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NEWSLETTER
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CCR awarded 10 year Centre by ESRC

CCR is delighted to have won funding from the Economic and Social Research Council (ESRC) to establish a ten year research programme, building on its activities over the last two years. The funding will pay for a rolling buyout of the UEA faculty centre members, allowing them to concentrate on Centre based research for uninterrupted periods of six months at a time with support from research assistants and administrative staff. Two postdoctoral positions will be created for new researchers in the area, establishing the Centre as a community of scholars from a variety of disciplines at various stages of their careers, including the lively, and rapidly growing, group of doctoral students already in this area at UEA.

Interdisciplinary Research Themes

Initially the Centre's research will focus on three broad themes: Regime Dynamics; Enforcement and Remedies; and Developing Principles and Methodology. From 2004-2007, seven projects falling into these broad areas have been identified, described below. Each involves both an economics and a legal dimension, with management, political science, and information systems also contributing to several.

Regime Dynamics

This theme focuses on the context of competition policy. Economic behaviour in competitive markets is subject to varying degrees of regulation: this may be economy-wide or by multiple sector-specific regulators, interacting with different portfolio ministries, each setting policy in different areas. Competition policy is also influenced by the interaction between different levels of government, for example between national governments and the EU. In turn, the corporate response to competition policy and sectoral regulation has an important influence in shaping the regulatory regimes themselves 'from below', through the way in which compliance strategies and remedies in competition law take account of the compliance practices of firms.

The research objective of this theme is to explore the internal and external factors which influence the co-evolution of economy-wide and sector-specific regulation of competitive processes. These influences, at national level, and across 'tiers of government', affect the 'spillover' of other areas of policy into the regulation of competition, and the transplant of competition and regulation regimes between countries. The research process will be a combination of cross-national comparisons, longitudinal studies and retrospective theoretical analysis of 'milestone' cases. Three projects are identified within this strand: Sequencing Competition and Regulatory Policy Reform; Consumers and the Role of 'Super-complainants' and New Consumer Representation Bodies; and Policy Learning in the Regulation of the Competitive Process.

Enforcement and Remedies

This theme examines the appropriate use of remedies by competition authorities, including specialist regulators, and the effects of different legal regimes and

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CCR Working Paper Series insert

Editorial

Since our last edition, CCR has received a major boost (see front page). ESRC's support provides us with the financial means to achieve our founding objectives of establishing, and then sustaining, a real centre of excellence for research and doctoral studies in the area of competition and regulation policy. This, for us, eagerly awaited news is the cause of the slight delay in going to print with this issue of the Newsletter.

in this issue....

As most of the previous issue was devoted to economists' views on competition policy, this time we have redressed the balance by featuring two articles by lawyers, and by devoting two of the articles to the regulated industries. The legal perspectives are provided by two of our members from the Law School: Andrew Scott reviews the EC's proposals for the future of its merger control regime, and Michael Harker contributes his views, also with an EU theme, on the proposals for full liberalisation of gas and electricity. Catherine Waddams provides the second article on the regulated industries, this time with a UK focus. Other competition issues are not forgotten – see the reports on the major NIE conference on Competition Policy and Regulation held here at UEA in December, and the new project on remedy appraisal in the EU.

new CCR members

Since the last issue of our Newsletter, CCR has been joined by two new doctoral students: Ivan Diaz-Rainey (School of Management) who is undertaking research into investment incentives, regulation and technological diffusion in wind energy in Europe, and Sujitha Subramanian (Law School) whose research area is intellectual property rights and competition law.

In September our numbers will be further augmented by the addition of Dan Goyder, Professor of Law, who joins us and the Norwich Law School as part of the growing body of interest in Competition Law issues.

For further details of their research interests, please visit our website at: www.ccr.uea.ac.uk

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administrative procedures. One example covers the regulatory response to concerns about dominant firms, mergers and agreements between firms. One project will investigate which ultimate criterion competition authorities should employ when assessing whether or not to block proposed mergers. The UK government has recently replaced the traditional public interest test with one assessing whether the merger would lead to a substantial lessening of competition (SLC). This project will address both any practical guidance provided by oligopoly theory to identify SLC in any particular market, and whether the switch from 'public interest' to SLC is likely to change the authorities' decisions in practice. A second project focuses on the remedies that competition authorities impose before clearing prospective mergers, and has three stages: (i) a typology of different types of remedy and characteristics of the merger, (ii) a methodology, grounded in Industrial Organisation theory, for appraising the efficacy of those remedy types, and (iii) application of both to carefully chosen industry case studies.

