Our First Birthday

Director's Letter

Catherine Waddams

The Centre celebrated its first birthday in September, a particularly poignant date as it came just a few days after the death of Paul Geroski, Chairman of the Competition Commission, who had spoken at the Centre's launch last year. The world of competition policy will miss his leadership and (often challenging) fellowship, and many of us will miss his warm friendship. Earlier in the year we had been deeply shocked by the accidental death of Heather Coles, a final year PhD student within the Centre, about whom more is said on the final page.

On 28th/29th June we welcomed several distinguished speakers to our conference – 'Credibility through Delegation: Independent Agencies in Comparative Perspective'. The invited speakers, including Giandomenico Majone, Fabrizio Gilardi, Roger Noll, Bill Kovacic, Imelda Maher and CCP's Lindsay Stirton and Michael Harker, engendered lively and thoughtful interdisciplinary debate. The conference was timed to coincide with a week long PhD student workshop for 9 students, invited and funded from the UK and Europe. These students joined our own research students from economics, law, political science and management in an excellent academic (and social) programme, and many research collaborations and friendships were established.

In September, Andrei Medvedev joined us as our second post-doctoral research fellow after completing his doctoral studies on mergers, anti-trust and competition at the Centre for Economic Research and Graduate Education, Charles University, Prague. Chris Wilson, one of our PhD students, has joined the research associate team on a half-time one year contract. He is focusing on consumer switching and decision making, as part of his thesis and the Centre's research programme.

Hayley Morris took up the post of full time Centre manager at the beginning of June. Lucy Moore-Fuller, the Centre's administrative assistant, left us in mid November to take up a position with an interior design consultancy. We will miss her creativity and are very grateful to her for pioneering many of our event procedures. We are recruiting for a replacement to start in January.

We've welcomed a number of visitors over the last few months. Severin Borenstein, a member of our advisory board, from the University of California, Berkeley visited briefly in August. Mike Waterson, from the University of Warwick, another advisory board member and one of our associate members, was with us for a week later that month. Mita Bharracharya, from Monash University in Australia came for a month in September. Necmeddin Bagdadioglu, from the Department of Public Finance at the University of Hacettepe in Turkey joined us for a year in September; supported by a scholarship from the Jean Monnet programme, he is studying the integration of the Turkish and the European energy markets.

Other research highlights include the receipt of data from our major survey on search and switching behaviour, now being analysed; and an assessment of media mergers led by Andrew Scott and funded by the Irish Competition Authority.

The Centre is launching policy briefings for appropriate research findings and planning a number of seminars and events for practitioners and policy makers, in addition to more traditional academic output. Watch our website for details of these briefings and events or contact us to find out more.

Students at CCP's PhD workshop

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Money-off for Bad Behaviour?

Morten Hviid &
Andreas Stephan

In law, we are accustomed to the notion that a sanction should reflect and be proportionate to the seriousness of the crime and that, where a criminal breaks the law more than once, the sanction should increase to reflect the extent of his disregard for the law and to deter further breaches of it. In competition law, however, this appears not always to be the case. In a series of European Commission cartel decisions in concurrent cases involving the German company, **SGL Carbon A.G.** we see something unusual: the company was granted a 33% fine discount on both its second and third offence expressly because it had already been fined heavily for the first offence.

The three offences in question were the **Graphite Electrodes, Specialty Graphites**, and **Carbon & Graphite** cartels.[1] Although these three products appear similar, they each have very distinct uses (Graphite Electrodes are used in the production of steel in electric furnaces, Specialty Graphites are used to make tools used in heavy industry, and Carbon & Graphite products are used to transfer electricity in electrical motors). The Commission considered the cartel offences serious enough to impose fines totalling €218.8 million, €60.6 million and €101.4 million (before appeals) respectively on the firms involved in those three cases. The Graphite Electrodes cartel operated for most of the nineties and raised prices by 50% in an industry which, in 1998, was worth €420 million in the European Economic Area (recital 19 of Case C.36.490).

