

From CCR to CCP

Editorial

Catherine Waddams

This is the last newsletter from the Centre for Competition and Regulation (CCR) - our next one will be in the autumn from the Economic and Social Research Council Centre for Competition Policy (CCP). This major new phase, funded by the ESRC, builds on CCR's existing research on competition and regulation, extending it to provide a stronger focus on policy and to include political science, as well as the foundation disciplines of economics, law and management.

The main building blocks for this next phase are the strengths of existing Centre members. Catherine Waddams will become director of the new Centre, and Steve Davies and Bruce Lyons will be joined in the economics faculty group by Alexandre Gaudeuil, at present at Southampton. Morten Hviid is moving from economics to become Professor of Competition Law at UEA in September, where he will continue as one of the core members of CCP, working more closely with the current law faculty: Andrew Scott, Michael Harker and Lindsay Stirton. In Management, John Ashton and Pinar Guven-Uslu will be faculty members, working with Pat Barrow from the School of Computing Sciences and CCP will provide a new focus for our growing group of doctoral students. We are delighted that Yoonhee Tina Chang has been appointed as our first post doctoral fellow, after a year lecturing in economics at UEA; Laurence Mathieu will continue as research associate, and be joined by another half time quantitative research associate in September. From this base we will expand to include some visiting political science expertise, a qualitative research assistant from next Spring, and a second post doctoral researcher from autumn 2005.

This new phase of CCP will be housed in self contained dedicated accommodation - in one of the zigurats which has become a hallmark of UEA architecture and recently designated as grade 2* listed accommodation. The unit is centrally based on the

campus, close to existing CCR premises in the School of Management, and is currently being refurbished for the Centre's needs.

We are very saddened that Dan Goyder, who contributed so much to the vision of the new Centre, bringing his particular perspective of practical Competition Law, did not live to see CCP's inauguration. Alastair Mullis, Dean of Law, who himself encouraged the Centre so much in its early days, has written a tribute to Dan (page 8)

The autumn will see the second intake for our MA in Competition and Regulation Policy, for which applications are now being processed (see back page). Because of the intensive teaching by senior staff, intake to this modular degree, specially designed to provide specialist advanced economic and legal expertise for practitioners in full time employment, occurs only in alternate years. While some background in economics is expected (first year undergraduate or equivalent) we can provide a guided reading programme for those who are missing part of the necessary background or feel they need a refresher course. The course involves considerable commitment from students in completing assessed work, and from employers in terms of allowing sufficient time for the reading and assessment involved, but the first cohort had found the experience very valuable; employers concerned seem to have done so too, since they have increased the numbers they are prepared to fund for this next intake.

We hope you'll find the articles in this newsletter of interest. Two of these discuss rulings - by the European Commission on Ryanair and the Court of Appeal on the role of the Competition Appeal Tribunal in the *IBA Health* case; and two focus on the energy market, on consumer attitudes to climate change and on the interaction between social obligations and deregulation in energy markets. We welcome comments or questions on this, or the rest of our programme. See www.ccr.uea.ac.uk.

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The Ryanair State Aid Case

Morten Hviid

On February 3rd 2004, the European Commission announced its decision that some of the direct aid granted by the Walloon Region and partly by Brussels Charleroi Airport (BACA) to Ryanair was incompatible with the proper functioning of the internal market. The aid granted was a mixture of lump-sum subsidies (affecting Ryanair's fixed costs) and per passenger subsidies (affecting Ryanair's marginal costs). The decision does not rule out agreements between local airports and airlines, but it does clarify the Commission's framework for such agreements. Some issues which arise both from the particular case and more generally are discussed below.

From the Commission's decision there appears to have been two major concerns: (lack of) Transparency
Discrimination

However, no concern about the motives of the local authority/public firm is expressed beyond the private investor principle which tests whether the action would have been in the narrow interest of a private firm. This raises two further issues:

The objective of the local authority

The exclusion of positive externalities from the imposed private firm objectives.

Taking each of these in turn:

Transparency. A large part of the aid to Ryanair had the effect of lowering its marginal costs. Lowering the marginal cost of a firm would typically make it a stronger competitor, capturing market share and profits at the expense of rivals. This may even lead to the demise of one or more rivals. However this only works if rivals are aware that the aid package has lowered the marginal costs of the recipient. If the motivation for state aid is to benefit a firm in this way, transparency is clearly in the interest of both the authority offering the aid and the firm receiving it. Does the non-transparency of the agreement imply that we can rule out both profit shifting and entry deterrence as the motive?

