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Reforming Competition Law

CCP's inaugural conference heard thought provoking speeches on reform of competition law and merger control from three distinguished speakers: Chairman of the Office of Fair Trading, Sir John Vickers; Chief Economist at the Directorate General of Competition at the European Commission, Professor Lars-Hendrik Röller; and leading competition lawyer Christopher Bright. In his presentation Sir John argued that the European Commission should take the initiative in setting policy on still unreformed areas of competition law. If this didn't happen, he warned, then it would be left to the courts to determine such policy by "default".

Three vignettes of the Centre's planned research were presented by Steve Davies, Michael Harker and Morten Hviid.

Sir John Vickers addresses the inaugural conference of CCP.

Director's Letter

Catherine Waddams

Articles in this newsletter focus on a range of subjects central to the Centre for Competition Policy's research. Steve Davies and Bruce Lyons' article on merger simulation arises from work they have completed for the European Commission, and represents important new thinking in the principles and practice of merger analysis. Peter Møllgaard, Professor at Copenhagen Business School, who visited the centre during March and April, argues that it is important to define product and geographical markets simultaneously if the markets are not to be defined too narrowly. Michael Harker examines the introduction of competition into regulated markets, using as an example the provisions of the Water Act 2003, to be implemented this year. The approach of the government is contrasted with those previously applied in telecommunications. Hussein Kassim, our part time senior political science mentor, explores the potential contribution of this discipline to the Centre's research agenda.

The establishment of CCP is almost complete: a second post doctoral fellow will join us in September. Laurence Wild, our excellent centre co-ordinator, is leaving after four years to concentrate on a postgraduate degree in Social Development. Hayley Morris is joining us at the beginning of June as full time Centre manager.

We have welcomed four visitors during the year: Alberto Prandini, undertaking doctoral studies at LUISS in Rome, spent four months with us exploring the issues of the British Electricity Transmission and Trading Arrangements; Peter Møllgaard came for four weeks to continue work on joint papers with Morten Hviid and establish links with others in the Centre; Meghan Busse and Florian Zettelmeyer, both of University of California, Berkeley, visited in May, giving three CCP seminars.

Centre members have delivered two bespoke courses during the last six months: Bruce Lyons and Morten Hviid to the Office of Government Commerce on Procurement, and Catherine Waddams and Michael Harker to the Competition Commission on regulatory appeals. Meanwhile the second cohort of our MA course are completing their first year. Morten Hviid delivered his inaugural professorial lecture on Cartels, Collusion and Punishment in March.

Finally, we are delighted that CCP Law PhD student Pinar Akman has been awarded an ORSAS award, which are given on a competitive basis to international postgraduate students of outstanding academic ability and research potential.

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How Simple Simulations Would Improve EC Merger and Remedy Appraisal[1]

Steve Davies and Bruce Lyons

In principle, mergers constitute a major potential means of restructuring, allowing a more efficient allocation of resources in any particular industry. This can enhance the competitiveness of the merging firms and improve competitiveness of the industry as a whole on the world stage. Potentially, both consumers and producers can ultimately gain from that restructuring. However, mergers may also dampen the competitive process, by reducing the number of effective competitors, by softening competition, by impeding entry, and by reducing the incentives to innovate. This can harm both domestic consumers and international competitiveness. The way in which a competition authority can try to get the 'best of both worlds' is by requiring certain remedies – which for horizontal mergers at the European Commission nearly always means selective divestitures – as a condition for allowing the merger to proceed.

...Remedies are used ten times as frequently as outright prohibitions...

Relative to the total number of mergers, remedies are imposed relatively infrequently: since 1990, the European Commission has been notified of about 2,500 mergers; and, of these, remedies were imposed in only 8% of cases (about 200). Outright prohibition occurred even less frequently - in fewer than 1% of cases (19). Put another way, however, remedies are used ten times as frequently as outright prohibitions and so can be argued to be even more deserving of investigation than the bans which typically attract the biggest headlines.