Developing Principles and Methodology

This theme includes two projects. The first investigates the (consumer) welfare implications of a merger between firms in an upstream industry supplying a downstream market, where both markets are oligopolistic. Such cases are commonplace, for example: helicopter firms transporting personnel to North Sea oil rigs for the big multinational oil companies; Alcatel-STC (cables), Sara Lee-Reckitt & Coleman (supplying shoe polish to a concentrated retail sector), Nutreco-Hydro (supplying farmed salmon to the retail sector). The second project will address recent changes to competition law in the UK, which have substantially increased the penalties for cartel offences and introduced jail sentences. At the same time, competition authorities have introduced various leniency programmes designed to tempt members to inform on each other. These changes may decrease the likelihood of direct price fixing; but they leave the possibility of tacit behaviour where firms do not communicate directly but avoid vigorous competition. There is a range of practices which firms can use either directly to soften competition or to make tacit collusion more effective.

Visitors, User Engagement and Dissemination

The ESRC funding includes a visitors' programme and a programme of seminars and workshops for academics and practitioners, as well as continuation of this newsletter; we are looking forward to stimulating interactions with colleagues in both communities as our research programme develops.

Are You Being Served?

Catherine Waddams

Answer the following questions:

1. Since privatisation, has quality of service in regulated industries
a) increased? ☐
b) decreased? ☐
c) stayed about the same? ☐

2. Is the current level of service quality in regulated industries
a) too high? ☐
b) too low? ☐
c) about right? ☐

Our research shows that the answer to 1) is a), but the correct answer to question 2 is more difficult to establish. It depends on how consumers (on average) value quality and the cost of providing higher quality. Networks mean that quality characteristics (e.g. reliability of supply) have to be jointly determined, and consumers cannot choose their own preferred quality level. Regulators have to choose on behalf of consumers, and balance the benefits of higher quality with the costs of achieving it.

These questions were addressed in an ESRC funded project recently completed at CCR. This focused on the targets set by the economic regulators, for example on supply interruptions and response to consumer telephone and written enquiries, rather than on environmental or safety standards set by other regulators. Since privatisation, regulators have consistently extended the range of standards over which quality is measured, raised the targets set to companies and increased fines and penalties for failure to achieve them. This pattern was echoed by the regulated companies, where standards had also risen over time. More surprisingly, perhaps, firms often "over performed", so that regulators' higher standards sometimes seemed to be following rather than leading the firms' achievements.

The need to set and monitor quality standards arises from an intrinsic temptation for firms whose revenue is capped to reduce costs by degrading quality. This is in direct contrast to rate of return regulation, where profits can be increased by capital intensive quality improvements because they legitimate increasing the capital base. The UK price cap system has evolved into a mixture of short term incentives to reduce costs within the price cap period, and longer term temptations to raise the capital base to justify a more generous price cap at the next review. Concern in the early days of British Telecom's privatisation (particularly over its maintenance of public telephone boxes) suggested that the price cap incentives to save costs were dominant. But one interpretation of some over achievement of quality targets more recently observed is that as regulation matures, particularly in networks where competition is not a viable alternative, companies focus more on the rate of return element in resetting future price caps. Companies are therefore eager to achieve higher levels of quality, and have the attendant increases in capital included in their asset base with the costs passed on to consumers through the next price cap.

Managers who we asked about their response to quality incentives showed that they had thought carefully about these issues. In particular they do not consider their regulated UK markets in isolation. Many also compete in overseas markets, where their quality record at home may be a significant factor. Relative performance is particularly important for the regional monopolies in water and electricity distribution when bidding against overseas competition. So ironically the regulators' attempts to raise quality in home markets may have 'overshot the mark' in the sense that the firms provide higher quality at higher cost and price than consumer valuations would justify, to establish a competitive advantage abroad.

Getting the appropriate level of quality in regulated industries is a complex mix of the regulators' assessment of consumer valuations and setting appropriate incentives for the firms, given the mixture of short term and long term incentives to which they are subject. Two incentive schemes recently introduced by the regulators of the regional water and electricity distribution companies provide direct revenue incentives for higher quality, as measured by a composite index across several dimensions (in the case of electricity distribution, numbers and length of interruptions and response to telephone calls). Can these mechanisms avoid perverse incentives and succeed in getting the level of quality 'about right'?

