

**Chatham House Conference
Competition Policy 2009
*Competition Policy after the Credit Crunch***

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The view from a UK competition authority
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Competition under threat

Ladies and Gentlemen,

It is my task, in this introductory part of the conference, to present the views of a national competition authority, that is to say an authority of an EU member state. There are of course 27 EU member states and I would be brave, if not foolhardy, if I sought to speak as some kind of representative. Instead I will try and explain what we in the UK Competition Commission (CC) are doing to ensure that coherent competition policy survives the credit crunch.

As Winston Churchill said, ‘there are a terrible lot of lies going round the world and the worst of it is half of them are true’. There is indeed a lot of nonsense being talked about the end of the market economy, the collapse of capitalism and the irrelevance of competition policy to the present crisis. These views are quite understandable but they are also quite wrong, and it is interesting that in the recent European Parliament elections there appears to have been no concerted move to reject the EU’s essentially free market settlement.

But it is nonetheless the case that the merits of competition have struggled to show their face at a time when businesses and consumers and, indeed, governments have been much more concerned about survival than prosperity. The so-called honeymoon which competition policy has enjoyed for a decade—rather long for a honeymoon you might think—has come to an abrupt end and the need to restate the benefits of competition has never been greater.

The UK competition authorities are working very hard to do this. I am sure my Office of Fair Trading (OFT) friends will understand if I concentrate on what the CC is doing, but I emphasize that the OFT has been very visible and vocal in this respect also.

Competition policy and advocacy

The first point to make may seem pedantic, but it is important. Competition authorities are not there to make policy. That job is for Government and we have just heard very clearly from the Minister of State what is our own Government’s position and from the Commissioner for Competition about the position at EU level. Our main job is to implement the policy and to ensure it is implemented in the most efficient and effective way. I will explain in a moment how the CC is doing that. But we do, in addition, have a role in explaining and justifying the policy that is set by Government. We are the people who apply competition policy and we are in the best position to state its virtues and assert its benefits for consumers and for business. This role, loosely described as ‘competition advocacy’ increases in importance during a period of economic difficulty and in my view it would be strange if we kept silent at this time.

The importance of casework

So, what has the CC been doing? First of all, as any good authority should do, we have been getting on with our casework.

We have first of all concentrated on bringing to a successful conclusion the major market investigations which were in hand when the credit crunch hit—Groceries, Airports, Railway Rolling Stock and Payment Protection Insurance. By taking on board the changing financial and economic situation and by recognizing, where appropriate, the effects in our analysis and in our remedies, we give the clearest signal as to how we mean to proceed. The claim we heard from time to time in the Groceries market investigation that consumers were not very concerned about the price of food looks a bit hollow now. And we reject emphatically the idea that tough times for business mean that airport users, train passengers or insurance consumers have to accept a poorer or more costly service or product.

The CC Roundtable on Competition in Recession

But in addition to getting on with our cases, we have thought long and hard about what it all means and how we should conduct ourselves in a recession. At the end of March, we organized a Roundtable of our expert Members and staff to discuss the problem and have published the results yesterday. The CC's broad, expert membership makes it particularly well suited for this kind of task. We gathered together many of the CC's 45 Members and organized a discussion led by a mix of CC people and some distinguished outsiders. A summary of the discussion, together with the background papers, is now on our website.¹

Let me summarize the results of the Roundtable. We considered four topics (i) how did the crisis arise; (ii) what were the implications for competition in the banking and financial sectors; (iii) what were the implications for competition in the wider economy; and (iv) what should a competition authority do.

How did this crisis arise? Not from 'too much competition' but, in the view of those present, the origins of the crisis can be traced at the 'macro' level to worldwide trade and capital imbalances and the way in which macroeconomic policy had developed. At a more 'micro' level, a misdirected system of financial regulation in the UK and USA in particular and a misplaced system of incentives for banks and their employees, led to poor assessment of risk, excessive leverage, exuberance, hubris and recklessness. This may not have mattered when asset values were rising but when they started declining the result was a collapse of trust and confidence in banks, and gross undercapitalization of banks, which effectively ceased to operate as banks.

