MERGER CONTROL IN THE UNITED KINGDOM
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PREFACE

Merger control in the United Kingdom has entered a new phase in its development. The advent of the relevant aspects of the Enterprise Act 2002 has been welcomed as a ‘depoliticization’ of the regime. The role of the Secretary of State has been all but excised, and the substantive criteria against which mergers are assessed have been revised to offer formally a competition-based standard. Moreover, together with guidance published subsequently, the reforms prescribe a range of new procedural guarantees for those parties affected under the regime. In addition, the EC merger control regime, and in particular the nature of its relationship with the competent authorities of the Member States, has undergone revision. It is against this backdrop that this book aims to offer a comprehensive statement of the law, architecture and procedure of merger control in the United Kingdom; to explain the factors pertinent to the substantive appraisal of mergers in a manner accessible to a legal audience; and to place the national regime within its international context.

Of the many revisions of the merger regime in the United Kingdom that have taken place over the past number of years, perhaps the most important has been the increase in influence of the economics of industrial organization in the assessment of merger situations. This shift has been gradual, being by no means occasioned solely by the introduction of the ‘substantial lessening of competition’ test in the Enterprise Act 2002. Merger control is now pursued through a rigorous and sophisticated analysis that requires presumptions to be justified and conclusions substantiated. Alongside its scrutiny of the law, procedure and practice of merger control, the central intention of this book is to integrate discussion of the economic foundations of particular types of decision so as better to inform legal approaches. The discussion of the disparate elements of the economic appraisal under the ‘substantial lessening of competition’ test is geared towards an interested, but non-economist readership.

The different chapters of this text are in many respects the product of teamwork among the authors. Notwithstanding this, Morten Hviid was primarily responsible for Chapters 7, 8 and 9 (on market definition, unilateral effects and coordinated effects), Bruce Lyons for Chapters 10, 11 and 12 (on vertical effects, indirect effects and quantitative techniques), Chris Bright for Chapter 18 (on the management of risk), and Andrew Scott for each of the remaining chapters.
As with any project of this scale, there are many people who have offered valuable support and assistance, and whom the authors would like to thank wholeheartedly. Catherine Waddams and Michael Harker of the ESRC Centre for Competition Policy at the University of East Anglia, Cathryn Scott, Chris Walters and Tom Kitchen of the Competition Commission, and Kirsten Griffiths Scott each read portions of the text and offered suggestions that improved significantly both its content and style. The late Dan Goyder was also very helpful and encouraging during the preparatory stages of the project. The book would have been immeasurably stronger had we been able to benefit from the advice and support that he had so generously offered prior to his untimely death. We would also like to thank the anonymous reviewers of the original proposal consulted by Oxford University Press, who offered valuable criticism of the envisaged scheme of the book at the formative stage.

The greatest debt in these respects, however, is owed to Christopher Bright, who – in addition to contributing an invaluable chapter on the management of risk in the regulatory process – read and commented on the entirety of the text. The value to the project of someone with his range and depth of practical experience and intellectual rigour has been inestimable. Without his input many errors, inconsistencies and obscurities would not have been remedied, and the text would have been significantly poorer as a result. Of course, all remaining errors are those of the authors alone.

Beyond these persons who exercised direct influence over the content of the book, we would also like to acknowledge the assistance proffered us by a range of other people and institutions. The University of East Anglia was generous in allowing one of the authors a period of study leave in order to progress the manuscript. More generally, the authors would like to acknowledge the support of the Economic and Social Research Council (ESRC) through its award of Centre funding to the Centre for Competition Policy at UEA. This award assisted the authors both directly, by freeing individuals’ time for focused research on this and other projects, and indirectly, through its engendering of an unparalleled and stimulating scholarly environment in which insights from a range of disciplines (law, economics, management and political science) are brought to bear on the development of ideas and research outputs in the competition field. We would also like to thank our students, both at undergraduate level and on the three Masters level competition programmes run by the Norwich Law School, the School of Economics and Centre for Competition Policy, for their challenging observations and stimulating insights. Similarly, we must thank Karen Williams and Lucy Harrison, editors of the Practical Law Company Competition Service, both for their general support and for their design and development of a research tool that eases considerably the burden of initial and more focused researches in the competition law field. Derek Morris, former
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Andrew Scott
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CONTENTS—SUMMARY

Preface vii
Table of Cases xxiii
Tables of Legislation xxxiii

INTRODUCTION THE STRUCTURE AND CONTEXT OF MERGER CONTROL IN THE UK

1. The Structure and Context of Merger Control in the United Kingdom 3

I THE SCOPE OF MERGER CONTROL IN THE UK

2. Introduction: The Relevant Merger Situation 17
3. The Merger Situation: ‘Enterprises Ceasing to Be Distinct’ 21
4. Determining Relevance: The Threshold Tests 49
5. Relationship with the EC Merger Control Regime 65

II THE SUBSTANTIVE APPRAISAL OF MERGERS IN THE UK

6. Introduction: The Substantial Lessening of Competition 89
7. Determining the Relevant Market 99
8. Horizontal Effects: Unilateral 119
9. Horizontal Effects: Coordinated 147
10. Vertical Effects 165
11. Indirect Effects 183
12. Quantitative Techniques in Merger Analysis 201

III THE PROCEDURE AND ENFORCEMENT OF MERGER CONTROL IN THE UK

13. Introduction: The Two-stage Assessment of Mergers 221
14. The Office of Fair Trading and Referral Decisions 227
## Contents—Summary

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>The Competition Commission and Substantive Decisions</td>
<td>271</td>
</tr>
<tr>
<td>16</td>
<td>The Agreement of Merger Remedies</td>
<td>299</td>
</tr>
<tr>
<td>17</td>
<td>The Competition Appeal Tribunal and Judicial Review</td>
<td>327</td>
</tr>
<tr>
<td>18</td>
<td>Managing Risk in the Regulatory Process</td>
<td>345</td>
</tr>
<tr>
<td></td>
<td><strong>IV SPECIAL CASES IN UK MERGER CONTROL</strong></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Introduction: The Exceptional Character of Some Mergers</td>
<td>361</td>
</tr>
<tr>
<td>20</td>
<td>Intervention by the Secretary of State: (Special) Public Interest Cases</td>
<td>365</td>
</tr>
<tr>
<td>21</td>
<td>Intervention by the Secretary of State: Mergers in the Media Industry</td>
<td>373</td>
</tr>
<tr>
<td>22</td>
<td>Mergers in the Water Industry</td>
<td>399</td>
</tr>
<tr>
<td></td>
<td><strong>V CONCLUSION: THE FUTURE OF UK MERGER CONTROL</strong></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>The Future of UK Merger Control</td>
<td>415</td>
</tr>
</tbody>
</table>

**Appendices**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Bibliography</strong></td>
<td>581</td>
</tr>
<tr>
<td></td>
<td><strong>Index</strong></td>
<td>587</td>
</tr>
</tbody>
</table>
## CONTENTS

*Preface*  
*Table of Cases*  
*Table of Legislation*  

### INTRODUCTION  THE STRUCTURE AND CONTEXT OF MERGER CONTROL IN THE UK

1. The Structure and Context of Merger Control in the United Kingdom  
   A. Introduction  
   B. Evolution of the Substantive Principles  
   C. The Institutional Architecture  
     1. The Office of Fair Trading  
     2. The Competition Commission  
     3. The Secretary of State for Trade and Industry  
     4. The Competition Appeal Tribunal  
     5. Workload  
   D. Sources of Law  
   E. Summary

### I THE SCOPE OF MERGER CONTROL IN THE UK

2. Introduction: The Relevant Merger Situation  
   A. Introduction  
     1. The Merger Situation  
     2. Determining the Relevance of a Merger Situation  
     3. Relationship with the EC Merger Control Regime  
   B. Summary

3. The Merger Situation: ‘Enterprises Ceasing to Be Distinct’  
   A. Introduction  
   B. The Definition of an ‘Enterprise’  
   C. Ceasing to be Distinct  
     1. Methods of Acquiring Control

xii
## Contents

| (2) Common Ownership or Common Control | 3.22 |
| (3) A Lacuna in Orthodox Opinion on Control | 3.38 |
| (4) Miscellaneous Points regarding Ceasing to be Distinct | 3.44 |
| **D. Ancillary Restraints** | 3.61 |
| (1) Identification of Ancillary Restraints | 3.64 |
| (2) Ancillary Restraints in Practice | 3.68 |
| (3) Withdrawal of the Exclusion from the Competition Act | 3.70 |

| 4. Determining Relevance: The Threshold Tests | 49 |
| **A. Introduction** | 4.01 |
| **B. The Turnover Test** | 4.04 |
| (1) The Calculation of Relevant Turnover | 4.06 |
| (2) The Calculation of Relevant Turnover in Financial Industries | 4.11 |
| **C. The Share of Supply Test** | 4.14 |
| (1) The Distinction Between Share of Supply and Market Share | 4.19 |
| (2) Calculation of the Share of Supply | 4.22 |
| (3) ‘A Substantial Part of the United Kingdom’ | 4.24 |
| **D. Time Limits on Consideration of Completed Mergers** | 4.30 |
| **E. The Extra-territorial Reach of the UK Merger Control Regime** | 4.39 |

| 5. Relationship with the EC Merger Control Regime | 65 |
| **A. Introduction** | 5.01 |
| **B. Pre-notification Referrals: The Article 4 Mechanisms** | 5.09 |
| (1) Article 4(4): Pre-notification Referral to a National Authority | 5.12 |
| (2) Article 4(5): Pre-notification Referral to the European Commission | 5.17 |
| **C. Referral Back: The Article 9 Mechanism** | 5.23 |
| (1) Criteria for Referral | 5.24 |
| (2) Time Limits | 5.35 |
| (3) Article 9 Referral in Practice | 5.38 |
| **D. Referral Forward: The Article 22 Mechanism** | 5.39 |
| (1) Criteria for Referral | 5.41 |
| (2) Time Limits | 5.44 |
| (3) Article 22 Referral in Practice | 5.47 |
| **E. Protecting the Legitimate Interests of the State** | 5.48 |
Contents