...We were asked to investigate a practical methodology for assessing the efficacy of merger remedies...

We were asked by the European Commission to investigate a practical methodology for assessing the efficacy of remedies put in place by an antitrust authority as a condition for allowing a merger to take place. The basis for our proposal was to apply highly simplified simulation models. The methodology was tested on seven complex multinational mergers, most of which took place in the late 1990s.
In order to provide a benchmark for the competitive effect of a remedy, it was necessary to apply our methodology also to the original merger appraisal which identified a problem for competition. This provides a desirable consistency between the appraisals of the merger and of the remedy. However, given that the Commission typically relies heavily on market share analysis in its own merger appraisals, our simulation methodology had the important by-product of providing a critique of simple market share analysis in assessing mergers. We had extensive access to information that the Commission gathered at the time of the investigation, so we were able to rework some of their conclusions. We also had access to follow-up studies of 'what happened post-remedy?' which were conducted in parallel by DG Competition. In a future edition of this Newsletter, we hope to summarise our conclusions from this *ex post* part of the project. Meanwhile, we focus on the ex ante merger and remedy appraisals.

...We had extensive access to confidential information that the Commission gathered at the time of the investigation...

Most of our mergers required remedy in multiple product markets (we singled out 14 for detailed analysis), and in nearly every case, the geographic market was national for each member of the EEA, so there were up to 17 (now 27) separate geographic markets for some of our product markets. Multiplying the number of product and geographic markets, there can be well over 100 'relevant markets' for which competitive impact must be appraised. This gives an idea of the complexity of investigation and competition assessment for multinational mergers. Despite this, some of the most complicated mergers we reviewed were decided within the two months allowed for a Phase I decision. This does not allow time for sophisticated econometric techniques or major new model building.

Because full-blown simulation methods can be expensive and time intensive to implement, we advocate simplified methods. This makes the methodology practicable, and not excessively demanding in its data requirements. A major advantage of our approach is that it provides a discipline that requires the investigation team to make clear exactly how it thinks competition may be impeded by the merger. We believe it should be possible to apply the methodology even within the constraints of many (but not all) Phase I cases, where the pressure on time can be intense.

...The essence of simulation is to form an opinion of the nature of competition, select the appropriate oligopoly model, calibrate it, and then ask it what would happen if…

The essence of our methodology is as follows. Faced with any merger, one first forms an opinion of the nature of competition in the market concerned. This is then formalised into a relevant oligopoly model. The analytical implications of the merger are then derived within the model – both with and without remedies. In order to quantify those implications, we must calibrate certain key variables and parameters: market share, demand elasticities, claimed efficiency savings, etc. Thus, simulation requires both formal theoretical analysis and a practical reading of market conditions.

The simulation of remedies fits naturally into the analysis that a competition authority should undertake anyway

when assessing a proposed merger. Since the authority must form an impression of how the merger might lead to a lessening of competition, the requirement to simulate would serve as an additional beneficial discipline on the case team in (i) how it thinks competition would be affected by an unremedied merger, and (ii) the sort of data which is needed for its assessment (and simulation). The ground is then fully prepared for remedy appraisal, if needed. Thus, using simulation to appraise alternative candidate remedies provides a very natural link between the competitive harm and remedy, and focuses the data gathering of the investigators.

...Nearly all divestments amount to prohibition within the market...

It turns out that, in nearly all of our cases, the remedy was that the merging firm divested itself entirely of the assets of one or the other of the two merging parties in the relevant market, to a firm not previously present in the market in the country concerned. This was often implemented by means of country-specific exclusive brand licensing. We refer to such divestitures as 'prohibition within the market'. Where this is the case, our methodology only raises issues beyond those already present in standard merger simulation if the acquiring firm is less efficient than the divesting firm.

