

COMPETITION LAW BULLETIN

MARCH 2011

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FEATURE ARTICLE

UK Government opens public consultation “A Competition Regime for Growth”

On 16 March 2011, the Department for Business, Innovation and Skills opened the widely trailed public consultation on the options for reform of the UK competition regime (the **Consultation**). According to the UK Government, the overriding objective in reforming the UK competition regime is to “*maximise the ability of the competition authorities to secure vibrant, competitive markets that work in the interests of consumers, to promote productivity, innovation and economic growth*”. The proposed areas of reform cover a wide range of measures across different sections of the UK competition framework.

- **Single competition and markets authority.** The Consultation seeks views on a proposal to restructure the regulatory authorities that govern the UK competition regime (the Office of Fair Trading (**OFT**) and the Competition Commission (**CC**)) into a single Competition and Markets Authority (**CMA**). In addition, the Consultation invites comments on how the CMA, if established, should operate particularly in terms of decision-making processes. The new body would have a primary focus on competition (the Government is separately seeking views on where various consumer protection functions should be performed in the parallel ‘*consultation on institutional changes for the provision of consumer information, advice, education, advocacy and enforcement*’).
- **Merger control.** According to the Government, there are a number of perceived disadvantages with the current merger control system, including the risk of missing anti-competitive mergers and the difficulties of applying appropriate remedies to completed anti-competitive mergers.

The Consultation includes options to reform the UK merger notification tests, ranging from the introduction of a mandatory notification regime to a hybrid regime where notification is part mandatory (for example, where the target’s UK turnover exceeds £70 million) and part voluntary (for example, retention of the existing 25% share of supply test). Views are also sought on a small merger exemption from the merger control regime (mergers where the UK turnover of the target does not exceed £5 million and the world wide turnover of the acquirer does not exceed £10 million); and on whether there is a need to reduce timescales (achieved through statute) and strengthen merger inquiry phase I information gathering powers.

- **Antitrust.** The Government is concerned that antitrust cases take too long and result in too few decisions, meaning the regime has less deterrent effect on anti-competitive activity than it should. The Consultation therefore seeks views on the following options which may shorten either the investigation/decision stage or the appeal stage, while still retaining fairness and robustness of decisions: enhancing the current system by streamlining the decision-making process, whilst retaining a Competition Appeal Tribunal (**CAT**) full-merits review; developing a new administrative approach involving a two-phase decision making process within the CMA, subject to judicial review; or introducing a prosecutorial model, where the CMA (or sectoral regulator) would not be the decision-maker and rather would prosecute the case before a court. The Consultation also seeks views on other aspects of the antitrust process, including streamlining via statutory or administrative timescales; reviewing powers of investigation and entry; and improving the opportunities for private damages actions.

- **Cartel offence.** The Consultation notes the Government's view that the criminal cartel offence helps to deter hard core cartels; perceived to be the most serious and damaging form of anti-competitive conduct. However, according to the Consultation, the 'dishonesty' element in the offence seems to make the offence harder to prosecute and is not consistent with developing international best practice on how to define a hard core cartel offence. Views are therefore sought on the removal of the 'dishonesty' element and the introduction of a number of alternatives such as prosecutorial guidance or a 'secrecy' element.

Other areas that are dealt with in the wide-ranging Consultation include improving the impact of the market investigations regime by modernising and streamlining the process and scope of the investigations and improving the sectoral regulators' regime, particularly in light of the relatively small number of decisions and market investigation references initiated by the sectoral regulators. The Consultation also sets out options for amending the way the costs involved in regulating mergers are recovered through merger fees and considering ways to improve incentives and recover costs from those found to have broken the law.

Responses to the Consultation are sought by 13 June 2011.

16 March 2011

MERGERS

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EU

[European Commission conditionally approves acquisition of McAfee by Intel](#)

The European Commission (the **Commission**) has published its decision of 26 January 2011 to approve the acquisition by Intel of McAfee following a series of commitments by Intel regarding the interoperability of its merged products with that of competitors.