According to the 1998 EU 'Guidelines on the method of setting fines imposed' (98/C 9/03), fines should reflect the *gravity* and *duration* of the cartel and should be set to "a level which ensures that it has a sufficiently deterrent effect". Fines can be increased by 'aggravating circumstances'; the first such circumstance listed in the guidelines is the "repeated infringement of the same type by the same undertaking(s)". Fines can also be reduced where there are 'attenuating circumstances'. Financial difficulties of a company is not listed in the guidelines as an attenuating circumstance, but the list is not exhaustive and the Commission has the discretion to decide what constitutes an 'attenuating circumstance'. The Commission also has to observe an upper limit of 10 % of worldwide turnover in the year of the decision or the one immediately before. This limit would appear to include any additions to the fine caused by aggravating circumstances.

The fine details

In the Graphite Electrodes (2001) case, the basic fine for SGL (and the other major participant, UCAR) was set at €62 million, the highest level for any of the cartel members. For SGL, this was increased by 85% due to aggrevating circumstances, again the highest level for any cartel member and no mitigating circumstances were found. The resulting amount was then reduced by 30% due to the EU leniency programme, leaving SGL with a final fine of €80.2 million.[2]

In Specialty Graphites (2002), SGL was fined for participating in two cartels. In the Isostatic Specialty market, the total fine of €18.94 million included a 50% increase of the basic fine as SGL was identified as the ringleader and a 35% leniency discount. In the Extruded Specialty market, the fine of €8.81 million included a 35% leniency discount. However, that was not the end of the discounting. The total fine of €27.7 million also included a 33% discount, because, according to Garica Bermudez[3], "the Commission considered that SGL was *both* in a delicate financial position and has recently been imposed an important Commission fine", the fine mentioned in the previous paragraph. It would appear that the Commission found that the full amount of fine would be more than was needed to ensure effective deterrence.[4]

Finally, in Carbon & Graphite (2003) SGL is again found guilty. It does get a 20% reduction in the fine because, although it was very late in coming forward with information, it narrowly fulfilled the conditions for leniency. However, it did get a further discount. In section 14.2.7 of Case C.38.359 Carbon Lorraine and SGL both argue that they are unable to pay the fine. The Commission states (recital 356) that "to take account of the mere fact of the difficult financial situation undertakings may be in, mainly due to general market conditions, would be tantamount to conferring an unjustified competitive advantage on those undertakings least well adapted to the conditions of the market". However, recital (360) "the Commission notes that SGL is *both* undergoing serious financial constraints *and* has relatively recently been subject to two significant fines by

Table: break-down of fines without the additional "discount" [in € million]

case	basic	aggravating	mitigating	leniency	final
Graphite Electrodes	62.00	52.70	0	34.41	80.29
Isostatic Specialty	29.14	14.57	0	15.30	28.41
Extruded Specialty	20.32	0	0	7.11	13.21
Carbon & Graphite	44.25	0	0	8.85	35.4
Total	155.71	67.27	0	65.67	157.31

Note: The column final does not include any additional discount due to "inability to pay".

the Commission for participation in cartel activities." Noting that the three cartel activities occurred simultaneously and that the full amount of the fine does not appear necessary to ensure effective deterrence, the fine is reduced by 33% to €23.6 million.

In recital (361) of Case C.38.359 the Commission appears to base the deterrence argument solely on the fact that the two previous fines "amount to almost 10% of SGL's worldwide turnover in 2002". Worldwide turnover for SGL in 2002 was about €1,112 million. Note from the table that even with the basic fines, this was reached in the first two cases as the addition for aggravating circumstances are more or less neutralised by the leniency discounts.

The pure financial hardship argument is rejected and it is hard to find mitigating factors which could justify the discount. SGL was not a minor member of these cartels, it was a founding member of all three and the only company in the graphites industry to be involved in all three, had been given a 50% fine *increase* in Specialty Graphites for being the ringleader and had been a member of the Carbon & Graphite cartel for its full duration of 11 years and 2 months. Nor was SGL exceptionally forthcoming in helping with the Commission's investigation; SGL did not reveal any of the three cartels, was not the first to cooperate with the Commission and, in Carbon & Graphite, was one of the last to cooperate.

