

**Complaints considered by Ofgem under the
Competition Act 1998**

1 March 2000 to 29 February 2004

1 March 2004

46/04

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1. Introduction

The substantive provisions of the Competition Act 1998 ('the Act') came into force on 1 March 2000 and introduced prohibitions on agreements which prevent, restrict or distort competition ('the Chapter I prohibition') and on conduct by undertakings which amounts to an abuse of a dominant position ('the Chapter II prohibition').

The Gas and Electricity Markets Authority ('the Authority') has concurrent powers with the Office of Fair Trading ('OFT') to apply and enforce the Act in relation to the gas and electricity sector in Great Britain¹. The Office of Gas and Electricity Markets (Ofgem) exercises certain functions under the Act on behalf of the Authority. The Authority's published Rules of Procedure set out functions which must be exercised by the Authority itself rather than by Ofgem staff under delegated powers. The terms 'Authority' and 'Ofgem' are used interchangeably in this report.

The aim of this report is to provide information on the number and outcome of complaints considered by Ofgem under the Act. The report also highlights the nature of complaints made, and the main Ofgem policy areas dealing with complaints.

Ofgem intends to publish decisions under the Act in accordance with the requirements of the Competition Act (Director's Rules) Order 2000.

Following Ofgem's July 2003 consultation² on compliance with supply licence conditions and consumer protection legislation, Ofgem intends to consult all gas and electricity licence holders on the proposal to publish a list of ongoing formal investigations under the Act, consumer protection legislation and sectoral legislation.

The report covers the period 1 March 2000 to 29 February 2004.

¹ The Office for the Regulation of Electricity and Gas (Ofreg) has concurrency for the gas and electricity sector in Northern Ireland.

² "Making markets work for consumers: Ofgem's approach to securing compliance with supply licence obligations and consumer protection legislation – A consultation document", 70/03, July 2003.

2. Complaints received and issues raised

NUMBER OF COMPLAINTS

2.1. Figure 1 shows the number of cases opened and closed each month during the period 1 March 2000 to 29 February 2004. Table 1 shows the total number of complaints opened and closed each year during the period 1 March 2000 to 29 February 2004.

2.2. During the period 1 March 2000 to 29 February 2004, Ofgem received 44 complaints under the Act. As of 29 February 2004, 41 files had been closed, of which 2 were the subject of non-infringement decisions, and 1 is the subject of an ongoing formal investigation. During this period 2 cases resulted in Ofgem using the investigative powers provided in the Act.

2.3. The busiest period was March 2002 to February 2003, when Ofgem opened 20 cases.

2.4. The number of complaints Ofgem received under the Act decreased significantly during the period March 2003 to February 2004, where the total number of cases opened decreased from 20 or the previous period to 4.

