



CCP Annual Report 2011-12

This report is an abridged version of the Annual Report sent to the ESRC on 30th March 2012.



INTRODUCTION

CCP has continued to deliver across its programme of academic research and policy relevant output and advice during 2011-12. We had 34 weekly research seminars during the period with attendance consistently exceeding the 35 seat capacity of CCPs seminar room and 23 distinct cases of direct engagement with non-academic users. We continue to support high quality research across disciplines in a real 'Centre' with a physical presence, publishing 2 books, 2 book chapters and 15 refereed articles.

The Centre's reputation was recognised in invitations to speak at academic conferences and practitioner events and in requests for policy advice. During the year, members of the centre presented their work at 30 events in the UK and abroad. The blog, which is followed by key individuals within UK authorities, as well as academics and journalists, continues to be very successful, with around 20,500 views during the period. We combined our responses to consultation documents with blog postings, resulting in a number of invitations to speak as well as direct consultation by government departments. We have extended our involvement in international networks where Catherine Waddams is now an academic director of the Centre for Regulation in Europe and have used our contacts in bids for new funding for additional networks.

STAFFING NEWS

During the period, Waddams stepped down as director and Morten Hviid took over that role. Waddams continues to work part time as a researcher in CCP. Two new faculty members (Yan Li and Franco Mariuzzo) and one new Post Doctoral fellow (Anna Bennato) joined the Centre and one Post Doctoral fellow (Luke Garrod) and one Research Associate (Assem Dandashly) left to take up academic positions elsewhere.

We welcomed two visitors to the Centre during the year, Professor Zahariadis, University of Alabama at Birmingham, funded through the ESRC-SSRC Collaborative Visiting Scholars Programme; and a student, Ozbugday, from a CLEEN network member, TILEC.

Five new PhD students joined the centre during the year, one funded by CCP through raising external income and three by UEA. We continue to run an annual introductory day for new researchers and graduate students and we delivered a series of lectures on game theory for research students with no previous formal background in the approach. Research students and interested masters students continue to participate actively in the life of the centre.

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

A problem which has troubled researchers of cartels for a long time is how many cartels are really out there. Not all cartels are detected, but without knowing the total number, we cannot address key policy questions such as: how effective is cartel policy in deterring cartel formation? In a CCP working paper, currently being revised for an academic journal, Ormosi utilises methods devised by biologists to count the number of a given species from repeated sampling. As some firms are repeat cartel offenders, the methodology can be adapted to estimate the proportion of cartels detected each year and

finds that in the EU, less than a fifth of all cartels are detected. Ormosi is currently exploring the possibilities of cooperating with experts in other areas of social sciences, where a similar method could be applied.

A growing literature in industrial organisation argues that consumers often lack the cognitive capacity to make good decisions in complex environments and that profit-seeking firms may be able to exploit this limitation by creating spurious complexity. Gaudeul and Sugden, in an article forthcoming in *Economica*, identify a ‘common standard effect’ that, for any given product, the long-run tendency of markets is for the emergence of conventions which standardise the buyer/seller interface in ways which facilitate price and quality comparisons. If a number of firms use a common standard, they are forced to compete with one another, driving down their prices. If consumers gradually learn that a common standard is a signal of good value for money, firms which use idiosyncratic interfaces will lose market share. This work is important because it provides guidance about appropriate policy interventions.

Scientific impact

Most commentators explain differences in competition policy decisions across jurisdictions in terms of approaches to economics. An article in *Theory and Decision* by Lyons, Menzies and Zizzo uses an experimental approach to control for economics issues and to isolate the effects of training and the legal system on the use of evidence in a stylised merger decision. Most experimental research uses student subjects, but this is the first paper to use competition practitioners. Heads of competition authorities from across the world were approached and, because of the reputation of the CCP, we gained agreement for the participation of multiple individuals working in eleven very different authorities from across the world. We find that legal standards of proof significantly affect decisions. There are also specific differences because of professional judgment, including in how error costs and volume of evidence are taken into account - not only the economics matters when decisions differ. This is a good example of how interaction with the policy world feeds back into productive academic research.

CCP’s 2011 summer conference on the role of Consumers in Competition Policy attracted both an excellent line up of speakers from the US and Europe, and more delegates (around 100) than in previous years. The conference, held at UEA, addressed questions surrounding consumer behaviour in markets, including the factors that determine how active consumers are, switching behaviour, whether the markets deliver what consumers actually want and the policy implications. As usual the mixture of economics, law, management and political science perspectives, and of theoretical and empirical papers, underlined CCP’s unique role in this area, and provoked lively and constructive debate, as well as generating two high quality contributions to the CCP research paper series.