While the Commission (recital (359)) considers that each of the three separate infringements merit a separate fine in order that further infringements do not become "free", the outcome of the cases is that fines are a regressive function of the number of infringements. This may be an unintended consequence of the "max 10% of worldwide turnover" rule. In particular where the reason for the undertaking reaching the 10% limit in less than two infringements is aggravating circumstances, this appears problematic. Certainly, once a ring-leader, always a ring-leader would be a rational response to firms who collude in many markets.

When the medicine is worse than the disease.

The logic behind the 10 % rule must be in protecting the firms from bankrupting fines. Besides raising concerns about the regressive nature of the fines when firms are involved in increasing numbers of concurrent infringements, the case also highlights another problem. What if the fine imposed is so severe that one or more of the cartel members are driven out of business? If this occurs and they are not replaced by new firms, either the unilateral effect of the reduction in firms or even more paradoxically the coordinated effect of the reduction may lead prices to go up rather than down, reducing consumer surplus further. Such concerns may make any attempts of competition authorities to take a tough stance against cartels using firm level fines non-credible.

In addition, in law, a bankruptcy consideration raises certain issues of equity and justice because it essentially allows the punishment to become proportionately less, as the offence gets worse. As the Commission itself states in the Graphite Electrodes decision, such a discount confers an unjustified competitive advantage on a company that might find itself in a difficult financial situation because of internal factors such as inefficiency and bad management.

The challenge for the future is how to overcome the bankruptcy problem in such a way that optimal fines can be set that effectively punish and deter collusion.

Time to focus on individuals?

One problem with heavy fines which could force the firm into bankruptcy is that it may not actually get at the wrong-doers. While past share holders, management and workers will have benefited directly or indirectly from the activity of the cartel, this need not be the case for the current ones who are losing their share value or their jobs. If concerns over bankruptcy is behind the discounted fines, this strengthens the argument for criminal sanctions against company directors and senior management. Imprisoning or disqualifying the people who make the decision to form or join a cartel can fill the gap in deterrence that is created by a bankruptcy consideration.

The U.S. Department of Justice already has a criminal offence in its arsenal; indeed it has imposed its own fines on the companies involved in the three international cartels, including SGL. As part of its Graphite Electrodes investigations, two UCAR executives confessed to their part in the cartel and agreed to serve jail sentences of 17 months and 9 months respectively. The deterrent effect of such sanctions is hard to dispute – however, criminal powers of this nature are currently only available within some member states, do not exist on the Community level and are unlikely to do so in the foreseeable future.

[1] Respectively: Commission Decisions of 18 Jul 2001 (C.36.490 L100/1), 17 Dec 2002 (Press Release IP/02/1906), 03 Dec 2003 (C.38.359 L125/45)

[2] On appeal to the CFI [Case T-239/01] their fine was reduced to 69.114 million

[3] Garcia Bermudez, A. (Directorate-General Competition, unit E-1), "The speciality graphite price fixing cartels" *Competition Policy Newsletter* 2003, No 1 SPRING, p66

[4] See also recital (362) of Case C.38.359

Whither Dominance?

Adrian Majumdar

Recently there has been considerable debate as to whether the European Commission should move towards an effects-based analysis of abusive behaviour. This article considers the extent to which a role for the dominance test remains in an effects-based regime.

Drop dominance and focus on what matters?

In a recent report for DGComp, 'An economic approach to Article 82', the EAGCP (a group of economists from member states) writing in favour of an effects-based approach stated:

"In contrast to a form-based approach, an effects-based approach needs to put less weight on a separate verification of dominance… *If an effects-based approach yields a consistent and verifiable account of significant competitive harm, that in itself is evidence of dominance*" (emphasis added).[1]

At first sight, this argument is appealing. Ultimately, competition policy should protect consumers' interests by protecting competition. So why waste time worrying about market shares and entry barriers when we can go straight to analysing the competitive effects? If consumers are harmed substantially, is that not a sufficient case for intervention?

