

<p><b>Institution: City University London</b></p>
<p><b>Unit of Assessment: 18 Economics and Econometrics</b></p>
<p><b>Title of case study: Shaping the UK's competition regime</b></p>
<p><b>1. Summary of the impact</b></p> <p>Research in the Centre for Competition and Regulatory Policy (CCRP) at City University London has influenced extensively UK competition policy and continues to do so. The research has influenced directly the Department for Business, Innovation and Skills (BIS) in the development of the new Enterprise and Regulatory Reform Act 2013 (ERR Act). A process of engagement including two Round Tables chaired by Professor John Cubbin and a corresponding documentary submission, shaped the way in which the ERR Act gives enhanced powers to a unified competition authority, the Competition and Markets Authority (CMA). The research impacted on the eventual form of this new institution, especially in its independence in merger and market inquiries between Phase 1 (Could there be a problem?) and Phase 2 (What do we do about it?), which were previously carried out by the Office of Fair Trading and the Competition Commission respectively. The Centre's input into the Act has also been central in influencing how the CMA will retain and enhance the role of members of the panel of independent "external" experts.</p>
<p><b>2. Underpinning research</b></p> <p>The relevant underpinning research was undertaken from 2002 onwards by two of the leading academics of the CCRP, Professor John Cubbin and Dr Xenia Dassiou (at City since 1992, now a Reader). Cubbin joined City as a Professor in 1995 and in 1997 established the first MSc in Economic Regulation and Competition in the UK. In 2005, he subsequently established the CCRP with the aim of developing and disseminating research that can improve the functioning of regulated and non-regulated markets. He has been a panel member of the Competition Commission since 2005 and is now an Emeritus Professor at City.</p> <p>Professor Cubbin co-authored with Lord Currie (Chair Designate of the CMA, which will assume its powers in April 2014) the influential and heavily-cited paper on regulatory creep and regulatory withdrawal in May 2002 [a]. Examples of citations demonstrating the impact of this paper are given in [b]-[g]. They include the House of Commons Standing Committee in 2002 [b] and regulators and consultancy reports on behalf of regulated companies. This research paper heralded the widespread regulatory withdrawal of price cap regulation, most noticeably by Ofgem and Ofcom, allowing competition to flourish in major parts of the utility sectors. The policy relevance of this paper on the current policy reforms was highlighted by Lord Currie during the 2013 Round Table and is reflected in the emphasis placed in the Bill for the CMA to strengthen concurrency. He stressed that the future of the market investigations was at stake because "<i>it will be difficult to implement the new ERR Act if sectoral regulators continue to be hesitant to refer cases – particularly MI [Market Inquiry] cases – to competition agencies.</i>" Cubbin's 2006 policy review paper [h] points to the absence of regulatory MI references by sector regulators. His 2007 paper [i] examines the role of competition policy, explains its purpose and importance and identifies its beneficiaries, which he shows are not only consumers but also businesses and indeed the economy as a whole, since countries with effective competition policies grow faster than those without. It has therefore been critical for the CCRP to act as an academic/practitioner forum to examine and inform the reforms process as changes in competition policy have been proposed and then to analyse and comment on how the reforms will be applied in practice by the CMA, when it commences operation.</p> <p>Dr Xenia Dassiou is a co-founder of the CCRP and has been its Director since 2008. She contributed to the volume edited by J.E. Harrington Jr. &amp; Yannis Katsoulacos both as the author of an article [j] where she analyses the competition policy implications of bundling decisions (combining sales or purchases of different products or services, or tying two goods in an exchange transaction) and as the organiser and chair of a European Conference Special Policy session on</p>

Financial Regulation [k] where the implications of the financial crisis on the financial regulation framework were discussed. This relates to the themes of the two round tables, as the CMA will have an important role to play in promoting effective competition and the recently-constituted Financial Conduct Authority (FCA) will have the power of referral to the CMA for possible MI purposes.

### 3. References to the research

[a] Cubbin J. & Currie D. (2002). *Regulatory creep and regulatory withdrawal: why regulatory withdrawal is feasible and necessary*. London: City University London.

Significant references to this paper demonstrating that it provided an important point of reference in the field:

[b] [SC Deb \(E\) Communications Bill 10 December 2002 c018](#)

[c] Sokol D. (2009). [Limiting Anticompetitive Government Interventions that Benefit Special Interests](#), *Geo. Mason L. Rev.*, 17(1), 119-130.

