



CCP Annual Report 2009-10

This report is an abridged version of the Annual Report sent to the ESRC on 30th March 2010.



INTRODUCTION

The ESRC Centre for Competition Policy undertakes interdisciplinary research into competition policy, including market regulation, which has real-world policy relevance without compromising academic rigour. Such analysis requires an interdisciplinary approach, using insights and analysis from economics, law, political science and business. The research programme is organised around five themes:

1. Consumers as actors in and objects of competition and regulation policy
2. Institutions through which policy is developed and delivered
3. Market power and its regulation
4. Agreements between firms and ‘tacit collusion’
5. Merger regulation and institutional design

Research has continued as planned, with the main focus of the Centre being the Friday lunchtime seminars, and two research retreats (July and December). There have been no changes in the central staff of the Centre not anticipated in the mid term review, which involved expansion of approach and membership. Graham Loomes continues to be a member despite his move to Warwick and visits regularly; Vinh Chau and Pinar Guven have become affiliate members. Andros Gregoriou, Grischa Perino, Ivan Diaz-Rainey and Jerome Healy have joined as affiliate members. Stephen Greasley and Subhasish Modak Chowdhury have been appointed by the Schools of Political and International Studies and Economics respectively as lecturers and CCP members. Matt Olczak has graduated and left his RA post for a lectureship at Aston; Catherine Ball, Dr Minyan Zhu and Oindrila De have joined as RAs; Anupa Sahdev left her RA post and is working for the Co-operation and Competition Panel; and Oles Andriyчук has joined as a post doctoral researcher. Four doctoral students have successfully defended their theses during this year, and three have been appointed to academic posts. We welcomed a new cohort of six full time students across law, economics and political science, several from UEA masters’ programmes. Two were supported by ESRC quota awards and three by UEA studentships.

The Centre has expanded in size and perspective as foreseen in the plan and reflected in the research reports above, and we continue to attract interest from colleagues across UEA and forge new potential research links. Our links with other academic institutions continue, and included a workshop with other members of the Competition Law and Economics European Network.

IMPACT AND HIGHLIGHTS

The ESRC specify that the annual report should contain two examples of each of the following three types of impact.

Research Progress

1. Under the Cartels and Tacit Collusion theme, further progress has been made on the conceptually difficult issues surrounding the differences between tacit and explicit collusion. Within CCP this has been approached from a variety of perspectives, including coordinated effects in mergers, the internal organisation of cartels, experimental work on the role of focal points, compliance and public perceptions on the criminalisation of collusion. To reflect this focus, CCP devoted its 2009 annual conference to the subject, bringing together some of the world’s leading academic experts working on cartels and/or tacit collusion. Papers presented there employed theory, econometric and experimental methodologies, and included policy oriented approaches.

2. As part of its new remit following the mid-term review, CCP has embraced experimental methods which have now become relatively standard for consumer research. In one particular project within the Merger theme, we have taken a significant methodological step forward. Little is known about the fundamental influences behind competition agency decisions. Characteristically, the evidence base is nearly always incomplete and uncertain. Are decisions affected by, for example: the error cost of making the wrong decision; the legal standard of proof; and individual experience? One reason for the relative neglect of such topics is that actual cases are highly idiosyncratic and complex, so it is not

possible to use case data to undertake a statistical analysis of the underlying characteristics. We have therefore adopted an experimental approach with the very distinctive feature of using active practitioners in competition agencies across the globe, incentivising them to make decisions in a context that enables us to identify underlying forces. We thereby avoid a standard criticism that student decisions might be different from those of practitioners and gain insight into the underpinnings of agency professionalization.

Scientific impact

1. Although the intent of the drafters/legislators of a legal provision can provide invaluable insights for the correct interpretation of a provision with ambiguous wording and/or objectives, research into the legislative intent behind the competition rules of the Treaty on the Functioning of the European Union has been practically non-existent. We sought to fill this gap in knowledge by examining the archival documents relating to the negotiations of the provision prohibiting the abuse of a dominant position which regulates unilateral market power. The findings have revealed that this provision has been wrongly associated with a particular school of thought (ordoliberalism) with important implications for its contemporary application and interpretation. Akman's article "Searching for the Long-Lost Soul of Article 82EC" published in the Oxford Journal of Legal Studies (OJLS) has made various suggestions on a possible modern interpretation of this provision which have been positively received by prominent authors and was listed as one of the top-20 most downloaded articles on the OJLS website.