Intel is the market leader in the production of computer processing units (**CPUs**) and chipsets. McAfee is involved in the design and development of internet security products. Security software developers need to access certain information about CPUs in order to develop their products. As Intel and McAfee are active in neighbouring and rather complementary product markets the Commission assessed the merger in terms of conglomerate effects. The Commission concluded that serious competition concerns arose due to the ability of the new merged entity to bundle and tie CPUs with McAfee security solutions and, in particular, because other companies' security solutions might have suffered from a lack of interoperability with Intel CPUs and chipsets or from a technical tying between Intel CPUs and McAfee's security solutions. The commitments made by Intel have addressed the Commission's concerns and will ensure that competitors can interoperate with their products, whilst preserving the efficiencies of the merger. The Commission has therefore concluded that with the commitments in place, the merger will not affect competition in the EEA or a significant part of it.

EU competition official Cecilio Madero Villarejo (acting Deputy Director General for Competition) has identified the decision as a model for future merger cases involving complex technology markets.

IP/11/70 26 March 2011

UK

[OFT fast tracks travel agency joint venture to Competition Commission](#)

The OFT has used the fast track procedure introduced by its revised 2009 Jurisdictional and Procedural Guidance for the first time, to refer the proposed travel agency joint venture between Thomas Cook, the Cooperative Group (**CGL**) and the Midlands Co-operative Society (**MCS**) to the CC. This follows a request from the parties on 14 February 2011 for a fast track reference to the CC.

Following a request for referral to the CC, the OFT has a duty to make a reference if it believes a relevant merger situation is likely to be created, resulting in a substantial lessening of competition within the relevant UK market. The OFT made the reference to the CC due to concerns that the proposed joint venture could significantly affect competition in the supply of travel services via retail travel agency outlets in the UK. In addition, the OFT has concerns that given the significant market presence of Thomas Cook at the tour operator level in the supply and distribution of package holidays in the UK, independent tour operators may lose or have reduced access to distribution through the former CGL and MCS stores.

This proposed joint venture was initially notified to the Commission, but following a reference back from the Commission, pursuant to article 9 (3) (b) of the EU Merger Regulation, the UK competition authorities have jurisdiction over the transaction.

28/11 2 March 2011

[OFT accepts Asda/Netto divestment undertakings](#)

The OFT has accepted undertakings from Asda in relation to its proposed acquisition of Netto's 194 UK stores. The undertakings involve Asda divesting Netto stores in 47 local areas to address local competition concerns. The transaction will not, therefore, be referred to the CC.

In 25 of the 47 local areas, where evidence had suggested finding suitable buyers might be difficult, Asda offered 'upfront buyers'. The OFT will typically require an upfront buyer where it has reasonable doubts with regard to the ongoing viability of the divestment package and/or there exists only a small number of candidate purchasers. The agreed purchasers of the 25 stores were WM Morrison Supermarket plc, Iceland Foods Limited and the Haldanes Group (under the 'Ugo' brand).

The next stage of the process is for Asda to divest stores in the remaining 22 local areas.

31/11 9 March 2011

[CC and OFT publish Quick Merger Guide and Commentary on Retail Mergers](#)

The CC and OFT have published two joint documents on aspects of the UK merger regime.

The [Quick Merger Guide](#) (published on 25 March 2011) (the **Guide**) informs businesses of what to expect from the competition authorities during the contemplation of a merger. It covers issues such as whether to notify the authorities; the different roles of the authorities; which mergers are reviewed and when they might be referred for a full investigation by the CC. The Guide also briefly covers the merger assessment process and the possible use of remedies. The Guide complements the more detailed Merger Assessment Guidelines published in September 2010. The [Commentary on Retail Mergers](#) (published on 17 March 2011) (the **Commentary**) draws together some of the common themes that have arisen in the retail mergers examined by the CC and the OFT since the Enterprise Act 2002 came into force. In particular, the Commentary focuses on three areas that have, according to the OFT, most often arisen: the local catchment

area for retail outlets; the extent to which competition takes place at local and national levels; and the techniques used to assess the effects of mergers on retail prices.

ANTITRUST

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EU

[European Commission probes publishers over e-book pricing](#)

The Commission has confirmed that on 1 March 2011, it conducted unannounced inspections at the premises of several businesses involved in the e-book publishing sector in a number of Member States on suspicion of a breach of Article 101 TFEU which prohibits anti-competitive practices. In January 2011, the OFT opened an investigation into whether arrangements that certain publishers have put in place with some retailers for the sale of e-books may breach competition rules.

The OFT and the Commission are co-operating to avoid duplication between the two investigations.