**Figure 1: Number of complaints opened and closed per month during period
March 2000 to February 2004**

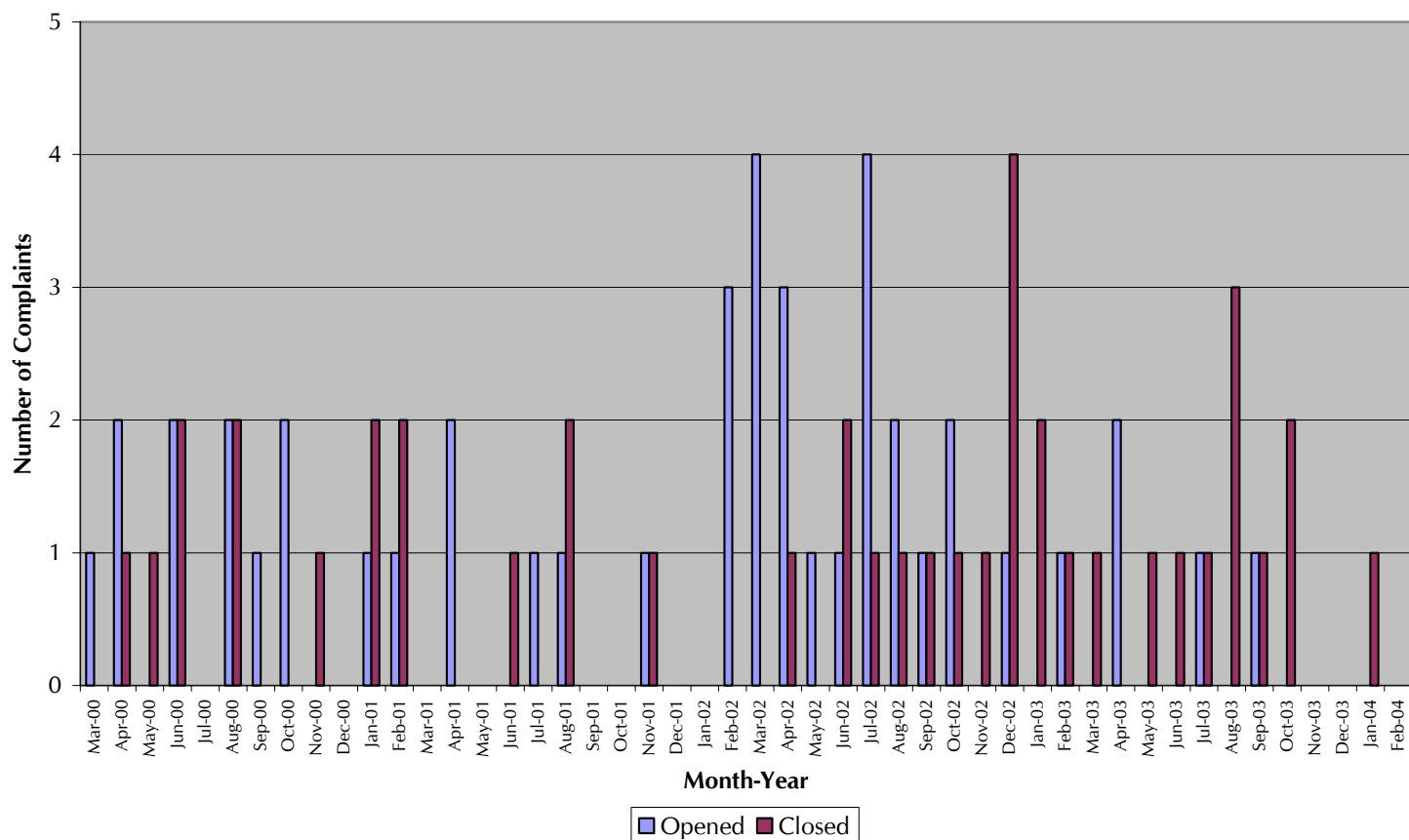


Table 1: Number of complaints opened and closed per year

	Mar-00 - Feb-01	Mar-01 - Feb-02	Mar-02 - Feb-03	Mar-03 - Feb-04	Total
Total complaints					
Opened	12	8	20	4	44
Closed	11	4	15	11	41

ISSUES RAISED IN COMPLAINTS

2.5. Ofgem has received complaints on a wide variety of issues. For the purpose of this document, these issues have been grouped into six categories³:

- Non-price discrimination
- Price discrimination
- Predation
- Excessive pricing
- Anti-competitive agreements: complaints alleging agreements or concerted practices for the purposes of the Chapter I prohibition.
- Other / unclear: complaints alleging other specified types of anti-competitive conduct and those which raise general concerns.

2.6. Table 2 and Figure 2 illustrate the issues raised by complaints during each of the four years covered by this report.

2.7. It is apparent that complaints concerning non-price discrimination increased significantly during the first three years in which the Act has been in force. The most significant increase was during the period March 2002 to February 2003 where complaints of this type increased from 2 for the previous period to 9. During the period March 2003 to February 2004 the number of non-price discrimination complaints decreased significantly from 9 complaints for the previous period to 1.