Our experience of applying simulation techniques to actual mergers was that even the simplest models require information which is not typically collected at the time of investigation. The most obvious examples are the market demand elasticity (in all cases), the extent of capacity constraints, and brand-level own-price and cross-price elasticities. However, we do not view this as a weakness of the simulation methodology *per se*, but more as a reflection of the fact that, when coming to decisions, the Commission may not always have asked the right questions. This would have been less likely had the investigations included a requirement to simulate. As part of our project, we piloted very simple questionnaire techniques to collect industry expert opinion on elasticities. The simulations then bring such opinion together with market shares and a view of the competitive process in the relevant market, to predict the consequences of a merger with and without remedy.

...Simulations often predict different consequences from simple market share analysis...

We acknowledge that our proposed methodology has definite limitations. For example, it should not be applied when market shares are changing very rapidly, or where the initial opinion of the nature of competition cannot be captured in an existing model. However, it also has strengths, so the pertinent question is: how should we judge the success or otherwise of our approach? The essential alternative is a simple structural criterion for assessing the likely competitive effects, based largely on the market shares of the merging parties, and perhaps their leading rivals. Of course, it would be a crude caricature to suggest that the modus operandi of the Commission, or any other antitrust body, is to base decisions purely on market shares, but they are discernibly the most important indicator of the Commission's decisions in most cases. So, it is relevant to ask whether simulation adds substantially to a simple analysis of pre-merger combined market shares.

A significant conclusion from our research was that simulations do not necessarily predict the same adverse consequences of a merger that would be implied by a simple market share analysis. We found substantial differences in a significant number of markets we investigated, some more harmful and others less so. Thus, our proposed methodology, if adopted, would have led to different decisions by the Commission.

...Simulation has several advantages over market share analysis...

Overall, the simple simulation methodology has a number of advantages over a broad brush structural reliance on market share analysis:

- It uses more of the available information
- It provides a rough quantification of the price effects from any suspected loss of competition
- It incorporates the roles of non-merging firms
- It incorporates expected behaviour of the merging firms[2]
- It disaggregates firms' aggregate market shares into brand portfolios
- It can assess the efficiency gains which would be necessary to eliminate any loss of competition
- It can explore the extent to which partial divestiture will eliminate the loss of competition
- It helps identify which brand divestments are critical

But perhaps most importantly:

- The choice and calibration of a simulation model requires the analyst to ask the right questions about how competition might be impeded, without requiring much extra time/information to be collected

Of course, this does reduce legal certainty: if less weight were attached to market shares, firms might be less able to 'read' the Commission's likely response to any particular merger in advance. Our view, supported by our finding that there are considerable differences between the predictions of simple simulation and market share analysis, is that this is a price worth paying in return for an effects-based analysis, and hence a more efficient merger policy.

[1] This article is based on our 328-page report for the European Commission (DG Industry and Enterprise) 'Assessing the Consequences for Competition of EC Merger Remedies'. Our research made use of confidential information, an unfortunate consequence of which is that it will take some time before a non-confidential version is made publicly available.

[2] *Ex ante* market shares are a misleading indicator of what market shares might be post-merger. Oligopoly theory tells us that the merging firm will typically lose market share as a consequence of the price rises/output restriction which results from the merger. In fact, this must be the case if there are to be any unilateral effects. The simulations estimate how much market share erosion can be expected.

Competition in Bulk Water Supply: Regulation Still Holds the Fort?

Michael Harker

The Water Act 2003 (WA2003) creates new opportunities for competition in water supply in England and Wales. From the Autumn of this year, bulk water customers (those consuming at least 50 mega litres of water per annum) will be able to choose whether they are to be supplied by the incumbent water undertaking for their region or by one of a new breed of water suppliers. There are around 2,300 customers meeting this threshold, collectively spending around £210 million on water each year.[1] The threshold will be reviewed by the Government within three years of the new licensing regime coming into effect. This article reviews the new regulatory regime put in place by the WA2003, in particular the access arrangements, and assesses the prospects for competition in this industry.