F. Many Firms: Perfect Competition 8.49
G. Buyer and Seller Power 8.50
H. Applying the Theory to Finding an SLC 8.54
Additional Note: Monopoly Price Discrimination 8.59

9. Horizontal Effects: Coordinated 147
   A. Introduction 9.01
   B. Collusion 9.05
   C. An Illustrative Example of the Economics Approach 9.07
      (1) The Stage Game 9.08
      (2) Binding Agreements 9.10
      (3) Repetition 9.15
   D. When Do Coordinated Effects Arise? 9.23
   E. What Hinders and What Facilitates Conscious Parallelism? 9.31
      (1) The Intensity of Competition 9.36
      (2) The Number of Firms 9.37
      (3) The Importance of the Future 9.38
      (4) Detection and Punishment Lags 9.39
      (5) Asymmetries 9.40
      (6) Contracts with Consumers 9.43
      (7) The Stability of the Industry 9.44
      (8) Entry Barriers 9.45
      (9) Buyer or Seller Power 9.46
   F. The Competition Commission Test 9.47
      (1) Awareness of Competitor Behaviour 9.48
      (2) Incentive to Conform to the Prevailing Behaviour 9.49
      (3) Weak Competitive Constraints 9.50
   G. Summary 9.51

10. Vertical Effects 165
    A. Introduction 10.01
    B. Efficiency Effects 10.03
    C. The Chicago View 10.07
       (1) No Leverage of Market Power into Competitive Markets 10.08
       (2) Double Marginalization 10.11
       (3) Conclusion on the Chicago View 10.15
    D. When Vertical Mergers Can Lessen Competition 10.16
       (1) Price Discrimination 10.17
       (2) Input Substitution 10.20
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Introduction</td>
<td></td>
</tr>
<tr>
<td>2. Definition of Markets and Customer Convenience</td>
<td></td>
</tr>
<tr>
<td>3. The Chicago View on Leverage</td>
<td></td>
</tr>
<tr>
<td>4. Tying and Foreclosure</td>
<td></td>
</tr>
<tr>
<td>5. Tying to Extract Maximum Monopoly Profit</td>
<td></td>
</tr>
<tr>
<td>6. Price Discrimination and Metering</td>
<td></td>
</tr>
<tr>
<td>7. After-markets</td>
<td></td>
</tr>
<tr>
<td>8. Effects Not Related to Common Customers</td>
<td></td>
</tr>
<tr>
<td>9. Predatory Cross-subsidization</td>
<td></td>
</tr>
<tr>
<td>10. Coordinated Effects and Multi-market Contact</td>
<td></td>
</tr>
<tr>
<td>11. Indirect Effects</td>
<td>183</td>
</tr>
<tr>
<td>A. Introduction</td>
<td>11.01</td>
</tr>
<tr>
<td>B. Eficiencies</td>
<td>11.04</td>
</tr>
<tr>
<td>(1) Producer Costs and Customer Convenience</td>
<td>11.05</td>
</tr>
<tr>
<td>(2) Complements and the Elimination of Double Marginalization</td>
<td>11.08</td>
</tr>
<tr>
<td>(3) Eficiencies and Competition</td>
<td>11.09</td>
</tr>
<tr>
<td>C. Bundling and Tying</td>
<td>11.11</td>
</tr>
<tr>
<td>(1) Efficiency Reasons</td>
<td>11.14</td>
</tr>
<tr>
<td>(2) Hidden Pricing</td>
<td>11.18</td>
</tr>
<tr>
<td>(3) The Chicago View on Leverage</td>
<td>11.21</td>
</tr>
<tr>
<td>(4) Tying and Foreclosure</td>
<td>11.24</td>
</tr>
<tr>
<td>(5) Tying to Extract Maximum Monopoly Profit</td>
<td>11.32</td>
</tr>
<tr>
<td>(6) Price Discrimination and Metering</td>
<td>11.38</td>
</tr>
<tr>
<td>(7) After-markets</td>
<td>11.40</td>
</tr>
<tr>
<td>D. Effects Not Related to Common Customers</td>
<td>11.42</td>
</tr>
<tr>
<td>(1) Predatory Cross-subsidization</td>
<td>11.43</td>
</tr>
<tr>
<td>(2) Coordinated Effects and Multi-market Contact</td>
<td>11.44</td>
</tr>
<tr>
<td>12. Quantitative Techniques in Merger Analysis</td>
<td>201</td>
</tr>
<tr>
<td>A. Introduction</td>
<td>12.01</td>
</tr>
<tr>
<td>B. Data Sources</td>
<td>12.04</td>
</tr>
<tr>
<td>C. Market Definition and the Hypothetical Monopolist (SSNIP) Test</td>
<td>12.09</td>
</tr>
<tr>
<td>(1) Price Correlation Analysis</td>
<td>12.10</td>
</tr>
<tr>
<td>(2) The Hypothetical Monopolist (SSNIP) Test Based on Consumer Surveys</td>
<td>12.12</td>
</tr>
<tr>
<td>D. Structural Measures</td>
<td>12.16</td>
</tr>
<tr>
<td>(1) Market Shares</td>
<td>12.17</td>
</tr>
<tr>
<td>(2) Concentration</td>
<td>12.19</td>
</tr>
</tbody>
</table>
### Contents

- **E. Prediction of Merger Effects** 12.24
  - (1) Simple Links between Prices and Market Structure 12.25
  - (2) Modelling the Post-Merger Incentive to Change Price, Service or Capacity 12.27
  - (3) Bidding Markets 12.40
  - (4) Coordinated Effects 12.44

---

### III THE PROCEDURE AND ENFORCEMENT OF MERGER CONTROL IN THE UK

13. Introduction: The Two-stage Assessment of Mergers 221

- **A. Introduction** 13.01
- **B. Respective Roles of the Competition Authorities** 13.02
  - (1) Choice between Two Models of Assessment 13.03
  - (2) *IBA Health v Office of Fair Trading* 13.06
- **C. Procedural Safeguards in the Merger Control Regime** 13.09
- **D. Summary** 13.12

14. The Office of Fair Trading and Referral Decisions 227

- **A. Introduction** 14.01
- **B. Process at the Office of Fair Trading: Advice in Advance of Notification** 14.06
  - (1) Confidential Guidance 14.08
  - (2) Informal Advice 14.14
  - (3) Pre-notification Discussion 14.18
- **C. Process at the Office of Fair Trading: Notification** 14.19
  - (1) Notification: Voluntary Statutory Pre-notification Procedure 14.24
  - (2) Notification: Informal Submission 14.31
  - (3) Notification: Proceeding Without Clearance 14.34
- **D. Process at the Office of Fair Trading: Staged Review** 14.40
  - (1) Preliminary Assessment 14.41
  - (2) Issues Letter and Hearing 14.44
  - (3) Case Review Meeting 14.47
  - (4) Decision Meeting 14.50
  - (5) Publication of Decisions 14.51
- **E. Powers of the Office of Fair Trading** 14.57
  - (1) Interim Enforcement Measures 14.58
  - (2) Requests for Additional Information 14.61
- **F. Miscellaneous Aspects of the Office of Fair Trading Review** 14.68
  - (1) Consultation of Third Parties 14.69
  - (2) Confidentiality of Information 14.76
Contents

(3) Contemporaneous Mergers 14.81
(4) Merger Fees 14.83

G. The Referral Decision 14.89
   (1) The Duty to Refer 14.90
   (2) Exceptions to the Duty to Refer 14.104
   (3) Review of the Referral Decision 14.109

15. The Competition Commission and Substantive Decisions 271
   A. Introduction 15.01
   B. Commission Personnel 15.06
      (1) The Inquiry Group 15.07
      (2) The Remedies Standing Group 15.10
   C. Investigation Process 15.11
      (1) Assessment Timetable 15.18
      (2) Information Gathering and Assessment 15.26
      (3) Statement of Issues 15.38
      (4) Oral Hearings 15.41
      (5) Provisional Findings 15.46
      (6) Final Report 15.50
   D. Miscellaneous Aspects of the Commission’s Investigation 15.54
      (1) Implementation of Interim Undertakings and Orders 15.55
      (2) Investigatory Powers 15.63
      (3) Confidentiality 15.66
      (4) Cancellation of a Reference 15.70
      (5) Judicial Review of Substantive Decisions 15.71

16. The Agreement of Merger Remedies 299
   A. Introduction 16.01
   B. Reprise: The Nature of Remedies 16.05
      (1) Identifying Appropriate Remedies 16.08
      (2) Illustrative Use of Remedies 16.14
      (3) Statistics on Recent Practice 16.30
   C. Procedure for Agreeing Undertakings in Lieu: Office of Fair Trading 16.31
      (1) Assessment Timetable where Remedies are Involved 16.33
      (2) Discussion of Possible Remedies 16.35
      (3) Consultation on and Confirmation of Proposed Remedies 16.38
      (4) Enforcement of Undertakings in Lieu 16.42
   D. Procedure for Determining Final Remedies: Competition Commission 16.43
      (1) Interim Undertakings and Orders 16.45
## Contents

(2) Determination of Remedies 16.46  
(3) Implementation and Oversight of Remedies 16.54  

17. The Competition Appeal Tribunal and Judicial Review 327  
A. Introduction 17.01  
B. Role of the Competition Appeal Tribunal in Section 120 Review  
   (1) Procedural Impropriety 17.06  
   (2) Illegality and Objective Justification 17.11  
   (3) Irrationality 17.18  
C. Procedural Aspects of the Review Function 17.24  
   (1) Decisions Subject to Review 17.29  
   (2) Timing of an Application 17.30  
   (3) Standing to Make an Application 17.31  
   (4) Forum of Proceedings 17.34  
   (5) Expert Evidence 17.36  
   (6) Interim Relief and Remedies 17.38  
   (7) Costs 17.41  
   (8) Appeal 17.43  
D. Appeals in Relation to Penalties 17.44  

