March</b>	<u>6</u>	<u>8</u>

**17 Notes to the cash flow statement***a Reconciliation of operating cost to operating cash flows*

	Notes	2008-2009 £'000	2007-2008 £'000
Gross operating cost		<b>(4,072)</b>	(3,590)
Court rental income	7b	<b>40</b>	21
Website service income	7c	<b>5</b>	0
Net operating cost		<b>(4,027)</b>	(3,569)
Adjustments for non-cash transactions	6	<b>164</b>	153
(Increase) in debtors		<b>(9)</b>	(3)
(Decrease) in creditors		<b>(32)</b>	(7)
Use of provisions		<b>0</b>	0
Increase in provisions		<b>5</b>	2
<b>Net cash (outflow) from operating activities</b>		<b><u>(3,899)</u></b>	<b><u>(3,424)</u></b>

The creditors amount is net of non-operating expenses relating to corporation tax accrued at 31 March 2009.

*b Analysis of capital expenditure*

	2008-2009 £'000	2007-2008 £'000
Tangible fixed asset additions	<b>(56)</b>	(6)
Intangible fixed asset additions	<b>(16)</b>	(2)
Proceeds of disposal of fixed assets	<b>0</b>	0
<b>Net cash outflow from investing activities</b>	<b><u>(72)</u></b>	<b><u>(8)</u></b>

*c Analysis of financing*

	2008-2009 £'000	2007-2008 £'000
Financing from BERR	<b>3,876</b>	3,589
Net financing	<b><u>3,876</u></b>	<b><u>3,589</u></b>

*d Reconciliation of net cash flow to movement in net funds*

	2008-2009 £'000	2007-2008 £'000
Increase/(Decrease) in cash in the year	<b>(80)</b>	196
Net funds at 1 April	<b>488</b>	292
<b>Net funds at 31 March</b>	<b><u>408</u></b>	<b><u>488</u></b>

The change in net funds is due entirely to cash flows of cash in hand and at bank.

## 18 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.

	2008-2009 £'000	2007-2008 £'000
<b>Obligations under operating leases comprise</b>		
<i>Land and buildings</i>		
Expiry within 1 year	0	0
Expiry after 1 year but not more than 5 years	0	0
Expiry thereafter	1,163	1,163
<i>Other:</i>		
Expiry within 1 year	0	0
Expiry after 1 year but not more than 5 years	19	13
Expiry thereafter	0	0
Total obligations under operating leases	<u>1,182</u>	<u>1,176</u>

## 19 Financial instruments

The Service has limited exposure to risk in relation to its activities.

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

Set out below is a comparison by category of book values and fair values of the Service's financial assets as at 31 March 2009.

	Book value £'000	Fair value £'000
Cash at the bank	<u>408</u>	<u>408</u>

## 20 Related party transactions

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

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

In addition, the Service 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. During the year, the Service recognised income in respect of court rental from HM Courts Service, Pensions Regulator, HMCS Gambling Licensing and The Tribunal Service. At the balance sheet date an amount of £13,500 was outstanding.

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

## **21 Contingent liability**

During the year, part of the premises suffered significant damage caused by flooding. Further investigations indicate that the defect in the air conditioning system that caused this incident is replicated in other parts of the office and possibly the whole building, which may require further repairs and expenditure which cannot be quantified at present. Investigations are underway to determine the best way forward in these circumstances.

## **22 Post balance sheet events**

On Friday 5 June 2009, the Government announced the creation of a new Department for Business, Innovation and Skills (BIS) by merging the Department for Business, Enterprise and Regulatory Reform (BERR) and the Department for Innovation, Universities and Skills (DIUS). From this date, BIS will take over the work previously undertaken by BERR.

There were no other post balance sheet events to report.

The financial statements were authorised for issue on the date of certification.

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