The water supply industry in England and Wales

There are 24 vertically integrated incumbent water companies in England and Wales, each having currently an exclusive licence to supply water within a specified geographic area.[2] There is limited scope for competition in the water supply industry. In respect of setting price caps and service standards, the Director General for Water Services (DGWS) operates a system of "yard-stick competition", whereby the performance of each regional incumbent is compared with others.[3] "Inset appointments" may be granted where a new entrant seeks to replace the incumbent as the provider of the local water supply network, but these are restricted to the supply of very large customers or to areas previously not supplied (green field sites), and are subject to a detailed application process.[4]

The new regulatory regime under the WA2003

The new competition provisions of the WA2003 represent part of a more wide ranging reform of the regulatory regime for the water industry. Once fully implemented, the Act will result in the DGWS being replaced by a new regulator, the Water Services Regulation Authority.[5] The Act also provides for a new overriding duty to protect the interests of consumers, wherever appropriate through the promotion of effective competition.[6] Both of these changes mirror reforms to the gas and electricity sectors under the Utilities Act 2000, and emanate from the Government's review of utility regulation commenced in 1997.[7]

In pursuance of the new overriding duty to promote effective competition, the Act provides for the granting of licences to new entrants, known as water supply licensees. There are two types of licence which prospective suppliers may apply for:

- a *retail* Water Supply Licence, whereby the new entrant purchases wholesale a supply of water from the incumbent supplier, and then retails it to eligible customers;[8] or
- a *combined* Water Supply licence, whereby in addition to the retailing function, the entrant has the supplementary authorisation to introduce water into the incumbent's supply network for the purpose of the new entrant supplying its retail customers.

The introduction of competition will depend upon the entrants reaching access agreements with the relevant incumbents. The regulator has a power of determination over access terms in the event of an incumbent and new entrant failing to reach an agreement.

The access arrangements

As with any proposal where supply competition requires access to an incumbent's existing network infrastructure, the terms upon which such access is granted will be of paramount importance to the eventual success or otherwise of the competitive regime. Clearly, an incumbent has little incentive to allow such access, as might otherwise be the case if it did not possess a monopoly position.[9]

There are a number of concerns over the introduction of competition in water supply, as was recognised by the Government. A particular issue was the prospect of competition "unwinding" the cross-subsidies inherent in the incumbents' supply tariffs, in particular the geographical averaging of prices for households. For this reason competition in the supply of domestic consumers was ruled out.[10] However, in respect of larger customers, such geographical cross-subsidies have been largely unwound.

Incumbents face a statutory requirement to enter into access agreements with new entrants.[11] The legislation requires the regulator to issue guidance on access terms and the regulator may intervene where it appears that an agreement is not in compliance with the guidance, in practical terms, upon the complaint of a new entrant.[12]

The new primary legislation sets out the "costs principle" which governs how undertakings should set their access prices.[13] The central purpose of the costs principle is to ensure that customers who are ineligible for competition do not subsidise the competitive market.[14] It is said to be aimed at fully compensating the incumbents for the net losses which they *unavoidably* incur when providing access as compared with supplying the final customer themselves.[15] The clear aim is to ensure that the costs of universal service obligations are fully shared among all providers, incumbents and new entrants. The writing into the legislation of such a prescriptive requirement is unusual; such matters of

Table 1

Access price =
retail charge – ARROW costs + additional costs

the retail charge is the revenue the incumbent can be expected to recover from the customer now served by the new entrant;

the ARROW costs are those costs with can **a**voided or **r**educed or any other amount that is **r**ecoverable in some **o**ther **w**ay (other than from other customers of the incumbent);

the additional costs are those costs which the incumbent incurs as a result of providing access.

detail are usually left for the regulator to prescribe *ex post*. Furthermore, from the debates in Parliament, it is clear that a retail-minus, rather than a cost-plus, approach was preferred[16] and this intention has been faithfully followed by OFWAT in their consultation on access pricing.[17] The retail-minus approach is expressed in Table 1.