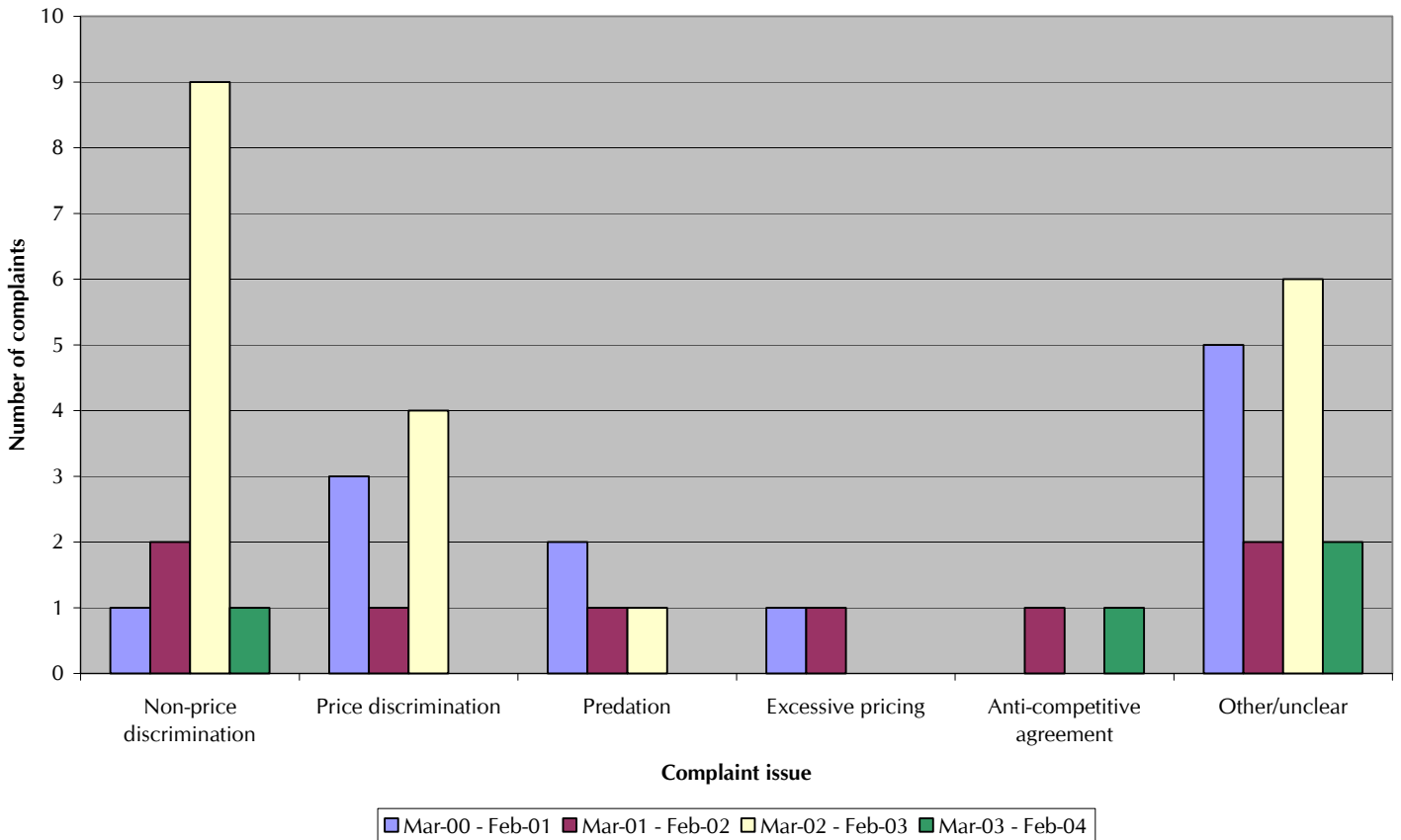
2.8. A large proportion of complaints made to Ofgem do not highlight specific types of anti-competitive conduct, but raise general concerns. These complaints fall into the other/unclear category.

