



CCP Annual Report 2012-13

This report is an abridged version of the Annual Report sent to the ESRC March 2013.



INTRODUCTION

The ESRC Centre for Competition Policy has continued to deliver relevant output and policy advice across its programme of academic research during 2012-13. We held 33 weekly research seminars during the period with attendance consistently in excess of 35 as well as our summer conference and other public events. We continue to support high quality research across disciplines in a real 'Centre' with a physical presence, publishing one book, two book chapters and 20 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 67 events in the UK and abroad and we had 31 distinct cases of direct engagement with non-academic users. The main blog, which is followed by key individuals within UK authorities, as well as academics and journalists, continues to be very successful, with 24 postings during the period. We have added a second blog aimed at research news dissemination. We continue our involvement in several international networks and have used our contacts in two ORS bids for new funding.

CCP has been joined by four new faculty members (Farasat Bokhari, Enrique Fatas, Franco Mariuzzo and Georg von Graevenitz), one new Post-Doctoral fellow (Tong Wang) and five new Research Associates (Sven Gallasch, Antony Karatzas, Ana Moniche, Martin Graffenberger and Miguel Flores). Four alumni (Luke Garrod, Matthew Olczak, Chris Wilson and Kathryn Wright) joined CCP as associate members. During the period, one Post-Doctoral fellow (Oles Andriychuk), one Research Associate (Catherine Webster) and two administrators (Leanne Denmark and Suzy Adcock) left CCP. We were delighted to welcome four new PhD students to CCP.

IMPACT AND HIGHLIGHTS

Research progress

Bokhari's forthcoming paper with Fournier in the *Journal of Industrial Economics* (Entry in the ADHD drugs market: Welfare impact of generics and me-toos) identifies and measures substitution patterns across a range of drugs designed to treat attention deficit hyperactivity disorder (ADHD). Using estimates from demand parameters, the authors assess the welfare gain from the first-time introduction of a generic drug. They also find that the welfare gains due to the introduction of me-too drugs vary with the novelty of the drug and, for significantly new varieties, can be larger than those for the introduction of a generic. These results have policy implications for the speed with which new drugs are approved for marketing. More important for current competition cases, the methods developed in the paper indicate how welfare losses due to delay in the entry of a generic drug can be assessed. The research thus enables a value to be put on specific enforcement activities.

The heavy promotion of private enforcement in both the UK and EU over the past 10 years has largely developed without solid empirical underpinnings. Peyer's article, published in the *Journal of Competition Law & Economics* (Private Antitrust Litigation in Germany from 2005 to 2007: Empirical Evidence), takes a step towards redressing this imbalance by providing unique European insights into private competition litigation. Working on a data set collected while first a research student and then a post-doctoral student in CCP, Peyer has been able to highlight two features: firstly the importance of injunctions rather than damages; and secondly the importance of speedy resolutions as a key to the practical usefulness of private enforcement. Further exploration of the data set is underway. This research has had both academic and policy impact, especially in the UK where it informed current thinking by the Department of Business, Innovation and Skills (BIS); see the consultation document "Private actions in competition law: A consultation on Options for Reform" and the subsequent government response.

Scientific impact

There is considerable value in linking concepts across legal sub-disciplines enabling learning from a larger and broader set of decided legal cases. Akman (Economic Duress and Abuse of Dominance) investigates the relationship between seemingly unrelated doctrines of economic duress in contract law and abuse of dominance in competition law. She demonstrates that these doctrines are substantively quite similar and that “abuse” in many instances is akin to “duress”. The implication is that many cases that could have been argued under both doctrines have been argued under only one of them and this suggests that there might be under-utilisation of one or both of these doctrines. This has implications for both doctrines since both suffer from lack of sufficient case law leading to lack of certainty for undertakings. More importantly, abuse of dominance can enable litigants to receive far more advantageous remedies in contract cases than economic duress and these benefits seem to be forgone.