[MEMO/11/126 2 March 2011](#)

[European Commission conducts unannounced inspections in rail freight sector](#)

On 8 March 2011, the Commission conducted unannounced inspections at the premises of companies involved in the rail freight industry (and related sectors) in Baltic countries. The inspections are a preliminary step in a Commission investigation into suspected infringement of Articles 101 and/or 102 Treaty on the Functioning of the European Union (TFEU) which prohibit cartels/restrictive agreements and the abuse of a dominant market position respectively.

[MEMO/11/152 10 March 2011](#)

[European Commission conducts dawn raids at Deutsche Bahn](#)

On 31 March 2011, the Commission confirmed that it conducted unannounced inspections at Deutsche Bahn and some of its subsidiaries' premises because it has reason to believe there has been an abuse of dominance by Deutsche Bahn AG. It has been alleged that Deutsche Bahn group, and in particular Deutsche Bahn Energie, the de facto sole supplier of electricity for traction trains in Germany, have been giving preferential treatment to the group's own rail freight business in breach of Article 102 of the TFEU.

[MEMO/11/208 31 March 2011](#)

UK

[OFT publishes new Competition Act 1998 procedures guidance and announces the introduction of a Procedural Adjudicator](#)

The OFT has published guidance describing the procedures it follows when carrying out Competition Act 1998 investigations, and introduces a number of new measures – which include those detailed below - designed to increase efficiency and minimise delays to investigations. The guidance is a result of a consultation with businesses and lawyers, with a focus on improving the OFT's transparency and accountability during the

investigation process.

Firstly, the OFT has introduced pre-complaint discussions. This gives potential complainants the opportunity to discuss a complaint with the OFT to assist with their decision as to whether to prepare a formal complaint, on the basis of whether or not the OFT would be likely to investigate. Secondly, the OFT has made a commitment to reach a decision as to whether it will open a case within four months of receiving a substantiated complaint. Thirdly, the OFT has committed to send a case initiation letter, on opening a formal investigation, to the company under investigation. This will set out brief details of the matter and OFT key contacts.

In addition to publishing the guidance, the OFT has announced a one-year trial of a Procedural Adjudicator role, to fulfil the task of reviewing procedural decisions taken during an investigation. This is a result of feedback from businesses that there was no efficient way to deal with procedural disputes during investigations if the issue could not be settled with the Senior Responsible Officer.

On 18 March 2011 the OFT published further information on the Procedural Adjudicator role, revealing that parties involved in disputes relating to Competition Act 1998 cases have the option to apply to the Procedural Adjudicator for the following procedural matters:

- Deadlines to respond to information requests, submit non confidential versions of documents or to submit written representations on the statement of objections or supplementary statement of objections;
- Requests for confidentiality redactions of information in documents on the OFT's case file, in a statement of objections or in a final decision;
- Requests for disclosure or non-disclosure of certain documents on the OFT's case file;
- Issues relating to oral representations meetings, such as the date of the meeting; and
- Other significant procedural issues that may arise during the course of an investigation.

Further information on the Procedural Adjudicator can be found at the OFT's [Procedural Adjudicator Trial](#) page.

27/11 2 March 2011

[OFT not to open a market investigation into Visa sponsorship of 2012 Olympics](#)

The OFT has conducted a preliminary assessment of sponsorship agreements between Visa and the London Organising Committee of the Olympic Games and Paralympic Games, on the basis that these arrangements grant Visa payment card exclusivity for the purchase of official merchandise and for the use of ATM machines at official venues for the 2012 Olympic Games. Following this initial assessment, the OFT concluded that the arrangements under consideration are unlikely to give rise to material consumer harm and, at this stage, the OFT has proposed not to open a Competition Act 1998 investigation.

If evidence of consumer harm materialises in the future, the OFT will further investigate the proposed arrangements.

The OFT reported it has received informal assurances from Visa that, as well as being able to pay by cash and cheques for official merchandise, consumers who do not own a Visa debit or credit card will be able to access a prepaid Visa card to make purchases at official Olympic 2012 sites.

The OFT has not conducted an assessment regarding the arrangements for the purchase of tickets for the 2012

Olympic Games and Visa's related sponsorship deals, as this is being monitored by the European Commission.

16 March 2011

[OFT publishes final land agreements guideline](#)

The OFT has published guidelines on the application of competition law to land agreements. As of today, 6 April 2011, the Land Agreements Exclusion Order that has caused land agreements to fall outside of competition regulation is revoked, which means parties to land agreements must now self assess the competitive impact of existing and future agreements (as they would with any other agreement).

