



CCP Annual Report 2010-11

This report is an abridged version of the Annual Report sent to the ESRC on 30th March 2011.



INTRODUCTION

CCP has continued to deliver across its programme of academic research and policy relevant output and advice during 2010-11. Attendance at the weekly seminar is now so large (between 30 and 45) that we have to hold it outside CCP, and we continue to support high quality research across disciplines in a real 'Centre' with a physical presence.

The Centre's reputation was recognised in two invitations – one to host the annual Association of Competition Economics meeting in November, attended by 120 academics, policy makers and private practitioners from across Europe, and extremely well received. This was a valuable opportunity to host the leading European practitioners in Norwich. The second was to join the Centre on Regulation in Europe, which should provide both a valuable network based in Brussels, and an opportunity for research funding from the non academic members and other sources.

The blog continues to be very successful, with around 25,000 hits in total, but was seriously disrupted by the imposition of Purdah at the time of the general election. From responses (both public and private) it is evidently being followed by key individuals within UK authorities, and well as academics and journalists; the blog has featured in Competition Policy's 'Blog of blogs' and in the Times Law blog.

STAFFING NEWS

Staffing changes were much as predicted, with three research associates moving to other academic posts, and two new appointments made. The Centre manager, Stu White, left in July and was replaced by Suzy Adcock. Four new faculty members (Mac Sithigh, Hanretty, Vasilakos, Whelan) joined the Centre, and John Ashton left CCP and UEA for Bangor. We congratulate seven of our PhD students who successfully completed their PhDs this year, five of whom are in academic posts and two in consultancy, and we are delighted to welcome seven new PhD students to CCP.

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

This year we report the collection of two (very different) data sets. The first is a part of the Centre's ongoing research into consumer choice of suppliers and activity in markets. In January 2011, following a detailed consultative and piloting period, the Centre commissioned GfK NOP to undertake the latest Consumer Survey. Over a two-week period, over 2500 over 16s were interviewed face-to-face in-home about their behaviour in the retail electricity market. The resulting dataset contains anonymised information that will be used to predict the respondents' search and switching behaviour. Building on previous CCP surveys and research, these include their personal characteristics, their attitudes to the market, attentiveness to the market and perceived gains and the time and difficulty of searching and switching. The survey complements and extends previous studies conducted by the Centre under the theme of *Consumers* by focussing on consumer confidence and the salience of the search/switching tasks. Initial analysis of the data has commenced and will be presented at a seminar at Birkbeck College in March, and a

paper on the first findings will form part of the Centre's annual conference – this year on Consumers – in June.

The second data set is an empirical study of German competition law litigation from 2005 to 2007, the most complete dataset of its kind for civil law jurisdictions in Europe. The results question some assumptions about private antitrust enforcement in Europe and have been published as a working paper. A refined version of this paper is currently under review at the Oxford Journal of Legal Studies. The results from the data analysis were presented at academic conferences, to practitioners (German Federal Cartel Office, European School of Management and Technology) and have been sent to stakeholders and policy makers (European Commission, German law professors) in the form of a working paper. Daniel Crane quotes an early draft of the empirical work in his recent book on enforcement institutions and Gero Meeßen refers to the work in his book/PhD thesis on private antitrust enforcement in Germany. Another paper which is based on the data has been accepted for publication in the *International and Comparative Law Quarterly* (forthcoming July). We expect both data sets to become a valuable resource for the Centre, to be exploited in the years to come.

Scientific impact

Pinar Akman's paper 'The European Commission's Guidance on Article 102tfeu: From *Inferno* To *Paradiso*?' was published in *Modern Law Review*, one of the top generalist academic law journals. This article is a critical assessment of the European Commission's Guidance on Enforcement Priorities in Applying Article 102 of the Treaty on the Functioning of the European Union to abusive exclusionary conduct by dominant undertakings. The Guidance is the first ever official document adopted by the European Commission to provide guidance on the application of Article 102 which forms one third of EU competition law. The Commission's and the European Court's application of this provision had been controversial and particularly criticised for protecting competitors and not competition, and for being devoid of modern economic thinking. Although it has been only recently published (July 2010) and was not preceded by a CCP research paper, the paper has already been cited by one of the leading textbooks in EU competition law as a "further reading" article on the subject [see A Jones and B Sufrin *EU Competition Law: Text, Cases and Materials* (4th ed OUP 2011) p. 281.]

