



CCP Annual Report 2014

From 2014, CCP Annual Reports are prepared by calendar year for the consideration of the Centre's Management Committee.

This report is an abridged version of the Annual Report submitted to the University of East Anglia in February 2015



Introduction

The Centre for Competition Policy (CCP) is a joint venture between ECO (Economics), LAW, NBS (Norwich Business School) and PPL (Politics, Philosophy, Language and Communication Studies). CCP has established itself as an internationally recognised research centre focused on competition policy and regulation. A properly regulated, competitive market provides consumers with products and services they want at the best possible prices. Competition policy provides the framework to encourage businesses to compete productively, and without fixing prices, unfairly excluding rivals, gaining market power through mergers, or receiving distortionary subsidies. It operates alongside policies that regulate other aspects of business behaviour (e.g. environmental, social). Competition law provides little restraint on business behaviour in markets with many alternative suppliers. When fewer firms participate in a market, however, it is appropriate to constrain a range of anticompetitive business practices. In cases where entry and competition cannot erode market power, at least in the medium term, the policy options include direct regulation of the firms' behaviour.

Enquiry in this field is necessarily multidisciplinary. In its research, CCP draws on models, theories and techniques from economics, law and political science. Economic analysis provides an understanding of how consumers, firms and markets operate, of when markets fail for lack of competition, of techniques which might be adopted to regulate behaviour and of the consequences of such policy interventions. Legal analysis is necessary because the courts establish standards and provide the framework within which competition and regulatory agencies have to operate. Political science provides an understanding of the design and development of policies, and into the bodies that implement them. Our research applies each of these disciplines individually and together to achieve real-world policy relevance without compromising academic rigour.

This year is a transitional year for CCP, moving from being supported by a generous Economic and Social Research Council (ESRC) Centre grant to a more diverse funding model. Our new business plan and 5-year financial plan has been approved by the University as has a revision to our constitution.

Summary of activities in 2014

CCP members engaged with the academic community through publications, presentations and organised academic events. We published 19 articles in peer-reviewed journals, three book chapters and one book, as well as eight working papers and associated policy briefs. We organised four events aimed at other academics, including our Annual Summer Conference on "Problem Markets" and the annual Competition Law and Economics European Network (CLEEN) new-researchers workshop. We held 36 Friday research seminars, with 12 visiting speakers and 24 CCP speakers. In addition CCP members presented their work at 115 academic conferences, workshops and seminars and were discussants or chairs on a further 27 occasions.

CCP engaged actively with practitioners through formal presentations, participation in practitioner events, organised discussions, responses to consultations and through social and traditional media. CCP members provided 25 presentations to practitioner audiences and participated in a further 25 practitioner events. We continued with our more direct engagement with practitioner through one-to-one or small group meetings, taking part in 26 such events, and through 10 responses to consultations. CCP now has in excess of 700 followers on twitter, and in 2014 recorded 14 cases of interactions with traditional media.

Impact of CCP research

As detailed in section 2 below, the Centre continued to deliver relevant output and policy advice across its programme of academic research during 2014. Among the academic highlights were the publication of Peter Whelan's [now at Leeds University] book on the criminalisation of European cartel enforcement and the publication in Rand Journal of Economics of a paper on Naked Exclusion by Zhijun Zhen [formerly a Post-Doctoral Fellow at CCP] and Greg Shaffer.

Our Summer Conference attracted a record number of delegates, both academics and practitioners, tackling the difficult and under-researched area of problem markets. These are markets where there is no obvious competition law infringement, but where the market nonetheless is not delivering the expected benefits from competition. On the practitioner side, we provided substantial evidence to various energy related consultations including the provision of oral and written evidence to the Competition and Market Authority's energy market investigation. This was backed up by several academic publications on key topics.

Knowledge Exchange

In addition to teaching on relevant modules on undergraduate and postgraduate degrees, CCP members delivered two bespoke training courses during the year. In October Fletcher organised, and together with Hviid and a number of practitioners delivered, a two day course on "Economics of Competition Policy for Economist" attracting 35 participants from the public and private sector. In December Hviid organised and together with Fletcher, Lyons and Waddams delivered, a two-day course "Introduction to the economics of competition policy: A course designed for BIS" to more than 20 BIS staff and invited civil servants. Both events were very well received by the participants.

New Research Grants

During 2014 CCP members secured funding from various sources for several new research projects. Georg von Graevenitz, Chris Hanretty and Daniel Zizzo were awarded an ESRC Knowledge Exchange Grant with the Intellectual Property Office on "Assessing the Unitary Patent and the Unified Patent Court". Peter Ormosi obtained a grant from the EU Commission for a project on "A retrospective study on EU mergers and merger control". Catherine Waddams was awarded a grant for a project on "Affordability of utilities' services: cooperation agreement" from the Centre on Regulation in Europe (CERRE). Morten Hviid was awarded additional resources for the "Intermediaries" project funded by the RCUK Centre for Copyright and New Business Models in the Creative Economy (CREATE).

