FINAL NOTICE

To: **Marconi plc**
Of: **One Bruton Street**
LONDON
W1J 6AQ
Date 11 April 2003

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice that it has decided to publish a public statement.

ACTION

For the reasons set out in the attached annex and pursuant to Article 11 of the Financial Services and Markets Act 2000 (Official Listing of Securities) (Transitional Provisions) Order 2001, the FSA has decided to publish a public statement in the form contained in the Annex to this Notice. The statement will be published by the Regulatory Information Service on 11 April 2003.

IMPORTANT

This Final Notice is given to you in accordance with section 390 of the Financial Services and Markets Act 2000 ("the Act").

PUBLICITY

Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA Contacts

For more information concerning this matter you should contact Richard Mumford at the FSA (direct line: 020 7676 1684/fax: 020 7676 1685).

Martyn Hopper
Head, Market Integrity Group
Enforcement Division

a. Annex

i. Introduction

1. This statement by the FSA concerns the issue by Marconi plc ("Marconi") of a trading statement via the London Stock Exchange's Regulatory News Service ("RNS") at 18:41 on 4 July 2001 and Marconi's failure to comply with its obligations under the Listing Rules prior to the issue of this update. The Listing Rules in force throughout the period were those published in May 2000.

2. Decision

2. On 2 July 2001 Marconi changed its expectation as to its performance for the half year ending 30 September 2001 and the full year ending 31 March 2002. That change, if made public, was likely to lead to a substantial movement in the price of its listed securities and gave rise to the obligation to notify the Company Announcements Office without delay. The notification should have been made by, at the latest, the evening of 3 July 2001. By not making that notification until 18:41 on 4 July 2001 Marconi contravened Rule 9.2(c) of the Listing Rules.

3. The FSA considers it appropriate to make a public statement about this contravention.

3. Factual background

4. Marconi is listed on the London Stock Exchange, and at the material time was a constituent of the FTSE 100 index. Marconi's principal activity at the relevant time was the provision of hardware and software for communication and information industries to a global market.

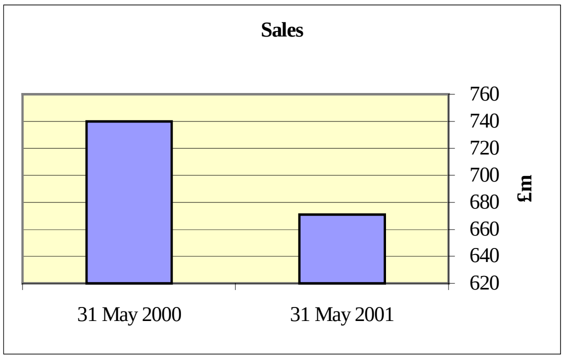
5. During the period 17 May 2001 to 4 July 2001, Marconi's senior executive management comprised its Chief Executive, Lord Simpson, its Deputy Chief Executive, John Mayo, and its Chief Financial Officer, Steve Hare. Sir Roger Hurn was Chairman.

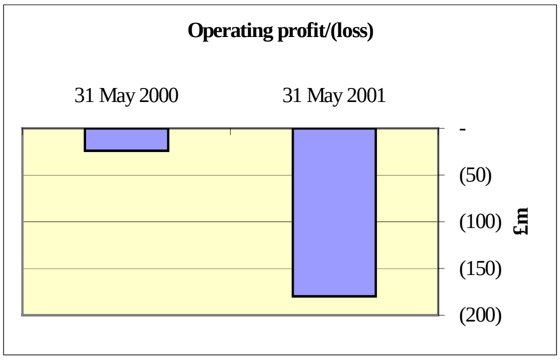
6. On 17 May 2001 Marconi announced its final results for the year ended 31 March 2001. Compared to the previous financial year, sales increased by 21% to £6,942 million. Operating profit rose by 8% to £807 million, and net debt amounted to £3,167 million. The announcement included a statement that Marconi's results for the first half of the financial year ending 31 March 2002 were unlikely to show an improvement on the results for the first half of the previous year, but that Marconi expected to show growth for the full year. Marconi stated:

"We do not see an upturn in general market conditions until the end of this calendar year, and the first half of the current financial year is therefore unlikely to show an improvement over the first half of last year. Due to increasing underlying demand by businesses and consumers for communications services and the absence of significant over-capacity in Europe, we anticipate the market will recover around the end of this calendar year, initially led by European incumbent and established operators. On this basis, we believe that we can achieve growth for the full year, as a result of our relative strength supplying these operators and the growing momentum in our product pipeline. Our new, customer focused organisation provides the platform for future success as market conditions improve, and so enhances our confidence."

7. *On 12 June 2001, the Chief Executive informed the Non-Executive Directors that the financial year had started very slowly indeed and that the early flash results showed that revenues for the first two months were 10% lower than those for the equivalent period in the previous year. He made reference to recent announcements by Marconi's competitors which he said indicated that they were having an equally difficult time. He informed the Non-Executive Directors that detailed operating reviews would be held in the next few weeks to establish the basis for a trading update to be made at the time of the AGM in July 2001.*
8. *On 18 June 2001 and 19 June 2001 respectively, Credit Suisse First Boston and UBS Warburg reduced their operating profit forecasts for Marconi by 21% and 22%.*
9. On 21 June 2001, full consolidated management accounts for the first two months of the financial year were circulated among Marconi's senior executive management. The results for the two months, and those for the same period in the previous year, are shown below:

	Two months ending 31 May		
	2000	***2001***	***Variance***
	£m	£m	£m
Sales	740	671	(69)
Operating profit / (loss)	(24)	(180)	(156)



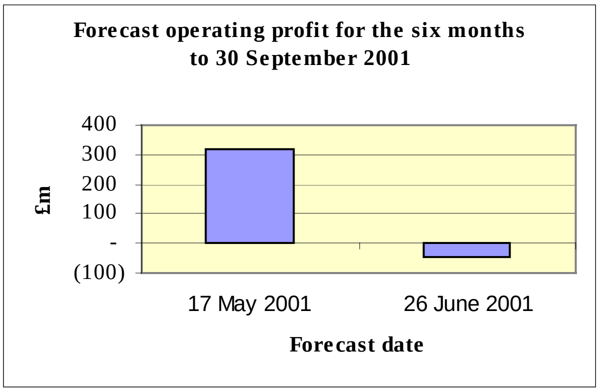


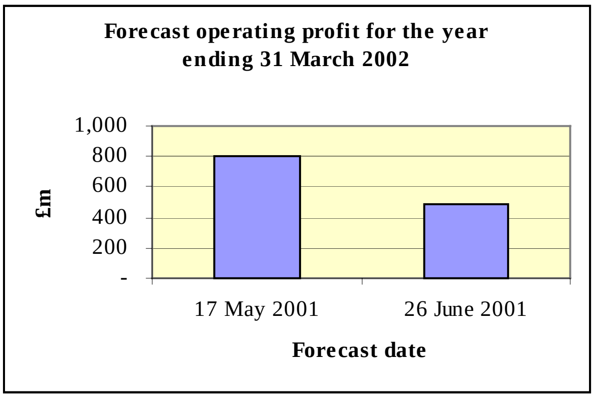
10. At face value, the figures were an indication that Marconi was not likely to meet expectations; however, the preamble to the management accounts stated that the figures should be treated with caution due to the effects of restructuring the business since April 2001.

11. Revised forecasts for the half year to 30 September 2001 and the full year to 31 March 2002 were due to be submitted by Marconi's divisions on 25 June 2001. A meeting had been arranged for 26 June 2001 at which those forecasts would be reviewed by the Chief Executive, Deputy Chief Executive and Chief Financial Officer with, among others, the heads of Marconi's divisions. On 22 June 2001, as a contingency against the figures to be received and reviewed on 26 June 2001, the Deputy Chief Executive discussed the preparation of a trading statement with the Chief Financial Officer.