Table 2: Issue of complaints

³ These categories represent Ofgem's judgement on the main issues raised by the complaints received.

Complaint Issue	Date Complaint Received				Total received
	Mar-00 - Feb-01	Mar-01 - Feb-02	Mar-02 - Feb-03	Mar-03 - Feb-04	
Non-price discrimination	1	2	9	1	13
Price discrimination	3	1	4	0	8
Predation	2	1	1	0	4
Excessive pricing	1	1	0	0	2
Anti-competitive agreement	0	1	0	1	2
Other/unclear	5	2	6	2	15
Total	12	8	20	4	44

Figure 2: Issue of complaints between March 2000 and February 2004



3. Outcome of closed complaints

3.1 As of 29 February 2004, the Authority had made two non-infringement decisions and no infringement decisions under the Act.

3.2. Table 3 outlines the reasons why files were closed during each of the four years covered by the report. In the majority of cases this was due to there being insufficient information to decide whether there had been an infringement of the Act or not.

3.3 The number of complaints referred by Ofgem to the OFT and other regulators⁴ has decreased to the extent that no complaints were transferred during the period March 2002 to February 2003, indicating that Ofgem has increasingly been receiving complaints that fall within its remit.

Table 3: Reasons for case closures between March 2000 and February 2004

Reason	Date Complaint Closed				
	Mar00 - Feb01	Mar01 - Feb02	Mar02 - Feb03	Mar03 - Feb04	Total Mar00 - Feb03
Infringement decision	0	0	0	0	0
Non-infringement decision	0	0	0	2	2
Company agreed to change behaviour	1	0	0	0	1
Referred to OFT or other regulator	3	1	0	1	5
Lack of evidence	5	3	11	4	23
Investigation under sectoral powers	0	0	1	2	3
Other	2	0	3	2	7
Total	11	4	15	11	41

4. Lead policy areas

⁴ The Competition Act 1998 (Concurrency) Regulations 2000 contain the procedural requirements for determining whether the OFT or a sectoral regulator will exercise proscribed functions under the Act in relation to a given case. Paragraph 3.8 of the guideline 'Concurrent Application to Regulated Industries' states that "[t]he general principle will be that a case will be dealt with by whichever of the [OFT] or the