Discrimination. Here we have two problems. Firstly, offering different level of aid depending on whether (a) the firm is also flying out of nearby airports, or (b) is a subsidiary of a firm flying out of nearby airports, could be privately optimal. If an airport authority is concerned with expanding the throughput of passengers, then it would pay more to a carrier who would lower its fares the most. That would be the case if neither (a) nor (b) was the case, because such a firm would not take business from itself or its parent company. The second problem arises when one combines transparency with non-discrimination. If the local authority or airport have some bargaining power, this combination can strengthen its bargaining position, see e.g. O'Brien and Shaffer (1994). Firms may be reluctant to agree terms if rivals are later offered better terms and this can erode the bargaining power of the authority. Transparency enable the firm to observe if better deals are on offer and non-discrimination rules them out. Thus the authority can credibly argue that: no rivals will be given a better deal than you, so you can safely accept. Transparency would in this case be in the interest of the airport and the local authority, so why did they not pub-

lise the agreement?

Objectives. Aid from a public authority will be allowed if a hypothetical private firm would have offered it, the so called private investor principle. Thus what happens to the aid does not effect the Commission's decision. However, a government or a local authority might think differently about aid to a local firm, which in welfare terms is a transfer, and aid to a foreign firm, which in welfare terms is a direct loss. Indeed, some people may have been surprised that payments from a Belgian local authority to a private Irish firm would constitute state aid, as one would commonly think of state aid as being financial aid to local firms from their own (local) government. Is it worthwhile to speculate on the motives behind the aid beyond the private investor principle?

Externalities. It is clear from the rules of the Commission that the local authority in granting aid must not take positive externalities on local businesses into consideration. Thus in the specific case, any benefits to the local community from increased throughput of people cannot be counted. Why could a private firm not capture (some of) these externalities, for example by funding an expansion by going to those local outlets who would benefit and asking for contributions? One argument against this is that a private firm cannot compel those who benefit to contribute and hence free riding would result. Another is that transaction costs of asking all are too high. Does that not leave a role for a (local) authority who does take the externality into consideration?

One further issue concerns how the private investor principle was used. We know that vertically related but separate firms, such as an airport and an airline, can use non-linear prices to ensure that joint surplus is maximised. Consider then an integrated private firm which owns the airport and the airline. The integrated firm is selling (at least) two products, transport services to and from the area and shopping opportunities. It might well decide to use the transport service as a loss leader, in other words, pricing the internal transfer prices well below its cost level and might do so for a considerable time, in theory forever. But then so might two separate firms. Contrast this with the Commission's decision, which makes clear that any aid must be transitory and seems to suggest that no transfer price may be set below costs. If the Commission is content to allow non-linear pricing (here aid) should it then not consider how an integrated private firm would act?

As a final footnote, in their press release, the Commission claims that the decision will have no impact on fares? If by this they mean direct fares, then this would require a belief that none of the aid that affected marginal costs was passed on to consumers. One struggles to think of an economic model giving that answer. The Commission may of course be thinking of an all-in price which allows for changes to the price of shopping, car parking etc. in which case it would be very interesting to see the calculations.

Reference:

European Commission Decision on Charleroi Airport **IP/04/157**
O'Brien, D.P and G. Shaffer (1994) The Welfare Effects of Forbidding Discriminatory Discounts: A Secondary Line Analysis of Robinson-Patman *Journal of Law, Economics, and Organization* 10(2): 296-318.

Discretion Restored at the OFT?: *IBA Health* in the Court of Appeal

Andrew Scott

The decision of the Court of Appeal in the *IBA Health* case elicited a collective exhalation of breath across the competition community.ⁱ A thesis common to much of the attendant reportage was that the judgment heralded the restoration of a discretion to the Office of Fair Trading (OFT).ⁱⁱ The Court was said to have overturned a blatant error in the ruling of the Competition Appeal Tribunal (CAT) on the question of when mergers should be referred to the Competition Commission for in-depth analysis. A second clear message in both the CAT and the Court of Appeal judgements, however, was that the OFT failed properly to substantiate the basis of its decision whether to refer.ⁱⁱⁱ This is a lesson that the OFT must absorb. Unfortunately, on the further question of precisely when the duty on the OFT to refer a merger arises the case has generated more heat than light.