For further information on this change, please see the Squire Sanders Hammonds publication "Land agreements now challengeable under competition law", of 6 April 2011.

42/11 24 March 2011

MARKET INVESTIGATIONS

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UK

[OFT launches off-grid energy study](#)

The OFT has formally launched a market study into off-grid energy. This follows a short consultation period (as reported in the January edition of this bulletin) during which the scope of the study was considered.

The OFT received over 300 submissions during the consultation period. Particular concerns were raised regarding heating oil and liquefied petroleum gas (LPG). Concerns were also raised over high prices, misleading information, a lack of transparency and barriers to switching. The study will cover the 3.6 million households reliant on off-grid energy supplies, and will particularly focus on those households that rely on oil and LPG to heat their homes. As part of this the study will look at market structure and the choice of suppliers, whether competition is working for consumers, and contractual terms and fairness in supply agreements.

The study will also involve an analysis on other alternative sources of fuel available, looking at the extent to which these are, or will become, effective alternatives to heating oil and LPG in the future.

The OFT expects to publish the results of the study in October 2011. The OFT will be contacting key parties directly and also invites interested parties to submit contributions to the study by 27 May 2011.

35/11 14 March 2011

[Competition Commission provisionally concludes that BAA airport divestment should be implemented](#)

The CC has provisionally concluded that BAA should still be required to sell Stansted Airport, and Glasgow or Edinburgh Airport. This provisional finding follows a consultation period in 2010, where the CC invited evidence on whether there had been any material changes in circumstances since its final 2009 report in the BAA airports market investigation.

The CC has provisionally concluded that the sale of the airports is still justified despite the Government's

decision to rule out additional runways at any of London's airports. It is the CC's belief that passengers and airlines would still benefit from greater competition with the airports under separate ownership.

The CC invites responses on this decision, with submissions to be made in writing by 19 April 2011. A final decision will be published in either May or June.

30 March 2011

LITIGATION

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EU

[General Court reduces fine for World Wide Tobacco Espana's involvement in raw tobacco cartel](#)

The General Court has reduced the fine imposed by the Commission for World Wide Tobacco Espana's (**WWTE**) participation in a cartel on the Spanish raw tobacco market from EUR 1,822,500 to EUR 1,579,500.

In October 2004, the Commission found that four Spanish processors and one Italian processor of raw tobacco were in breach of Article 101(1) TFEU which prohibits anti-competitive agreements. WWTE appealed the level of fine imposed, submitting four pleas.

Firstly, WWTE argued that the multiplier which increased the starting amount for the penalty calculation, which was applied on the basis that WWTE belonged to a multinational group, breached the principle of equal treatment since a multiplier was not applied to all parties involved belonging to a multinational group. The General Court found that unlike other parties belonging to multinational groups, WWTE's parents exerted decisive influence over WWTE and therefore the multinational group constituted a single undertaking whose size determines the multiplier to be applied. The General Court also rejected WWTE's second plea, that the Commission had failed to take into consideration attenuating circumstances (the agreement was not fully implemented, WWTE stopped the infringement as soon as the Commission commenced its investigation and this was the first time the raw tobacco market had been investigated). WWTE's third plea, that the Commission's fine breached Article 23(2) of Regulation 1/2003 by exceeding 10% annual turnover limit was also rejected, again on the basis that as the multinational group was acting as a single economic entity, the relevant turnover upon which the fine was based was that of the whole group and not just WWTE. WWTE's fourth plea was that the Commission infringed the 1996 Leniency Notice, the principle of protection of legitimate expectation and the principle of equal treatment. In this regard, the General Court found that the Commission had made a manifest error of judgment when reaching the conclusion that WWTE had contested certain facts in the statement of objections. Accordingly, WWTE was granted a reduction of 10% of the total fine.

Case T-37/05 8 March 2011

[The European Court of Justice dismisses appeal in alloy surcharge cartel](#)

On 28 March 2011, the European Court of Justice (**ECJ**) handed down a judgment dismissing the appeal by ThyssenKrupp Nirosta GmbH (**TSK**), formerly ThyssenKrupp Stainless AG, and upholding the findings of the General Court in relation to an appeal against the Commission's decision in the alloy surcharge cartel. The initial decision, made in 1998, found that six European steel companies had entered into an anti-competitive agreement in relation to the calculation of alloy surcharges, in breach of Article 65 of the European Coal and Steel Community (**ECSC**) Treaty. The decision was readopted in 2006 following an ECJ judgment that the

Commission had breached TSK's right of defence.