One of CCP's main contributions is in building capacity amongst masters' and doctoral students, and this year was particularly vibrant, with seven CCP students successfully defending their theses; topics ranged from rationality of consumers in water, collusive agreements, European electricity and buyer power to private enforcement, tacit collusion and innovation and competition policy. Seven students commenced their studies in CCP this year, two of them supported by ESRC quota awards. One highlight of the CCP environment this year was the month long visit of Professor Andy Gavil from Howard University School of Law, Washington. He evidently enjoyed the atmosphere at CCP immensely, particularly interacting closely with the PhD students and junior faculty; as part of his visit he presented a very popular and useful series of masterclasses on US antitrust. Based on his positive experiences at CCP, Professor Gavil has initiated a proposed exchange for EU PhD students to visit US institutions.

Economic and Societal Impact

Government and regulators sought extensive advice from the Centre during the year, based on three streams of research: economic regulation, consumer choice (especially in regulated industries) and price guarantees. The Department of Business and Innovation, the Department of Energy and Climate Change, the Cabinet Office Behavioural Change Unit, the economic regulators for communications, water and energy all invited contributions of varying kinds from Centre members. The advice involved three contracts with the Centre (one research, two

consultancies) and two explicit publications: one on price guarantees for Ofcom and one on consumer choice for Ofwat. Collectively this solicited 'engagement' (listed in the output return) represents a substantial interest in and direct application of the Centre's research within policy circles.

One example of a development from academic research to practitioner application arose when Daithi Mac Sithigh, a new faculty member of the Centre, was asked by a delegate at an academic conference to develop his paper into a piece of training organised by the Practical Law Company, which provides training and updates for legal practitioners (solicitors – in-house and in law firms) in the UK – <http://uk.practicallaw.com>. The talk, entitled 'Google in the spotlight', was attended by 100 PLC subscribers, all solicitors, and dealt with the legal issues encountered by Google under four major headings (regulating search engines, liability for YouTube, competition, and Google Books). Organisations represented including Google itself, the BBC, ITV and Sony, as well as major law firms working in the area (e.g. Pinsent Masons, Olswang, Freshfields Bruckhaus Deringer, Kemp Little). The talk brought together (for a practitioner audience) different aspects of the academic research; feedback from attendees suggested that bringing together a range of legal issues (including comparative law) highlighted the complexity of doing business online and also the impact of competition and regulation on the affairs of Google and others. The event (including slides) is reported at <http://ipandit.practicallaw.com/content/seminars>.

PROGRESS AGAINST OBJECTIVES

The Centre undertakes interdisciplinary research into competition policy, including market regulation, which has real world policy relevance without compromising academic rigour. During the year we developed our research programme based on the changes agreed in the mid-term review and forecast in the 2010-11 forward plan, recruiting new faculty members and expanding our focus. While some plans have been delayed or altered, other activity has taken its place, so the result is, if anything, more and better output than forecast. Centre members have published 29 pieces of refereed work, 15 working papers, made 32 conference presentations, continued involvement with international academic networks and intensified their engagement with policy makers, including joining a new European regulation group.

Research

Research activity is reported under each of the five streams, as anticipated in the forward plan, though much activity overlaps several themes.

In the *Consumer* theme the main achievement has been the refinement of the large scale survey on consumer switching, prepiloting competitive tendering of the survey itself (which was won by GfK-NOP), piloting, administration of the survey and organisation and cleaning of data. The last date of the reporting period (31st March) sees the first presentation of results to a research seminar at Birkbeck College, and further results will be presented at CCP's annual summer conference on consumers. The survey has been supplemented by experiments on complexity in consumer choice, and these experiments are themselves being modelled on energy tariffs, to provide a direct link with the Centre's sector expertise. Two pieces on the role of economic freedom in the objective of competition law have been published, both listed in the outputs: 'Economic Freedom as Political Virtue: An Insight from the Perspective of Value Pluralism' (European Journal of Legal Studies) and 'Rediscovering the Spirit of Competition: On the Normative Value of the Competitive Process', (European Competition Journal). The paper on consumer errors in switching, whose earlier versions continue to be influential and widely cited in policy circles, has finally been published. Bob Sugden continues to develop his book draft

through completing individual chapters as working papers. *Social Choice and Welfare* has agreed to publish a special edition based on a conference, part sponsored by CCP and held at UEA in 2008, on Reconciling Normative and Behavioural Economics.