The factual background to the case is well known. In short, it arose out of a decision of the OFT not to refer an anticipated merger between two healthcare software providers iSOFT and Torex to the Competition Commission. IBA Health, a third party competitor to the two firms, applied to the CAT for a judicial review of this decision. At first glance, IBA Health had good cause for complaint. Specifically, its products competed directly with those of iSOFT, and were distributed in the UK by Torex. This arrangement would not survive the merger. More generally, the parties to the proposed merger were the two leading suppliers of IT software to the healthcare sector in the UK with aggregate legacy market shares of 44% rising to 100% on relevant markets. The introduction of a National Programme for IT in England, however, is wringing fundamental change in procurement practice in the healthcare software market. In light of this, and the concomitant enticement of overseas competitors onto domestic markets, the OFT determined that a reference of the iSOFT / Torex merger need not be made.

The purported legal basis for this decision is to be found in s.33(1) of the Act.^{iv} This provides, *inter alia*, that the OFT shall make a reference if [it] believes that it is or may be the case that (b) [a merger] may be expected to result in a substantial lessening of competition. The Court of Appeal was clear that this phrase imposed a statutory duty, as opposed to a statutory power or discretion (para.23). The OFT has never enjoyed a discretion over whether to refer; rather it has exercised a duty resting on a margin of appreciation. To clarify when this duty arose, the court ruminated on both the nature and the content of the belief to be held by the OFT. As to the nature of the belief, it concurred with the general view that this should be not merely subjective.^v The statute should be interpreted as requiring a reasonably grounded belief on the part of the OFT (para.184). As regards the content of the belief, the court reflected on the proper interpretation to be given to the phrase it is or may be the case that the detrimental outcome would result. Sir Andrew Morritt (VC) explained that the

second possibility envisaged in this phrase the lower degree of likelihood would be invoked where the work done by the OFT did not justify any positive view, but left some uncertainty (para.47). Thus, the OFT can either take a definite view one way or the other, or find that the scenario in hand avails of alternative, contrary, but equally feasible prognoses.

The crucial question was the degree of credibility that a view suggestive of a competition problem must evince before invoking the second possibility. This could range through far-fetched, tenable but unlikely, and probable to near certainty. On its reading of the Act, the OFT had since June 2003 operated towards the higher end of this scale under a criterion of significance. The CAT's determination appeared to unsettle this practice and a range of concerns were widely aired in consequence.^{vi} A prominent view was that the ruling imposed a requirement of virtual certainty as to the absence of a detrimental outcome where the OFT wished not to refer; that it lowered markedly the degree of credibility required of alternative hypotheses. On this inference, the OFT could act as no more than a first screen of patently innocent mergers. Almost every case that currently reached the case review stage, that is those in which *prima facie* valid competition concerns could be recognised, would henceforth have to be referred. This would see a significant increase in the number of references to the Competition Commission. For many proposed arrangements even the threat of an additional delay caused by Competition Commission proceedings would likely result in termination.

For its part, the CAT appeared to consider the line adopted by the OFT as somewhat obtuse, and evincing no reasonable prospect of success on appeal (paras.4 and 65). It had maintained that it did not accept that the judgment, properly understood, significantly lowers the threshold for referring mergers to the Competition Commission (para.5). In both its original judgment (para.193) and its determination on whether to grant permission to appeal (paras.17-18),^{vii} the CAT had emphasised the need to determine the existence or otherwise of credible alternative views. It had explained: if there is genuinely room for two views on the question then in our opinion the requirement in section 33(1) is satisfied (para.191). As regards the requisite degree of credibility, it discounted cases in which the alternative view is merely fanciful, or far fetched (para.193). Moreover, on granting permission to appeal, it noted that in its earlier discussion of room for two views, it had not envisaged merely an arguable view but a serious view, reasonably based (para.25). This would parallel the perspective of the OFT. Ultimately, the CAT's complaint was that, rather than refer where it perceived two credible views, in fact the OFT's approach was to seek to decide which of two plausible views [it] preferred (para.233).