2. The monograph, 'Air Transport and the European Union', by Kassim and Stevens published by Palgrave in December 2009, makes a major contribution, both substantive and methodological, to the scholarship on Europeanization. The book challenges the top-down perspective that dominates the existing literature by arguing that a bottom-up approach provides a more sensitive measure of where, when and the extent to which EU action affects national policy and policy making. In tracing change over the long term and across all areas of aviation, it significantly raises the bar for studies of how EU-level developments affect regulation in the member states. It has been nominated for two prizes, by the Political Studies Association and the University Association for Contemporary European Studies.

Economic and societal impact

1. Research on the effect of non discrimination clauses was stimulated by the energy regulator's proposal to introduce such clauses into the licenses of electricity retailers. Our widely presented analysis shows its detrimental effect; CCP provided responses to the regulators' three consultations, has influenced the implementation of the proposal, and played an important part in a high profile debate about the role of competition, equity concerns and the regulators. The CCP Director has contributed through helping to initiate the Next Generation Utilities Forum; and serving on expert groups advising the Better Regulation Executive at BIS and Ofwat.

2. CCP continues to have a significant impact on the evaluation of competition policy. For example, Steve Davies presented a keynote speech at an international conference in Mannheim on the quantitative methods used to evaluate specific policies. This led to an invitation from the OFT to carry out an independent review of its impact estimation methodologies. His review, published in January 2010, assesses the methodologies applied to each area of OFT's work (which it is required to produce as part of its own accountability of VFM to HMT.) His report was published at http://www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/oft1164.pdf

PROGRESS AGAINST OBJECTIVES

Programme of Research

Consumers as actors in and objects of competition and regulation policy

The corner stone of this research stream is empirical work based on data from surveys and experiments. The new consumer survey is in draft form and will be administered in summer 2010. Other research completed has covered diverse aspects, such as the origins of behavioural economics and the antecedents of current controversies about the proper role of psychology in economics, an assessment of the general use of behavioural insights, the impact on competition law remedies of

behavioural biases, and the importance of complexity. Work completed during the year has documented the challenges consumers face in markets for gas and electricity and water. Another strand has focused on consumer welfare, exploring the appropriate measure of welfare.

Institutions

CCP researchers are investigating the role of institutions at national and EU levels in the development and implementation of competition policy, as well as the origins and impact of change in competition policy regimes. The Centre produced a 'recession' newsletter and convened a workshop on state aid control. Publications have addressed the reform of the EU antitrust regime and the merger regulation, and investigated the role of myths and mythmaking in institutionalizing and legitimating the powers granted to the Community and the Commission in this field. Research on the European Competition Network and the role of national courts was presented at several international conferences in law and political science. Private enforcement is a second major preoccupation. A database of private enforcement in Germany, completed in February 2010, will provide the basis for empirically informed research in this developing field. More broadly, CCP has investigated the interaction between competition policy and other objectives; assessed the role of economics in the first 10 years of the UK competition Act; compared voluntary and compulsory pre-notification regimes; and assessed the interaction between competition and research and development activity, and competition and corruption and social norms.

Agreements between firms and tacit collusion

The major event of the year was the CCP's annual conference, which was devoted to 'Cartels and Tacit Collusion.' Many of the world's leading researchers in the field presented papers, and the conference was extremely well-attended. There is considerable worldwide interest in exploring the interface between these two forms of collusion, and this has continued to be the focus of ongoing research within CCP. The year also saw published papers on: the duration of cartels; coordinated effects in mergers; the internal organisation of cartels; plea bargains and direct settlements; social norms, collectivist cultures and cartel enforcement; the design of leniency programmes; matching rivals' prices; and can tacit collusion be illegal?

Market power and its regulation

We continue to explore the regulation of market power, both through Article 102 and sectoral regulation (see scientific impact above). Other areas addressed include a critique of the EU Commission's Article 102 guidelines on exclusionary abuses; raising rivals' costs and predation; the role of fairness in the application of Article 102 from a legal and a behavioural economics perspective; vertical restraints both from a legal and economics perspective; the welfare effects of market power and price discrimination in intermediate goods markets; and a legal perspective on the EU's approach to vertical restraints, in particular differentiating between intermediate customers and final consumers when assessing welfare effects.

The Centre continues to contribute to the debate on the UK retail energy markets (see economic and societal impacts).

Merger regulation and institutional design

The innovative experimental work on standards of proof in the context of merger regulation have been written up and submitted for publication (see research highlights above). Research on comparative judicial review of merger decisions (EU, UK and Germany) has been completed. A further strand has been the econometric analysis of why some merger remedy agreements are reached in Phase I while others have to wait until Phase II investigations. The theoretical framework allows the identification of which European mergers may have been allowed with insufficient remedy. Complementary research has focussed on the detailed time-path of reaching agreement.