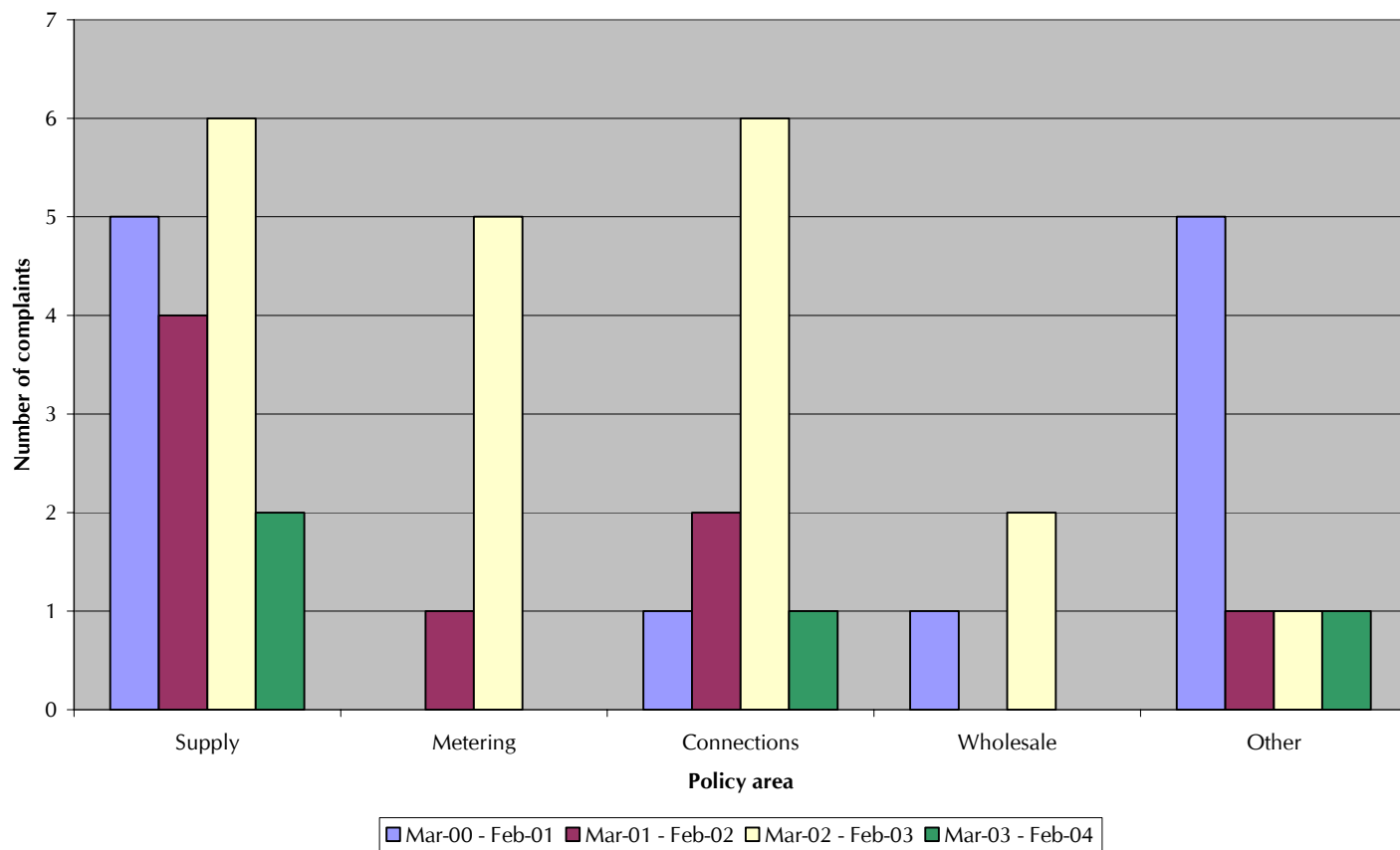
4.1. Figure 3 indicates the number of complaints received by each policy area for each of the four years the Act has been in force.

4.2. Four main policy areas have been involved with complaints under the Act since March 2000: Supply, Metering, Connections, and Wholesale. Supply has been the area which has received the highest amount with 17 complaints, of which 1 has resulted in the use of investigative powers under the Act. Connections has received the second highest amount with 10 complaints, of which 1 has resulted in the use of investigative powers under the Act.

4.3. It is apparent that Ofgem's Supply Directorate has consistently been dealing with a significant number of relevant complaints over the four year period covered by this report. It is also apparent that there was a significant rise in the number of complaints being dealt with in the areas of Metering and Connections during the period March 2002 to February 2003.

relevant regulator is better, or best, placed to do so".

Figure 3: Number of complaints per policy area for period March 2000 to February 2004



5. Conclusions

5.1. A significant number of complaints made to Ofgem under the Act result in the file being closed due to the poor quality of information supplied. In such cases, it is not possible for a decision to be made as to whether the Act has been infringed or not. In many cases the complainants have not identified the nature of the alleged infringement or provided any supporting evidence.

5.2. Ofgem would urge complainants to provide relevant supporting information when making complaints and, as far as possible, provide a reasoned view on the following matters:

- the relevant product and geographical market;
- the complainee's and complainant's position within that market;
- the nature and effect of the alleged infringement.