The discrepancy between readings of the CAT judgment rest on the inclusion indeed, the centrality of some additional commentary. In interpreting the language of s.33(1) the CAT had stipulated a two-part test for non-referral which included the need for the OFT to find no significant prospect of an alternative view being taken in the context of a fuller investigation by the

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Commission. Similarly, it required that the OFT be able reasonably to discount the possibility of the Competition Commission coming to a different view after a more in-depth investigation (para.198). The CAT suggested that the OFT is, in effect, assessing the prospect of the Commission finding the necessary expectation were a reference to be made (para.183). It concluded that the correct approach for the OFT was to ask whether there were, reasonably, two views which could be taken (para.233).

These additional aspects of the CAT decision are open to two criticisms. First, they inappropriately and unnecessarily locate the question as to whether there are alternative credible hypotheses in the setting of a notional Commission investigation. This undermines the subjective nature of the requisite belief. While the second limb of the proposed test could be read as merely a hypothecation as to the credibility of alternative views, the CAT's continued insistence on the bipartite test does suggest a confirmed intention to require the OFT to undertake a mind's eye estimation of a second party's thinking. Secondly, they suggest that an alternative view need only be reasonably well-founded before it warrant the epithet credible. Clearly, the OFT concluded that it was neither required nor able to second guess the results of Commission investigations, and that the degree of credibility of an alternative view must be more persuasive before it impacted upon the formulation of its belief.

Thus, the appeal was brought to clarify between the OFT's own perspective and its broadly justifiable reading of the Competition Appeal Tribunal ruling regarding the necessary degree of credibility of alternative views. Interestingly, the necessary degree was not defined tightly in the appellate ruling. Like the CAT, the Court was happy to exclude the purely fanciful because the OFT acting reasonably is not going to believe that the fanciful may be the case (para.48). In addition, the court derided the two-part test (para.42), and thereby undermined the apparent support for a criterion of reasonable credibility. Beyond this, the court left a wide margin in which the OFT is required to exercise its judgment. It deemed it inappropriate to attempt any more exact mathematical formulation of the degree of likelihood which OFT acting reasonably must require. The judgment of the Court of Appeal was welcomed by the OFT, which saw it as assuaging erstwhile concerns.^{viii}

While this result would seem to resolve uncertainty and offer clarity to both the OFT and the legal profession, there remains a slight concern. In both the substantive Court of Appeal judgments there was passing reference to a credibility hurdle of 50 per cent and criticism of the OFT's significance test (paras.49 and 86). This interpretation appears to conflate the is or may be aspect of the statutory provision with the may be expected part, and it is submitted that the OFT's somewhat higher estimation probably remains more correct.

The possibility that this remaining opacity might engender wider recourse to the CAT in future is probably negated by the fact that the exercise to be undertaken remains a review and not an appeal on the merits. Assuming that the OFT refines its practice to offer more

detail on its reasoning, and that such reasoning will be intelligible and adequate to meet the substance of the arguments advanced (CA, para.104), its decisions will not be impugned. Notwithstanding its relative expertise, the CAT remains an umpire and not a player in the merger control game. The belief upon which the duty (not) to refer rests must be well-founded, although it need not be watertight. It remains that of the OFT alone.

ⁱ *Office of Fair Trading and others v IBA Health Ltd* [2004] EWCA Civ 142

ⁱⁱ For example, Sherwood and Tait. (2004) Court Decision Averts Curb on OFT Powers. *Financial Times*, 22 February; Langdown-Down. (2004) Discretion Restored at the OFT. *The Times*, 2 March.

ⁱⁱⁱ The judgments of the CAT and the Court of Appeal each rested heavily on the perceived failure of the OFT properly to demonstrate the coherence of its conclusions. The CAT noted the apparent speed with which the OFT had reached its decision on an extremely complicated factual matrix (paras.236 and 239), and that a substantiated rebuttal of this alternative view did not form part of the impugned decision (para.237). It complained of a general want of evidence; of its extreme difficulty in determining whether all material considerations [had] been taken into account and all material facts ascertained (para.243).

^{iv} s.22 provides the equivalent test in regard of completed mergers.

^v *IBA Health Limited v Office of Fair Trading* [2003] CAT 27.

^{vi} Vickers. (2004) *Merger Policy in Europe: Retrospect and Prospect*. Washington, 11 February; Nicholson. (2003) Reinstatement of the Old Regime of Merger Control. *Financial Times*, 15 December; ECR Group. (2004) A Winter Chill Descends on United Kingdom Merger Control. *Clifford Chance Client Briefing*, January.

^{vii} *IBA Health Limited v Office of Fair Trading* [2003] CAT 28.