18. Managing Risk in the Regulatory Process 345  
A. Introduction 18.01  
B. Preparatory Issues 18.02  
   (1) Early Identification of the Substantive and Commercial Issues 18.03  
   (2) The Parties’ Attitudes Towards Risk 18.05  
C. Transaction Documents and Relevant Terms to be Considered 18.10  
   (1) Filing Obligations 18.11  
   (2) Conditions Precedent 18.12  
   (3) ‘Efforts’ Obligations 18.19  
   (4) Termination Provisions 18.22  
   (5) Cooperation 18.24  
   (6) Obligation to Inform and Involve 18.25  
   (7) Break Fees 18.26  
   (8) Business as Usual Covenant 18.27  
   (9) Access Provisions 18.28  
   (10) Compliance with Law 18.29  
   (11) Restrictive Covenants and Ancillary Agreements 18.30  
   (12) City Code on Takeovers and Mergers 18.32  
D. Extra-contractual Arrangements 18.34
E. Confidentiality Arrangements 18.35
   (1) Confidentiality of Communications Between Each Party and its Advisers 18.36
   (2) Confidentiality of Communications Between the Parties 18.38
   (3) Confidentiality vis-à-vis the Regulatory Agencies 18.40
F. Timetable 18.41
G. Remedies 18.42
H. Management of Multi-jurisdictional Filings and Timetable 18.43

IV SPECIAL CASES IN UK MERGER CONTROL

19. Introduction: The Exceptional Character of Some Mergers 361
   A. Introduction 19.01
      (1) (Special) Public Interest Cases 19.02
      (2) Mergers in the Media Industry 19.05
      (3) Mergers in the Water Industry 19.07
   B. Ancillary Controls 19.09
   C. Summary 19.10

20. Intervention by the Secretary of State: (Special) Public Interest Cases 365
   A. Introduction 20.01
   B. Public Interest Cases 20.05
      (1) Intervention by the Secretary of State 20.06
      (2) Office of Fair Trading Report 20.07
      (3) The Secretary of State’s Reference Decision 20.08
      (4) Commission Investigation 20.10
      (5) The Secretary of State’s Remedies Decision 20.11
      (6) Judicial Review of Public Interest Decisions 20.12
   C. Special Public Interest Cases 20.13

21. Intervention by the Secretary of State: Mergers in the Media Industry 373
   A. Introduction 21.01
   B. Scope of the Media Public Interest Rules 21.10
      (1) The Modified Share of Supply Test 21.13
      (2) Identification of a Newspaper or Media Merger 21.14
   C. Procedure for Consideration of Media Public Interest Cases 21.18
      (1) Informal Advice and Confidential Guidance 21.19
      (2) Notification 21.23
Contents

(3) Intervention by the Secretary of State 21.25
(4) Office of Fair Trading and Ofcom Reports 21.29
(5) The Secretary of State’s Reference Decision 21.32
(6) Commission Investigation 21.35
(7) The Secretary of State’s Remedies Decision 21.37
(8) Judicial Review of Media Mergers Decisions 21.39
D. The Decision to Intervene in Media Public Interest Cases 21.40
E. Assessment against the Media Public Interest Considerations 21.47
   (1) Accurate Presentation of News 21.50
   (2) Free Expression of Opinion 21.52
   (3) Sufficient Plurality of Views 21.58
   (4) Sufficient Plurality of Control Over Media Outlets 21.66
   (5) Quality and Breadth of Appeal of Broadcasting 21.70
   (6) Genuine Commitment to Broadcasting Standards 21.71

22. Mergers in the Water Industry 399
   A. Introduction 22.01
   B. Scope of the Water Merger Control Regime 22.04
   C. Procedure for the Consideration of Water Mergers 22.09
   D. Substantive Assessment of Water Mergers 22.14
      (1) General Regulation of the Water Industry 22.16
      (2) The Competition Commission’s Assessment 22.20
   E. Remedies 22.26

V CONCLUSION: THE FUTURE OF UK MERGER CONTROL

23. The Future of UK Merger Control 415

APPENDICES

Relevant Statutes
1. Enterprise Act 2002 (Parts) 423
2. Communications Act 2003 (Parts) 535

Relevant Guidance

Schematic Diagrams of the Merger Control Process
4. Typical Shape of a Competition Commission Merger Inquiry 547

xxi
| Contents |
|-------------------|-----|
| 5. Procedure under Article 4(4) ECMR | 549 |
| 6. Procedure under Article 4(5) ECMR | 551 |
| 7. Procedure under Article 9 ECMR | 553 |
| 8. Procedure under Article 22 ECMR | 555 |

**Standard Forms**

| 9. Merger Notice | 557 |
| 10. Template for Interim Undertakings (Competition Commission) | 565 |
| 11. Form RS: Reasoned Submission pursuant to Article 4(4) and (5) ECMR | 569 |

*Bibliography* 581  
*Index* 587
### TABLE OF CASES

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>B. Decisions of the Secretary of State under s 67 of the Enterprise Act 2002</td>
<td>(Alphabetical)</td>
</tr>
<tr>
<td>C. Competition Commission Reports</td>
<td>F. United Kingdom Cases</td>
</tr>
<tr>
<td>D. European Commission Decisions (Numerical)</td>
<td>G. European Cases</td>
</tr>
<tr>
<td></td>
<td>(1) Pre-1989</td>
</tr>
<tr>
<td></td>
<td>(2) Court of First Instance (post-1989)</td>
</tr>
</tbody>
</table>

#### A. OFFICE OF FAIR TRADING DECISIONS

**AAH Pharmaceuticals Ltd/East Anglian Pharmaceuticals Ltd** (OFT, 3 December 2003)..............14.09

**Admiral Pub Company/Enterprise Inns plc** (OFT, 23 July 2004) ........................................3.13

**Arcelor SA/hot-rolled steel sheet piling business of Corus UK Ltd** (OFT, 10 September 2004) ......................................................................................................................3.67, 3.68

**Arriva plc: Wales and Borders Rail Franchise** (OFT, 9 July 2004).................................3.55, 16.28, 16.30

**ASDA/4 Morrisons stores** (OFT, 7 October 2004) .................................................................16.63

**Associated British Foods plc/Cargill plc** (OFT, 23 March 2005) ........................................5.16

**BAE Systems plc/Alvis plc** (OFT, 21 November 2003) ..........................................................3.26

**Bayard Capital Partners/Landis & GYR** (OFT, 8 December 2004) ........................................5.20, 5.22, 14.70

**BBC Worldwide Ltd/Woolworths Group plc** (OFT, 20 September 2004) ...............................3.40

**Bretagne-Angleterre-Irelande SA/certain assets of P&O Ferries** (OFT, 7 December 2004) ......................................................................................................................3.67, 3.68

**British Salt Ltd/New Cheshire Salt Works Ltd** (OFT, not yet reported) ...............................14.59

**Brittany Ferries/P&O (Portsmouth—Le Havre)** (OFT, 7 December 2004) .........................15.70

**Capital Radio plc/Tainside Limited** (OFT, 23 February 2004) ............................................3.30, 3.37, 3.45

**Capital Radio plc/GWR Group plc** (OFT, 22 December 2004) ..............................................16.16, 16.30

**Carl Zeiss Jena GmbH/Bio-Rad Laboratories** (OFT, 30 December 2003) .........................16.35

**Centrica plc/Killingholme Power Ltd** (OFT, 16 September 2004) ......................................14.72

**Chelsea Limited/Chelsea Village plc** (OFT, 27 August 2003) .............................................3.36

**Cheung Kong Infrastructure Holdings Ltd/Cambridge Water PLC** (OFT, 24 May 2004) ........................................................................................................................................22.01

**Deutsche Börse AG/London Stock Exchange** (OFT, 29 March 2005) .................................14.82

**Dräger Medical AG/Airshields business of Hillenbrand Industries Inc** (OFT, 18 December 2003) ..................................................................................................................3.68

**DS Smith plc/LINPAC Containers Ltd** (OFT, 20 May 2004) ................................................16.32

**DSB/English Webb & Scottish Railway Holdings: InterCity East Coast Passenger Rail Franchise** (OFT, 8 December 2004) .................................................................3.55
Table of Cases

Emap plc/Scottish Radio Holdings plc (OFT, 13 May 2004) .................................................... 3.26
Euronext NV/London Stock Exchange (OFT, 29 March 2005) .................................................. 14.82

First Islamic Investment Bank EC/South Staffordshire Water plc (OFT, 29 November 2004) ... 22.01
FirstGroup plc: ScotRail Franchise (OFT, 13 January 2004) .................................................... 3.55
FirstGroup plc: Thames Trains Franchise (OFT, 26 March 2004) ........................................... 3.55

Geest plc/G's Marketing Ltd (OFT, 23 March 2005) .............................................................. 3.67, 3.68
Govia Ltd/Connex South Central Ltd (OFT, 23 August 2001) ................................................. 5.26, 5.38
Great North Eastern Railway Limited: InterCity East Coast Franchise (OFT, 21 December 2004) .............................................................................................................. 3.55
Greene King plc/Laurel Pub Holdings Limited (OFT, 6 October 2004) .................... 16.27, 16.30
Guardian Media Group/Trader Media Group (OFT, 29 September 2003) ...................... 3.34, 3.37

H+H Celcon Ltd/Marley Building Materials Ltd (OFT, 13 February 2002) ....................... 14.81

Imperial Cancer Research Fund/Cancer Research Campaign (OFT, 10 April 2002) .............. 3.06
International Power plc/AES Drax Holdings Ltd (OFT, 27 October 2003) ......................... 3.18
iSOFT Group plc/Torex plc (OFT, 6 November 2003) .......... 14.05, 14.40, 14.90, 14.93, 23.03
iSOFT Group plc/Torex plc (OFT, 29 April 2004) .............................................................. 16.16, 16.30
Ivax International GmbH/3M Company’s Distribution Business for Asthma Products (OFT, 9 January 2004) ... 16.28, 16.30

John Lewis Partnership plc/Wm Morrison Supermarkets plc (OFT, 28 May 2004) .............. 3.13