[d] Cadman R. & Carrier H. (2002). [Market structure and innovation in the telecommunications sector: A framework for assessing the impact of structural separation of the incumbent](#). *Info*, 4(6), 9-15.

[e] [Response by British Sky Broadcasting Group Plc to Ofcom's consultation document 'pay TV second consultation: access to premium content' of 30 September 2008](#).

[f] Bahrain Telecommunications Company (BATELCO) BSC. (2007). [Strategic and retail markets review submission to the Telecommunications Authority of Bahrain](#). BATELCO: Bahrain p. 24.

[g] Doyle C. (2008). [Structural separation and investment in the National Broadband Network environment: A report for Optus](#). University of Warwick: Competition Economists Group.

#### Additional publications

[h] Cubbin J. (2006). Competition and Regulated Industries. In R. Clarke & E.J. Morgan (Eds.), *New developments in UK and EU Competition Policy*. Cheltenham: Edward Elgar.

[i] Cubbin J. (2007). [What is Competition Policy For?](#) (CCRP Working Paper No. 11). London: CCRP, City University London.

[j] Dassiou X. & Glycopantis D. (2012). [Optimal decisions in two-stage bundling](#). In J. E. Harrington Jr & Y. Katsoulacos (Eds.), *Recent advances in the analysis of competition policy and regulation* (pp.95-115). Cheltenham: Edward Elgar, ISBN 978-1-7810-0568-2. - 2012, p. 95-115

[k] Special Policy Session on Financial Regulation organised and chaired by Xenia Dassiou *ibid*, Part IV

### 4. Details of the impact

In 2011, BIS put forward proposals to reform the competition regime and invited stakeholders to contribute their feedback. In response, the CCRP organised a Round Table in January 2012 on "*The Future of the UK's Competition Regime*", with panellists including Roger Witcomb (the Chairman of the Competition Commission (CC)), Peter Freeman (now a Chairman of the Competition Appeal Tribunal and Amelia Fletcher (the then Chief Economist of the Office of Fair Trading (OFT)). The Round Table was chaired by Professor John Cubbin [1]. After the Round Table, a document [2] was submitted to BIS which made a significant contribution to the formation of the Final Proposals by the Government in March 2012 [3]. These in turn became the backbone for drafting the ERR Bill. BIS mentions explicitly the CCRP 2012 Round Table as one of the events that informed the formation stages of its reforms [3].

Given the success of the first Round Table, the CCRP agreed with BIS to organise a second Round Table with the formal presence of the CMA's Chair Designate Lord Currie as a panel member. Among other experts, the panel included Mary Starks (Senior Director, OFT) and Roger Witcomb [4]. BIS was formally represented in the audience by its senior competition policy staff who were involved in establishing the CMA. The CCRP agreed that the second event would focus on the topic of market investigations conducted by the CMA and the implications of this decision on the efficacy and legitimacy of the new regime, as well as the implications of the new regime on concurrency (i.e., the use by sectoral regulators of their competition powers, rather than the regulation powers, where appropriate).

The Round Table 2012 recommended that the regulatory agencies should not only retain their role as enforcers of the Competition Act (e.g., concurrent competition powers), but also make more active use of such powers. Regulatory agencies (with the exception of Ofcom) have made scant use of their competition powers, preferring to use their toolkit of regulatory enforcement powers to avoid time delays and uncertainty over the outcome.

At the time of the second Round Table it was clear that the Government had heeded the earlier advice from the first Round Table: it would not only retain the competition powers of the regulators, but also expect the new regime to facilitate concurrency and ensure that regulators use their competition powers where appropriate as one of its key goals. This latter point was discussed in greater detail in the second Round Table where it was stressed that it would be very difficult for the new competition regime to work properly and act as a deterrent to competition abuse practices, unless this was changed. It was also recommended that clear guidance should be provided to the sectoral regulators regarding both CA enforcement and better coordination with the competition authorities, OFT and CC, in raising and resolving competition cases [5]. These recommendations are clearly reflected both in the final proposals document from BIS (March 2012) and in the Bill and the ensuing discussion of it in Parliament (e.g., see [6] on the strengthening of the concurrency regime by the Bill on the first day of its discussion in the Lords). As advocated in the 2012 and 2013 CCRP events and corresponding summary documents, the Bill, through clause 45 and a series of amendments in the Lords [6], gives stronger powers to the CMA to coordinate CA enforcement work and assigns to sector regulators more explicit duties to use their general competition powers instead of their sector specific regulatory powers. The CMA will co-ordinate CA enforcement work by sector regulators and report on the use of their concurrent powers. Finally, the Secretary of State has been granted a power to remove the concurrent competition enforcement powers of sector regulators such as Ofgem and Ofwat. This may lead to the sector regulators making greater use of their competition powers such as the referral of MIs to the CMA.