In December 2012, CCP organised a Network of Industrial Economics Winter Conference in London focused on Competition Issues in the Health and Pharmaceutical Sectors. The Health and Social Care Act 2012 potentially shifts the full force of competition law and policy into the area of healthcare, and brings with that an increased need for Industrial Economics research. While such research is well established in the US, this is less so in Europe and the aim of this conference was to showcase some existing empirical research, to illustrate current developments, and to inspire future research. In addition to its academic merits, such research would provide much needed evidence for policy makers. The conference had seven speakers from the UK, EU and US and 35 participants and covered both general topics related to competition policy in the health care market and specific research on the pharmaceutical sector.

Economic and Societal Impact

During the year, BIS issued a consultation document on private enforcement of competition law in the UK. Arising out of a previous consultation, to which CCP provided extensive response, BIS had already involved CCP members Hviid and Peyer in the drafting of the consultation document. Following the publication of the consultation, to which CCP responded and blogged, several meetings were held in London and Norwich between relevant policy makers in BIS and researchers in CCP, including Hviid, Lyons and Peyer. Testimony from the lead civil servant, Iain Mansfield, highlights in particular the work by Peyer mentioned above. Both the BIS minister introducing the consultation document (Normal Lamb, MP) and Iain Mansfield addressed CCP’s summer conference. In the Government response, published in January 2013, the impact by CCP research was evident, with CCP responses cited directly four times and the evidence by Peyer reproduced in the impact assessment.

Work by Hviid and Waddams on non-discriminatory pricing in energy, published in the Economic Journal during this period, was instrumental in Ofgem dropping their non-discrimination clauses. The authors were involved in extensive meetings with Ofgem, presentations of the results to academic and practitioner audiences and direct responses to consultations, but even more important their arguments were taken up by other influential commentators, in particular Stephen Littlechild. As a result of the evidence presented from all these sources, the regulator reversed its initial intention of renewing the non-discrimination clauses, and in July announced that it would allow them to lapse. Commentators have estimated the increased profit to companies over the 5 years since the clauses were introduced at around £10bn., so removal of the clauses has the potential to save consumers up to £2bn per year. Arguments from the theoretical research and the empirical evidence that the clauses have indeed been detrimental to consumers are being used by both CCP and other commentators to challenge the regulator's and government's plans for further intervention in the retail energy market.

Knowledge exchange:

Internally: Our weekly research seminar series [33 this year] is interdisciplinary and regular participation is a criteria for membership of CCP. These seminars are the main vehicle to ensure that the disciplines are able to communicate.

Externally: Arguably the work we are doing with “the Big Switch” described elsewhere involves knowledge exchange between CCP and Which? CCP provided a competition law and economics training course to civil servants delivered at BIS; Discussion groups were held at UEA with civil servants from BIS, HM Treasury, Monitor, ORR. In total we had 31 distinct cases of direct engagement with non-academic users.

International:

CCP is a founding member of the Competition Law and Economics European Network (CLEEN) which now comprises nine members. CLEEN organise an annual conference aimed particularly at new researchers. It also enables the exchange of staff and students for shorter or longer visits. During the period Professor Larouche from Tilec visited the CCP. CLEEN provides a network for funding applications and contacts have been used in one current ORA bid.

CCP has close links with the Centre on Regulation in Europe (CERRE) where Waddams is an academic director. CERRE focuses on network industries, with members from industry, regulators and academics across Europe, providing access to policy makers and practitioners and funding. One grant has been completed. Harker and Waddams are currently undertaking work on a second grant.

CCP is a partner institution of the Asian Competition Law and Economics Centre (ACLEC), established in December 2008 by Professor Mark Williams, Hong Kong Polytechnic University. A bid involving CCP's Stephan and the ACLEC director is currently with the ESRC.

CCP is part of the United Nations Conference on Trade and Development (UNCTAD) Research Partnership Platform, linking it with 24 other research institutes around the world. There is scope for future collaboration through this platform.