Kingspan Group Plc/Atlas Access Group (OFT, 10 June 2004) ........................................ 3.09

LINK Interchange Network/Transaction Network Services (OFT, 27 January 2005) .......... 15.70

Midland Quarry Products Ltd/Hanson Quarry Products Europe Ltd (OFT, 27 September 2004) ......... 3.14
Milk Link Ltd/Glanbia Foods Ltd (OFT, 17 May 2004) .......................................................... 3.63, 3.69

National Express: Greater Anglia Franchise (OFT, 27 May 2004) .................................. 3.55
National Milk Records/Cattle Information Service (OFT, 3 March 2004) ......................... 15.70

Phoenix Healthcare Distribution Ltd/East Anglian Pharmaceuticals Ltd (OFT, 17 December 2004) ... 7.31, 14.40, 14.73, 14.74, 17.17

Safeway plc (OFT, 13 March 2003) ..................................................................................... 14.82
Scottish and Southern Energy Group/Fiddler’s Ferry and Ferrybridge Power Stations (OFT, 15 October 2004) ......................................................................................... 14.72
Scottish Courage Ltd/Carlsberg-Telesy Brewing Ltd—technical services divisions (OFT, 24 March 2004) ................................................................................................. 20.03
SDEL/Coors Brewers Ltd (OFT, 19 October 2004) .............................................................. 3.60
South Eastern Railways Limited: Integrated Kent Rail Franchise (OFT, 1 April 2005) ........ 3.55
SSE/Medway Power Ltd/AES Medway Operations Ltd (OFT, 13 November 2003) .............. 3.37
Stena AB/P&O Group (OFT, 22 August 2003) ...................................................... 3.57, 3.68
Table of Cases

Swiss Life plc/Unum plc (OFT, 31 October 2003) ....................................................... 3.58, 15.70
Swiss Life plc/Unum plc (OFT, 22 March 2004) ........................................................... 3.58
-
-
-
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-
-
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-
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<table>
<thead>
<tr>
<th>Case Description</th>
<th>Reference Dates</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Airways/Sabena, Cm 1155 (1990)</td>
<td></td>
<td>3.30, 3.33</td>
</tr>
<tr>
<td>British Bus plc/Arrowline (Travel) Ltd, Cm 3183 (1996)</td>
<td></td>
<td>3.68, 4.28</td>
</tr>
<tr>
<td>British Sky Broadcasting Group plc/Manchester United plc, Cm 4305 (1999)</td>
<td></td>
<td>4.04</td>
</tr>
<tr>
<td>British United Provident Association/Community Hospitals Group plc and Salomon International LLC/Community Hospitals Group plc, Cm 5003 (2000)</td>
<td></td>
<td>3.29, 9.01</td>
</tr>
<tr>
<td>Bucher Industries AG/Johnston Sweeper Ltd (not yet reported)</td>
<td></td>
<td>15.59</td>
</tr>
<tr>
<td>Capital Radio plc/GWR Group plc (OFT, 22 December 2004)</td>
<td></td>
<td>21.08</td>
</tr>
<tr>
<td>Cargill Incorporated/Cerestar SA, Cm 5521 (2002)</td>
<td></td>
<td>5.38</td>
</tr>
<tr>
<td>Carlson Communications plc/Granada plc, Cm 5952 (2003)</td>
<td></td>
<td>16.28</td>
</tr>
<tr>
<td>Centrica Ltd/Dyneqy Storage Ltd and Dyeneq Onshore Processing, Cm 5885 (2003)</td>
<td>12.08, 12.34–12.37, 16.27, 16.28</td>
<td></td>
</tr>
<tr>
<td>Compass Group plc/Restromana AG/Rail Gourmet Holding AG/Gourmet Nova AG, Cm 5562 (2002)</td>
<td></td>
<td>5.38</td>
</tr>
<tr>
<td>Daily Mail &amp; General Trust/T Bailey Forman Ltd, Cm 2693 (1994)</td>
<td>21.08, 21.58, 21.60</td>
<td></td>
</tr>
<tr>
<td>Deutsche Börse AG/Euronext NV/London Stock Exchange (not yet reported)</td>
<td></td>
<td>15.14</td>
</tr>
<tr>
<td>Drescher Medical AG/Arshields business of Hillenbrand Industries Inc (Competition Commission, 19 May 2004)</td>
<td>3.68, 8.35, 8.53, 15.47, 16.30, 16.44, 16.48</td>
<td></td>
</tr>
<tr>
<td>Eastman Kodak Company/ColourCare Limited Cm 5339 (2001)</td>
<td></td>
<td>4.21</td>
</tr>
<tr>
<td>Elders IXL Ltd/Grand Metropolitan plc, Cm 1227 (1990)</td>
<td>3.14, 3.35, 3.43</td>
<td></td>
</tr>
<tr>
<td>Emap plc/ABI Building Data Ltd (Competition Commission, 26 January 2005)</td>
<td>15.59, 16.23, 16.30, 16.55</td>
<td></td>
</tr>
<tr>
<td>FirstGroup plc: ScotRail Franchise (Competition Commission, 28 June 2004)</td>
<td>3.55, 12.08, 12.29–12.32, 16.30</td>
<td>15.59</td>
</tr>
<tr>
<td>Francisco Partners LP/G International (not yet reported)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Electric Co plc/VSEL plc, Cm 2852 (1995)</td>
<td></td>
<td>1.08</td>
</tr>
<tr>
<td>General Utilities plc/Colne Valley Water Company/Rickmansworth Water Company, Cm 1029 (1990)</td>
<td></td>
<td>22.01</td>
</tr>
<tr>
<td>General Utilities plc/Mid Kent Water Company, Cm 1125 (1990)</td>
<td></td>
<td>22.01</td>
</tr>
<tr>
<td>Government of Kuwait/British Petroleum plc, Cm 477 (1988)</td>
<td>3.29, 3.52</td>
<td></td>
</tr>
<tr>
<td>Group 4 Falck AS/The Wackenhut Corporation, Cm 5624 (2002)</td>
<td></td>
<td>8.53</td>
</tr>
<tr>
<td>Icopal Holdings AES (formerly CAIK)/Icopal, Cm 5089 (2001)</td>
<td>3.53, 3.54, 4.33</td>
<td></td>
</tr>
<tr>
<td>IMS Health Inc/Pharmaceutical Marketing Services Inc, Cm 4261 (1999)</td>
<td></td>
<td>16.27</td>
</tr>
<tr>
<td>Interbrew SA/Bass plc, Cm 5014 (2001)</td>
<td>5.34, 5.38, 16.34</td>
<td></td>
</tr>
<tr>
<td>James Budgett Sugars Ltd/Napier Brown Foods plc (Competition Commission, 15 March 2005)</td>
<td>7.39, 7.51, 8.35, 9.25, 15.59</td>
<td></td>
</tr>
<tr>
<td>Knauf Insulation Limited/Superglass Insulation Limited (Competition Commission, 26 November 2004)</td>
<td>8.27, 12.33</td>
<td></td>
</tr>
<tr>
<td>Ladbrooke Group plc/Coral betting business, Cm 4030 (1998)</td>
<td></td>
<td>14.38</td>
</tr>
<tr>
<td>Linpac Group Limited/McKechnie Paxton Holdings Limited, Cm 5496 (2002)</td>
<td></td>
<td>4.23</td>
</tr>
</tbody>
</table>

Table of Cases

xxvi
Table of Cases

Lloyds TSB Group plc/Abbey National plc, Cm 5208 (2001) ........................................ 16.19, 16.28
Lyonnaise des Eaux SA/Northumbrian Water Group, Cm 2936 (1995) .... 5.49, 5.53, 22.01, 22.07
March UK Ltd/home shopping and delivery businesses of GUS plc, Cm 6102 (2004) ...... 6.10, 7.40,

Mid Kent Holding plc/General Utilities plc/SAUR Water Services plc,
Cm 3514 (1997) ........................................................................................................... 3.50, 3.54, 22.01
Minorco/Consolidated Gold Fields plc, Cm 987 (1989) .............................................. 3.34
Mirror Group plc/Midland Independent Newspapers plc, Cm 3762 (1997) .............. 21.61

National Express Group plc/Scotrail Railways Ltd, Cm 3773 (1997) ...................... 4.28
National Express: Greater Anglia Franchise (Competition Commission, 4 November 2004) .... 3.55, 7.22, 12.07, 12.08, 12.29–12.32


News Communications & Media and Newsquest Ltd/Johnston Press plc/Trinity Mirror plc, Cm 4680 (2000) ...................................................... 21.62
NFU Development Trust Ltd/PMC Ltd (1974–75) HC441 ........................................ 3.06, 3.39
Northcliffe Newspapers Group Limited/Aberdeen Journals Limited, Cm 3174 (1996) ...... 21.16
NTL Communications Corporation/Newcastle United plc, Cm 4411 (1999) .......... 15.69
Nutreco Holding NV/Hydro Seafood GSP Ltd, Cm 5004 (2000) ......................... 15.58

Peninsular and Oriental Steam Navigation Co/European Ferries Group plc, Cm 31 (1986) ........ 3.29
Pleasunormal/Trident Television/Grand Metropolitan, Cmnd 9108 (1983) .............. 3.28, 3.32

Reed International Ltd/Berrows Organisation Ltd, Cmnd 8337 (1981) ..................... 21.08
Rockwool Ltd/Owens-Corning Building Products Cm 4330 (1999) ...................... 3.67


