

## NOTE ON THE COMPETITION APPEALS TRIBUNAL JURISDICTION

The Tribunal has a specialised but increasingly wide jurisdiction which covers the whole of the United Kingdom. The jurisdictions include:

- a) appeals from decisions taken by the Office of Fair Trading (OFT) (or other regulators in sectors such as telecommunications, gas, electricity, water and railways) in the application of the Chapter I and Chapter II prohibitions imposed by the Competition Act 1998. Those prohibitions, modelled on Articles 81 and 82 of the EC Treaty, prohibit restrictive agreements and abuse of dominant position respectively. Penalties of up to 10% of turnover may be imposed. Companies against whom infringement decisions have been taken may appeal to the Tribunal under s.46 of the Act. Under s.47, aggrieved third parties have a right of appeal (for example where the OFT has decided that there is no infringement). By virtue of section 60 of the 1998 Act, the principles applicable are those of EC competition law. The Tribunal has a full jurisdiction to determine the appeal on the merits, making such order as it sees fit: see Sch.8, para. 3. In addition the Tribunal has jurisdiction to grant interim measures, and to hear appeals from refusals by the OFT to grant interim measures.

Details of the judgments and decisions delivered so far (prior to 1 April 2003, by the CCAT) are to be found on the Tribunal's website: [www.catribunal.org.uk](http://www.catribunal.org.uk).

- b) appeals from decisions taken by the OFT in applying Articles 81 and 82 of the EC Treaty, quite possibly involving some parties who are not United Kingdom nationals. Among other things, Council Regulation 1/2003 has the effect of authorising the OFT, and on appeal the Tribunal, to apply Article 81(3) of the EC Treaty, a matter that had hitherto been reserved to the European Commission.
- c) aggrieved persons may bring actions for damages before the Tribunal in cases where either the OFT or the European Commission have already decided that there has been an infringement of either United Kingdom or EC Competition law, and the appeals process relating to that infringement has been concluded. Under section 19, of the Enterprise Act (inserting Section 47B into the Competition Act 1998) such actions may be brought on a 'class' basis by specified bodies acting on behalf of consumers. The Tribunal is receiving a growing number of damages cases and these are involving the Tribunal in an exploration of the basic principles applicable in a field of the law in which there have been few developments outside the United States.
- d) the Tribunal has jurisdiction to hear applications for a review of a decision by the Competition Commission, the OFT or the Secretary of State in merger cases. This jurisdiction arises from the policy decision, implemented by the Enterprise Act, that Ministers should no longer play a role in domestic merger control, except in a limited number of exceptional circumstances e.g. where national security is involved. Hence, following the Enterprise Act, the Competition Commission itself takes the final decision in merger cases, including the decision as to remedies, rather than reporting to the Secretary of State as hitherto. It is for the OFT to decide whether or not to refer a merger to the Commission, and the Commission then has to decide whether or not the merger will be allowed. The test is now whether the merger is likely to result in a "substantial lessening of competition" rather than the "public interest" test hitherto applied. Any person aggrieved by a decision by the OFT or the Competition Commission, or the Secretary of State, may apply for that decision to be reviewed by the Tribunal. On such a review, the Tribunal is obliged to apply the same principles as would be applied by the Court on a judicial review: see generally s.120 of the Enterprise Act. Such cases can often be of momentous significance to the relevant industry

or sector concerned and the wider public interest.

- e) the Tribunal has a similar 'review' jurisdiction with respect to decisions taken by the Secretary of State, Ministers, the OFT or the Competition Commission in respect of 'market investigations'. Market investigations replace the former monopoly or complex monopoly inquiries carried out by the Competition Commission, or its predecessor the MMC. Under these provisions, the Commission is obliged to decide, on a reference made by the OFT, or a sectoral regulator, or Ministers, whether any features, or combination of features, of a market in the United Kingdom prevents, restricts or distorts competition. If so, the Commission may make orders remedying the adverse effects it has found. Any person aggrieved by any decision of the OFT, Commission, Secretary of State or Ministers may apply to the Tribunal for a review of that decision. Again, that review proceeds on the same principles as judicial review by the Court: see generally s.179 of the Enterprise Act. The last year has seen an increase in this type of work which again often concerns matters of importance to industry/commerce and the wider public interest.
- f) the Competition Commission is given powers under the Enterprise Act to impose penalties on parties who fail to co-operate with its investigations. A full appeal against such penalties lies to the Tribunal: see s.114 of the Enterprise Act.
- g) the Tribunal acquired a substantial new jurisdiction under the Communications Act 2003 ("The Communications Act"). That Act introduced substantial reforms in the communications sector, partly to reflect the requirements of EC Directives, and partly as a result of rapid technological change. A number of existing regulators (including OFTEL) were amalgamated into one regulator, the Office of Communications (OFCOM). Under Part 2 of the Communications Act, OFCOM has extensive regulatory functions in relation to the use of electronic communications networks and services, including access to networks and the imposition of conditions on suppliers with significant market power, as well as regulatory functions in relation to the radio spectrum, notably under the Wireless Telegraphy Acts. In addition, OFCOM may in certain circumstances use its Broadcasting Act powers for a competition purpose, for example in imposing licensing conditions to ensure competition between providers of broadcasting services. The exercise of these powers by OFCOM is appealable to the Tribunal. The appeal under the Communications Act is an appeal on the merits.