Broadly speaking, the retail-minus approach is the least advantageous method of calculating access charges from the point of view of new entrants. It differs from the approach of Postcomm, for example, which uses a cost-plus test for the purposes of determining access charges for the use of the Royal Mail's postal network specifically because of the need to promote new entry in that sector.[18] Despite the divergence of approach on access pricing, both of these sectors display the common characteristics of the geographical averaging of prices and universal service obligations the protection of which was the Government's (and the regulator's) justification for taking the retail-minus approach for water.

All of this is reminiscent of the use of the "Efficient Component Pricing Rule" in the setting of BT's access charges in the early years of telecommunications liberalisation. While Oftel subsequently reversed the approach, it was argued for on the basis of the "access deficit", *i.e.*, the need to finance universal service obligations borne disproportionately by the incumbent BT and the need not to promote inefficient entry.

The prospects for competition?

All of this begs two questions. First, why did the Government decide to take such a prescriptive approach in the setting of access charges, rather than leave this issue to the regulator to decide in the light of emergent market conditions? Secondly, what are the realistic prospects for competition where the margin for new entrants – after the access charge – is thought to be no more than four per cent?

The answer to the first question might be this. Questions over pricing in the utilities have always been politically controversial. The costs principle is designed precisely to ensure that the costs of new entry are not borne by the incumbents' residual customer base.[19] In the context of the recent water price review where the price caps are to increase by an average 4.2 per cent (before inflation) each year for the next five years, it is little wonder that the Government did not want to introduce any other pressure which *might* increase the prices faced by water customers.

The second question is more difficult to address. One of the supposed benefits of competition is that it reduces the significance of informational asymmetries as between the regulator and the incumbent firms. To the extent that comparative price and quality data has always had a significance in the regulation of the water industry, the presence of more of this data is perhaps to the benefit of the regulatory system. However, while sectoral regulation has often been characterised as "holding the fort" until competition arrives, this is unlikely to be the case in water supply and upon closer inspection the WA2003 does not herald the arrival of the cavalry!

[1] This represents around 7 per cent of incumbents' total revenue for water supply.
[2] Ten of which provide water and sewerage services, the remaining 14 providing water only services. In areas where a water only company provides water, one of the ten water and sewerage companies provides the sewerage services.
[3] When it comes to setting the price cap, the efficiency gains to be expected over the next price review period can be set according to the performance of the most efficient undertaking under the pervious review period.
[4] Only a handful of such appointments have been made.
[5] Section 34. It is expected that this will be implemented by April 2006.
[6] Section 35.
[7] See DTI (1998), *A Fair Deal for Consumers: Modernising the Framework for Utility Regulation*, White Paper, London.
[8] *i.e.* those meeting the threshold mentioned above.
[9] For example, in the case of two-way networks, such as telecommunications, network operators without market power have a positive incentive to enter access agreements with competitors because they thereby increase the value of being connected to their networks (a direct network externality).
[10] DEFRA and Welsh Assembly Government (2002), *Extending opportunities for competition in the water industry in England and Wales, Consultation Document*, London, paragraphs 26 to 27.
[11] Except in limited specified circumstances, for example, where such an agreement would entail unreasonable expenditure on the part of the incumbent (section 66A WIA1991 as inserted by WA2003, Schedule 4, paragraph 3).
[12] Section 66D WIA1991 as inserted by WA2003, Schedule 4, paragraph 3.
[13] Section 66E WIA1991 as inserted by WA2003, Schedule 4, paragraph 3.
[14] OFWAT (2004), *Consultation on access code guidance*, Birmingham, section 6.3.
[15] *ibid*.
[16] *e.g.*, House of Commons Standing Committee D, Thursday 16 October 2003, *Hansard* Cols. 272-274 (*per* Mr. Elliott Morley, Minister for Fisheries, Water and Nature Protection). A cost-plus approach would compensate the incumbent on the basis of the cost of providing access to the entrant plus a reasonable rate of return for the use of the specific assets concerned.
[17] OFWAT (2004), n.14, section 6.4.
[18] For a recent detailed consideration of the position see: Postcomm (2004), *Promoting effective competition in UK Postal Services through downstream access*, London, chapter 2.
[19] n.16.
[20] OFWAT (2004), n.14, section 6.5.