Scottish Radio Holdings plc/GWR Group plc/Vibe Radio Services Ltd/Galaxy Radio Wales and the West Ltd, Cm 5811 (2003) ...................................................... 4.28
SDELI/Goors Brewers Ltd (Competition Commission, 11 March 2005) ................. 3.60
Severn Trent plc/South West Water plc, Cm 3429 (1996) ........................................ 22.01, 22.23
South Yorkshire Transport Ltd acquisitions, Cm 1166 (1990) ................................ 4.25, 4.28
Southern Water plc/Mid Sussex Water Company, Cm 1126 (1990) ................. 22.01
Stagecoach Holdings Ltd/Portsmouth Citybus Ltd, Cm 1130 (1990) .................... 4.28
Stagecoach Holdings plc/Ayrshire Bus Owners (AI Service) Ltd, Cm 3032 (1995) .... 4.28
Stagecoach Holdings plc/Chesterfield Transport 1989, Cm 3086 (1996) ............. 4.28
Stagecoach Holdings plc/Lancaster City Transport, Cm 2423 (1993) ................. 3.08, 3.10
Stagecoach Holdings plc/Mainline Partnership Ltd, Cm 2782 (1995) ................. 3.32, 4.28
Stagecoach Holdings plc/SC Holdings Ltd, Cm 2845 (1995) ......................... 3.32, 4.28
Stora Koppabergs Bergslags AB/Swedish Match NV/The Gillette Company, Cm 1473 (1991) .... 3.10, 3.19, 3.31, 3.54

Sylvan International Ltd/Locker Group, Cm 4883 (2000) ......................................... 15.51, 16.28

Taminco NV/Air Products and Chemicals Inc (Competition Commission, 29 November 2004) 3.13
TR Beckett Ltd/EMAP plc, Cm 623 (1989) ................................................................. 21.08
Trinity International Holdings plc/Thomson Regional Newspapers Limited, Cm 3033 (1995) ... 21.61
Trinity plc/Mirror Group plc, Cm 4393 (1999) ............................................. 21.08, 21.51, 21.57, 21.64, 21.65
Trusthouse Forte plc/Enterprises belonging to Hanson Trust plc, Cm 96 (1987) .... 14.36
Table of Cases

United Newspapers plc/Fleet Holdings plc, Cmnd 9610 (1985) .................................................. 21.60

Vibe Radio Services Ltd/Galaxy Radio Wales and the West Ltd (Competition Commission, 16 May 2003) .......................................................... 3.27, 16.16

Vivendi Water UK plc/First Aqua (JVCo) Ltd, Cm 5681 (2002) ............... 15.08, 22.01, 22.09, 22.20

Wessex Water plc/South West Water plc, Cm 3430 (1996) ............... 22.01, 22.23, 22.31

Western Travel Ltd and G&G Coaches (Leamington) Ltd, Cm 1226 (1990) .................. 4.28

William Cook plc acquisitions, (Cm 1196, 1990) ...................... 3.10

D. EUROPEAN COMMISSION DECISIONS (NUMERICAL)

Case IV/M.180 Steetly/Tarmac (1992) .......................................................... 5.38
Case IV/M.423 Newspaper Publishing (1994) ............................................. 5.53
Case IV/M.580 ABB/Daimler Benz (1995) .................................................. 5.31
Case IV/M.716 Gehe/Lloyds Chemist (1996) .............................................. 5.34, 5.38
Case IV/M.1030 Redland/Lafarge (1997) ................................................. 5.32, 5.38
Case IV/M.1060 Vendex/KBB (1998) ......................................................... 5.33
Case IV/M.1346 EDF/London Electricity (1999) ......................................... 5.38
Case IV/M.1383 Exxon/Mobil [2004] OJ L103/1 ........................................ 5.32
Case IV/M.1464 Total/Petrofina II (1999) .................................................... 5.30
Case IV/M.1684 Carrefour/Promodes (2000) ............................................. 5.32
Case COMP/M.1779 Anglo American/Tarmac (2000) ................................ 5.38
Case COMP/M.1827 Hanson/Pioneer (2000) ........................................... 5.38
Case COMP/M.2044 Interbrew/Bass United Kingdom (2000) ............... 5.29, 5.34, 5.38
Case COMP/M.2154 C3D/Rhone/Go-Ahead (2000) ................................ 5.38
Case COMP/M.2256 Philips/Agilent Healthcare Solutions (2001) ............ 12.43
Case COMP/M.2389 Shell/DEA [2003] OJ L15/35 ........................................ 5.29
Case COMP/M.2446 Giovia Ltd/Connex South Central Ltd (2001) .......... 5.26, 5.38
Case COMP/M.2502 Cargill/Cerestar (2001) ............................................ 5.38
Case COMP/M.2533 BP/E.ON [2002] OJ L276/31 ....................................... 5.29
Case COMP/M.2621 SEB/Moulinex (2002) .............................................. 5.33
Case COMP/M.2639 Compass/Restoramat/Rail Gourmet/Gourmet Noss (2002) .............................................................. 5.38
Case COMP/M.2698 Promatech/Sulzer (2002) ........................................ 5.40
Case COMP/M.2706 P&O Princess/Carnival (2002) ................................ 5.34
Case COMP/M.2738 GEES/Union (2002) .............................................. 5.40, 5.47
Case COMP/M.2760 Nehlsen/Rethmann/SWB/Bremerhaven Entsorgungsgesellschaft (2002) .......................................................... 5.30
Case COMP/M.2898 Le Roy Merlin/Brico (2002) ...................................... 5.32
Case COMP/M.3083 GE/Instrumentarium [2004] OJ L109/1 ..................... 12.43
Case COMP/M.3136 GEAGFA NDT (2003) ............................................ 5.40
Case COMP/M.3227 Paperlux Ltd/Paper Merchancing Division of Buhmann NV (2003) .... 5.38
Case COMP/M.3273 FirstGroup plc/Keolis/TransPennine Express passenger rail franchise (2003) .......................................................... 5.38

xxviii
## Table of Cases

Case COMP/M.3535 *Van Drie/Schill* (2005) ........................................ 5.22  
Case COMP/M.3669 *Blackstone/NHP* (2005) ....................................... 5.16, 5.38

### E. EUROPEAN COMMISSION DECISIONS (ALPHABETICAL)

*ABB/Daimler Benz* Case IV/M.580 (1995) .................................................. 5.31  
*Anglo American/Tarmac* Case COMP/M.1779 (2000) .......................... 5.38  
*Arla Foods/Express Dairies* Case COMP/M.3130 (2003) ....................... 5.26, 5.38

*Blackstone/NHP* Case COMP/M.3669 (2005) ......................................... 5.16, 5.38  
*BP/E.ON* Case COMP/M.2533 [2002] OJ L276/31 ................................. 5.29

*C3D/Rhone/Go-Ahead* Case COMP/M.2154 (2000) ............................... 5.38  
*Cargill/Cerestar* Case COMP/M.2502 (2001) ......................................... 5.38  
*Carrefour/Promodes* Case IV/M.1684 (2000) ........................................ 5.32  
*Compass/Restorama/Rail Gourmet/Gourmet Nova* Case COMP/M.2639 (2002) .................................................. 5.38


*EDF/London Electricity* Case IV/M.1346 (1999) ..................................... 5.38  
*Exxon/Mobil* Case IV/M.1383 [2004] OJ L103/1 .................................... 5.32

*FirstGroup plc/Keolis/TransPennine Express passenger rail franchise*  
Case COMP/M.3273 (2003) ................................................................. 5.38

*GE/AGFA NDT* Case COMP/M.3136 (2003) .......................................... 5.40  
*GE/Instrumentarium* Case COMP/M.3083 [2004] OJ L109/1 .................... 5.43  
*GEES/Unison* Case COMP/M.2738 (2002) ......................................... 5.40, 5.47

*GebeLloyd Chemit* Case IV/M.716 (1996) .......................................... 5.34, 5.38  
*Giovia Ltd/Connex South Central Ltd* Case COMP/M.2446 (2001) ........... 5.26, 5.38


*Hanson/Pioneer* Case COMP/M.1827 (2000) ........................................ 5.38

*Interbrew/Bass United Kingdom* Case COMP/M.2044 (2000) .......... 5.29, 5.34, 5.38

*Körber/Winkler + Dünnhieber* Case COMP/M.3589 (2004) ................. 5.22

*Le Roy Merlin/Brico* Case COMP/M.2898 (2002) .................................. 5.32


*Mannesmann/Fuchs* Case COMP/M.3582 (2004) ................................... 5.22

*Nebelen/Reithmann/SWB/Bremerhaven Entsorungsgesellschaft*  
Case COMP/M.2760 (2002) ................................................................. 5.30

xxix
## Table of Cases

Newspaper Publishing Case IV/M.423 (1994) ................................................................. 5.53

P&O Princess/Carnival Case COMP/M.2706 (2002) ....................................................... 5.34
Paperlinx Ltd/Paper Merchancing Division of Buhrmann NV Case COMP/M.3227 (2003) ........................................... 5.38
Philips/Agilent Healthcare Solutions Case COMP/M.2256 (2001) .................................... 12.43
Promatech/Sulzer Case COMP/M.2698 (2002) .............................................................. 5.40

Redland/Lafarge Case IV/M.1030 (1997) ........................................................................ 5.32, 5.38

SEB/Moulinex Case COMP/M.2621 (2002) ................................................................. 5.33
Seric Group plc/Nedrailways: Northern Passenger Rail Franchise Case COMP/M.3554 (2004) ................................. 5.38
Shell/DEA Case COMP/M.2389 [2003] OJ L15/35 .......................................................... 5.29
Steetly/Tarmac Case IV/M.180 (1992) ........................................................................ 5.38

Total/Petrofina II Case IV/M.1464 (1999) ................................................................. 5.30

Van Drie/Schil Case COMP/M.3535 (2005) ................................................................. 5.22
Vendex/KBB Case IV/M.1060 (1998) ........................................................................ 5.33
Voestalpine AG/Nedcom Group NV Case COMP/M.3483 (2004) ................................. 5.22

F. UNITED KINGDOM CASES

Education Secretary v Tameside BC [1977] AC 1014 ........................................................ 17.15


Hasbro UK Ltd v Director General of Fair Trading [2003] CAT 1 ................................. 17.31


Interbrew SA and Interbrew UK Holdings Ltd v Competition Commission and the Secretary of State for Trade and Industry [2001] UKCLR 954 .............................. 14.37, 17.04

Locabail v Bayfield Properties and ors [2000] 1 All ER 65 .............................................. 17.16