Under the '**Institutions**' heading the empirical study on German competition law litigation from 2005 to 2007 is well underway – originally as part of a PhD thesis and now being pursued at a post doctoral level (for data, see highlights section). The results have been published as a working paper, and a refined version is currently under review at the Oxford Journal of Legal Studies. Another paper based on the data has been accepted for publication in the International and Comparative Law Quarterly (forthcoming July). Discussion of the dialectical approach to antitrust has been continued with the articles on consumers and competition (noted above) and application to the economic downturn. Work on the case studies in national competition authorities has been delayed by the departure of a research associate for an academic post at York.

In addressing **Market Power and its Regulation**, Akman continues to work on her book, and has published two articles, one a critique of the European Commission's new guidelines on the application of Article 10;2 the other on the problems, in the context of vertical restraints, of not differentiating between intermediate customers and final consumers; a paper on net neutrality has been published, comparing the approach in the EU to that of Canada, and Mezzanotte on the conceptual boundaries of collective dominance in the context of Article 102. Members have commented on 'How Loyalty Discounts can Perversely Discourage Discounting', and on care homes. Hviid and Waddams have developed their analysis of the energy regulator's introduction of non discrimination clauses, a topical and controversial policy issue. Their work has led to an invitation to provide consultancy advice to Ofgem on its latest review of the retail market. A paper on the importance of market structure for the diffusion of mobile phones shows that triopoly is optimal for maximizing the rate of diffusion, but there remains a role for independent regulation. This finding is important both for regulators designing the structure of such markets and for agencies deciding on whether mergers should be allowed.

Several contributions have been made in the '**Agreements**' strand. The issue of how cartels solve the problem of stability via their internal structure was addressed in two chapters of a successful PhD thesis, namely: Are cartels really most likely for small number symmetric industries? and the types of agreements, rules and 'punishment' strategies use to avoid the 'cartel problem'. A subset of one to two hundred cartel cases has been isolated from a larger data set to calculate (reliable) estimates of the magnitude of overcharge. Current analysis focuses on whether the estimates of such overcharges depend on how the counterfactual is measured (before or after, during price war, or using a comparator non-cartelised industry). The paper on cartels in recession was redrafted for publication in *World Competition*; a book chapter on media coverage of cartel cases was prepared for publication in: C Beaton-Wells and A Ezrachi (eds) *Criminalising Cartels* (Hart 2011); a paper on the UK's fledgling cartel offence is accepted for publication.

The question of which parties should have standing to request a review of a Commission **Merger** decision and standing to sue developed issues arising from the Impala case. Using economic insights from US and EU cases, early findings suggest that EU rules on standing are consistent with 'protecting competitors not competition' rather than 'the more economic approach' aiming to protect consumer welfare. Work has been published on judicial scrutiny of merger decisions in the EU, UK and Germany. Work identifying the contribution of horizontal mergers to the emergence of giant firms in power generation in the EU was included in a successful PhD. Analysis of design of merger institutions included a major re-working of a paper on the type of error implied by early settlements of merger remedies. Early settlements by the

EC are more likely to be Type 1 errors (i.e. “too harsh” as firms offer too much remedy in the hope of an early settlement) but there are also Type 2 errors (i.e. anticompetitive mergers allowed), particularly when the merger is difficult to assess. Work has also been published on mergers and the theory of harm.

Our new banking theme has resulted in the construction of databases on market structure across Europe, state aid and other crisis interventions (including mergers). Much of the groundwork is in place, ready for planned papers on state aid and on evolving market structure in banking. The Independent Commission on Banking invited a presentation of early results. A paper that finds adverse effects of mergers on deposit interest rates has been accepted for publication.

LIST OF PUBLICATIONS APRIL 2010 – MARCH 2011

P Akman ‘Consumer versus Customer: the Devil in the Detail (2010) 37 (2) Journal of Law and Society 315-44.

P Akman ‘The European Commission’s Guidance on Article 102 TFEU: From *Inferno* to *Paradiso*? (2010) 73 (4) The Modern Law Review, 605-630

P Akman ‘The Turkish Competition Board confirms lack of anticompetitive conduct in the biotech pharmaceuticals market despite evidence of bid-rigging brought by criminal proceedings (Roche), e-Competitions, Special Issue 59

P Akman ‘The Turkish Competition Board grants individual exemption to an exclusive distribution agreement (*GlaxoSmithKline / Pfizer*), e-Competitions, Special Issue 59

O Andriychuk ‘Dialectical Antitrust: An Alternative Insight into Methodology of the EC Competition Law Analysis in a period of Economic Downturn’, European Competition Law Review, Vol 31 No 4/2010 (April 2010)

O Andriychuk ‘Can we Protect Competition without Protecting Consumers?’, Competition Law Review, Vol 6, No 1, 2010