However, while this argument undoubtedly has its merits, in practice, it raises some awkward questions:

- What role remains for theory?
- How often can we demonstrate harm to competition and consumers independently of an analysis of market power?
- What is the relationship between market power and dominance?
- To what extent do we lower the threshold for intervention by discarding the dominance hurdle?

What role remains for theory?

In horizontal merger analysis, empirical tests can be crucial in determining likely competitive effects. For example, a commonly used test is to compare (quality adjusted) prices in areas where only one of the merging parties competes with prices in 'overlap' areas where both compete. If prices are lower in overlap areas (after controlling for other factors that may influence price), this suggests that the merger would be harmful.

A similar technique can in principle be used for the analysis of alleged exclusionary practices: prices can be compared 'before and after' an alleged harmful practice or in areas 'with and without' the practice (i.e. where the practice is employed only in a subset of markets in which the dominant firm operates).

In practice, however, we are rarely in a position simply to 'let the data decide'. First, alleged abusive behaviour usually concerns foreclosure. Often the alleged harm to consumers has not yet occurred (so a 'before and after' or a 'with and without' test cannot be conducted), as in the case of offering predatory discounts. Moreover, foreclosure relates to a *market* meaning that identifying harm to a particular customer is not sufficient to identify harm to competition (see an example below).

This means that empirical tests should be used *in conjunction* with theory. Theory sets out a coherent story of harm to competition and consumers that can be tested with empirical techniques. Since data limitations are common, evidence from a variety of sources must be assessed – theory provides the structure within which the evidence can be organised.[2]

The role of an assessment of market power

While the assessment of market power is not the ultimate goal of effects-based regime, its importance is in helping us arrive at our goal more quickly and more robustly.

First, where it is clear that the firm does not have market power, the case can be dropped at an early stage on the basis that anti-competitive effects are not feasible.

Second, an assessment of market power involves analysing: (a) the scope for demand and supply side substitution; (b) the extent of barriers to entry and growth; and (c) the strength of buyers. An abusive practice would adversely affect any of the above 'competitive constraints'. Thus, in carrying out the assessment of market power, we establish the context in which the alleged abuse takes place.

Consider, for example, a margin squeeze scenario in which an integrated raw material supplier has introduced a new pricing structure which favours its own downstream manufacturing operations to the detriment of a non-integrated manufacturer (the complainant). Further, suppose that econometric techniques establish that since the introduction of the integrated firm's pricing policy, the integrated firm has increased the price of its manufactured good by 5% and that the complainant has increased its price by 10% (after controlling for other factors that may increase price, including quality improvements).

At first sight, we might argue that the effects are clear. Consumers are now worse off. However, this price rise needs to be put in context. For example, are there any other suppliers of the raw material (i.e. to what extent does the integrated manufacturer face competition in the upstream market)? How did buyers react to the price rise of the manufactured goods? For example, suppose most downstream buyers switched to buying substitute manufactured goods such that the higher prices affected only a tiny proportion of the relevant market. Here, the case for intervention is weak. In short, even if we have evidence on how (quality adjusted) prices change following alleged abusive behaviour, we still need an assessment of market power to put these effects in context.

Third, the degree of market power matters. Theories of anti-competitive exclusionary behaviour are relatively well developed for near monopolists but are far less developed for firms with a lower degree of market power. For example, a near monopolist is better able to recoup losses incurred during an exclusionary pricing strategy than a firm that would still face some existing competition even after marginalising one of its competitors. Refusal to supply is generally perceived to be more of a problem in relation to bottleneck facilities (i.e. monopoly power). To be credible, leverage theories require the pre-existence of substantial market power in at least one of the markets concerned.

The relationship between market power and dominance

Broadly speaking, economists link the legal concept of 'dominance' with the economic concept of substantial market power. Competition economists have a relatively well developed concept of market power. A firm with market power does not face sufficient competitive pressure from any of the following sources: existing competitors, potential competitors and buyers in the relevant market. As a result, it can profitably sustain prices above (or hold quality below) competitive levels in the long run. This definition seems entirely consistent with the spirit of dominance.

However, economists would criticise some of the case law on dominance, notably that dominance can be presumed from a market share persistently in excess of 50%. This is because focussing on market shares alone downplays the importance of product differentiation and the scope for new entry.