Mid Kent Holdings plc v General Utilities plc [1996] 3 All ER 132 .................................. 16.71


XXX
### Table of Cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Year</th>
<th>Relevant Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Padfield v Minister for Agriculture</td>
<td>1968</td>
<td>14.51, 17.12</td>
</tr>
<tr>
<td>R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 2)</td>
<td>1999</td>
<td>17.16</td>
</tr>
<tr>
<td>R v Gough</td>
<td>1993</td>
<td>17.16</td>
</tr>
<tr>
<td>R v Minister for the Civil Service, ex parte Council of Civil Service Unions</td>
<td>1985</td>
<td>15.72, 17.09, 17.24</td>
</tr>
<tr>
<td>R v Monopolies and Mergers Commission, ex parte Air Europe Ltd</td>
<td>1988</td>
<td>17.04</td>
</tr>
<tr>
<td>R v Monopolies and Mergers Commission, ex parte Argyll Group plc</td>
<td>1986</td>
<td>17.04</td>
</tr>
<tr>
<td>R v Monopolies and Mergers Commission, ex parte Elders IXL Ltd</td>
<td>1987</td>
<td>15.69, 17.04</td>
</tr>
<tr>
<td>R v Monopolies and Mergers Commission, ex parte Matthew Brown plc</td>
<td>1987</td>
<td>17.04</td>
</tr>
<tr>
<td>R v Monopolies and Mergers Commission, ex parte Service Corporation International plc</td>
<td>1996</td>
<td>4.02, 4.24–4.28, 17.04</td>
</tr>
<tr>
<td>R v Monopolies and Mergers Commission, ex parte South Yorkshire Transport Ltd</td>
<td>1993</td>
<td>17.04</td>
</tr>
<tr>
<td>R v Secretary of State for the Environment, ex parte Powis</td>
<td>1981</td>
<td>17.39</td>
</tr>
<tr>
<td>R v Secretary of State for Trade and Industry, ex parte Airlines of Britain Holdings plc</td>
<td>1993</td>
<td>17.04</td>
</tr>
<tr>
<td>R v Secretary of State for Trade and Industry, ex parte Anderson Strathclyde plc</td>
<td>1983</td>
<td>17.04</td>
</tr>
<tr>
<td>R v Secretary of State for Trade and Industry, ex parte Thomson Holidays plc</td>
<td>2000</td>
<td>16.44</td>
</tr>
<tr>
<td>R v Somerset CC, ex p. Dixon</td>
<td>1997</td>
<td>17.35</td>
</tr>
<tr>
<td>R (On the application of Kides) v South Cambridgeshire District Council</td>
<td>2001</td>
<td>17.35</td>
</tr>
<tr>
<td>R (On the application of Lynch) v General Dental Council</td>
<td>2003</td>
<td>17.39</td>
</tr>
<tr>
<td>Re Medicaments and Related Classes of Goods (No 2)</td>
<td>2001</td>
<td>17.16</td>
</tr>
<tr>
<td>Umbro Holdings Ltd v Office of Fair Trading</td>
<td>2003</td>
<td>14.07</td>
</tr>
</tbody>
</table>

### G. European Cases

#### (1) Pre-1989

Table of Cases

(2) Court of First Instance (Post-1989)

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Case Name</th>
<th>Year/Location</th>
<th>ECR/Other References</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>T-22/97</td>
<td>Kesko Oy v Commission</td>
<td>[1999]</td>
<td>ECR II-3775</td>
<td>5.41</td>
</tr>
<tr>
<td>T-342/99</td>
<td>Airtours v Commission</td>
<td>[2002]</td>
<td>ECR II-2585; 5 CMLR 7</td>
<td>6.05</td>
</tr>
<tr>
<td>T-251/00</td>
<td>Lagardère v Commission</td>
<td>[2002]</td>
<td>ECR II-4825, 4 CMLR 20</td>
<td>3.63</td>
</tr>
<tr>
<td>T-119/02</td>
<td>Royal Philips Electronics v Commission</td>
<td>[2003]</td>
<td>5 CMLR 53</td>
<td>5.15, 5.25, 5.29</td>
</tr>
</tbody>
</table>
## TABLE OF LEGISLATION

<table>
<thead>
<tr>
<th>A. United Kingdom Primary Legislation</th>
<th>D. European Community Secondary Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. United Kingdom Secondary Legislation</td>
<td>(1) Regulations</td>
</tr>
<tr>
<td>C. European Community Treaty</td>
<td>(2) Directives</td>
</tr>
<tr>
<td>E. European Commission Notices</td>
<td></td>
</tr>
</tbody>
</table>

### A. UNITED KINGDOM PRIMARY LEGISLATION

**Communications Act 2003**
- s 319...
- s 373...
- s 374...
- s 375...
- s 375(2)...
- s 376(1)...
- s 376(2)...
- s 377...
- s 378...
- s 379...
- Sch 14...

**Companies Act 1985**
- s 736...

**Companies Act 1989**
- s 146...

**Competition Act 1998**
- s 3(1)(a)...
- s 19(1)(a)...
- s 60...
- Sch 1...
- Sch 7...

**Enterprise Act 2002**
- s 1...
- s 2...
- s 5...
- s 12...
- s 12(2)...
- s 22...
- s 22(1)...
- s 22(2)...
- s 22(3)...
- s 23...

xxxiii
### Table of Legislation

<table>
<thead>
<tr>
<th>Section</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>s 23(1)</td>
<td>4.05, 4.39</td>
</tr>
<tr>
<td>s 23(2)</td>
<td>4.18</td>
</tr>
<tr>
<td>s 23(3)</td>
<td>4.17, 4.24, 4.29, 4.39</td>
</tr>
<tr>
<td>s 23(4)</td>
<td>4.17, 4.24, 4.39</td>
</tr>
<tr>
<td>s 23(5)</td>
<td>4.23</td>
</tr>
<tr>
<td>s 23(6)</td>
<td>4.23</td>
</tr>
<tr>
<td>s 23(7)</td>
<td>4.23</td>
</tr>
<tr>
<td>s 23(8)</td>
<td></td>
</tr>
</tbody>
</table>
### Table of Legislation

<table>
<thead>
<tr>
<th>Section</th>
<th>Notes</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>s 35(1)*</td>
<td></td>
<td>22.04, 22.14</td>
</tr>
<tr>
<td>s 35(5)*</td>
<td></td>
<td>22.26</td>
</tr>
<tr>
<td>s 35(6)*</td>
<td></td>
<td>22.28</td>
</tr>
<tr>
<td>s 35(7)*</td>
<td></td>
<td>22.30</td>
</tr>
<tr>
<td>s 36</td>
<td></td>
<td>1.18, 15.26</td>
</tr>
<tr>
<td>s 36(2)</td>
<td></td>
<td>16.43, 16.44</td>
</tr>
<tr>
<td>s 36(5)</td>
<td></td>
<td>1.18</td>
</tr>
<tr>
<td>s 36(6)</td>
<td></td>
<td>1.18</td>
</tr>
<tr>
<td>s 36(1)*</td>
<td></td>
<td>22.04, 22.14</td>
</tr>
<tr>
<td>s 36(4)</td>
<td></td>
<td>22.26</td>
</tr>
<tr>
<td>s 36(5)</td>
<td></td>
<td>22.28</td>
</tr>
<tr>
<td>s 36(6)</td>
<td></td>
<td>22.30</td>
</tr>
<tr>
<td>s 37</td>
<td></td>
<td>1.18</td>
</tr>
<tr>
<td>s 37(1)</td>
<td></td>
<td>15.69</td>
</tr>
<tr>
<td>s 38</td>
<td></td>
<td>1.18, 15.50, 16.50</td>
</tr>
<tr>
<td>s 38(2)</td>
<td></td>
<td>15.50</td>
</tr>
<tr>
<td>s 38(3)</td>
<td></td>
<td>15.13</td>
</tr>
<tr>
<td>s 39</td>
<td></td>
<td>1.18</td>
</tr>
<tr>
<td>s 39(1)</td>
<td></td>
<td>15.18</td>
</tr>
<tr>
<td>s 39(2)</td>
<td></td>
<td>5.37</td>
</tr>
<tr>
<td>s 39(3)</td>
<td></td>
<td>15.20</td>
</tr>
<tr>
<td>s 39(4)</td>
<td></td>
<td>15.21</td>
</tr>
<tr>
<td>s 39(5)</td>
<td></td>
<td>15.21</td>
</tr>
<tr>
<td>s 39(6)</td>
<td></td>
<td>15.21</td>
</tr>
<tr>
<td>s 39(7)</td>
<td></td>
<td>15.21</td>
</tr>
<tr>
<td>s 39(8)</td>
<td></td>
<td>15.21</td>
</tr>
<tr>
<td>s 40</td>
<td></td>
<td>1.18</td>
</tr>
<tr>
<td>s 40(2)</td>
<td></td>
<td>5.37</td>
</tr>
<tr>
<td>s 40(3)</td>
<td></td>
<td>15.20</td>
</tr>
<tr>
<td>s 40(4)</td>
<td></td>
<td>15.20</td>
</tr>
<tr>
<td>s 40(8)</td>
<td></td>
<td>15.21</td>
</tr>
<tr>
<td>s 40(9)</td>
<td></td>
<td>15.21</td>
</tr>
<tr>
<td>s 41</td>
<td></td>
<td>1.18, 6.15, 16.02</td>
</tr>
<tr>
<td>s 41(3)</td>
<td></td>
<td>15.63</td>
</tr>
<tr>
<td>s 41(4)</td>
<td></td>
<td>16.03, 16.44</td>
</tr>
<tr>
<td>s 41(5)</td>
<td></td>
<td>6.14, 16.03, 16.44</td>
</tr>
<tr>
<td>s 42</td>
<td></td>
<td>20.01</td>
</tr>
<tr>
<td>s 42(1)</td>
<td></td>
<td>20.06</td>
</tr>
<tr>
<td>s 42(2)</td>
<td></td>
<td>20.06, 21.25</td>
</tr>
<tr>
<td>s 42(3)</td>
<td></td>
<td>19.04, 20.03</td>
</tr>
<tr>
<td>s 42(4)</td>
<td></td>
<td>20.06</td>
</tr>
<tr>
<td>s 42(7)</td>
<td></td>
<td>20.03</td>
</tr>
<tr>
<td>s 43(1)</td>
<td></td>
<td>20.06</td>
</tr>
<tr>
<td>s 44</td>
<td></td>
<td>20.07, 21.32</td>
</tr>
<tr>
<td>s 44(2)</td>
<td></td>
<td>20.07</td>
</tr>
<tr>
<td>s 44(3)</td>
<td></td>
<td>20.07, 21.29</td>
</tr>
<tr>
<td>s 44(5A)</td>
<td></td>
<td>21.31</td>
</tr>
<tr>
<td>s 44(6)</td>
<td></td>
<td>20.07</td>
</tr>
<tr>
<td>s 44(9)</td>
<td></td>
<td>21.17</td>
</tr>
<tr>
<td>s 44(10)</td>
<td></td>
<td>21.15</td>
</tr>
</tbody>
</table>