^{viii} Press release, 19 February 2004.

LLM in International Competition Law and Policy

Recognising that the nature of the lawyer's role in the competition field is such as to require a substantial appreciation of the law, the procedures, and the economic concepts that underpin policy and practice, this unique LLM programme is designed to equip students with each of these important competencies. It uses the EC competition regime as the standard vehicle for analysis, but draws detailed comparison with the substantive law of the UK, the US, and other jurisdictions as appropriate. Moreover, the course of study encompasses wider issues such as the overlap with trade policy, development issues, and sectoral regulation. The range of expertise and experience within the CCR allows us to offer an unparalleled learning environment. Furthermore, students benefit from engagement with leading actors from business, government, and private legal practice. The programme is supported with scholarships for candidates of outstanding calibre. For further information contact Dr Andrew Scott (a.d.scott@uea.ac.uk or (01603)592525), or visit www.uea.ac.uk/law

Disappointment and Relief from Deregulation of Energy Markets: Not as good as was Hoped, Nor as Bad as was Feared

Catherine Waddams

In our Economic and Social Research Council funded project on Social Obligations and Economic Regulation, based at CCR¹, Catherine Waddams, Diane Sharratt² and Evens Salies found both bad and good news in our exploration of the deregulated household energy markets. Using evidence from the prices charged by companies in different markets after deregulation, and from talking to companies about their policies, we discovered that formal deregulation had less effect than might have been expected, because of the importance of informal pressure from the regulator and public opinion on energy supply companies. This resulted in a bad news/good news story. The bad news is that incumbents retain considerable market power, and that consumers who don't switch supplier are still paying a significant premium over entrants' prices. Moreover there may be worrying distributional effects because competition has developed less aggressively in prepayment markets, and the fact that some vulnerable households are less likely to switch, and so may pay higher prices. The good news is that the cross subsidies which have (by and large) helped disadvantaged consumers in the past, and which were expected to be eroded by competition, are only slowly being phased out, so the impact on vulnerable households from price *rebalancing* has been less severe than had been feared.

Our research with energy supply companies found that most see social obligations as a commercial opportunity, both for customer growth and to satisfy external perceptions. Compatibility between social and economic roles arises from the value of addressing social goals for the benefit of a variety of audiences. Government and the regulator appear to be cast as surrogates for public relations given their capacity to injure or enhance reputations. It is less clear that the companies focus specifically on achieving fuel poverty targets and the elimination of consumer detriment.

The energy regulator's Social Action Programme has stimulated activities on two fronts: regulatory requirements to which the industry is obliged to respond; and discretionary actions beyond these obligations. Such behaviour responds to three sets of incentives: the role of external parties, specifically Ofgem, government and beliefs concerning the general public's sensitivity to socially responsible companies; the capacity for impression management and enhancing brand reputation to encourage customer retention and acquisition (but not specifically the fuel poor and vulnerable); and the role of leadership, particularly in one company.

However we found that operational managers were less aware of the social policies and practices of their company than the managers responsible for marketing, regulatory affairs and strategic issues. Attaching commercial objectives to social obligations corresponds with the regulator's view of the best way to realise the social agenda: the carrot rather than the stick being a better incentive. However, the consumer body believes that the industry is

not performing as well as it could in relation to vulnerable customers, and that the industry is claiming to do more than it is doing to avoid the imposition of further requirements.

The electricity prices charged by the industry showed significant differences in the general pattern between the two credit and the prepayment tariffs, which are used predominantly by lower income households. In the prepayment market some costs are only partially passed through, while others appear to have no effect on the charges levied. But the size of the market seems to have a significant effect on prepayment charges. However we find little evidence that the *incumbent* has any additional market power in this market, beyond that identified above. In contrast, the charges in the direct debit and credit markets appeared to be much more closely related to costs. There is also evidence that incumbents consistently charge more than entrants, which indicates continuing market power of incumbents, particularly over consumers who are reluctant to switch supplier.

As the final price controls were removed from retail electricity tariffs when these charges were the prevailing prices, the results raise important issues for future regulation of the market. We found evidence of rather different types of market power according to payment method. Incumbent mark ups in direct debit and credit markets raise concerns for the potential exploitation of nonswitchers. In the prepayment market we found indications of more generalised market power. Since the average income of non switchers and prepayment consumers is lower than that of other consumers, these effects may work against the objectives of the regulator's Social Action Plan.