12. On Tuesday 26 June 2001 forecasts for the half year ending 30 September 2001 and the full year ending 31 March 2002 were available, and were considered at length by Marconi's senior executive management. These forecasts are set out below with, by way of comparison, the existing guidance to the market, being the announcement made by Marconi on 17 May 2001:

	Forecast period					
	Six months ending 30 September 2001			*Year ending 31 March 2002*		
Forecast date	*17 May*	*26 June*	*Variance*	*17 May*	*26 June*	*Variance*
	£m	£m	£m	£m	£m	£m
Operating profit / (loss)	320	(47)	(367)	807+	491	(316)





13. If accurate, these forecasts would clearly have indicated that the guidance given to the market on 17 May 2001 was no longer correct. However, the Chief Executive, Deputy Chief Executive and Chief Financial Officer held the view that the forecasts contained inaccuracies and inconsistencies which demonstrated that they were fundamentally flawed. In particular,

the costs figures appeared to have failed to take properly into account the restructuring of Marconi's business since April 2001. The figures could not, therefore, be relied upon to assess Marconi's likely performance. The FSA accepts that this was the position.

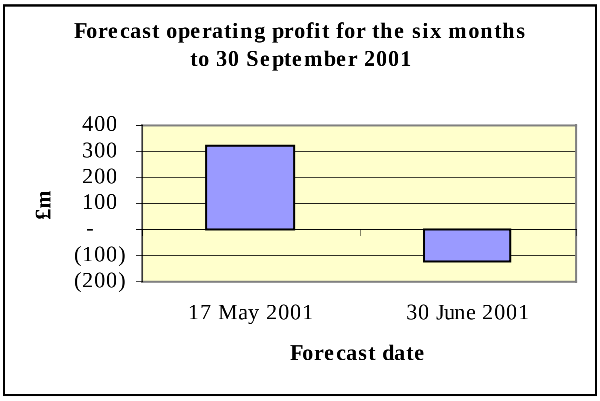
14. At the conclusion of the meeting on 26 June 2001, instructions were given for the forecasts to be reviewed and re-submitted to the Chief Financial Officer by close of business on Friday 29 June 2001.

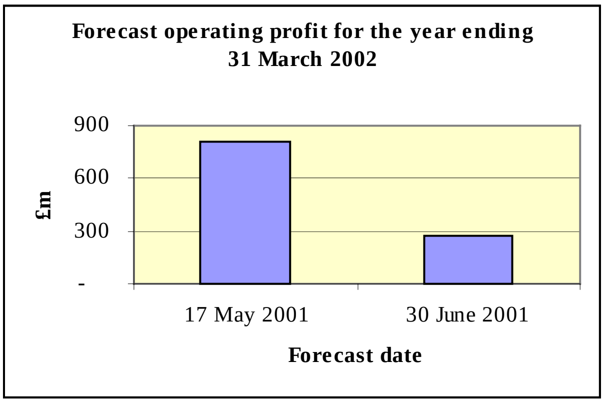
15. The Deputy Chief Executive was overseas on business from the evening of 26 June 2001 until the morning of 3 July 2001 (with the exception of the evening of 28 June 2001). He was contacted on a number of occasions about other business during this period, but was not contacted by anyone in relation to the forecasts. He had no involvement in the preparation or evaluation of the forecasts or other actions referred to below until his return to the office at 14:00 on 3 July 2001. The FSA makes no finding that the Deputy Chief Executive's conduct contributed to Marconi's contravention of the Listing Rules. Following his review of the forecasts, the Deputy Chief Executive immediately requested that Marconi's advisers be briefed and a meeting was then arranged for as soon as possible that day. This was the first time that the advisers were consulted regarding the release of a trading statement.