'Regulatory Design: External and Internal Performance Measures in Regulated Industries' was funded by the Economic and Social Research Council (ref R022250147) and undertaken by Catherine Waddams of the Centre for Competition and Regulation, and Lin Fitzgerald and Bitten Brigham from Warwick Business School. The data base of measures was collected by CCR's Vinh Sum Chau, who is tracking the implementation of the new incentive scheme in electricity as part of his doctoral studies.

CCR Director visits California Energy Institute

Catherine Waddams was on leave of absence during February, March and April 2003 at the University of California Energy Institute in Berkeley where she analysed consumer survey data on consumers' switching behaviour, with particular emphasis on the consumption and switching decisions of low income households in the UK. She plans to develop this work to make some comparisons with the US experience. Steve Davies, CCR's Deputy Director, was acting Director in her absence.

Electricity and Gas Liberalisation in the EU: a New Social Dimension for the Regulation of Energy Utilities

Michael Harker

On the 3 February 2003, the Council adopted proposals which, if implemented, will result in an accelerated timetable for the completion of an internal market in gas and electricity across the EU. Subject to the approval of the European Parliament, the proposals will result in the full liberalisation of gas and electricity markets in EU member states for non-domestic and domestic consumers by 1 July 2004 and 1 July 2007 respectively.[1] In addition to an accelerated programme of liberalisation, the proposals will also result in a new social dimension to the regulation of the energy utilities across the Union.

The proposals

Progress towards the completion of a single market in gas and electricity has been far slower than has been the case in telecommunications. Full liberalisation of telecommunications was only secured, however, once it was accepted that the introduction of competition had to be matched with the imposition of mandatory public service standards. The 1998 Telecommunications Directive on Open Network Provision puts in place a number of minimum public service standards, for example, a universal service obligation requiring that services be available, independent of geographical location, at an affordable price, and a requirement that Member States take 'specific measures to ensure equal access to and affordability of fixed public telephone services, including directory services for disabled users and users with special social needs'.[2] In respect of gas and electricity, the Commission appears to be taking a similar approach in formulating its proposals which will complete the liberalisation agenda.

The proposals in question will amend the common rules for the internal market in electricity and in gas adopted in 1996 and 1998 respectively.[3] Those two Directives provide for common rules governing the framework for the liberalisation of Member States' gas and electricity markets, including prohibitions on discrimination and rules seeking to increase the transparency of vertically integrated undertakings. However, rules on public service standards are permissive in form, allowing for derogation from the common rules in limited circumstances. The recent proposals by the Commission mark a change of approach where, if adopted, the implementation of an accelerated timetable for liberalisation will be coupled with the adoption of mandatory public service obligations and a proactive role for the Commission in monitoring the imposition of these standards by the regulatory authorities in each of the Member States.

Accelerated liberalisation coupled with a wider social dimension to state regulation

In July 2000, the Commission set out a timetable for the implementation of the current Directives. According to this timetable, there would be a partial liberalisation of the energy sector across Europe, with 33 per cent of consumers being entitled to choose their supplier by February 2003 and August 2008 in respect of electricity and gas respectively.[4] At Lisbon in March 2000, the European Council requested that the Commission should make further progress towards the creation of a single market in energy. The Commission responded with proposals to amend the current Directives, but in doing so stressed that, in the completion of the internal market, 'the attainment of public service objectives is one of the most fundamental objectives' it has.[5] While the current Directives merely permit the imposition of public service obligations, the proposed amendments will actually require that certain public service obligations are imposed on undertakings by the Member States. These will include, in respect of electricity, a universal service obligation which will give consumers 'the right to be supplied with electricity of a specified quality within their territory at affordable and reasonable prices'.[6] In respect of consumers of both electricity and gas, the proposed amendments will require Member States 'to protect final consumers and to ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms'.[7] According to the Commission, such a requirement will include the special protection of vulnerable consumers.[8] There is also a requirement that Member States implement measures to achieve social and economic cohesion which will include the need to supply 'peripheral' areas (an aspect of universal service), environmental protection and security of supply.[9]