O Andriychuk ‘Economic Freedom as Political Virtue: An Insight from the Perspective of Value Pluralism’ Economic Journal of Legal Studies, EUI Vol 3, No 1, December 2010, pp. 129-144

O Andriychuk ‘Rediscovering the Spirit of Competition: On the Normative Value of the Competition Process’, European Competition Journal, Vol 6 No 3, 2010, pg 575-610

O Andriychuk ‘Concept of Network Neutrality in the EU Dimension: Should Europe Trust in Antitrust?’, in Meritxell Fernandez-Barrera, Norberto Nuno Gomes de Andrade, Primavera de Filippi, Mario Viola de Azevedo Cunha, Giovanni Sartor, Pompeu Casaonovas (eds.), ‘Law and Technology: Looking into the Future, collection of papers from the conference The Future of...Conference on Law & Technology in the Information’, European University Institute Florence, 28-29 October 2008’, European Press Academic Publishing, Florence, 2010

Y Breitmoser, JHW Tan, D Zizzo ‘Understanding Perpetual R&D Races’, Economic Theory, 44(3), September 2010, pp 445-467

R Cadman ‘Means not Ends: Deterring Discrimination through Equivalence and Functional Separation’, Telecommunications Policy (Issue 7), Special Issue on Functional Separation

R Cadman 'Next Generation Access: Analysing Regulation and the Product Life Cycle', *Intermedia*, Journal of the International Institute of Communications, July 2010, Vol.38, Issue 3

R Cadman "Margin Squeeze: the reasonable efficient operator standard", *InfoMedia*, March 2011

S Davies and M Olczak 'Assessing the Efficacy of Structural Merger Remedies: Choosing Between Theories of Harm?' *Review of Industrial Organization*, Vol 37, Issue 2 (2010) pg 83

S Davies, M Olczak and H Coles "Tacit Collusion, Firm Asymmetries and Numbers: Evidence from EC Merger Cases", *International Journal of Industrial Organization*, 29 (2) March 2011, p. 221-231.

M Harker, S Peyer and K Wright 'Judicial Scrutiny of Merger Decisions in the EU, UK and Germany', *International and Comparative Law Quarterly* (2011), 60:93-124

E Hooper and C Waddams 'Innovation and Competition in Generation and Retail Power Markets', *Economic Affairs*, Vol 30, Issue 2, pp13-20, 7th June 2010

M Hviid and A Medvedev 'The Role of Contribution among Defendants in Private Antitrust Litigation', *International Review of Law and Economics*, 30 (4) 306-316

M Hviid and G Shaffer 'Matching Own Prices, Rivals' Prices or Both', *The Journal of Industrial Economics*, Volume 58, Issue 3, pg 479-506, September 2010

D Mac Sithigh 'Regulating the Medium: reactions to network neutrality in the European Union in the European Union and Canada', (2011), 14 (2), *Journal of Internet Law* 3

F Mezzanotte 'Interpreting the Boundaries of Collective Dominance in Article 102TFEU' (2010), 21 *European Business Law Review*, pp 519-537

G Perino 'Technology Diffusion with Market Power in the Upstream Industry', *Environmental and Resource Economics* 46(4), 403-428, 2010

G Perino 'How Delegation Improves Commitment', *Economics Letters*, 106(2), 137-139, 2010

S Peyer 'The German Federal Court of Justice finds that a recommendation of the Association of the German lottery operators violates the prohibition of Art 81EC and s.1 of the Act Against Restraints of Competition (Lottoblock), e-competitions Special Issue: Absolute Territorial Protection, August 2010

G Shaffer 'How Loyalty Discounts can Perversely Discourage Discounting: Comment' (with Assaf Eilat, Jith Jayaratne and Janusz Ordovery), *CPI Antitrust Chronicle*, Vol 4 (1), 2010, April 2010

A Stephan, 'Reforming EU Competition Law', editorial in *Competition Law Review*, Vol 6 Issue 2, September 2010

A Stephan, 'Cartel Laws Undermined: Corruption, Social Norms and Collectivist Business Cultures' (June 2010), *Journal of Law and Society* 37 (2), pp345-67

A Stephan, 'See no evil: Cartels and the Limits of Antitrust Compliance Programs' (2010) *The Company Lawyer*, 31 (8), pp 231-239

A Stephan 'OFT Dairy Price-Fixing Case Leaves Sour Taste for Cooperating Parties in Settlements' (2010), *ECLR*, 30 (11), pp 14-16

S Sitzia and D Zizzo 'Does Product Complexity Matter for Competition in Experiment Retail Markets?', *Theory and Decision*, 70 (1), January 2011, pp 65-82