Despite these concerns, the market could have delivered benefits to individual households who have switched supplier. Analysis of experience in the early days of the competitive market indicate that about half those who had changed supplier have switched to a higher cost tariff for their consumption level and payment method. Most of the changes in expenditure are small, with around 80% of switchers making gains or losses of no more than 10% of their bills. Those who gain more than this (12% of our sample) just outnumber those who lose more (10% of our sample).

This does not suggest that competition has brought great benefits, even to the consumers who have changed supplier, and at best renders considerably lower benefits than those which Ofgem has calculated from the best available offers. Indeed the best assumption from these results seems to be that on average no benefits have accrued to consumers who have switched supplier. Moreover, amongst those who have switched there is little evidence that vulnerable groups have gained more than others. Given these outcomes for consumers, it is very difficult to argue that welfare as a whole has increased, once the cost of companies attracting new consumers has been taken into account. While extending competition to residential markets has introduced some innovations, for example in tariff structures, such benefits will have to be substantial to overcome the costs accruing to administrators, participating firms and consumers in the early years.

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Turning to the dynamics of prices in the prepayment market, we find weak evidence that removing price caps has increased the price of prepayment charges *relative* to those in other markets, but that companies still charge a lower mark up for prepayment customers over other forms of payment in the area where they are incumbents compared with areas where they are entrants. The continuing relative bias in favour of prepayment consumers by incumbents in area is most likely to be caused by informal pressure from the regulator and consumer watchdog, and fear of bad media exposure. Such attitudes are confirmed by the company interviews, which emphasise the importance of external perceptions. It indicates the continuing influence of the regulator, despite the removal of price caps.

Overall the research shows that despite the removal of formal price controls, residential markets are still far from competitive. However companies see delivery of social objectives as compatible with commercial imperatives, and continue to act in the shadow of the regulator and other opinion formers. In the short term this informal oversight may deliver some social benefits; but there is a danger that these may be more apparent than real. In the longer term the market may not be sufficiently competitive to justify the costs of its deregulation, in terms either of benefits to consumers as a whole, or specific gains for low income consumers.

Overall the competitive energy market seems to have got off to a rather hesitant start for households, with informal regulation exerting almost as much control over companies' behaviour as more formal price caps. As consumers gain experience and companies build confidence, it will be interesting to see whether the forces of competition or inertia prevail, and who the main beneficiaries will be.

¹ Salies, E and Waddams Price, C (2003) Charges, Costs and Market Power in the Deregulated UK Electricity Retail Market . CCR Working Paper 03-6

² Social Obligations and Economic Regulation: Coincidence or Conflict - A Report on the UK Energy Supply Industry . Sharratt, D, Centre for Management under Regulation, Warwick Business School.

Shedding Light on Domestic Energy Consumption: Powergen Energy Monitor 2003

Ivan Diaz-Rainey, Rob Tinch and Catherine Waddams

Only 52% of Britons believe that their energy use at home impacts the environment. 82% would, however, like additional information and advice to help them think more about the environmental consequences of their own actions. 42% say they would be willing to pay a 5-10% premium for green energy, while at the same time 76% believe that electricity from renewable sources ought to be cheaper because it does not damage the environment as much. What to these beliefs and desires mean for UK energy policy? Are they borne out in actual behaviour? Are they contradictory or complementary? A team of CCR researchers, along with colleagues at UEA's School of Environmental Sciences, attempted to find some answers.

Energy policy context

Concerns for the environment, fuel poverty and the desire to have competitive energy markets, as well as the realisation that North Sea oil and gas production have passed their zeniths, mean that energy policy in the UK is squarely in the gaze of policy makers. The current debate on energy policy is centred on the 2003 Energy White Paper that followed the 2002 PIU Energy Review.

Given that a third of the UK's energy consumption takes place in the home, both the White Paper and the PIU Review stressed the importance of household sector and energy efficiency in achieving UK's diverse energy policy goals. The Government's UK Climate Change Programme (UKCCP) aims for a 10MtC (million tonnes of carbon) reduction in emissions per annum by 2010, of which half is to come from the domestic sector. With this in mind, Powergen commissioned the University of East Anglia to carry out a study on public attitudes towards energy and the environment, as well as the related energy behaviour of the UK population. An interdisciplinary team comprising members of CCR (Professor Catherine Waddams and Ivan Diaz-Rainey) and the UEA's School of Environmental Sciences (Dr Rob Tinch, Dr Michael Peters, Jennifer Monahan and Dr Keith Tovey) conducted the research.