TSK's argument before the ECJ - that they could not be penalised for an infringement that had ceased prior to the expiry of the ECSC in July 2002 - was rejected by the ECJ since the infringement was carried out when the ECSC was in force. As to attribution of liability, although the ECJ found that the General Court's reasoning committed an error of law, it held that the circumstances of the case led to the conclusion that the Commission could attribute liability to TKS for the conduct of Thyssen Stahl. The ECJ also rejected an appeal on the calculation of the fine stating that since it turned on the facts, the ECJ could not review the point unless there was a clear distortion of evidence.

Case C-352/09 29 March 2011

UK

CAT judgments on construction bid rigging appeals

The CAT has handed down two judgments following twenty five appeals in 2010 lodged as a result of the OFT's 2009 decision "Bid rigging in the construction industry in England" (the **Decision**).

The CAT has reduced the fines imposed on the companies involved in 'cover pricing' in both of these appeals. In both judgments, which involved substantial fine reductions for the parties, the CAT accepted some of the challenges to the OFT's Penalty Guidelines (the **Guidelines**) and to the methodology adopted by the OFT in applying those Guidelines in the Decision. For example, the CAT held that the interpretation of 'relevant turnover' in the Guidance for the calculation of the fine should be the year before the infringement took place, rather than the year prior to the decision (as the OFT has adopted). The CAT held that any adjustment to this approach must first of all be made in the Guidelines before it can be applied to an infringement decision. In both judgments the CAT also found that when applying the Minimum Deterrent Threshold (the **MDT**) the OFT had adopted a mechanistic approach, without critically examining the resulting fines alongside other indicators, such as a company's size and financial position. A device such as the MDT should not, according to the CAT, be used in a mechanistic way and the method by which it is applied should be open and transparent.

REGULATORY

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EU

European Commission commitment to review SGEI State aid rules

The Commission has published a communication on the reform of the State aid rules that apply to Services of General Economic Interest (**SGEI**), and issued an accompanying report on the application of these rules. The current package of rules followed an ECJ case in 2003 - Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH - which established certain criteria that must be fulfilled in order for compensation for public services to not be considered State aid. The Commission has stated that there is a need for clearer, simpler and more proportionate instruments and to achieve these goals, and proposes to clarify a number of key concepts related to the operation of the SGEI activities and to offer a more diversified and proportionate approach to the different types of public services.

Polish telecoms regulator receives conditional European Commission backing for geographic segmentation

The Polish telecoms national regulation authority (**Polish NRA**) has had its proposal to distinguish the remedies imposed on telecoms incumbent Telekomunikacja Polska (**TP**) in relation to the market for retail broadband access into three divisions approved by the Commission, subject to certain conditions. This is for the purpose of regulating an undertaking with significant market power (**SMP**).

Pursuant to “Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services” (the **Directive**), where the national regulation authority determines a market is not effectively competitive, it must identify undertakings with SMP for the purpose of imposing on them appropriate specific regulatory obligations. The Polish NRA has identified TP as an operator with SMP and, as it is obliged to under Article 7 of the Directive, the Polish NRA has made the draft obligations on TP available to the Commission for comment before they are adopted.

The Commission approved the approach adopted by the Polish NRA to the extent that TP applied the same pricing across the national market, and that on the Polish NRA’s analysis some regions exhibited competitive features such as to deserve different, less intense regulatory measures. However, the Commission raised the issue that other considerations might contribute to differentiating between communes requiring more or less regulation. The Commission also sought to impose an accounting separation requirement on TP in deregulated areas, to allow the Commission to monitor signs of margin squeeze, and to reinforce price regulation.

Under Article 7 of the Directive, the national regulation authority must take the “utmost account of comments of other national regulation authorities and the Commission”.

23 March 2011

UK

National Lottery Commission refuses consent to Camelot to provide ancillary commercial services

The National Lottery Commission, the public body set up to regulate the National Lottery, has taken the decision to refuse consent to an application by Camelot UK Lotteries Ltd (**Camelot**) to provide ancillary commercial services. The application from Camelot was to enable it to provide commercial services such as mobile phone top-ups, electronic bill payments and similar services through National Lottery terminals.