Furthermore, some would also argue that the 'special responsibility' of a dominant firm is an unhelpful and unclear concept that at worst chills competition or at best is a trite reminder to dominant firms that they should not break the law. According to this view, an advantage of losing the dominance test would be dropping the 'special responsibility' tag that shackles certain beneficial behaviour.

While the argument that dominance should be retained so as to maintain legal certainty is relatively weak, we should nevertheless retain an economic assessment of market power. For example, competition authorities could replace the dominance test with a commitment to conduct an economic assessment of market power as an integral part of an effects-based analysis. Since the concept of market power is well developed and relatively uncontroversial, there should be not great difficulty establishing robust guidance.[3]

Discarding dominance leads to excess intervention

A better argument for retaining the dominance test *and an essential argument for retaining an assessment of market power* is that, without it, the doors are potentially open for excess intervention.

The success of an effects-based approach depends crucially on the strength of evidence that is required to establish harm to competition and consumers. If, for example, abusive behaviour need only to be 'capable' of harming competition (as in *Michelin II*) then at the very least there should be a market power hurdle to establish that anti-competitive effects are feasible.

Without the dominance hurdle – and given that direct tests of the effect of alleged abusive behaviour are usually not robust when employed without a prior consideration of market power – nearly *all* firms could face genuine uncertainty that would chill price competition. For example, discounts are *capable* of having an anti-competitive effect. Almost all firms offer discounts and, when they do, their rivals tend to suffer. Suppose an inefficient rival left the market as a result of a discount policy adopted by a firm that had no market power. In the short term at least, some customers of the inefficient firm would suffer. But this 'consumer harm' is not a good case for intervention. If it were, firms without market power could reasonably fear that by delivering pro-competitive discounts, the authorities could erroneously infer that they have market power!

Even if abusive behaviour must be 'likely' or even 'very likely' to harm competition, we noted above that in establishing that likelihood an assessment of market power will usually be important. In particular, economists view dominance to be *substantial* market power. While in theory this leaves room for firms with a lower degree of market power to harm competition and consumers, in practice, it is sensible to focus only on those firms with substantial market power since the harm they may cause is correspondingly greater (some theories of harm do not work at all unless firms are near monopolists) and so the risk of chilling price competition by mistaken interventions is correspondingly lower.

The same principle should carry through to an effects-based approach. To infer dominance from direct evidence of competitive effects should require demonstrating (to a high standard) substantial adverse harm to consumers. We should not infer dominance from relatively small adverse effects on consumers given the margin for error likely to be involved.

Conclusion

In debating the role of dominance, we must not lose sight of three fundamental points. First, in an effects-based regime, demonstrating sufficiently strong evidence of (likely) harm to competition and consumers is crucial. That requires a credible theory of harm that is strongly supported by the available evidence.

Second, while there is a case for discarding dominance, we should nonetheless retain an economic assessment of market power as part of the analysis of competitive effects.

Third, losing the dominance test should not be an excuse to lower the threshold for intervention.

1 http://europa.eu.int/comm/competition/publications/studies/eagcp_july_21_05.pdf

2 This is consistent with the view set out in the EAGCP report as well as that in RBB Economics, "Selective price cuts and fidelity rebates", A report for the Office of Fair Trading, July 2005.

3 See, for example, OFT415a, Assessment of Market Power.

Public Interest Intervention in Media Mergers: Worth the Effort?

Andrew Scott

The overarching aim of the recent reforms of the UK merger regime was arguably the diminution of political influence over merger decisions. This was achieved by the installation of an exclusively competition-based standard against which mergers would henceforth be assessed, and by the transfer of the determinative function at the merger referral and decision stages from the Secretary of State to the OFT and the Competition Commission (CC) respectively. In two circumstances, however, it remains possible for the Secretary of State to intervene in the assessment of a merger to bring wider public interest considerations to bear on the case. The first is where the merger may raise issues of national security; the second where it invokes 'media public interest considerations'.[1] This note focuses on the latter of these circumstances, and raises the questions of why and whether the Secretary of State should ever intervene in a media merger.