Powergen Energy Monitor 2003 (PEM 2003)

The Powergen Energy Monitor 2003 was conducted between March and October 2003 and it comprised three major pieces of work: a literature review, a series of focus groups and a questionnaire survey. The Powergen Energy Monitor PEM 2003 was centred on the latter, a telephone survey of a cross-section of the UK population, resulting in 1800 completed interviews covering a broad range of energy related issues. The questionnaire design was informed by the literature review, as well as input from Powergen, the Energy Savings Trust and Government Departments.

The focus groups aimed to explore areas covered in the survey in more detail, in addition to topics not easily

covered in a questionnaire, such as trust. Participants for the twelve panel focus groups, which were held in London, Norwich (two groups), Leicester, Manchester and Aberdeen, were recruited via the telephone survey. The panel approach was used in an attempt to discern behavioural changes between two focus groups, which were held roughly a month apart, with participants asked to keep an energy diary between the first and second focus group they attended.

Following its launch in October 2003, at a gathering of the policy community in Westminster hosted by Stephen Timms MP (Energy Minister), Dr Paul Golby (CEO of Powergen) and Professor Trevor Davies (Dean, School of Environmental Sciences, UEA), the Powergen Energy Monitor 2003 generated significant media coverage in the national press.

Domestic energy use and energy policy

The Powergen Energy Monitor M 2003 findings were grouped under three main themes: Attitudes and behaviour, behaviour in cutting energy use and views on information and advice:

Attitudes and behaviour

This heading aimed to ascertain public attitudes to domestic energy and environmental issues, and how the two link together. A number of sub-themes emerged:

The environment: 23% of survey respondents believed concerns for the environment are often exaggerated. Only 52% agreed that their domestic energy usage did have an impact on the environment. Overall, although there was evidence of broadly formed attitudes to environmental issues, the link onwards to behaviour was much less obvious.

Green consumerism: there was substantial support in principle for green energy with 42% claiming that they would be willing to pay a small premium for green energy (see Figure 1). However, three quarters of those surveyed felt that electricity from renewable sources should be cheaper as it is less harmful to the environment. The implication was that there could be public support for subsidising green energy.

Responsibility for action: half of respondents felt that government, individuals and companies should work in partnership on energy efficiency. The single group most judged to have this responsibility, however, was government.

Cutting energy use

This theme explored what households are doing (or not) to reduce energy consumption and/or expenditure. Findings here fell into two sub-headings:

Reducing energy consumption: a third of survey respondents had tried to reduce the amount of gas or electricity used in the home, and the vast majority had taken some steps to improve their home energy efficiency. The most popular reason for doing so, cited by a third of respondents, was increased comfort. Only a fifth cited saving money as the key motive, suggesting cost is less of a motivator than previously thought. Environmental rea-

sons were mentioned by fewer than one in ten.

Energy-efficient appliances: very few participants identified energy efficiency as a factor in buying new appliances. There was considerable support for government action to raise minimum standards and thereby remove from consumers the ability to choose inefficient appliances.

Information and advice

The last of the three themes sought to discover what households felt about the energy-related information they are currently provided with and what type of information they would additionally like to have at their disposal.

Once again two broad sub-themes emerged

Availability of information: one of the main points of consensus across all focus groups was that there is a dearth of reliable and impartial information, with even independent pressure groups being seen as having an axe to grind. There was strong agreement that energy efficiency should be taught in schools.

Bills: nearly three quarters of consumers found their bills easy to understand. There was also strong support for the idea of the back of the bill being used to provide energy efficiency information, possibly in the form of a checklist, thereby allowing for the centralisation of information that is presently fragmented.

Overall the research suggests that people tend to give energy use little thought except when purchasing appliances. Moreover, whilst many people have strong views about environmental damage, concerns about the bottom line and comfort will usually dominate other considerations.

Conclusions and policy implications

The Powergen Energy Monitor 2003 findings have a number of implications for energy policy. With respect to appliance efficiency there is clearly strong public support for the expansion of minimum standards and better energy efficiency labelling. In a similar vein, and given that the UK has growing but ageing housing stock, there is strong support in favour of efforts to raise building regulations standards. More importantly, however, if the UKCCP targets are to be met, then behavioural change will be needed from consumers. History tells us that engendering such change will be challenging. Perhaps the first step in achieving behaviour change is to ensure that individuals accept that their actions have environmental consequences. To this end providing households with accessible and easy to follow information from a source they trust, may be a useful point of departure.