Economic and Societal Impact

During the year, BIS issued an extensive consultation document on the future of the competition regime in the UK. The questions raised were fundamental and right at the heart of what CCP is about and provided us with a focus for weekly meetings discussing one chapter of the consultation document at a time, following this up with one or more blog posts and eventually tying all this together in a joint submission to BIS. Following this Lyons was invited to BIS for an individual discussion with their team dealing with merger reform (as a direct result of our submission). Hviid was invited to several individual discussions at BIS (with their team preparing consultation on private

enforcement) and to present to the Economic Growth Unit at HM Treasury. Teams from BIS and HM Treasury visited CCP in Norwich for further discussions. Lyons was invited to be (the only academic) on a panel to discuss reform, including the current CC chairman, OFT chief economist, and a current CAT member. We were also consulted by FT leader writers on the subject.

Work by Davies and Ormosi, building on past work by Davies for the OFT, on the assessment of competition authorities has already attracted a lot of public attention with Davies receiving invitations to present their work at the competition authorities of Sweden, South Africa and Norway. Following the publication of their CCP Working Paper at the end of 2010, the OECD commissioned Ormosi to write a background note for the February 2012 roundtable meeting of the OECD Competition Committee. The authors are also involved in an ongoing informal OECD discussion group, which was set up as a backbone to an OECD project to help improve, summarise, disseminate and, where useful, to co-ordinate the evaluation of competition interventions, by competition agencies.

PROGRESS AGAINST OBJECTIVES

The Centre undertakes interdisciplinary research into competition policy, including market regulation, which has real world policy relevance without compromising academic rigour. Our research programme reflects the vision set out in the mid-term review and forecast in the 2011-12 forward plan. While some plans have been delayed or altered, other activity has taken their place. Despite overlaps, research activity is reported under the five streams, as anticipated in the forward plan.

Research

1. Consumers. Included in the summer conference was the first presentation of results from the CCP consumer survey, completed in January. Further data from those original respondents who agreed to be approached again with a very brief survey in early 2012 has been collected. We supplemented our quantitative data through interviews at two ‘surgeries’ held in Norwich as part of the ESRC Festival of Social Science. Other consumer related contributions include work on consumer decision making with the Special issue of “Social Choice & Welfare” accepted for publication; the role of the media in Cartel Criminalisation; competition as a right; and fuel poverty for a special edition of Energy Policy; unfair competition, including an article on Rudolf Callman.

2. Institutions. Research on regulatory institutions with a broader political science perspective was initiated with three papers presented in each of two European conferences, covering areas such as: Termination of quangos; the future of sector regulation; private enforcement as an alternative to regulation; the European Commission’s capacity as a network broker. Work on private enforcement continued with a paper published in the International and Comparative Law Quarterly and two draft papers on the data collected on German cases, one on public and private enforcement of competition law and one specifically focused on regulated industries. This and past work combined with our blog has ensured that we have been consulted on the drafting of the BIS consultation on private enforcement.

3. Market Power and its Regulation. Akman’s book on The Concept of Abuse in EU Competition Law has been published. A further paper on Article 102, including on the relationship between economic duress and abuse of dominance, and on the concept of

economic freedom in EU competition law is now in draft form. A draft paper on price guarantees and the ability of firms to discriminate between different types of consumers has been submitted to a journal. Several papers have been written on various aspects of regulation including media markets (papers on vertical restraints in the pay-TV market, net neutrality, public service broadcasting in new media markets, and on convergence between broadcasting and telecommunications regulation) and energy markets (a paper on price discrimination in energy markets has been accepted for publication by the Economic Journal).

4. *Agreements*. A wide range of work is ongoing on horizontal agreements and cartels. Working papers, publications and/or presentations have been generated on the following topics: criminalisation, disqualification orders, cover pricing, the significance of focal points in tacit collusion, the role and effects of ringleaders, evaluation of savings achieved by CAs from busting cartels, collusive price rigidity, cartel detection and deterrence and policy (especially leniency programmes). Work by CCP researchers has been influential in the policy debate about the criminalisation of cartel behaviour. For example UK Government consultation document recommended that the UK's cartel offence be reformed to remove the requirement of 'dishonesty', directly citing Stephan's CCP survey study as a justification for the reform.

5. *Mergers*. In relation to our work on merger remedies, one paper on the strategy of offering remedies was published. Three are under revise and resubmit consideration at journals and one is submitted. A further paper is being revised to include new data. Work on the incentive to obfuscate in merger investigations was presented at a conference but technical modelling difficulties have held back further developments. A paper on state aid and bank mergers has been accepted for publication. A paper on who should have standing to challenge a merger decision by the competition authority was published. The work on a follow-up paper has been slowed down by a re-phasing of a research buy-out.