There are five public interest considerations (PICs) that can be brought to bear on the assessment of a media merger should the Secretary of State choose to intervene.[2] The first two PICs largely replicate the substantive provisions of the old special regime for newspaper mergers:

- the need for accurate presentation of news and free expression of opinion in newspapers.
- the importance of a sufficient plurality of views in newspapers in each market.[3]

The three remaining PICs apply to broadcasting and cross-media mergers:

- the need for a sufficient plurality of persons with control of the media enterprises serving each different audience or particular area.
- the need for a wide range of broadcasting to be available throughout the UK, which is of high quality and appealing to a wide variety of tastes and interests.
- the need for persons carrying on media enterprises to have a genuine commitment to the attainment of prescribed standards objectives.[4]

The UK is almost unique in providing for merger-specific assessment by competition authorities of the impact of a merger on diversity of viewpoint in the public sphere. Only Austria and Ireland possess comparable merger-specific media rules, although other forms of regulation designed to maintain the diversity of political viewpoint expressed through the mass media are a feature common to almost all nations.

At its core, all such regulatory effort is based on the 'common sense' appreciation that it is important somehow to sustain the diversity of viewpoints expressed in the public sphere. Intervention is considered necessary to preserve the free-flow of ideas that underpins the democratic tradition. This high-minded intention explains the existence of such rules, and the motivation behind intervention in the assessment of any given media merger.

An important problem here is that the concept of diversity of viewpoint is somewhat nebulous, or at least its measurement is conceptually and practically challenging. One common regulatory response to this difficulty is to fall back upon proxy variables for diversity of viewpoint, such as the degree of concentration of ownership in the media sector. Over-concentration is considered undesirable, and is prevented. However, the link between media concentration and diversity of viewpoint is not clear. There is no particular reason to expect that high levels of concentration will result in harm to diversity. Alternatively, the regulator may adopt a 'case-by case approach'; this could threaten inconsistency over time.

These disjunctions between the laudable aspiration – sustaining the vitality of the public sphere – and the tools deployed to achieve it leave the regulatory mechanisms vulnerable to attack. This is especially the case when other governmental policies – such as competition-based merger law and public service broadcasting – already do much to sustain an adequate representation of disparate viewpoints. The threat comes, on one hand, from the standard neo-liberal critique that regulation interferes unjustifiably with basic economic freedoms. On the other hand, however, is a radical-democratic critique that considers such regulation to be simply redundant.

A number of factors may support this latter critique. First, emerging media and in particular those that use the Internet – chatrooms, weblogs, Internet gateways - may offer citizens a vastly improved means of accessing and promulgating a broad range of political information. New technologies may possess emancipatory potential. By the same token, of course, they may provide new technologies of control. Secondly, private restrictions on diversity of viewpoint may be 'self-correcting' in that people respond to perceived attempts to subvert open communication. Survey evidence on the degrees of 'trust' placed by the public in different media outlets suggests that the credibility of information communicated by those that are considered 'partial' for whatever reason is likely to be discounted heavily.

Ultimately, to persist, regulatory intervention must be seen to be necessary. It must be based upon a more developed and coherent theory of private ownership of the media, the contribution of emerging technologies, and their effects on the openness of the public sphere. In the meantime, if asked to intervene in a media merger the best policy for the Secretary of State may be simply to decline.

[1] s 58 of the Enterprise Act.

[2] Following intervention, the CC prepares a report on both the competition and media issues. Ofcom will support these functions.

[3] s 58(2A) and (2B).

[4] s 58(2C).

[5] Of course, certain features of media markets, such as their 'two-sidedness', may raise problems from a diversity perspective at levels of concentration that are unproblematic in competition terms – see Armstrong (2005) Competition in Two-sided Markets. *Rand Journal of Economics* (forthcoming).

