

Know the rules or pay the price:

Firms and competition law enforcement

A collection of short talks by members of the ESRC Centre for Competition Policy.

A number of cases over the last few years have illustrated the potential costs to businesses and individuals of ignoring competition law.

- In the case of mergers, some cases which might have been resolved at an early stage have ended up being referred to the Competition Commission at large extra costs to both the firms involved and to society.
- Talking to your rivals can land not just the company you work for, but also yourself, in trouble. Conversations about fuel surcharges have left BA with a large public fine, both Virgin and BA with large private damages liability and in addition led to the criminal prosecution of four former BA executives. Criminalisation in the UK of some competition law infringements is new, but we have already had the first such conviction with three executives from Lincolnshire sent to prison for between 30 and 36 months.

Firms can be victims as well as perpetrators of competition abuses. Sometimes knowing what the rules are can protect a firm from harmful actions by others. If a powerful buyer or supplier places a huge financial burden on a firm, it may be able to turn to the competition authorities for relief.

- Competition law puts restraints on what a dominant firm can do vis-à-vis customers.

A firm may even take direct action itself, pursuing a private action either for damages or to stop a dominant firm using abusive practices.

- The first competition case to reach the House of Lords as well as the European Court of Justice, *Crehan vs Courage*, arose because a publican felt he was the subject of abusive behaviour by another firm.

To protect themselves from inadvertently violating competition law as well as from the abuses of others, firms need to be aware of what the law says and aims to achieve. Firms also need to consider whether their staff training is adequate: Should it introduce a compliance programme? If one is already in place, is it adequate to meet current and future challenges?

This event is aimed at providing such information. We start the event with a questionnaire to elicit the views of the audience on a range of actions and whether they are allowed under existing competition law. We will return to the results from these, after highlighting the dangers which inadequate knowledge of competition law can bring and a short introduction to current legislation. The audience's own initial responses (and those from other surveys) will form the basis for a general discussion at the end of the event. The event is especially aimed at businesses and law practitioners.

Rough time-table and topics for event:

10 minutes	Welcome and introduction to the event and the Centre for Competition Policy Administration of Competition questionnaire – what does the audience think about competition issues?
20 minutes	Ignorance can be costly – examples from the real world 1. Mergers 2. Talking to rivals 3. Agreeing with suppliers/buyers 4. Private enforcement - a danger or a protection?
30 minutes	Things you do that may harm others 1. Mergers. • Institutional set-up: OFT/sector regulators - Competition Commission • Notification • The reach of the EU and of other competition authorities 2. Cartels and other agreements. • What does chapter I of the Competition Act say? • What does the Enterprise act add to this?
30 minutes	Things which may harm you 1. Abuses by dominant firms • Foreclosure • Refusal to supply • Bundling 2. Private litigation - another form of enforcement • If someone in the organisation violates competition law, the firm may have to pay compensation. • If another firm is exploiting you, you may be able to use competition law to get relief.
30 minutes	Report and discussion of the earlier questionnaire, and general discussion about the law and appropriate responses.

Speakers:

Professor Morten Hviid (CCP and Norwich Law School, University of East Anglia)

Dr Andreas Stephan (CCP and Norwich Law School, University of East Anglia)

Professor Catherine Waddams (CCP and Norwich Business School, University of East Anglia)

Short bios of Speakers:

Catherine Waddams is Director of the ESRC Centre for Competition Policy at the University of East Anglia, an interdisciplinary research Centre which brings together contributions from Economics, Law, Business and Political Science to analyse issues of Competition and Regulation, and particularly fosters the development of new researchers in this subject area. She was previously founding director of the Centre for Management under Regulation and Professor in Warwick Business School; and before that Senior Lecturer in Economics and Dean of Social Sciences at Leicester University. Catherine has published extensively on the effects of these policies, particularly their distributional impacts, both in the UK and overseas. She has advised governments, regulators, the World Bank and firms on these issues at various times.

Her current research and publications focus on the role of consumers in the competitiveness of markets, particularly those which are newly opened, examining what motivates consumers to switch supplier and assessing how effectively they capture the maximum benefits available to them.

Catherine is a member of the Scientific Advisory Committee of the UK Research Councils Energy Programme; and is a part-time member of the UK Competition Commission 2001-2009.

Morten Hviid joined Norwich Law School in September 2004 as a Professor of competition law and is a founding member and a principal investigator of the ESRC Centre for Competition Policy. He has previously held posts in the Economics Departments at University of Copenhagen and University of Warwick and in the School of Economic and Social Studies, University of East Anglia.

Although trained as an economist, Morten's interest in law is long-standing and he has published in both fields. Morten researches in the areas of competition law, contract law and tort law and has recently published a book on Merger Control with Andrew Scott and Bruce Lyons, *Merger Control in the United Kingdom*, (Oxford University Press, 2006).

Morten has acted as an advisor to the Office of Fair Trading, the Office of Government Commerce and the Department of Constitutional Affairs (now Ministry of Justice).

Andreas Stephan is a lecturer in Competition Law. Having previously studied in both the Norwich Law School and the School of Economics, he became a lecturer in August 2007. He primarily researches all areas of Competition Law; much of his work focuses on cartel enforcement and, in particular, the criminal offence introduced by the Enterprise Act 2002. His work is often cross-disciplinary and he has presented papers at both Law and Economics conferences. He recently designed a public survey gauging British attitudes to price fixing and cartel enforcement. This was conducted in March 2007, and is the only study of its kind. Andreas is a faculty member of the ESRC Centre for Competition Policy.

Andreas' doctoral thesis was entitled: 'Enhancing Deterrence in European Cartel Enforcement' (funded by the AHRC). He has, on occasion, been asked to comment on issues relating to cartel policy: "BA fined £270m for price fixing" (Guardian Unlimited).