16. On Thursday 28 June 2001 the Chief Executive had met with the Chairman and they decided, in the light of the possibility of a trading statement having to be issued, that a Board meeting should be called for 16:00 on Wednesday 4 July 2001.

17. On Saturday 30 June 2001 the Chief Financial Officer received the revised forecasts ordered by senior management on 26 June 2001. These indicated an even greater variance from Marconi's original expectation for the financial year than the 26 June 2001 forecasts because, although concerns in relation to the level of costs forecast in the 26 June 2001 figures had been allayed, the forecast sales of communications products and services had been reduced by over £1 billion between 26 June and 30 June 2001 (see the table at paragraph 21 below). The forecast operating profit figures are shown below:

	Forecast period					
	Six months ending 30 September 2001			*Year ending 31 March 2002*		
Forecast date	***17 May***	***30 June***	***Variance***	***17 May***	***30 June***	***Variance***
	£m	£m	£m	£m	£m	£m
Operating profit / (loss)	320	(121)	(441)	807+	272	(535)

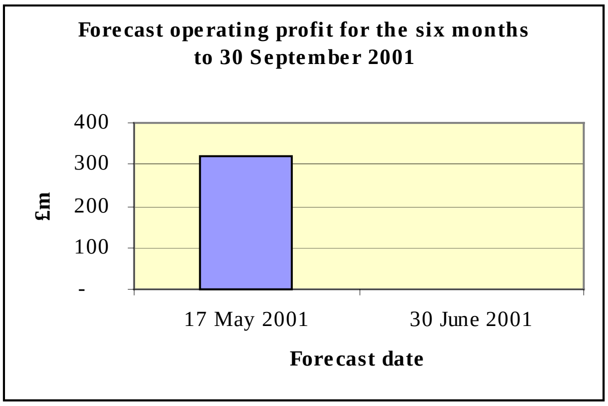


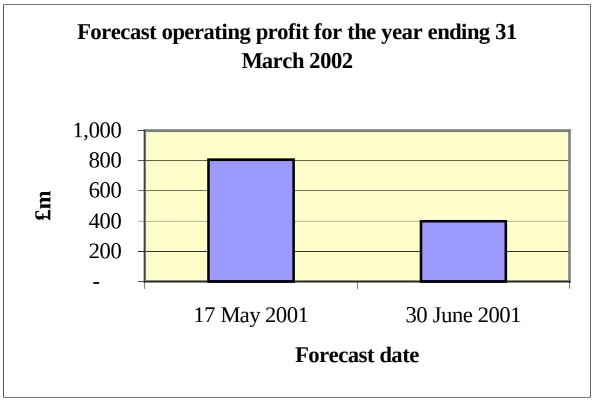


18. The Chief Financial Officer spent the weekend reviewing the figures, which he still considered to be flawed. He revised the figures, but they were still far below the guidance to the market from Marconi which was still extant. The Chief Financial Officer considered it appropriate to prepare a draft of a trading statement which he circulated by email on the morning of Sunday 1 July 2001. The FSA makes no finding that the Chief Financial Officer's conduct before or after 1 July 2001 contributed to Marconi's contravention of the Listing Rules.

19. The Chief Executive and the Chief Financial Officer met to discuss the revised forecasts and the latter's revised figures on Monday 2 July 2001 at 10:30. This meeting concluded at approximately 14:00. They made further revisions to the forecasts and set "target" figures as shown below:

	Forecast period					
	Six months ending 30 September 2001			*Year ending 31 March 2002*		
Forecast date	***17 May***	***2 July***	***Variance***	***17 May***	***2 July***	***Variance***
	£m	£m	£m	£m	£m	£m
Operating profit / (loss)	320	0	(320)	807+	400	(407)





20. These "target" figures were the figures Marconi included, unchanged, in the 4 July trading statement.

21. A comparative analysis of the forecast figures available to Marconi senior management on 26 June 2001, 30 June 2001 and 2 July 2001 is set out in the table below. This shows that, although the revision undertaken as a result of the 26 June 2001 senior management review meeting resulted in a reduction of forecast costs of £1,114 million, the profit increase which should have accrued was more than offset by the reduction in the sales forecast of £1,235 million. The reduction in sales was contrary to independent external market research

undertaken for Marconi which indicated that Marconi should expect sales to continue to grow to between £7,363 and £7,775 million. As a result, instead of the forecast operating profit being substantially increased (as management had expected), it decreased by a further £91 million against the 26 June figures.