* As substituted by the Water Mergers (Modification of Enactments) Regulations 2004 SI 2004/3202
### Table of Legislation

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>s 44(11)</td>
<td>21.14</td>
</tr>
<tr>
<td>s 44A</td>
<td>21.32</td>
</tr>
<tr>
<td>s 44A(2)</td>
<td>21.29</td>
</tr>
<tr>
<td>s 45</td>
<td>20.08, 21.34</td>
</tr>
<tr>
<td>s 45(2)</td>
<td>20.08</td>
</tr>
<tr>
<td>s 45(3)</td>
<td>20.08</td>
</tr>
<tr>
<td>s 45(4)</td>
<td>20.08</td>
</tr>
<tr>
<td>s 45(6)</td>
<td>21.34</td>
</tr>
<tr>
<td>s 46(1)</td>
<td>5.45</td>
</tr>
<tr>
<td>s 46(2)</td>
<td>20.07, 20.08</td>
</tr>
<tr>
<td>s 46(3)</td>
<td>20.03</td>
</tr>
<tr>
<td>s 47(1)</td>
<td>20.10</td>
</tr>
<tr>
<td>s 47(2)</td>
<td>20.10</td>
</tr>
<tr>
<td>s 47(4)</td>
<td>20.10</td>
</tr>
<tr>
<td>s 47(5)</td>
<td>20.10</td>
</tr>
<tr>
<td>s 47(6)</td>
<td>20.10</td>
</tr>
<tr>
<td>s 47(7)</td>
<td>20.10</td>
</tr>
<tr>
<td>s 47(8)</td>
<td>20.10</td>
</tr>
<tr>
<td>s 47(9)</td>
<td>20.10</td>
</tr>
<tr>
<td>s 50(2A)</td>
<td>21.36</td>
</tr>
<tr>
<td>s 51</td>
<td>21.36</td>
</tr>
<tr>
<td>s 51(1)</td>
<td>20.10</td>
</tr>
<tr>
<td>s 51(2)</td>
<td>5.37</td>
</tr>
<tr>
<td>s 51(3)</td>
<td>20.10</td>
</tr>
<tr>
<td>s 52</td>
<td>20.10</td>
</tr>
<tr>
<td>s 54(2)</td>
<td>5.37</td>
</tr>
<tr>
<td>s 54(4)</td>
<td>20.11</td>
</tr>
<tr>
<td>s 54(5)</td>
<td>20.11</td>
</tr>
<tr>
<td>s 54(7)</td>
<td>20.11, 21.37</td>
</tr>
<tr>
<td>s 55</td>
<td>21.37</td>
</tr>
<tr>
<td>s 55(2)</td>
<td>20.11</td>
</tr>
<tr>
<td>s 56</td>
<td>21.33</td>
</tr>
<tr>
<td>s 56(1)</td>
<td>20.09</td>
</tr>
<tr>
<td>s 56(6)</td>
<td>20.11</td>
</tr>
<tr>
<td>s 57</td>
<td>21.18</td>
</tr>
<tr>
<td>s 57(1)</td>
<td>20.06</td>
</tr>
<tr>
<td>s 57(2)</td>
<td>20.03</td>
</tr>
<tr>
<td>s 58</td>
<td>19.06, 20.02, 21.04, 21.29</td>
</tr>
<tr>
<td>s 58(1)</td>
<td>20.02</td>
</tr>
<tr>
<td>s 58(2)</td>
<td>20.02</td>
</tr>
<tr>
<td>s 58(2C)</td>
<td></td>
</tr>
<tr>
<td>s 58(3)</td>
<td>19.04, 20.03</td>
</tr>
<tr>
<td>s 58A</td>
<td>21.14, 21.67, 21.68</td>
</tr>
<tr>
<td>s 58A(1)</td>
<td>21.14</td>
</tr>
<tr>
<td>s 58A(3)</td>
<td>21.14</td>
</tr>
<tr>
<td>s 59</td>
<td>4.01, 21.11</td>
</tr>
<tr>
<td>s 59(1)</td>
<td>20.01</td>
</tr>
<tr>
<td>s 59(2)</td>
<td>20.13, 21.25</td>
</tr>
<tr>
<td>s 59(3)</td>
<td>20.13</td>
</tr>
<tr>
<td>s 59(3C)</td>
<td>21.13</td>
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<td>s 59(3D)</td>
<td>21.13</td>
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</table>
**Table of Legislation**

<table>
<thead>
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<th>Section</th>
<th>Reference</th>
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<td>s 59(4)</td>
<td>20.13</td>
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<td>s 59(8)</td>
<td>20.14</td>
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<td>s 59(9)</td>
<td>21.68</td>
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<td>s 61</td>
<td>al</td>
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<td>s 63</td>
<td>20.15</td>
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<td>s 65(2A)</td>
<td>21.36</td>
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<td>s 66</td>
<td>21.37</td>
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<td>s 67</td>
<td>5.07, 5.51, 5.53</td>
</tr>
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<td>s 69</td>
<td>21.03</td>
</tr>
<tr>
<td>s 70</td>
<td>22.02</td>
</tr>
<tr>
<td>s 71</td>
<td>14.34, 16.45</td>
</tr>
<tr>
<td>s 71(2)</td>
<td>14.58</td>
</tr>
<tr>
<td>s 71(3)</td>
<td>14.59</td>
</tr>
<tr>
<td>s 71(4)</td>
<td>14.60</td>
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<td>14.60</td>
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<td>s 71(6)</td>
<td>14.60, 15.59</td>
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<td>s 71(8)</td>
<td>14.60, 15.59</td>
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<td>14.60</td>
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</tr>
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<td>16.02, 16.31</td>
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<td>s 73(4)</td>
<td>16.03, 16.32</td>
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<tr>
<td>s 75</td>
<td>16.42, 16.69</td>
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<td>s 75(4)</td>
<td>16.42</td>
</tr>
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<td>s 77</td>
<td>15.57, 15.62</td>
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<td>s 77(2)</td>
<td>15.57, 16.45</td>
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<td>15.57</td>
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<td>s 78</td>
<td>15.58, 15.62, 16.45</td>
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<td>15.58</td>
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<td>s 80(10)</td>
<td>15.55, 15.60</td>
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<td>s 81(10)</td>
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Table of Legislation

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<td>s 82</td>
<td>15.04, 16.02, 16.44, 16.52</td>
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<td>s 83</td>
<td>16.69</td>
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<td>16.52</td>
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<td>s 86</td>
<td>14.58</td>
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<td>s 92</td>
<td>16.57, 16.68</td>
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<td>15.56, 16.56</td>
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<td>16.42, 16.52, 16.71</td>
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<td>s 94(2)</td>
<td>16.71</td>
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<td>15.62, 16.57</td>
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<td>16.52</td>
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<td>16.71</td>
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<td>16.51</td>
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<td>14.25</td>
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<td>14.26, 21.32</td>
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<td>5.45, 14.26</td>
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<td>14.25</td>
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<td>14.73</td>
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<td>14.25, 14.28</td>
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<td>14.28</td>
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<td>Section</td>
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<td>s 106(3)</td>
<td>................................................................. 15.05</td>
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<td>................................................................. 21.09</td>
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<td>................................................................. 21.38</td>
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<td>................................................................. 15.21, 15.35, 15.64</td>
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<td>................................................................. 15.64, 17.45</td>
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<td>s 111</td>
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<td>................................................................. 14.33, 14.67, 15.64</td>
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<td>................................................................. 21.18</td>
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<td>................................................................. 1.21, 14.108, 15.71, 17.03, 17.05, 17.06–17.28, 17.29, 17.31, 17.34, 17.36, 20.12, 21.39</td>
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<td>................................................................. 14.108, 17.03, 17.08</td>
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<td>................................................................. 17.44</td>
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<td>s 121</td>
<td>................................................................. 14.24, 14.83</td>
</tr>
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<td>................................................................. 4.18</td>
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<td>................................................................. 20.03</td>
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<td>s 127</td>
<td>................................................................. 3.03</td>
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<td>................................................................. 3.21, 3.53</td>
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<td>................................................................. 3.03, 3.23</td>
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<td>................................................................. 3.05, 3.06, 3.23</td>
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<td>s 176</td>
<td>................................................................. 15.35</td>
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<td>s 187</td>
<td>................................................................. 15.05, 15.09</td>
</tr>
<tr>
<td>s 187(3)</td>
<td>................................................................. 15.05</td>
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<td>s 188</td>
<td>................................................................. 9.01</td>
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xxxix
### Table of Legislation

<table>
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<td>14.79</td>
</tr>
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<td>s 242</td>
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<td>3.37</td>
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<td>15.58</td>
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<td>1.09, 6.01</td>
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<td>Monopolies and Restrictive Practices (Inquiry and Control) Act 1948</td>
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Table of Legislation