Furthermore, unlike the current Directives, which require notification by Member States of public service standards imposed on undertakings only where the State in question intends to derogate from one of the common rules, the proposed amendments will require notification of public service standards irrespective of whether their implementation necessitates a derogation. This is with a view to the Commission being in a position - should it be necessary - to make recommendations in respect of further (mandatory) measures to be taken to achieve high public service standards.[10]

The means by which the common rules or standards laid down in the Directives are to be given effect will be a question for the Member States. However, in order to facilitate a co-ordinated and coherent approach to the development of the internal market,

NIE Conference on Competition Policy and Regulation

The CCR hosted and organised this year's NIE Christmas conference. With six speakers and a large audience, this one day conference was great fun for us, as organisers, and we hope the same was true for the delegates.

left to right: Steve Davies, Mike Waterson, Morten Hviid and Peter Møllgaard

The conference kicked off with Peter Møllgaard (Copenhagen Business School) explaining how to make sense of the EU competition law concept of dominance. This was followed by Mike Waterson (University of Warwick), who highlighted the important role for consumers in the competitive process. This thoughtful, and thought-provoking, paper was delivered with the speaker's usual laconic humour.

After lunch we had two related papers, assessing the activities of competition authorities. Making her UK debut, Martina Lauk (University of Darmstadt) presented some econometric analysis of the decisions of the German competition authority: are those decisions consistent and in keeping with the statutes? This was followed by Steve Davies (CCR) who reported on the early findings of an ongoing project within CCR on remedies put in place following UK merger investigations.

Following afternoon tea, we heard two further papers on mergers in a closing session marked by heated argument. First, Bruce Lyons (CCR) explained why competition authorities might be right, for strategic reasons, to focus on consumer surplus rather than total surplus as the appropriate welfare standard. Then Paul Dobson (Loughborough University) brought the formal proceedings to a close with his own, inimitably controversial, economic analysis of the recent Interbrew/Bass proposed merger case. After a long day of interesting papers and lively discussion, many people stayed on to sample the excellent beer of the local Chalk Hill Brewery.

On a more serious note, we believe that this conference established quite conclusively that there exists a large demand, in both academic and policy circles, for further strengthening the links between the two communities (one of CCR's key objectives). Not only was the sheer size of the audience (86) unprecedented for NIE in recent years, but also its make-up was very revealing: 44 from the Universities, 31 from competition authorities or regulators; 11 from the private sector. Moreover, although the audience was inevitably primarily from the UK, we were also very pleased to welcome delegates from Denmark, Germany, Holland, Portugal and Sweden, as well as the European Commission.

the European Commission has created two consultative bodies, the European Electricity Regulatory Forum (the 'Florence Forum') and the European Gas Regulatory Forum (the 'Madrid Forum'). They are made up of all the key regulatory participants including consumers, the national regulators and representatives of undertakings. Their views will be of particular significance in framing future proposals should further intervention on public service obligations be required.

Conclusions

The result of these proposals will be minimum social obligations in domestic gas and electricity markets across Europe. Implicit in this approach is a recognition on the part of the Commission that increasing competition in the energy utilities across the Union without paying sufficient attention to the position of vulnerable consumers may militate against the wider goal of economic and social cohesion (as contained in the Treaty). The recent proposals of common rules laying down mandatory public service standards will go some way to addressing these concerns. Furthermore, the monitoring arrangements the Commission propose evince an intention on its part to take a proactive approach in the future should the liberalisation of domestic energy markets be seen to be producing inequitable results for vulnerable consumers. It may be, therefore, that while the UK approach to utility regulation is characterised by a move away from prescriptive regulation to regulation for competition, moves in the opposite direction are on their way from Brussels.

1 Commission Press Release 5959/03, Decisions adopted by written procedure (1 - 3 February 2003), 3 February 2003. The proposed Directives are subject to the co-decision procedure (Article 251, EC).
2 Directive 98/10/EC, Arts. 2(2)(f) and 8 respectively.
3 Directive 96/92/EC concerning common rules for the internal market in electricity; Directive 98/30/EC concerning common rules for the internal market in natural gas.
4 European Commission, Opening Up to Choice, Launching the single European gas market (July 2000); European Commission, Opening Up to Choice, The single electricity market (July 2000)
5 See the Explanatory Memorandum to the Communication from the Commission to the European Parliament of 13 March 2001 – Completing the internal energy market, COM(2001)125 final, para. 3.4.
6 Proposed new Art. 3(3) to both Directives.
7 ibid..
8 Explanatory Memorandum, op cit., para. 3.4.
9 Proposed new Art. 3(4) to both Directives.
10 Explanatory Memorandum, op cit., para. 3.4.