		Forecast period - Year ending 31 March 2002				
Forecast date	*Prior year*	*17 May*	*26 June*	*30 June*	*2 July*	*Variance 26 June to 2 July*
	£m	*£m*	*£m*	*£m*	*£m*	*£m*
Sales	6,942	N/A	7,435	6,364	6,200	(1,235)
Costs	6,135	N/A	6,944	6,092	5,800	1,144
Operating profit / (loss)	807	807+	491	272	400	(91)

22. As can be seen from the table above, on 2 July 2001 Marconi had both the corrected cost forecasts and the new sales forecasts.

23. By 14:00 on Monday 2 July 2001, the Chief Executive and the Chief Financial Officer were content with these figures as an accurate reflection of their expectation as to Marconi's performance. They concluded that a trading statement was necessary and that the work which needed to be done to make an announcement should now be completed. The FSA has concluded that it was at this point that Marconi changed its expectation and that the obligation to notify a change of expectation without delay arose.

24. The Chief Executive informed the Chairman of the position that afternoon. The Chief Executive and Chief Financial Officer also wanted to consult the Deputy Chief Executive, but awaited his return to the office at 14:00 the following day and did not contact him in the meantime. The FSA accepts that it was appropriate to take the view of the Deputy Chief Executive before making a public statement, but that should have taken place within the context of an obligation which had already arisen.

25. The Board Meeting was not brought forward from its scheduled time. The Chairman and the Chief Executive have explained that this was in order to allow further opportunity to carry out work on the figures, prepare for analysts' questions and to consult the Deputy Chief Executive. They have also explained that they wished to allow for the receipt of the flash figures for June which were due on the morning of 4 July 2001. The FSA does not accept that the flash figures were necessary to the release of a trading statement.

26. The Chief Executive and the Chairman have explained that they reached the view in good faith that undertaking this work in the context of the timetable already set was sufficient to meet their obligations under the Listing Rules. However, the FSA considers that the Board

meeting could have been rescheduled to a time on the afternoon of Tuesday 3 July 2001 which would have allowed for such work to take place and for the advisers to be contacted.

27. Although some further work was carried out on the figures following the meeting on 2 July 2001, this largely amounted to preparing reconciliations of the new figures with the previous forecasts and was not sufficient to justify any delay in initiating the other steps needed to prepare for the making of an announcement. Nor, therefore, was it sufficient to justify the delay in making that announcement to 4 July 2001. In addition, while flash figures for trading in June were due on the morning of 4 July 2001, these were sourced from the divisions which had presented the reforecast sales figures to the Chief Financial Officer on 29 June 2001. They were therefore very unlikely to be material to the making of the trading statement.