R Sugden 'Opportunity as mutual advantage', *Economics and Philosophy*, 26 (2010): 47-68
<http://dx.doi.org/10.1017/S0266267110000052>

R Sugden and G Loomes 'Preference reversals and disparities between willingness to pay and willingness to accept in repeated markets (with Chris Starmer), *Journal of Economic Psychology*, 31 (3) (2010) 374-387 <http://dx.doi.org/10.1016/j.joep.2010.01.006>

C Waddams and K Clayton 'Consumer Choice in the Water Sector', *Ofwat*
http://www.ofwat.gov.uk/publications/rpt_com_1010fplchoice.pdf

C Waddams 'Do consumers switch to the best supplier?', (with Chris M Wilson), *Oxford Economic Papers*, Vol 62, Issue 4, pp647-668, 2010

C Waddams 'The Distribution of Individual Personal Tax Compliance Costs in the UK', (with Laurence Mathieu and Francis Antwi), *Applied Economics*, 42:3, pp 351-368, 2010

C Wadlow 'Unfair Competition by Misappropriation: The reception of international news in the common law', in *The Common Law of Intellectual Property, Essays in Honour of Professor David Vaver*, edited by Lionel Bently, Catherine W Ng, and Giuseppina D' Agostino, Hart Publishing

C Wadlow 'The Great Pharmaceutical Patent Robbery', *Intellectual Property Quarterly*, September 2010

C Wadlow 'Rudolf Callmann and the Misappropriation Doctrine in the Common Law of Unfair Competition' *Intellectual Property Journal*, Vol 3 (2011)
<http://www.mohr.de/zeitschriften/rechtswissenschaft/zeitschrift-fuer-geistiges-eigentum-zge/zeitschrift.html>

K Wright 'The European Commission's Own 'Preliminary Reference Procedure'', *Competition Cases*, *European Law Journal*, Vol 16, No 6, pp 736-759, November 2010

Working Papers

10-4, When Are Excessive Prices Unfair?, Pinar Akman and Luke Garrod

10-5, The Equivalence of Contests, Subhasish M Chowdhury and Roman Sheremeta

10-6, The All-pay Auction with Non-Monotonic Payoff, Subhasish M Chowdhury

10-7, Modelling International Wind Energy Diffusion: Are the Patterns of Induced Diffusion 'S' shaped?, Ivan Diaz-Rainey

10-8, Price low and then price high or price high and then price low?, Stefania Sitzia and Daniel Zizzo

10-9, Price Discrimination Based on Downstream Regulation: Evidence from the Market for SO2 Scrubbers, Grischa Perino

10-10, European Competition vs. Global Competitiveness: Transferring EU Rules on State Aid and Public Procurement beyond Europe, Michael Blauburger and Rike U Kramer

10-11, Resale Price Maintenance and Restrictions on Dominant Firm and Industry-Wide Adoption, Oystein Foros, Hans Jarle Kind and Greg Shaffer

10-12, Myths and Untold Stories - Private Antitrust Enforcement In Germany, Sebastian Peyer

10-13, Market-Share Contracts as Facilitating Practices, Roman Inderst and Greg Shaffer

10-14, Slotting Allowances and Scarce Shelf Space, Leslie M Marx and Greg Shaffer

10-15, Exclusivity and Exclusion on Platform Markets, Subhasish Modak Chowdhury and Stephen Martin

10-16, Holding a Candle to Innovation in Concentrating Solar Power Technologies, Frauke G Braun, Elizabeth Hooper, Robert Wand and Petra Zloczynski

10-17, Buyer Power and Price Discrimination: The Case of the UK Care Homes Market, Ruth Hancock, Morten Hviid

10-18, Non-discrimination clauses in the retail energy market, Morten Hviid and Catherine Waddams Price

10-19, Assessing Competition Policy: Methodologies, Gaps and Agenda for Future Research, Stephen Davies and Peter Ormosi

11-1, Three Private Firms and an Independent Regulator are Sufficient for Rapid Mobile Network Penetration, Yan Li and Bruce Lyons

11-2, Avoidance Techniques: State Related Defences in International Antitrust Cases, Marek Martyniszyn

11-3, Financing Renewable Energy through Household Adoption of Green Electricity Tariffs: A Diffusion Model of an Induced Environmental Market, Ivan Diaz-Rainey

11-4, The Long-term Impact of Wind Power on Electricity Prices and Generating Capacity, Richard Green and Nicholas Vasilakos