Incremental Genius?: The ‘New’ Substantive Test in EC Merger Control

Andrew Scott

In a package of proposals published in December 2002 the European Commission outlined its vision of the future of the EC merger control regime. The reform package comprises four main elements: a proposal for new legislation to recast and replace Regulation 4064/89 (ECMR); a draft Notice on the appraisal of horizontal mergers; a draft set of best practice guidelines for the conduct of merger investigations; and a range of internal reforms designed to improve the management of the merger regime. Amidst much else of interest, this package offers the Commission’s conclusions on the long-standing debate as to the appropriate substantive test by which proposed concentrations should in future be assessed. The aim of this note is to sketch the position adopted on this point and the mechanism by which it has been achieved. At first glance, it might appear that there persists a determination to maintain the incumbent ‘dominance plus’ test. However, to borrow a metaphor previously deployed in these pages, the subtle design of the Commission’s solution will allow the ‘paralysed finger’ of this test soon to wither and fall from the hand of the EC merger regime.[1]

Contours of the Debate

In its Green Paper, the Commission had sought to "initiate a thorough debate" on the respective merits of the ‘dominance plus’ test, found in Article 2 ECMR, and the ‘substantial lessening of competition’ test (SLC) familiar to a number of other major jurisdictions.[2] It appeared to countenance a shift if this was considered necessary: "we are not wedded to the current wording, and have no prejudice in favour of one formulation or another… what matters is the effectiveness of the legal instrument".[3] The forum opened by the Commission has been entered with aplomb by protagonists on all sides of the debate.[4]

While there is little need to rehearse the main arguments, it is apposite to note two broad themes in the debate: the economic and the jurisprudential. First, it was suggested that by virtue of its focus on the ‘artificial’ notion of dominance, the incumbent test may misdirect attention away from questions raised by the underlying economic theory of competition. For example, it may clear a merger between firms operating in an oligopolistic market in which the conditions for tacit collusion are not present, and this notwithstanding any anti-competitive ramifications that such a merger may have.[5] The oppositions that have arisen on this point are perhaps best encapsulated in the contrary ruminations offered by Commissioner Monti and Professor John Vickers (DGFT) to the same conference in November. Whereas the former mooted that the current rule "is capable of dealing with the full range of anti-competitive scenarios which mergers may engender",[6] the latter retorted that "it cannot be safely assumed that the existing ECMR dominance test covers all anti-competitive mergers of concern".[7] The weight of opinion, one might suggest, lies in favour of the latter perspective. For Commissioner Monti’s part, however, it was the interpretation of the test that assumed central importance rather than its bare lexicon. This sentiment presaged much in the Commission’s proposal that would be published the following month.

The second, ‘jurisprudential’ theme comprised two component parts. On one hand, there was the supposition that any significant move away from the dominance test would entail a loss of the collected experiential wisdom developed through case analysis over the past decade. This would entail a period of uncertainty for business, and cautioned that the tacit knowledge within the Merger Task Force should not be jettisoned lightly. On the other hand, there was the perceived danger that further attempts to ‘interpret’ the language of dominance so as to cover all scenarios wherein proposed mergers might result in anti-competitive outcomes would have pathological repercussions. Fed back into Article 82EC, such broad interpretations would result in the ascription of the label ‘dominant’ to firms that should not suffer regulatory interference with their market behaviour. Such firms would become subject to a ‘special responsibility’ out of keeping with their relative strength on the market.[8]

The Merger Reform Package

The resolution reached by the Commission is reflected in the proposed new regulation, the attached explanatory memoranda (EM), and the draft Notice on appraisal of horizontal mergers (DN). At first glance, these suggest that little has changed; the explicit language of the test in the new Article 2 remains unaltered. Moreover, the language employed by the Commission in the various documents, and in its public statements regarding the package, indicates that it is more or less satisfied with the status quo. It professes to have adopted an explicitly incremental approach that merely "draws and elaborates on… evolving experience".[9] It notes the concern that the current test might not provide effective control in some situations of oligopoly, but cites a general recognition amongst its consultees that ‘broadly convergent outcomes’ flow from the application of the two tests.[10] The endorsement of the idea that "what matters is how the applicable legal test should be interpreted", however, suggests that a rapprochement with the SLC test may be intended nonetheless.