Supreme Court Act 1981
  s 31..................................................................................................................17.01
  s 31(3) .......................................................... .......................... .......................... .......................... 17.35
  s 31(6) .................................................................................................... 17.31
Water Act 2003
  Sch 4 ........................................................................................................... 22.19
Water Industry Act 1991
  s 2(2) ........................................................................................................... 22.16
  s 2(3) ........................................................................................................... 22.16
  s 6 .................................................................................................................. 22.05
  s 17 ........................................................................................................... 22.01
  s 32 ........................................................................................................... 22.01, 22.02, 22.04, 22.05, 22.12
  s 35 ........................................................................................................... 22.01, 22.02
  s 35(1) .................................................................................................... 22.06
  s 35(4) .................................................................................................... 22.06
  s 35(7) .................................................................................................... 22.06
  s 34 ........................................................................................................... 22.01, 22.02
  s 35 ........................................................................................................... 22.01, 22.02
  s 35(1) .................................................................................................... 22.05
  s 35(2) .................................................................................................... 22.05
  s 35(4) .................................................................................................... 22.05
  s 36 ........................................................................................................... 22.02
  Sch 4ZA ........................................................................................................... 22.02, 22.04, 22.05, 22.10, 22.13, 22.26

B. UNITED KINGDOM SECONDARY LEGISLATION

  Reg 2 ........................................................................................................... 5.01
Mergers (Fees) Regulations 1990 SI 1990/1660 ...................................................................... 14.85
EC Merger Control (Distinct Market Investigations) Regulations 1990, SI 1990/1715 (as amended) .................................................................................. 5.25
  Part 35 .................................................................................................. 17.39
  Part 54 .................................................................................................. 17.01, 17.05, 17.31, 17.35
Enterprise Act 2002 (Commencement No.2, Transitional and Transitory Provisions)
  Order 2003, SI 2003/766 .................................................................................. 1.14, 17.01
  Reg 3 ...................................................................................................... 14.25
  Reg 7 ...................................................................................................... 14.29
Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003 SI 2003/1370
  Reg 2 ...................................................................................................... 4.06, 14.24, 14.83–14.84
  Reg 3 ...................................................................................................... 4.10
  Reg 11 .................................................................................................... 22.12
  Sch ........................................................................................................... 4.07, 4.10
  Sch ........................................................................................................... 4.07, 4.09, 4.12, 4.13
Competition Appeal Tribunal Rules 2003 SI 2003/1372 ........................................................................................................... 17.05, 17.29
  Rule 8 ...................................................................................................... 17.31
  Rule 11 .................................................................................................... 17.32
  Rule 18 .................................................................................................... 17.36
  Rule 26 .................................................................................................... 17.31
  Rule 55 .................................................................................................... 17.43
  Rule 61 .................................................................................................... 17.41
Enterprise Act 2002 (Commencement No.3, Transitional and Transitory Provisions
and Savings) Order 2003, SI 2003/1397 ................................................................ 1.02
### Table of Legislation

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 SI 2003/1592</td>
<td>5.51</td>
</tr>
<tr>
<td>The Office of Communications Act 2002 (Commencement No.3) and Communications</td>
<td></td>
</tr>
<tr>
<td>Act 2003 (Commencement No.2) Order 2003, SI 2003/3142</td>
<td>21.02</td>
</tr>
<tr>
<td>Water Mergers (Modification of Enactments) Regulations 2004 SI 2004/3202</td>
<td></td>
</tr>
<tr>
<td>The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 SI 2003/1592</td>
<td>5.51</td>
</tr>
<tr>
<td>Water Mergers (Determination of Turnover) Regulations 2004, SI 2004/3206</td>
<td>22.06</td>
</tr>
</tbody>
</table>

### C. EUROPEAN COMMUNITY TREATY

<table>
<thead>
<tr>
<th>Article</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art 296</td>
<td>2.07, 5.07, 5.48, 5.50, 20.02</td>
</tr>
<tr>
<td>Art 87</td>
<td>4.07</td>
</tr>
<tr>
<td>Art 82</td>
<td>3.37, 3.61, 5.26, 5.41</td>
</tr>
<tr>
<td>Art 81</td>
<td>3.61, 3.63, 5.41</td>
</tr>
<tr>
<td>Art 30</td>
<td>5.01, 22.07</td>
</tr>
<tr>
<td>Art 8</td>
<td>2.06, 5.01</td>
</tr>
<tr>
<td>Art 1(2)</td>
<td>2.06, 5.01, 5.02</td>
</tr>
<tr>
<td>Art 1(3)</td>
<td>6.03</td>
</tr>
<tr>
<td>Art 1(4)</td>
<td>5.03</td>
</tr>
<tr>
<td>Art 3</td>
<td>5.03</td>
</tr>
<tr>
<td>Art 4(4)</td>
<td>5.01, 22.07</td>
</tr>
<tr>
<td>Art 4(5)</td>
<td>2.07, 5.04, 5.11, 5.12–5.16, 5.19</td>
</tr>
<tr>
<td>Art 6(1)</td>
<td>18.18</td>
</tr>
<tr>
<td>Art 8(2)</td>
<td>5.33</td>
</tr>
<tr>
<td>Art 9</td>
<td>2.07, 5.02, 5.04, 5.13, 5.16, 5.21, 5.23–5.38, 5.41, 14.37, 16.34, 18.18, 18.33</td>
</tr>
<tr>
<td>Art 9(2)</td>
<td>5.24, 5.26, 5.35</td>
</tr>
<tr>
<td>Art 9(3)</td>
<td>5.25, 5.29</td>
</tr>
<tr>
<td>Art 9(4)</td>
<td>5.35</td>
</tr>
</tbody>
</table>

### D. EUROPEAN COMMUNITY SECONDARY LEGISLATION

<table>
<thead>
<tr>
<th>(1) Regulations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Art 1(3)</td>
<td>5.03</td>
</tr>
<tr>
<td>Art 1(4)</td>
<td>5.03</td>
</tr>
<tr>
<td>Art 9(10)</td>
<td>5.03</td>
</tr>
<tr>
<td>Recital 11</td>
<td>5.03</td>
</tr>
<tr>
<td>Recital 12</td>
<td>5.39</td>
</tr>
<tr>
<td>Recital 14</td>
<td>5.06</td>
</tr>
<tr>
<td>Recital 15</td>
<td>5.23, 5.39</td>
</tr>
<tr>
<td>Recital 16</td>
<td>5.09</td>
</tr>
<tr>
<td>Recital 19</td>
<td>5.48</td>
</tr>
<tr>
<td>Recital 21</td>
<td>3.63</td>
</tr>
<tr>
<td>Art 1</td>
<td>22.07</td>
</tr>
<tr>
<td>Art 1(2)</td>
<td>2.06, 5.01</td>
</tr>
<tr>
<td>Art 1(3)</td>
<td>2.06, 5.01, 5.02</td>
</tr>
<tr>
<td>Art 2(3)</td>
<td>6.03</td>
</tr>
<tr>
<td>Art 3</td>
<td>5.01, 22.07</td>
</tr>
<tr>
<td>Art 4(4)</td>
<td>2.07, 5.04, 5.11, 5.12–5.16, 5.19</td>
</tr>
<tr>
<td>Art 4(5)</td>
<td>2.07, 5.05, 5.11, 5.17–5.22, 5.47, 18.18</td>
</tr>
<tr>
<td>Art 6(1)</td>
<td>18.33</td>
</tr>
<tr>
<td>Art 8(2)</td>
<td>5.33</td>
</tr>
<tr>
<td>Art 9</td>
<td>2.07, 5.02, 5.04, 5.13, 5.16, 5.21, 5.23–5.38, 5.41, 14.37, 16.34, 18.18, 18.33</td>
</tr>
<tr>
<td>Art 9(2)</td>
<td>5.24, 5.26, 5.35</td>
</tr>
<tr>
<td>Art 9(3)</td>
<td>5.25, 5.29</td>
</tr>
<tr>
<td>Art 9(4)</td>
<td>5.35</td>
</tr>
</tbody>
</table>
Table of Legislation

Art 9(6) ..............................................................5.36
Art 9(9) ................................................................5.25, 5.27
Art 10 ..................................................................5.37
Art 10(3) ............................................................15.22, 15.24
Art 11(6) ..................................................................5.25
Art 14(1) ............................................................5.11, 5.14
Art 17 ..................................................................5.06
Art 19(1) ..................................................................5.06
Art 19(2) ..................................................................5.06, 5.36
Art 21 .......................................................................4.40, 22.07
Art 21(3) ............................................................2.01, 2.06, 5.01
Art 21(4) ...........................................................1.19, 2.07, 5.07, 5.48, 5.49, 5.50, 5.51, 18.18, 20.01, 20.02, 22.07, 22.25
Art 22 .......................................................................2.07, 4.38, 5.02, 5.05, 5.39–5.47
Art 22(1) ..................................................................5.41
Art 22(2) ..................................................................5.44
Art 22(3) ..................................................................5.45, 5.46, 14.26
Art 22(4) ..................................................................5.47
Art 22(5) ..................................................................5.40
Art 6(1) .......................................................................5.11

(2) Directives

Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (1973) OJ L228/3 ........................................................................................................4.13
Annex ........................................................................4.13
Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions (2000) OJ L126/1
Art 1 ........................................................................4.12
Art 11 ........................................................................4.12
Art 2 ........................................................................4.13

E. EUROPEAN COMMISSION NOTICES

Commission Notice on the definition of the relevant market for the purposes of Community competition law [1997] OJ C372/5 ........................................................................7.05
Commission Notice on the Assessment of Horizontal Mergers Under the Council Regulation on the Control of Concentrations Between Undertakings [2004] OJ C31/3 ........................................................................5.03
Commission Notice on the notion of effect on trade concept contained in Articles 81 and 82 of the Treaty [2004] OJ C101/81 ........................................................................5.41
<table>
<thead>
<tr>
<th>Table of Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission Notice on case referral in respect of concentrations [2005] OJ C56/2</td>
</tr>
<tr>
<td>Commission Notice on restrictions directly related and necessary to concentrations [2005] OJ C56/24</td>
</tr>
</tbody>
</table>