Separate submissions were received by the National Lottery Commission from rival companies such as PayPoint. Having reviewed the case, and whether any suitable conditions could be attached to a consent, the National Lottery Commission concluded that it could not rule out a significant risk of a breach of Article 106 TFEU due to, amongst other things, the unmatched advantages of Camelot. Moreover, the National Lottery Commission held that, irrespective of the risks under Article 106 TFEU, it could not rule out the risk of being called to investigate alleged breaches of Camelot’s licence arising from alleged breaches of competition law in the commercial services markets if consent was granted.

3 March 2011

Ofcom decision to reduce mobile termination rates

Ofcom has announced its decision to reduce mobile termination rates - the wholesale charges that mobile operators make to other operators to connect calls to their networks. This measure, by way of a cap on the

rates charged by all four national mobile network operators, will be in force from 1 April 2011, and is designed to benefit consumers by reducing the cost to landline operators of passing calls to mobiles, and providing mobile operators with more pricing flexibility.

Ofcom's decision follows a recommendation by the European Commission in May 2009 that Member States should set mobile termination rates that directly reflect the cost of terminating calls from other networks and the new termination rate set by Ofcom for the four national mobile network operators will take into account only costs that are incurred directly from terminating calls from other networks. Smaller/new entrant mobile providers will be required to offer termination charges at a fair and reasonable price.

[OFT agreement with China on competition and consumer issues](#)

The OFT has signed a Memorandum of Understanding (**MOU**) with China's State Administration for Industry and Commerce committing to cooperation and the exchange of best practice information on competition and consumer policy and enforcement. This will involve the OFT providing expertise on issues such as abuse of dominance, the relationship between intellectual property and competition law, and market definition.

Also contained within the MOU are provisions to facilitate cooperation with China in handling consumer protection issues, particularly in the fields of cross-border purchasing and protecting consumers online. The MOU forms part of an ongoing programme with China, and comes during an OFT visit to China and Hong Kong to raise awareness of the role of competition in driving growth. The OFT signed an MOU with China's National Development and Reform Commission in January, and is expected to sign a further agreement with China's Ministry of Commerce in June.

41/11 21 March 2011

[Ofcom prepares for mobile spectrum auction](#)

Ofcom has announced plans for the largest ever single auction of additional spectrum for mobile services in the UK - the auction will be for two spectrum bands, 800 MHz and 2.6 GHz. The proposed auction is set out in a detailed Ofcom consultation "Assessment of future mobile competition and proposals for the award of 800 MHz and 2.6 GHz spectrum and related issues" (the **Mobile Spectrum Auction Consultation**).

Following a competition assessment initiated in December 2010, Ofcom believes there is the potential for future competition in mobile markets to be put at risk if bidders are free to bid for unlimited amounts of spectrum during the auction. Accordingly, the Mobile Spectrum Auction Consultation sets out two main ways in which Ofcom proposes to promote competition in this sector. Firstly, Ofcom proposes that, following the auction, it will ensure that there are at least four holders of a minimum spectrum portfolio. This portfolio would be designed to ensure that there are holders that are credibly capable of providing high quality data services in the future. Secondly, Ofcom proposes the introduction of a spectrum cap during the auction, whereby each auction participant is restricted as to how much spectrum it could win during the auction. The proposed caps are a maximum of 2x27.5 MHz of sub-1 GHz spectrum and 2x105 MHz of mobile spectrum in total.

Ofcom has invited comments to the Mobile Spectrum Auction Consultation by 31 May 2011.

[OFT receives super complaint from Which?](#)

Which? has made a 'super-complaint' to the OFT, inviting the authority to launch an investigation into surcharges payable by customers using credit and debit cards. The super-complaint mechanism is available to designated consumer bodies and allows these bodies to submit a complaint that any particular features of a market in the United Kingdom for goods or services 'is or appears to be significantly harming the interests

of consumers'.

Which? has requested the OFT investigate two aspects of the surcharges. Firstly, the transparency of the charges payable by a consumer before the consumer makes a decision to proceed with the transaction, and secondly the charge itself, particularly in relation to the level of charge in proportion to the cost incurred by a business to process the transaction.

The OFT has 90 days in which to publish a response to the super-complaint, during which time it intends to invite interested parties to provide evidence relating to the assessment.

45/11 30 March 2011

If you require further information or advice on any of the items covered, contact details of the Squire Sanders Antitrust and Competition partners are available at: http://www.ssd.com/antitrust_competition/