In fact, the Commission has adopted a two-part strategy in seeking to achieve an alignment with economic theory, and with other major jurisdictions. First, it has set out to ‘clarify’ the meaning of dominance insofar as it relates to merger control to ensure that the Regulation will in future cover such areas as may currently be excluded. Secondly, it hopes to ensure that this clarified interpretation will apply only in the context of merger control; to break the link between dominance under the ECMR and dominance under Article 82EC.

The clarification of the meaning of dominance begins with the insertion of a new Article 2(2) into the draft regulation. This provision explains that henceforth, "one or more undertakings shall be deemed to be in a dominant position if, with or without coordinating, they hold the economic power to influence appreciably and sustainably the parameters of competition". A new Recital 21 in the Preamble reiterates this position, referring explicitly to oligopolistic markets. The draft Notice published by the Commission takes this idea further. It includes a section on oligopolistic markets that are not conducive to collusion which is wholly distinct from that focused on markets where there will be a heightened risk of collusion.[11] Perhaps in order that it might claim continuity with existing law, the Commission cites the fact that the Community courts have never said that non-collusive oligopoly was not covered by the ECMR, implying that this may previously have been possible.[12] This is a spurious contention. There can be little doubt that this is a new-fangled concept of dominance, and one that is designed to encompass areas previously thought likely to lie beyond its scope. The notion that this is merely a question of incremental development towards an always feasible interpretation is a palpable ruse.

As regards the purported bifurcation of dominance – the intended divorce between the respective meanings under the ECMR and Article 82EC – it remains to be seen whether the Community courts will acquiesce. The Commission has done much to signpost its intentions: both Recital 21 and the new Article 2(2) state clearly that their effect is restricted to the context of merger control, and this intention is further emphasised in the explanatory memoranda. It seems unlikely that this scheme will fail. It is important for the integrity of Article 82EC that it does not.

Reflections

One result of this extension of the concept of dominance for the purposes of merger control is that the Article 2ECMR test becomes somewhat tautologous. An analysis of the creation or strengthening of dominance on one hand and of whether there will result a significant impediment to effective competition on the other will now involve in each instance a consideration of much the same set of factors. The requirement to prove the likely creation or strengthening of dominance as currently understood will, under the revised ECMR, dissolve to leave only the 'plus' element as the enduring test. Moreover, and more importantly, both parts equate closely to the SLC test.

If the Commission has determined that it must maintain the language of the dominance test, even as it moves in practice towards the alternative standard, then an obvious question arises as to its motivation in doing so. It may seek to justify the retention of the language of the erstwhile standard by reference to the valuable corpus of jurisprudence,[13] but this cannot adequately explain the action. Indeed, the proposition borders on the disingenuous. Most of the case-law under the ECMR would be unaffected by even a more forthright shift to the SLC test; such changes as the amendment entails will add competence, not subtract it.

The fullest explanation of the design of the proposed revisions would appear to lie in the realm of politics and international prestige. In announcing the reform package, Commissioner Monti suggested that the revised regime would offer "a model to be emulated worldwide".[14] Indeed, retention of the dominance test, however illusory, permits a denial that a test promulgated by 'competitor' regimes comprises the 'international mainstream'. More importantly, and in contrast with its consultees, the Commission was engaged in an exercise in realpolitik; there is no 'green-field site' for law-making in this area. As the Commission hinted at the outset of the review, the fact that most Member States and candidate countries have in recent years adopted the dominance test makes it politically difficult now to renege on that standard.[15] Such a move would likely be perceived widely as an inconvenience bordering on bad faith. The solution has been a subtle exercise which, despite its heavy deployment of smoke and mirrors, should achieve the twin goals of coherence with economic theory and harmonisation with international jurisidictions. Amid such distracting speculation it is important not to lose sight of the most important fact: the reform package will provide for the continued development of DGCOMP as a strong and effective regulator on the world stage.