One Step Forward, Two Steps Back: The Mehter March[1] Of Turkish Electricity Reform

Necmiddin Bagdadioglu[2]

While most of the world has been privatising utilities, Turkey has been swimming against the tide by nationalising. Just before membership talks started on 3rd October 2005 between the European Union (EU) and Turkey, three private electricity distribution companies were nationalised.[3] Then, the Electricity Sector Strategy Paper (ESSP) was withdrawn.[4]

Turkey, as a prospective candidate of the EU, like other candidates Romania and Bulgaria, Norway, the countries of South-East Europe (Croatia, Bosnia, Serb/Montenegro, Former Yugoslav Republic of Macedonia and Albania), and the twenty-five member states, is required to take the necessary steps to connect to the European Energy Network as soon as possible.[5]

These involve taking two sequential moves. The first step is breaking the dominance of the existing company in the state or region, and the second is securing access to the network and allowing market forces to shape the tariff structure. These may not necessarily involve a change of ownership. What matters more is keeping the market open for competition.

Turkey has progressed very slowly towards fulfilling the requirements. In 1993, two new public companies TEAS and TEDAS replaced the old public utility, TEK. TEAS generated and transmitted electricity, while TEDAS undertook distribution and supply. In 2001, the Electricity Liberalisation Law was announced. The law subdivided TEAS into three more public companies, namely, EUAS, TEIAS and TETAS. These public companies have been responsible for generating, transmitting and wholesaling of electricity, respectively. The same law established the Energy Market Regulatory Agency (EMRA), which is now monitoring and regulating activities in the energy market, including electricity.

Despite the restructuring and the legal framework designed for competition, Turkey has yet to break the dominance of existing public utilities and attract private investors into electricity distribution. This is partly due to a considerable number of Turks still having strong faith in the benefits of running electricity business under public ownership. Nonetheless, these common feelings may have a sentimental rather than an economic base. Since, a recent study[6] found on average as much as 20% technical inefficiency was experienced in publicly owned electricity distribution between 1991 and 2003.

The option of introducing partial competition in distribution was not fruitful either. Aktas, Cukurova, Kepez and Kayseri were a test case. Allegedly, the first three had to be nationalised due to improper economic activities, undermining service quality and destroying competition.[7] This is interesting since the same private companies were once found as examples of good management in comparison to their publicly owned counterparts.[8] Nevertheless, their nationalisation leaves a question mark about the real reasons for their good performance.[9]

In any case, the rapidly growing Turkish economy craves cheaper electricity. Potential gains from creating a working internal market are great and delay of electricity liberalisation is not costless. In that sense, the experience of forerunners[10] could be used to put an end to the two steps forward one step back approach pursued so far in the Turkish liberalisation process.

Besides, since Turkey is having difficulties in introducing competition at home, she could try to import it. The South Europe Energy Market, soon to be established by the Athens Memorandum signed in 6th December 2003, provides a good opportunity. The Centre for Competition Policy (CCP) is undertaking a project studying this process. The CCP research is expected to produce information about how energy market reforms in these countries, including Turkey, affect the main players – consumers, companies and governments.

1 The Mehter March is a traditional Turkish ceremonial march in which members of the Mehter band accompanying the Ottoman armies would march two steps forward and then turn to the right and left in salutation.

2 This document has been produced with the financial assistance of the European Union. The content of this document is the sole responsibility of the writer and can under no circumstances be regarded as reflecting the position of the European Union.

3 Until recently, there were four private electricity distribution companies in Turkey. These were Aktas (Istanbul-Anatolia), Cukurova (Mersin, Adana, and Hatay), Kepez (Antalya) and Kayseri (the brackets show their service areas). Aktas was nationalised in 2002. Cukurova and Kepez, which were controlled by the same private company, were nationalised in 2003. Kayseri is the only remaining private distribution company in Turkey.

4 As an important component of the Energy Chapter of the last Regular Report of the European Commission on Turkey's progress (6th October 2004), the ESSP was identifying the sequences of the electricity liberalisation in Turkey.

5 These steps are clarified within the two directives (the New Electricity Directive, 2003/54, and the New Gas Directive, 2003/55) and one regulation (the New Regulation on Cross Border Electricity Exchanges, 2003/1228) recently adopted by the EU.