We examined **the implications for competition in the banking and financial sector**. We accepted that to some extent banks and banking were 'special' because of information asymmetry between providers and consumers and because of the problem of systemic risk whereby the collapse of a larger bank can threaten the entire banking system. The example of the Lehman Brothers collapse illustrated the contagious effect of a major institution going under. And we agreed on the need for a fresh look at regulation—but not so as to exclude the ability of financial institutions to compete with each other and with an awareness that both banks and regulators may, for different reasons, want to make new entry more difficult in the interests of restoring profitability (on the one hand) and safety and prudence (on the other). I emphasize this was before the recent discussions in the European Council in Brussels, and the UK Ministerial proposals to be announced shortly.

¹www.competition-commission.org.uk/our_role/speeches/competition_in_recession.htm.

We then looked at **the wider economy**. Here the case for special pleading was much weaker mainly because the systemic risk factor is lower, and the collapse of even a major company, although very serious for those involved, does not necessarily threaten an entire sector—indeed it may strengthen the position of its competitors. Some shake out of less-efficient firms would be unavoidable in a downturn and would probably work to the benefit of consumers. We noted that the evidence from the US experience of the Great Depression in the 1930s was that tampering with the antitrust laws had simply served to make things worse.

And we discussed **what a competition authority should do?** Above all, we needed to understand what was going on, and not be too doctrinaire about it. Important parts of merger analysis, for example, might have to reflect the prevailing conditions—with recognition of genuine instances of firm failure, with less reliance being placed on expectations of new entry to correct market power—but essentially the task was to hold the line on policy, whilst recognizing that asserting the general principle that ‘competition is good’ is a lot easier than applying it in difficult times. There was general agreement that we should carry on doing what we are best at—coming to robust decisions in a fair and open way on significant cases that are of demonstrable benefit to consumers. That way we show the value of competition. Of course, reminding business, consumers, and government of the importance of competition is also essential and occasions like this are very important for this purpose. But we have to continue a sensible level of ‘enforcement’, ie casework, to demonstrate that the policy is still being applied.

That was the Roundtable. Certain further questions arise from the discussion.

The need for sensitivity

The first thing is to emphasize that we are pragmatic about what we do. We recognize that times are hard for many people and for many businesses. We will do our utmost to conduct our cases swiftly and sensibly and have recently in our Corporate Plan committed to doing our market investigations more quickly—and we recognize the practical difficulties on remedies that involve disposing of businesses. But we are not giving up on any part of our essential task.

Avoidance of dogma

Nor are we adhering blindly to market economy dogma or becoming slaves to neo-liberal market doctrines. The market economy, underpinned by competition, in which we operate, is a mixture of private and state activity with the state setting the overall framework in many areas, and intervening to mitigate some of the extreme effects of the market. So, for example, as I know very well, competition in grocery retailing occurs within a framework set by planning and environmental policy. Financial services competition, as we have mentioned, occurs, or should occur, within an appropriate legal and regulatory framework. There are many other examples and there is nothing remarkable in all this.

Expand the remit?

In that situation, should the competition authorities be expanding their remit and seeking to take on the job of balancing what competition requires against the imperatives of other policies? Well, it is tempting. The CC’s own remit used to extend widely to matters of the ‘public interest’, of which competition was only one.

Tempting though it is, I do not think it is the right way to go. We can, of course, look at and try and understand the full policy context. That is what the CC did in its recent major investigations in groceries, in air and rail transport, and in insurance. But the job of balancing and

reconciling policy requirements is surely one for Government, albeit seeking expert advice on the issues it has to weigh up. No independent agency has the right to appropriate that role.

Government remains intimately associated with the setting of the framework for markets, with the reconciling of different policies and (either directly or indirectly, through autonomous agencies like the CC,) with necessary interventions to ensure that Adam Smith's 'invisible hand' has sufficient room to operate for the general good.

An exit strategy

It may be observed that the recession has meant that the state may be somewhat more involved in aspects of economic activity than is 'normal' or 'healthy'. I take no position on this as it clearly falls under the heading of policy. But were it to be the case, the challenge now would be to get the balance of all these factors right—and in particular to ensure that, going forward, if the balance were thought to be wrong, the state can exit from the positions of direct intervention it has been adopted or been forced to adopt in a way that offers the best return to the taxpayer and provides the most benefit to the consumer through the re-invigorated operation of competitive markets.

'Stick to our last'

And whilst that is going on, there is no more important job for a national competition authority to do than to implement competition policy in a way that is firm but sensible. Competition is our thing and we should concentrate on applying it well to real situations. Like the cobbler, we should 'stick to our last', and for our part that is what we intend to do. Thank you.

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