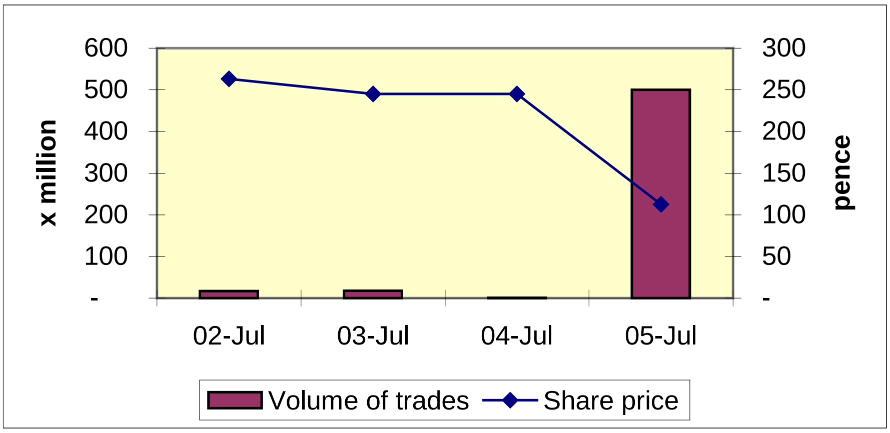
28. In April 2001 Marconi had begun the process of disposing of one of Marconi's US subsidiary companies, Marconi Medical Systems Inc ("MMSI"). The transaction was a class 2 disposal for the purposes of the Listing Rules, requiring Marconi, as soon as terms were agreed, to announce the transaction without delay. By early June 2001 Marconi had chosen a single bidder and by 30 June 2001 it was clear that there was a serious likelihood that the transaction would be agreed imminently. The disposal was in fact agreed in the early hours of 4 July 2001 and therefore had to be announced before the market opened on 4 July 2001. However, to make such an announcement in circumstances where a negative trading statement would be made later in the day risked creating a false market. Marconi concluded that in the circumstances it would have to seek a suspension of trading in its shares.

29. At 07:03 on 4 July 2001 Marconi announced through RNS the disposal of MMSI to Royal Philips Electronics. Shortly thereafter the suspension of Marconi's listing was announced and it was announced that Marconi would make a trading statement later that day. Suspension of the listing of its securities does not suspend the obligations of a listed company under the Listing Rules.

30. After a full day's suspension of listing, Marconi announced at 18:41 (published at 18:53) on 4 July 2001 that it expected to break even at the operating profit level for the first half and that operating profit before exceptional items for the year would be down by approximately 50% compared to the previous year. Marconi's listing was then restored.

31. The volume of shares traded on the London Stock Exchange in the period surrounding the announcement and the closing share prices are set out below:

	Volume	Price
Monday, 2 July 2001	17,196,644	263.0p
Tuesday, 3 July 2001	17,764,986	245.0p
Wednesday, 4 July 2001 (suspended)	925,000	245.0p
Thursday, 5 July 2001	500,400,000	112.5p



32. The twenty five fold increase in the volume of securities traded after Marconi's listing was restored as well as the 54% reduction in the share price are indicative of the price sensitivity of the information contained in the trading statement and the impact on the market of being prevented from trading for an entire day.

i. Relevant Statutory Provisions and published guidance

33. Article 11 of the Financial Services and Markets Act 2000 (Official Listing of Securities) (Transitional Provisions) Order 2001 provides that the FSA may publish a statement that an issuer of listed securities has contravened a requirement of the Listing Rules where that issuer:

- was admitted to the Official List before 30 November 2001;
- before 30 November 2001 had contravened a requirement of the Listing Rules;
- had not, in fact, been censured by the FSA (or been the subject of a final decision that it should not be so censured) under the FSA's powers under paragraph 1.9 of the Listing Rules prior to 30 November 2001; and
- would, if the actions or omissions constituting such contravention had taken place after 30 November 2001, have been in contravention of the requirements of the Listing Rules.

34. Rule 9.2 of the Listing Rules in force on 4 July 2001 states that:

> *"A company must notify the Company Announcements Office without delay of all relevant information which is not public knowledge concerning a change:*
>
> *(a) in the company's financial condition;*
>
> *(b) in the performance of its business; or*
>
> *(c) in the company's expectation as to its performance;*
>
> which, if made public, would be likely to lead to substantial movement in the price of its listed securities."

35. Rule 9.3A of the Listing Rules in force on 4 July 2001 states that:

> "A company must take all reasonable care to ensure that any statement or forecast or any other information it notifies to the Company Announcements Office or makes available through the UK Listing Authority is not misleading, false or deceptive and does not omit anything likely to affect the import of such statement, forecast or other information."