PROGRESS AGAINST OBJECTIVES

The Centre undertakes independent 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 2012-13 forward plan. While some plans have been delayed or altered, other activity has taken their place. Research activity is reported under the five streams, as anticipated in the forward plan.

Research

1. Consumers. Analysis of the consumer survey continued with a new full time RA, despite delays caused by difficulties with obtaining a visa for the RA. CCP has negotiated with Which? to analyse the large data set generated by their "Big Switch" campaign in Spring 2012. We are analysing data on 150,000 consumers including their energy situation and supplier, potential savings and whether they switched and we are preparing to contact them to explore reasons for their decisions. Experimental work by Zizzo on the effect of inattention continues. Two papers combining law and behavioural economics by Harker and Mehta are in advanced stages of the submission process. Wadlow has explored the consumer law origins of the emergent European law of unfair competition.

2. Institutions. Work by Kassim, Lyons and Zhu on state aid, including the banking crisis, is published or forthcoming. Akman's article on 'The Role of "Freedom" in EU Competition Law' examines the entire jurisprudence of the EU Courts to establish the role of 'freedom' in EU competition law as perceived by the EU Courts. Davies and Ormosi continue their work on evaluating public enforcement, including a report for, and several presentations to, the OECD.

Work on private enforcement and its interaction with public enforcement continued with two published papers by Peyer. We also contributed to an AHRC funded project on private enforcement in Europe.

3. Market Power and its Regulation. On Akman's paper on abuse of dominance and economic duress see section 2 above. With respect to the relationship between competition law and regulation, Harker has explored EU competition law as a tool for dealing with regulatory failure by looking at broadband margin squeeze cases. Hargreaves-Heap (with Conolly and Allen) have published a paper which addresses the question of the importance of competition in the media in forwarding citizen knowledge, and whether it is sufficient to displace public service broadcasting. Li and Lyons paper on the Speed of Mobile Network Penetration has been accepted for publication.

4. Agreements. Two papers by Stephan and five by Whelan deal with the enforcement of EU/UK cartel law from a legal perspective and in particular tackle the difficult issues surrounding whether and how to criminalise such

behaviour. The submitted thesis by Agisilaou focuses on the design of leniency programmes. Four empirical papers on cartels and in particular the detection and effect of these by Davies, Mariuzzo and Ormosi have been published or are close to publication. Modak Chowdhury and Wandschneider continue their experimental work on the Effects of Investigation and Fines on the Formation and Stability of Cartel. Sugden and colleagues' forthcoming article on focal points and bargaining inform our understanding on the internal workings of cartels.

5. Mergers. Research on merger remedies, early settlement, and the efficiency defence in mergers was revised and taken to journal publication or research paper level. Other research on the wider implications of media mergers, state aid and mergers for financial stability progressed to publication. Research on the evolution of bank market structure developed to include an econometric analysis of endogenous market structure, investment in branch networks and interest rate spreads. Two PhD student are working on non-competition objectives in merger regulation, and mergers in healthcare. Lyons gave a keynote lecture on 'Institutional Design for Merger Control' in Japan.

Research environment, Capacity Building and Funding:

The Centre provides a focus for lively research discussions through weekly seminars, twice yearly research reviews and informal opportunities which arise for interaction within the Centre's self-contained accommodation.

We continue our central role as a founding member of the Competition Law and Economics European Network which has expanded to nine members. The Centre participates actively in CERRE as well as the other two networks mentioned in section 2 above.

In addition to three short visits by international scholars (Gal, Gowrisankaran, Larouche), Wenzel, University of Düsseldorf visited the centre for three months. Three of our former members and current CCP associates (Garrod, Olczak and Wilson) visited the Centre for a short period.

Four new PhD students joined the Centre during the year, all funded by UEA. We continue to present an annual introductory day for new researchers and graduate students and our students have access to modules outside their own discipline. Research students and interested masters students continue to participate actively in the life of the Centre.