Changes to Staff and Membership

With the end of the ESRC grant, the number of Research Associates was reduced dramatically at the end of August, with eight leaving CCP - all to pursue their careers elsewhere. While briefly down to two Research Associates, the number had grown to four by the end of the year and is likely to grow further in the near future. Four faculty members left CCP after September, but two new members have since joined, leaving the total number of faculty members at 26. We continue to welcome new PhD students to CCP and to provide support to research students, through our induction programme and other specially designed events. Five students joined us in 2014. Eight of our PhD Students completed their theses and have either passed or are awaiting their Viva. Currently 19 PhD students are members of CCP. More details of members and leavers can be found in section 4 below.

Internal Organisation

The day-to-day running of the centre is undertaken by the Director supported by the Centre Manager and by two Deputy Directors. A Steering Group offers ongoing support and vision for the Centre. In addition to the Director, Hviid, and deputy directors, Fletcher and Lyons, it has two further members, Hanretty and Stephan, chosen to ensure that there is a representative from each sponsoring school.

The Centre's Management Committee oversees the performance of the Centre on behalf of the partner Schools and the University. It is chaired by the PVC for Research and in addition to the Director and one Deputy Director consists of heads of School from the four sponsoring Schools.

The Advisory Board (list of members in Section 5) consisting of distinguished members external to the University and representing the relevant user groups, offers valuable advice and support to the Centre and acts as the Centre's ambassadors in high level policy circles.

Summary of Activities by research theme

In this report we retain the five themes used during our ESRC funding. From next year we will be reporting under three headings (Anticompetitive Strategies; Markets and Systematic Challenges; Institutions), each with three sub-headings.

Consumers

Two important reports were published in 2014. One was the result of analysing extensive databases arising from “The Big Switch”, a collective switching initiative organised by the Consumer Association, to which CCP had been granted access. Several presentations were given on preliminary results from this research. The other was a report for the Federation of Small Businesses on whether micro businesses were or should be treated as consumers with equivalent protections. Research arising from the Big Switch databases have highlighted switching issues and in particular that some people are very averse to choice.

Fletcher explored consumer law from an economic perspective, focusing on issues such as: consumer consent when using internet sites, misselling, unfair contract terms, and when and how to intervene to protect consumers. Flores continued to work on the impact of shopping hour regulation and Fatas explored consumer responses such as boycotts to perceived misbehaviour by firms. Sugden continued his work on how to conduct welfare analysis without assuming consumer rationality.

Inspired by the CMA investigation into the energy market, Hviid and Waddams published a paper discussing what a well-functioning market in energy might look like and what the key challenges for the existence of such a market would be. They identified consumer behaviour as a fundamental element shaping the functioning of the market. Waddams gave several presentations on consumer behaviour in the energy market.

Institutions

A number of researchers worked on assessment of agencies or policies. Armoogum and Lyons as well as Hanretty worked on the evaluation of competition authorities. Kassim, Vantaggiato and Wright completed their survey examining how national competition authorities experience the European Competition Network. Provisional findings were presented at the 23rd World Congress of Political Science, Montreal 19-24 July 2014 and at a workshop on ‘The European Executive Order’ organized by ARENA, University of Oslo 5-6 November 2014. Kassim presented work conducted with Hilary Jennings, ‘Market studies – an international success story’, at CCP’s 10th Annual Conference. Massadeh completed his thesis comparing the agencies in France, the EU and England. Davies and Ormosi continued their work on measuring deterrence and the impact of enforcement. Vantaggiato presented work assessing sector regulators. Deller and Vantaggiato presented their exhaustive multidisciplinary survey of the literature on the regulatory state and identified a new research agenda. Street presented papers on various aspects of the Collecting Societies. Kassim, Buth and Streb continued their research on the early history of the institutionalisation of DG IV. Fletcher gave several talks on what might be the proper role for ex ante regulation.

Hviid contributed to an AHRC project on the empirical reality of private enforcement in the EU by discussing the role of costs of such cases in providing incentives to bring cases. He also presented a joint paper with Harker on who should have standing to bring a case. In a joint paper with Den Exter, Guy identified features of competition in healthcare in the Netherlands which can provide lessons for England. Guy also gave a number of talks on various aspects of competition law and health care.

Agreements

Peter Whelan published his monograph on criminalisation of cartel activity. The book identifies three crucial challenges of European antitrust criminalisation: It must be justifiable in principle, it must be legitimate and it must be practical. The analysis demonstrates that the three challenges should not be considered in isolation. In fact there is a dynamic relationship between the theoretical, legal, and

practical challenges of European antitrust criminalisation and an effective antitrust criminalisation policy is one which recognizes and respects this complex interaction.