36. Relevant guidance on the disclosure obligations was contained in the Guidance on the Dissemination of Price Sensitive Information published by the London Stock Exchange in 1996, in particular at paragraphs 1-5, 7 (last bullet point), 10, 11 and 19.

Contravention of the Listing Rules

37. The powers of delegation by the Board to Marconi's executives permitted by the Articles of Association are very wide. The Board of a listed company cannot comply with the obligations imposed by the Listing Rules, and in particular Rule 9.2, unless its executive officers monitor performance and give continuous consideration to whether there has been a change in the company's expectation as to its performance. They must draw any material change in expectation without delay to the attention of the Board for it to review and make a formal decision on any required announcement.

38. The forecasts for the half year ending 30 September 2001 and the full year ending 31 March 2002, together with the management accounts for the two months ended 31 May 2001, had been reviewed and agreed between the Chief Executive and the Chief Financial Officer by 14:00 on Monday 2 July 2001.

39. They, at that time, changed their expectations as to Marconi's performance and knew that, when that change was made public, it was likely to lead to a substantial movement in the price of its listed securities. As a consequence, Marconi’s obligation to inform the market without delay of the change in its expectation arose at that time. By reason of his absence overseas and the decision not to involve him between 26 June 2001 and 3 July 2001, the Deputy Chief Executive’s concurrence was not required for the change in Marconi’s expectation to take place. Fulfilment of this obligation involved reporting the matter to the Board without delay to enable the Board to make a formal decision to issue the necessary trading statement. It was not necessary to await the return of the Deputy Chief Executive before accelerating steps to do so.

40. The FSA accepts that, as required by Listing Rule 9.3A, reasonable care should always be taken in the preparation of guidance to the market but considers that Marconi placed undue importance on the repeated refinement of the figures and language contained in the trading statement at the expense of its obligations to the market. Steps should have been taken immediately to bring the Board meeting forward to no later than a time on the afternoon of 3 July 2001 which would have allowed the opportunity for the work on the trading statement and preparation for analysts’ questions to be completed, for Marconi’s advisers to be consulted in advance of the meeting and for the Deputy Chief Executive to review the proposed new guidance on his return. Marconi could and should have been in a position to make a statement to the market on the evening of 3 July 2001. In the event, the announcement was not made until 18:41 on 4 July 2001. This delay resulted in Marconi contravening Rule 9.2(c) of the Listing Rules.

Conclusion

41. The continuing obligations of a listed company set out in the Listing Rules are designed to promote full disclosure to the market of all relevant information on a timely basis. The FSA regards the continuing obligation requirements of Chapter 9 of the Listing Rules as a fundamental protection for shareholders. Observance of those continuing obligations is essential to the maintenance of an orderly market in securities and of confidence in the financial system. The FSA therefore takes the most serious view of listed companies which fail to comply with these requirements.

42. The Board of a listed company, on the advice of its executive officers, must carefully and continuously consider whether changes in its financial condition, in the performance of its business or in its expectation as to its performance may be price sensitive such that, if made public, they would be likely to lead to a substantial movement in the price of its listed

securities, and so require disclosure under the Listing Rules. When such changes are under consideration, a listed company should also consult its financial advisers at the earliest possible time.

43. The period of time which it is reasonable for a listed company to take in making an announcement under the Listing Rules regarding a change in its expectations will depend upon all the circumstances relevant to the particular situation in which the change occurs. However, save in exceptional circumstances, a listed company must prioritise its disclosure obligations under the Listing Rules.

44. Marconi failed to notify the Company Announcements Office of the change in its expectations as to its performance by, at the latest, the evening of 3 July 2001 and, in these circumstances, contravened Listing Rule 9.2(c). The FSA does not allege and there is no finding of bad faith on the part of Marconi or its officers. Nevertheless, the FSA considers it is appropriate to make a public statement regarding this contravention and to draw attention to the obligations of listed companies which find themselves in similar positions.