The Round Table 2013 also stressed the importance to the credibility of the competition regime of retaining both Phase 1 of a merger or market inquiry (performed by the OFT to explore whether there may be a competition problem) and Phase 2 (if Phase 1 finds a competition problem, the merger or market is examined in depth by the CC to establish whether this is the case and if so to specify remedies) as separate and independent when both will be performed under the CMA. BIS's CMA Transition Project Leader contacted us following the event to note that this latter point was one of the most critical and enlightening arising from the Round Table discussion and summary of

recommendations and that it would impact on the application of competition policy by the CMA. The decision by BIS to use the CCRP meeting to inform its *modus operandi* was stated by Lord Currie during the Round Table 2013. He indicated that both he and the BIS team had come to the event in a “listening” mode.

The panel membership and attendance at both events [7] and [8] testify to our stakeholder dissemination achievement. The City research and consequent reputation in this field had a significant impact on the eventual form of the CMA, especially in relation to the need to demonstrate independence in merger and market inquiries. The CCRP’s input was also central in influencing how the CMA will retain and enhance the role of members of the panel of independent “external” experts.

### 5. Sources to corroborate the impact

- [1] [www.city.ac.uk/\\_data/assets/pdf\\_file/0008/117845/CCRP-Roundtable-20th-January-2012\\_2.pdf](http://www.city.ac.uk/_data/assets/pdf_file/0008/117845/CCRP-Roundtable-20th-January-2012_2.pdf)
- [2] Dassiou & Stern CCRP Roundtable on the UK Competition Regime 20<sup>th</sup> January 2012 - Summary of Policy Conclusions, mimeo, City University London, February 2012 and Dassiou & Stern CCRP Event Summary Round Table on the UK Competition Regime: 20<sup>th</sup> January 2012," CCRP Summary Report.
- [3] p.17, BIS March 2012 Final Proposals Report:  
([www.bis.gov.uk/assets/biscore/consumer-issues/docs/g/12-512-growth-and-competition-regime-government-response](http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/g/12-512-growth-and-competition-regime-government-response))
- [4] [www.city.ac.uk/\\_media/city-site/documents/social-sciences/economics/ccrp-16/CCRP-Roundtable-25th-January-2013.pdf](http://www.city.ac.uk/_media/city-site/documents/social-sciences/economics/ccrp-16/CCRP-Roundtable-25th-January-2013.pdf))
- [5] pp. 7-9, Section 4, Dassiou & Stern, CCRP Competition Policy Roundtable: Market Inquiries and their Future, January 25<sup>th</sup> 2013, CCRP Summary Report, [www.city.ac.uk/\\_data/assets/pdf\\_file/0005/167630/CCRP-January-2013-Round-Table-Summary.pdf](http://www.city.ac.uk/_data/assets/pdf_file/0005/167630/CCRP-January-2013-Round-Table-Summary.pdf))
- [6] [www.theyworkforyou.com/lords/?qid=2013-02-26a.1034.0](http://www.theyworkforyou.com/lords/?qid=2013-02-26a.1034.0), 26/02/13
- [7] [CCRP Competition Policy Round Table Participants 20/01/12](http://www.city.ac.uk/_media/city-site/documents/social-sciences/economics/ccrp-16/CCRP-Roundtable-25th-January-2013.pdf)
- [8] [www.city.ac.uk/\\_data/assets/pdf\\_file/0007/164608/CCRP-January-2013-Round-Table-attendees.pdf](http://www.city.ac.uk/_data/assets/pdf_file/0007/164608/CCRP-January-2013-Round-Table-attendees.pdf)

Organisations/individuals who can be contacted for corroboration:

- Senior Policy Adviser, Consumer and Competition Policy, Department for Business, Innovation and Skills (leads stakeholder communication for the competition reform regime)
- Assistant Director, Competition Policy, Department for Business Innovation and Skills
- CMA Chair Designate
- Competition Commission Chairman