Stephan examined the revised UK cartel offence and in particular the new "obtaining legal advice" defence. He suggests that the defence should be afforded a purposive interpretation by the courts. Read literally, it undermines the offence by defeating the purpose of the legislation and creating an absurdity that runs counter to effective legal policy. In a working paper, Stephan analysed the Korean model of going beyond leniency by offering rewards to informants and concludes that this is a viable enforcement tool, although it does have some risks attached. With Nikpay, Stephan sought to assess the robustness of the assumptions made by much of the theoretical literature on leniency programs, giving a glimpse of the uncertainties and complexities that apply in practice.

Davies and Ormosi investigated how anti-cartel enforcement deters consumer harm. First, they draw on a theoretical model to establish the conditions of deterrence increasing or decreasing with the harm caused by cartels. Empirically, the paper uses cartel overcharges as a measure of harm and employs time periods when cartels were legal to capture a world without deterrence. Evidence is provided that the lowest and the highest harm cartels are the most likely to be deterred.

Fletcher and Hviid considered recent cases which have involved clauses in which sellers through an internet retail platform agree not to sell at a lower price elsewhere, including through other retail platforms. They note that such Retail Price Most Favoured Nation clauses rely on some form of RPM for their existence and argue that such clauses should be treated no less harshly than RPM under competition law.

Crede and Havell continued their PhD theses research on various aspects of cartel behaviour.

Abuse of Dominance

Both freedom and intent are concepts which are often mentioned, but their role and use often assumed. Akman explored these further in two papers, showing that freedom plays only a very minor role in case law and that the current use of intent is problematic. The paper argues that the thus-far developed use of intent within the substantive assessment under art.102 TFEU reduces legal certainty and increases the risk of decisional errors with negative welfare implications. In a third paper, Akman examined the relationship between the contractual doctrine of economic duress and the competition law prohibition of abuse of a dominant position. She finds that these doctrines are substantively rather similar, albeit with different functions in different areas of law. The similarity has important implications particularly for commercial litigants who could avail themselves of more favourable remedies such as nullity, damages and compulsory dealing in competition law, in comparison to mere voidability in contract law.

Two papers looked at supermarket behaviour. Dobson with Chakraborty considered the nature of competition between national brands and store brands (otherwise known as private label or own label goods). They show that generally the retailer will seek to position its store brand as closely as possible to the national brand, by seeking to minimise the quality gap, but price the two goods very differently, with a wide price gap, as a means of segmenting consumers. Store brand introduction can lead to overall higher prices, so is against consumers' interest, unless there is intense head-to-head rivalry for value-conscious consumers. Lan with Lloyd and Morgan presented statistical evidence on two pricing practices: the use of sales to disguise price rises and the artificial inflation of prices prior to a promotion. These have attracted public interest. They find no evidence of the former but some evidence for the latter.

Mergers

Davies, Ormosi and Graffenberger completed their project on "what happens next" after a cartel is busted, demonstrating how in many cases the break-up of a cartel results in future mergers. They identified two explanations for the increase in merger activity. One is an efficiency explanation: cartel breakdown stiffens competition and this forces weaker firms to exit. The other is a collusive explanation: with the cartel option denied, firms strive for tacit collusion via merger. Further

examination suggests that both explanations might be at work in some markets. However, on balance, the investigation points towards the 'anti-competitive' explanation.

Lyons researched on the economic theories of harm and quantitative techniques used in recent EC and UK merger control, and presented his results in London and Brussels. He was an invited member of the CMA roundtable on the EU White Paper on revisions to EU Merger Regulation.

CCP research students continued to work on specific aspects of merger control. Reader published two papers on the use of public interest tests in merger cases, one on the media market and one on pharmaceuticals and healthcare, and gave several talks on related issues. Guy discussed mergers in healthcare and presented work on the experiences from England and the Netherlands of the modification of general merger control and hospital mergers.

Other CCP research

Chowdhury and co-authors studied experimentally the effects of cost structure and price allocation rules on the performance of rent-seeking contests. Their results contribute towards design guidelines for contests based on behavioural principles that take into account implementation features of a contest.

Funded by CREATE, Hviid and Izquierdo Sanchez are exploring the role of intermediaries in selected creative industries, including game and apps. Early results were presented at conferences in Glasgow. While powerful intermediaries exist, early research suggests that these are continually challenged by development in technology and business formats. The challenge for regulators is to ensure that intermediaries respond to these challenges in a fair manner.

Both the summer conference and work by Fletcher and by Kassim considered what we have termed "problem markets"; markets which do not perform well in terms of giving consumers what they want at competitive prices, but at the same time these do not suffer from any obvious competition law infringements.