Defining Markets Sequentially: A Fishy Business?

Peter Møllgaard

Competition cases often start and end by discussing what the relevant market is. Firms do not want to appear dominant – at least not when the competition authority is around – so they typically define markets broadly. Competition authorities on the other hand often tend to define markets narrowly because otherwise they do not have a case. The purpose of the market definition exercise is to determine the products that may exert a competitive pressure on the products under scrutiny at the current price level.

The suggested method to define markets is the SSNIP[1] test, essentially proposing that if a hypothetical monopolist producing the goods cannot increase its profits by raising prices permanently by a small but significant amount, then more goods should be included in the definition of the market. You keep including "adjacent" goods until the hypothetical monopolist could profitably raise its price as suggested. When, in this manner, you have included all the goods that exert sufficient competitive pressure, you have found the relevant market.

In practice the European Commission rarely applies the SSNIP method, explicitly or implicitly. A recent study of market delineation in EU merger cases[2] reveals that SSNIP-type arguments are used in only eleven per cent of the cases to define product markets and in only four per cent of the cases to define geographical markets. In fact, the EC only rarely employs advanced methods to delineate markets but in most cases relies on simple arguments, in particular regarding demand substitution.

The European Commission has applied advanced econometrics to only very few merger cases. In the CVC/Lenzing and the Lonrho/Gencor cases, modern time series econometrics were used in the delineation of product markets; in the Mannesmann/ Vallourec /Ilva merger, Granger causality was applied to establish whether the US, the EU and Eastern Europe belonged to the same geographical market for seamless stainless steel tubes.[3] Lexecon has used stationarity tests[4] in a merger case before the UK Competition Commission[5] to show first that Norwegian and Scottish salmon belonged to the same market and then that Scottish salmon sold in the UK was part of a market including France and the rest of Europe.

The European Commission defines markets sequentially in the sense that markets are first defined in terms of products and only then in terms of their geographical extent.[6] Demand and supply substitution in both the product dimension and the geographical dimension will normally be stronger than substitution in either dimension because of "diagonal substitution". Customers may react to a price increase of a given good *a* in location *A* by buying its substitute *b* in location *B*; or suppliers of *b* in location *B* may decide to supply (more) *b* in *A* because of the *a,A* price increase. The latter type of "supply substitution" may be as important as demand substitution because suppliers often have a stronger incentive to react to price changes than individual customers.

This is more than a theoretical possibility. Using a unique data set for prices of Norwegian and Scottish salmon, we show that a ***sequential delineation method*** would lead to narrow markets:[7] Norwegian and Scottish salmon would be defined as belonging to two different product markets because their time series properties appear to be very different. Subsequently, the geographical markets for the two types of salmon would also be delineated differently. Norwegian salmon appears to be sold in a broad market comprising (at least) Germany, the Netherlands, France and Spain while no very strong results can be drawn regarding the geographical market delineation of Scottish salmon.

However, if, more properly, a ***simultaneous delineation method*** is applied, it appears that the entire system of prices is governed by a single price trend, indicating that Norwegian and Scottish salmon belong to one broad common market comprising (at least) Germany, the Netherlands, France and Spain. To reach this result we have to apply a vector auto regression model and use Johansen's trace test for cointegration rank. These terms may sound mind-boggling but are increasingly facilitated by run-of-the-mill econometrics software, although it is a good idea to join forces with a trained econometrician to avoid fishy findings.