LIST OF PUBLICATIONS APRIL 2009 – MARCH 2010

Akman, P - 'Consumer Welfare' and Article 82EC: Practice and Rhetoric; *World Competition*, 32(1), pp. 1-90 (March)

Akman, P - Searching for the Long-Lost Soul of Article 82EC; *Oxford Journal of Legal Studies*, 29(2), pp.267-303 (June)

Akman, P and Kassim, H - Myths and Myth Making in the Institutionalization and interpretation of EU Action: The Case of EU Competition Policy *Journal of Common Market Studies* (special issue), (2010) 48 (1) pages 111-132 (December 2009)

Andriychuk, O (2009) Does Competition Matter? An Attempt of Analytical 'Unbundling' of Competition from Consumer Welfare. *Yearbook of Antitrust and Regulatory Studies*, 2 (2). pp. 11-27. ISSN 1689-9024

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Coughlan, A and Shaffer, G - Price-Matching Guarantees, Retail Competition, and Product-Line Assortment; *Marketing Science*, 28, pp. 580-588.

Davies, S and Olczak, M - Tacit Versus Overt Collusion Firm Asymmetries and Numbers: What's the Evidence?; *Competition Policy International*

Hargreaves Heap, S and Zizzo, D, The Value of Groups, *American Economic Review* 99, pg 295-323 (March 2009).

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Hviid, M and Stephan, A., 'Fines which deter? The Graphite Electrodes Cartel' in Lyond (Ed.), *Cases in European Competition Policy*, chapter 5, Cambridge University Press, 2009

Hviid, M 'Economic Analysis in UK Competition Law after CA98' in *Ten Years of UK Competition Law Reform* ed. Rodger, Dundee University Press, 2010

Inderst, R and Shaffer, G - Market Power, Price Discrimination and Allocative Efficiency in Intermediate-Goods Markets; RAND Journal of Economics, 40, pp. 658-672.

Kassim, H "Air transport and the European Union: Europeanization and its limits", Palgrave Studies in European Union Politics, December 2009

Loomes, G, Shepley, O & Sugden, R 'Taste uncertainty and status quo effects in consumer choice' Journal of Risk and Uncertainty 39(2009): 113-135.

Lyons, B 'An Economic Assessment of EC Merger Control: 1958-2007' in Vives (Ed.), Competition Policy in the EU: Fifty Years on from the Treaty of Rome, Oxford University Press, 2009

Lyons, B 'Anticompetitive agreements or good governance? The orders and rules of British Horseracing' in Lyond (Ed.), Cases in European Competition Policy, Cambridge University Press, 2009

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Majumdar, A and Shaffer, G - Market-Share Contracts with Asymmetric Information; Journal of Economics and Management Strategy, 18, pp.393-421.

Shaffer, G and Zettelmeyer, F - Comparative Advertising and In-Store Displays; Marketing Science, 28, pp. 1144-1156.

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Waddams Price, Catherine and Pham, Khac (2009) The impact of electricity market reform on consumers. *Utilities Policy*, 17 (1). pp. 43-48

Working Papers

09-01 Exploitative Abuse in Article 82EC: Back to Basics?, Pinar Akman

09-02 The Regulatory Challenge to Branding: An Interpretation of UK Competition Authority Investigations 1950-2007, John Ashton and Andrew Pressey

09-03 Market Frictions: A Unified Model of Search and Switching Costs, Chris M. Wilson, February 2009* updated January 2012. A previous version of this paper was titled "Markets with Search and Switching Costs" (CCP Working Paper 06-10)

09-04 Competition Policy, Bailouts and the Economic Crisis, Bruce Lyons

09-05 Can the Commission use Article 82EC to Combat Tacit Collusion?, Felix Mezzanotte

09-06 A firm-level panel-data Approach to Efficiency, Total Factor Productivity, Catch-Up and Innovation and Mobile Telecommunications Reform (1995-2007), Yan Li

- 09-07 How Far Does Economic Theory Explain Competitive Nonlinear Pricing in Practice?,
Stephen Davies, Catherine Waddams Price and Chris M. Wilson
- 09-08 Should the Joint Provision of Credit Insurance with Unsecured Lending be Prohibited? An
Examination of the UK Payment Protection Insurance Market, John Ashton
- 09-09 Hear no Evil, See no Evil: Why Antitrust Compliance Programmes may be Ineffective at
Preventing Cartels, Andreas Stephan
- 09-10 Are all mergers equally delay-averse? An empirical analysis of procedural delay in European
Commission merger cases (1999-2008), Peter Ormosi
- 09-11 Determinants of the success of remedy offers: Evidence from European Community
mergers, Peter Ormosi