1 Steve Davies and Bruce Lyons. (2002) Merger Appraisal Under 'Substantial Lessening of Competition'. CCR Newsletter, 3, 4-6, 6.
2 Commission. (2001) Green Paper on the Review of Council Regulation 4064/89. COM(2001) 745/6 final, para. 167. The current test in Article 2(3)ECMR requires that a concentration be shown to 'create or strengthen a dominant position as a result of which effective competition would be significantly impeded'.
3 Monti, Mario. (2002) Roadmap for the Reform Project. Speech delivered to the British Chamber of Commerce EC Merger Control Conference, Brussels, 4 June.
4 The submissions received during the consultation are available at: [WWW] http://www.europa.eu.int/ comm/competition/mergers/review/comments.html (accessed 9 April 2003). See also, European Union Committee. [2001-02] 32nd Report: The Review of the EC Merger Regulation. HL 165.
5 A much-cited illustration of such a scenario was the proposed merger between Lloyds TSB and Abbey National that confronted the British authorities – see Competition Commission. (2001) Lloyds TSB Group plc and Abbey National plc: a report on the proposed merger. Cm 5208. London: Stationery Office.
6 Monti, Mario. (2002) Merger Control in the EU: A Radical Reform. Speech delivered to IBA/Commission Merger Control Conference, Brussels, 7 November.
7 Vickers, John. (2002) How to Reform the EC Merger Test. Speech delivered to IBA/Commission Merger Control Conference, Brussels, 8 November.
8 Case 322/81 Michelin v Commission [1983] ECR 3461, para. 57.
9 DN, para. 3.
10 EM, paras. 53-54.
11 DN, para. 25 et seq, and para. 40 et seq.
12 EM, para. 54.
13 ibid., para. 56.
14 Commission. (2002) Commission Adopts Comprehensive Reform of EU Merger Control. Press release, 11 December.
15 See supra note 2, para. 161.

DG Competition representative Damien Levie *(right)*, in Norwich for the signing of contracts on the Remedies project, meets CCR Director Catherine Waddams.

CCR wins EC funded project on Remedies in Merger Control

Competition authorities often impose conditions which must be adhered to before certain mergers are allowed. For example, where the merger might dampen competition in certain regions or localities, or in certain specific product lines, the merged firm may be required to divest itself of assets or subsidiaries. The guiding principle behind these so-called merger remedies is to protect the consumer from a potential increase in market power, whilst avoiding a disruption of the possibly beneficial impacts of the merger, such as increased efficiency.

In January, Steve Davies and Bruce Lyons started work on a project, financed by the European Commission, designed to develop an analytical methodology for assessing the effectiveness of such remedies, and then to apply it to case studies drawn from the experience of the last decade of European merger control. This requires a systematic modelling of the counterfactual – what would have happened had the merger been allowed without remedies – in order to compare with the actual out-turn. The analytical work will concentrate on deriving methods based on formal, but practicable, modelling of the nature of competition in a particular market, and calibrating it from data which might realistically be expected to be available – either as a result of the merger investigation itself, or more generally in the public domain.

ESRC Research Seminar Series: Modelling Political Accountability

Principal-Agent Relations in Politics and Government

On 6 December 2002, 22 invited political scientists, legal scholars and economists attended the first meeting of the ESRC funded seminar group on Modeling Political Accountability in Politics and Government co-convened by CCR and Birkbeck College, London, and hosted by CCR.

Canice Prendergast, Professor of Economics at the University of Chicago, introduced the concept of principal agent relations, illustrating it from his paper on the effect of incentives in the Los Angeles Police Department; and Kaare Strøm, Professor of Political Science at University of San Diego, California, spoke about Parliamentary Democracy as Delegation and Accountability.

For further details and links to the papers, visit our website.

Application of Principal-Agent Models to Utilities

The next event in this seminar series will take place on October 3rd 2003. A full day workshop is scheduled to take place in London with papers being presented by the following:

Michael Moran, University of Manchester
Regulating Privatization: Post Modern or High Modern?

Tony Prosser, University of Bristol
Regulatory Contracts and Stakeholder Regulation

Clare Leaver, University College London
The Political Economy of Utility Regulation: Some Lessons from the United States

Monica Giulietti, University of Aston and **Catherine Waddams**, CCR/UEA
Economic Regulation, Incentives and Price Structures

Michael Harker, CCR/UEA
A Theoretical and Constitutional Approach to Utility Rights as Human Rights

Bitten Brigham and **Diane Sharratt**, University of Warwick
The Utility of Social Obligations in the UK Energy Industry

David Coen, University College London
Learning to Play the Regulatory Game in the UK and Germany

Further information will be posted on our website in due course.