LIST OF PUBLICATIONS APRIL 2011 – MARCH 2012

O. Andriychuk, 'New Bottles - Same Wine? A Critical Assessment of the Reformed EU Rules on Vertical Restraints', *Concorrenza e Mercato*, Vol. 18, No. 1, 2011, pp. 649 – 667 (in print)

O. Andriychuk, 'The Concept of Perfect Competition as the Law of Economics: Addressing the Homonymy Problem' *Northern Ireland Legal Quarterly*, Vol. 62, No. 4, 2011

O. Andriychuk, 'Thinking Inside the Box: Why Competition as a Process is a Sui Generis Right – a Methodological Observation', in Daniel Zimmer (ed.), 'The Goals Of Competition Law', *ASCOLA Competition Law series*, Edward Elgar - February 2012.

P. Agisilaou, 'Competition Policy in Cyprus 1989-2009', *NOMIKI BIBLIOTHIKI SA*

P. Akman, 'The Concept of Abuse in EU Competition Law: Law and Economic Approaches', *Hart*, 12th February 2012

SM. Chowdhury & RM. Sheremeta, 'Multiple Equilibria in Tullock Contests', *Economic Letters*, Volume 112, Issue 2, pp 216-219, pp 216-219.

- SM. Chowdhury, D. Kovenock, , & RM. Sheremeta, An Experimental Investigation of Colonel Blotto Games, accepted in *Economic Theory* (forthcoming)
- M. Harker, 'The Transformation of Broadcasting: Public Service Broadcasting, the BBC and the Distortion of New Media Markets', *Northern Ireland Legal Quarterly*, Vol. 62, No. 4, 2011
- M. Hviid, I Henriksen & P Sharp 'Law and Peace: Contracts and the Success of the Danish Dairy Cooperatives', *The Journal of Economic History*, Vol 72, No.1 (March 2012)
- B. Lyons, G.D. Menzies and D.J. Zizzo, "Conflicting Evidence and Decisions by Agency Professionals: An Experimental Test in the Context of Merger Regulation", accepted by *Theory and Decision* (published online 18 June 2011)
- P. Ormosi, 'Diminishing Incentives to Reveal Efficiency-Related Evidence: An Empirical Analysis of EC Merger Cases' *World Competition* 34, no. 4 (2011): 615–640.
- S. Peyer, 'Cartel Members Only – Revisiting Private Antitrust Policy in Europe', (2011) 60 (3), *International and Comparative Law Quarterly*, 627-657.
- A. Stephan, "How Dishonesty Killed the Cartel Offence", (2011), *Criminal Law Review* 6, 446-455
- A. Stephan, 'Did Lloyds/HBOS mark the Failure of an Enduring Economics-based System of Merger Regulation?' *Northern Ireland Legal Quarterly*, Vol. 62, No. 4, 2011
- J. Street, 'The popular, the diverse and the excellent: political values and UK cultural policy', *International Journal of Cultural Policy*, 17(4), 2011, pp. 380-393.
- B. Sugden, 'Reconciling normative and behavioural economics', 'Social Choice and Welfare' approved special issue edited by Ben McQuillin and Bob Sugden (originated in a conference with the same title held at UEA in April 2008)
- B. Sugden, Commentary in a report 'Raising Household Saving', Institute for Fiscal Studies and the British Academy - February 2012
- S. Summers, 'What Should the Dishonesty Element of the UK Cartel Offence be Replaced with?' [2012] *Comp Law* 11(1) 53.
- P. Whelan, 'Criminal Sanctions: An Overview of EU and national case law', January 2012, e-competitions, No. 41902 www.concurrences.com
- C. Wadlow, "The Law of Passing off: Unfair Competition by Misrepresentation" (Sweet & Maxwell), May 2011
- C. Wadlow, "Rudolf Callman and the misappropriation doctrine in the common law of unfair competition" [2011] *Intellectual Property Quarterly* 110-153, also published at (2011) 3(1) *Zeitschrift für Geistiges Eigentum* 47-105 (in English)
- C. Wadlow, 'The emergent European law of unfair competition' accepted by for [2012] *Intellectual Property Quarterly* issue 1

C. Wadlow, 'Passing-off at the crossroads again: A review article for Hazel Carty, An Analysis of the Economic Torts' [2011] *European Intellectual Property Review* 447-455

C. Wadlow, 'The Emergent European Law of Unfair Competition and its Consumer Law Origins' [2012] (1) *Intellectual Property Quarterly* 1-24.