Overall the Powergen Energy Monitor PEM 2003 concludes that households are often faced with complex information and difficult choices, and many feel that greater and more forceful government intervention is required to directly influence the choices they can make. While such intervention may imply higher costs to consumers, our evidence suggests that many are willing to bear moderately higher cost if the social and environmental benefits of these measures can be communicated to them effectively. In addition, there is a sense that all the key players in this field – government, companies and consumers – must co-operate if there is to be effective progress.

A Tribute to Dan Goyder

Alastair Mullis

DAN GOYDER, who died on February 17, 2003, was a visiting senior teaching fellow in UEA's Law School, a member of the Centre for Competition & Regulation and one of the UK's leading competition lawyers who pursued parallel successful careers in the law as practitioner, professor, adjudicator and writer.

He was born on August 26, 1938, the eldest of eight children. Educated at Rugby School and subsequently at Trinity College, Cambridge, where he read law, he was elected a senior scholar in 1958. He qualified as a solicitor with the City firm Allen and Overy and had he chosen to remain there would undoubtedly have become a partner. However, he preferred to work and bring up his family in a smaller community and in 1968 he moved to Ipswich joining Birketts, a firm of solicitors, where he remained for the rest of his life as partner and latterly as consultant.

In 1963, Dan was awarded a Harkness Fellowship, a notable achievement in itself, which gave him the opportunity to spend two years in the US, first at Harvard Law School and then at the University of California at Berkeley. While he was there his interest in competition law developed from his study of American anti-trust law. His work in America led him to begin his distinguished writing career and in 1980 he published the book for which he is best known, *EC Competition Law*. This quickly established itself as the leading book in the area and went into its fourth edition in 2003. He invited CCR colleagues to the launch, and four were privileged to attend the gathering of Dan's family, leading colleagues and practitioners from 20 years of UK competition policy, an event overflowing with the respect and affection in which Dan was held. As well as numerous articles on competition law, he was also the author, with Sir Alan Neale, of *The Anti-Trust Laws of the USA*.

In 1980, he was appointed as a member of the Monopolies and Mergers Commission and later that year became a deputy chairman under Sir Sidney Lipworth, QC. He chaired a succession of inquiries, the most significant of which led ultimately to the division of British Gas's functions. As Deputy Chairman, he acquired a reputation for meticulous preparation, and courtesy, and as a thoughtful and effective questioner. These were attributes he brought to everything he did, making him not only a first-rate lawyer but also an exceptional colleague. For his work in competition law and at the MMC he was appointed CBE in 1996.

His academic career started in 1980 when he was appointed a lecturer at the University of Essex. In 1991 he was made a visiting professor at King's College London, a post he held until 2003, and at the University of Essex. Cambridge University engaged him as a senior fellow with the Centre for European Legal Studies in 2001 and last year he joined the Law School at UEA as a senior teaching fellow and CCR as a faculty member. He was a remarkable teacher: always meticulously well prepared, always demanding but also patient and kind

with all his students. He was a teacher for whom students always worked hard because they wanted to impress him. Dan played a central role in expanding the research of CCR, providing a senior mentor for the law research element, and his leadership at this crucial stage was undoubtedly influential in the award of funding to the Centre by the Economic and Social Research Council. The Centre will greatly miss his input into its developing research agenda, his practical experience of developing competition regimes, and his wisdom.

At the end of last year, Dan was appointed to the Competition Appeal Tribunal, a fitting recognition of the esteem in which he was held by competition lawyers generally. He was ideally suited by both temperament and training for this role and the Tribunal will be the poorer without him. Those who appointed him will find it exceptionally hard to find a worthy successor.

Dan's death deprives the Law School of a brilliant scholar and an exceptional colleague and the Centre of a wise and experienced mentor. It is, however, as a man that he will be missed most. He was the kindest and gentlest of men, always interested in others and never with a bad word to say. In the short time that he was with us, he had gained the respect and affection of all whom he met. He is, in short, wholly irreplaceable.

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MODULE 5:	Thurs 2nd Feb - Sat 4th Feb 2006
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