In addition to showing that sequential market delineation may lead to misleading conclusions as compared to a proper simultaneous market definition, the methodology reveals other interesting aspects of pricing. When the econometric model is formulated in error-correction terms, we can show that there are strong adjustments if relative prices are "out of line" with the underlying long-run fundamentals. For instance, if there is a price difference between Norwegian and Scottish salmon sold in France, most of it will disappear within a month. However, interestingly, Scottish salmon will contribute the lion's part of the adjustment. Norwegian prices are much less likely to react. This may further explain why the sequential procedure could result in misleading conclusions.

Another factor is the EU-imposed antidumping regulation towards Norwegian salmon. If the analysis includes a period where these regulations were effective, we find that the common market delineation breaks down. This is not surprising since the antidumping regulation was set up exactly to remove some of the competitive pressure Norwegian salmon exerted on Scottish salmon. Unfettered market behaviour for a given period is needed to ensure unbiased market delineation and regulatory interventions may well reduce the extent of the relevant market.

[1] SSNIP stands for Small but Significant Non-transitory Increase of Price.

[2] Copenhagen Economics (2004) *The internal market and the relevant geographical market*, Enterprise Paper No. 15, Brussels: European Commission.

[3] See Bishop, S. & M. Walker (2002) *The economics of EC competition law: concepts, application and measurement*, 2nd edition; London: Sweet & Maxwell: 15.10-11.

[4] Wills, H. (2002) "Market definition: how stationarity tests can improve accuracy", *European Competition Law Review* 23(1): 4-6.

[5] UK Competition Commission (2000) *Nutreco Holding NV and Hydro Seafood GSP Ltd: A report on the proposed merger*. Cm 5004 London.

[6] European Commission (1997) *Commission notice on the definition of relevant market for the purposes of Community competition law*, Official Journal of the European Union C372/5.

[7] Haldrup, N.; P. Møllgaard & C.K. Nielsen (2005) "Sequential versus simultaneous market delineation: the relevant antitrust market for salmon," *CCP Working Paper* 05-2, ESRC Centre for Competition Policy, University of East Anglia, Norwich.

Regulation, Competition Policy and Political Science

Hussein Kassim

A brief survey of the field

Although areas of long-standing interest for students of politics in the United States, regulation and competition policy became subjects of mainstream political science research in Europe only recently. The implementation and spread of privatisation attracted widespread attention, especially from political scientists specialising in public policy and administration. It was not only that privatisation represented a particularly fascinating case of policy change – a standing concern of political scientists – or that it appeared to mark the end of the 'national champions' era of post-war interventionism, but that, together with the regulatory mode of governance with which it was associated and the new prominence given to competition policy, it marked a historic shift in the nature of the modern West European state from owner and direct provider of services to the role of regulator (Majone 1994). These changes took place, moreover, at the same time as, and were reinforced by, the drive towards realisation of the single European market and a rush towards competitiveness motivated by concerns about globalisation.

While economists were concerned with efficiency and performance on the part of newly privatised companies and the benefits of varying sectoral regimes, political scientists explored the motives – ideological, financial, political, and economic – for privatisation and its consequences for industrial policy and state power (Müller and Wright 1994). Several important cross-national studies examined why privatisation programmes were far-reaching and radical in ambition and implementation in some countries, notably the UK, but limited elsewhere (Wright 1994; Prosser and Moran 2004). The near-simultaneous timing of reform, meanwhile, led to an interest in how ideas became diffused and a search for evidence of 'policy transfer' or policy 'learning'.

Work on privatisation tended to be transient by its nature, but the attention paid by political scientists to regulation has been sustained, detailed and far-reaching. A rich and insightful literature has been generated that employs techniques from economics, but which asks different questions. Accounting for the rise of the regulatory state in Europe has been a central preoccupation. In a series of seminal writings, which offer a technocratic defence of regulation, Giandomenico Majone argued that politicians turned to delegation as a solution to the growing complexity of policy making and a way of securing long-term credibility for policy aims. The same dynamic could also, he contended, explain the preparedness of member state governments to delegate decision-making competencies to the European Union and regulatory responsibilities to the European Commission.