6 N. Bagdadioglu, (2005) "The Efficiency Consequences of Resisting Changes in a Changing World: Evidence from the Turkish Electricity Distribution," to appear in *the Journal of Business, Economics and Management*.

7 OECD (2003) *Annual Report on Competition Policy Developments in Turkey*, OECD Competition Committee.

8 Bagdadioglu, N., C. M. Waddams Price and T. G. Weyman-Jones, (1996), "Efficiency and Ownership in Electricity Distribution: A Non-Parametric Model of the Turkish Experience," *Energy Economics*, No. 18, pp. 1-23.

9 Bagdadioglu, Waddams and Weyman-Jones are currently conducting a new study to explore further the reasons for technical efficiency change in Turkish electricity distribution.

10 The experience of countries which have already liberalised, namely, the United Kingdom (UK), Sweden, Finland, Norway and Denmark, as well as of those which have taken a gradual approach, namely, Germany, Italy, France, Spain, Belgium (nl), Ireland, Austria, Netherlands and Hungary, could be used by Turkey in designing her electricity liberalisation programme. (DG Energy and Transport, (2004), "Towards a Competitive and Regulated European Electricity and Gas Market," MEMO prepared by the Strategy, Coordination, Information and Communication Unit of DG Energy and Transport, 19.09.2004. http://europa.eu.int/comm./dgs/energy transport/index fr.html).

Paul Geroski (1952-2005)

Chairman of the Competition Commission ...

Others in the press have already focussed on Paul's influential, though all too short, period at the head of the Competition Commission. He took over at a time of great change following the Enterprise Act, and built on the firm foundations established by Sir Derek Morris. With the main guidelines in place, he had cemented the gaps and was finishing the details. This process took the Competition Commission to being the highest rated authority in the world, according to the Global Competition Review, joint first with the US Federal Trade Commission and Department of Justice. If Paul felt unclear on a policy issue, he took delight in opening a debate with a few colleagues before reaching a firm opinion. He adopted the same approach when developing secure economic principles to apply generally to practical competition policy, as he did to group discussions of the competitive process in an individual market under investigation. This open-mindedness made him an enormously popular colleague.

Academic Economist ...

Paul was a prolific researcher and published more academic papers and books than any other economist I know. He strode to work in the early hours of each morning, and had put in a couple of hours on his next research paper before anyone else had arrived at their desk. When many industrial economists jumped on the game theory bandwagon in the 1980s, with its then emphasis on untested theoretical models and static equilibrium, Paul insisted on viewing competition as a dynamic process on which light could be shed by econometric analysis of the data. He applied this approach to the entry of new firms, innovation by existing firms, productivity growth, the persistence of dominant firms, and many other related topics. Much of this work, particularly on market entry, still stands as amongst the best in the field. His academic reputation is reflected in honours such as being on the Council of the Royal Economic Society and President of both the leading European and US industrial economics research societies (EARIE and IOS). In between all this activity, Paul was quick, generous and constructive in the comments he gave others on their own work. Paul's wide ranging research and his natural humour combined to make him a charismatic teacher.

Friend ...

I knew Paul from when we were PhD students in the late 1970s, when the Industrial Economics Study Group met frequently and the EARIE conferences were developing rapidly. Much later, when my wife's work took her to London, Paul and Alice welcomed her as an overnight guest with generous and relaxed hospitality. Paul was very easy going, but always seemed to be on the move, determined not to waste time, and many of my memories are of animated discussions as we were walking purposefully between one venue and the next. He is greatly missed.

Bruce Lyons

Heather Coles (1978-2005)

It was with profound shock and sadness that all at the Centre for Competition Policy learned of the tragic death of CCP PhD student Heather Coles who drowned while swimming off the Irish coast on June 5th.

Heather was a popular and highly talented student who was just a few months away from completing her thesis. She had a tremendous passion for life and had a wide range of sporting and other interests outside academia.

Heather is deeply missed by all her friends and colleagues at CCP and the University, and we would like to express our deepest sympathy to her family and fiancé.

Her principal supervisor, Stephen Davies, will provide a full description and appreciation of her doctoral work in the next edition of this Newsletter.

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