Delegation to regulatory bodies and other independent agencies has been a major concern in the literature. Political scientists have explored in a variety of settings the conditions under which delegation takes place, when and how much authority is delegated to bureaucratic agencies, the autonomy exercised by regulatory bodies and agencies, and immediate, as well as broader, issues of accountability. Other important work has focused on the evolution of sectoral regimes in areas such as telecommunications, energy and transport. A further strand has investigated the action of the European Commission as a regulatory actor and examined the impact of EU policy development on national industrial policy. Rather surprisingly in view of its increasing centrality, competition policy has been somewhat neglected by political scientists. Important work has compared national competition regimes, investigated the development of Community competition rules, and examined the impact of Community competition rules in individual sectors, but, in the case of the first, political scientists have tended to abandon the field to economists and lawyers.

A future research agenda

Research inspired by political science concerns, but interacting with economics and law, could usefully be developed in at least three areas. The first, given the limited attention paid to it hitherto, is the evolution of national competition regimes. Several European states have reformed their competition policies in the recent past. What factors have driven these changes? Are they an adjustment to the requirements of the European Union, have they been prompted by the demands of domestic interests, or are they the result of new thinking or learning on the part of political and bureaucratic elites? Is the near simultaneity of these changes significant or, as was contended in the case of an earlier round of reforms, coincidental? To what extent has reform brought about a convergence between national regimes not only in terms of the content of competition policy, but also in its relative importance? If there is evidence of convergence, how is it best explained and does it at last make sense to speak of the triumph of the Anglo-Saxon model of capitalism? What accounts for cross-national differences that remain?

The creation and development of regulatory agencies and other independent bodies is a second important theme. Here, the new institutionalism, which is surprisingly little used in this connection, could provide valuable insights. What are the most important factors behind the successful *institutionalisation* of regulatory agencies or competition authorities – the process by

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means of which a new body develops an organisational identity, regularises its procedures and establishes its authority with respect to regulatees, government and third parties? Is there a standard route or many paths? What is the relative importance of the initial design, the available expertise or staff composition to achieving credibility? Are the differences between the experience of such bodies at the national, regional and international level a matter of degree or differences in kind? What, if anything, does the history of independent agencies in new capitalist democracies reveal about the process? How are efforts to achieve independence, authority and credibility sustained? Which are likely to be successful, and why?

Finally, developments at the EU level and their effects, domestically, in the member states and beyond the frontiers of the Union, are of considerable interest. With respect to the former, what explains the recent reform of the implementation of the anti-trust rules: a necessary response to overload, demands on the part of business, or the result of an organisational search on the part of DG COMP guided by historic norms? How effective is the network of competition authorities in achieving the uniform application of competition rules across the territory of the Union? To what extent does the Commission have the resources (nodality, authority, technical expertise) to coordinate the network effectively? How can the revision of the merger regulation best be explained? To the extent that the dictates of competition policy clash with other priorities, what arrangements exist to reconcile competing objectives and to manage policy interdependence? With respect to the consequences of EU action, to what degree has national competition policy been Europeanised and, to the extent that it has been, through what means? What have been the effects of Community competition rules on industrial and regional policies in the member states, and what has been the response of governments? What are the extraterritorial implications of competition policy reform, and to what extent has the EU managed to negotiate cooperation successfully with third countries, such as the United States?

Selective references

Majone, Giandomenico (1994) 'The Rise of the Regulatory State in Europe', *West European Politics*, 17:3, 77-101.

Müller, W. C. and Wright, V. (eds) (1994) 'The State in Western Europe: Retreat or Redefinition?' special issue of *West European Politics*, 17:3

Prosser, T. and Moran, M. (eds) (1994) *Privatization and Regulatory Change in Europe*, Open UP

Wright, V. (ed) (1994) *Privatization in Western Europe*, Pinter

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