

## IS COMPETITION EVERYTHING?

Peter Freeman, Chairman of the Competition Commission, spoke at a meeting of the Law Society European Group on 21 July 2008. The full text of his speech follows.

Whilst it might seem ‘a little unusual’ for a speech by the Chairman of a competition authority to question the benefits of competition, the speech acknowledges how some recent inquiries have led to calls for the CC to take a wider view of the matters it examines than that attained through what critics might call the narrow ‘prism of competition alone’. In particular, during the *Groceries* inquiry the CC was urged to broaden the focus of its investigation to include wider concerns such as the role of local shops in social cohesion, the sale of cheap alcohol and the effect on the environment and farming resulting from retailers’ supply practices. As well as the perceived conflict with issues specific to particular markets, the speech also outlines the potential tensions between competition analysis and general policy objectives across Europe and further afield and notes that it is important to realize that ‘competition is not necessarily regarded by everyone as the solution to every problem’.

The Chairman describes how competition authorities can, to some extent, address this concern by ‘not needlessly shutting our eyes to the overall context and to other policy objectives’ and also clearly explaining what they can and can’t be expected to achieve. He also stresses that competition analysis ‘can be surprisingly accommodating to other issues’, noting that the Market Investigation Regime, in particular, is flexible enough to directly consider the consumer interest.

However, it is equally true that there are limits to this flexibility and that whilst competition need not be irreconcilable with other policy imperatives, one must realize that conflicts can and will arise. The speech states that it is quite rightly the job, indeed the essence, of an elected Government to resolve conflicting priorities. It is not a weakness of competition analysis that it cannot deal with every policy imperative.

Importantly though, there is a clear warning that this process must not mean that competition gets diluted as ‘just another policy to be weighed in the balance’. The merits of competition can ‘never be taken for granted’; it remains the ‘best instrument yet found to deliver benefits in economy’ and the speech underlines that this is a message that must continue to be made clearly and forcefully.

## Law Society European Group

### Talk by Peter Freeman, Chairman, Competition Commission<sup>1</sup> at the Law Society on 21 July 2008

#### IS COMPETITION EVERYTHING?

##### The problem

My topic today may strike you as a little unusual or counter-intuitive. If I were asked this question by someone else, you might expect me to say that it is obvious that competition is good for all, that our statutory framework requires us to focus on competition and leave it there. But others may not be so impressed by this standard 'purist' competition approach, so I ask the question, 'Is competition everything?'

I expressed the view recently that 'efficient markets are the best instruments yet found to deliver benefits in an economy and regulation is usually a poor substitute for them'.<sup>2</sup> It may be thought that this was not exactly a particularly controversial statement for a member of a competition authority to make. However, in a recent article in a veterinary publication, this statement was said to be of 'breathtaking naivety and narrowness of mind'.<sup>3</sup>

In a way this is not surprising. Pedagogic blandness, particularly when combined with abstract concepts, can be unappealing. And the general public is perhaps less convinced than we are that competition analysis alone is always in everyone's best interest. On the one hand, what people may be concerned about could be much less abstract and much more tangible and immediate, ie 'what something costs now'; and an outcome based on competition analysis alone may not appear to produce a good enough result, at least in the short term. Others, like the veterinary columnist, may be more concerned that in trying to focus on the 'here and now' we mistake the true nature of the problem. Let me give some examples.

First, there is the Competition Commission's (CC) own *Groceries* inquiry. We received many submissions from people (including NGOs, charitable organizations, Members of Parliament and individual consumers) who urged the CC not just to focus on 'narrow' competition issues but to broaden the focus of its investigation to include considerations such as social cohesion and environmental distinctiveness; the effect of the potential loss of small corner shops on the local community, especially in rural areas; the effect of availability of relatively cheap alcoholic drinks in supermarkets on 'binge drinking', and street safety; the interests of UK farming and security of UK food supply; and the consequences for suppliers in the developing world (and the environmental impact) of seeking to provide seasonal fresh products to UK consumers throughout the year. The point is not whether these are more or less important matters than competition, but that there is a perception that if a competition analysis is not able to deal with them, then there is something wrong with the analysis.

On a slightly smaller scale, the *Home Credit* investigation is another case in point. In an inquiry focused on whether competition in the supply of small sum credit to disadvantaged borrowers was effective, much of the evidence was about access to affordable credit and the

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<sup>1</sup>All views expressed are personal. The help of Ingrid Nitsche of the CC staff in preparing this talk is gratefully acknowledged.

<sup>2</sup>Speaking to the David Hume Institute, on 3 May 2007. The actual quotation reads: 'Allowing markets to work effectively is the best system yet devised to deliver efficient businesses, innovation and benefits for consumers in terms of price, value for money and choice. And in markets where there are no natural—or even unnatural—monopolies regulation is normally a poor substitute for competition in this respect. The idea of an economy without a strong competition policy is very unattractive'.

<sup>3</sup>Michell, 'Alas in Fairy Trading Land' *Veterinary Review*, 1 June 2008. The article makes a number of trenchant criticisms of the application of competition principles to the supply of veterinary products and services.

less palatable alternatives to legitimate sources of credit—so-called ‘loan sharks’. But on the other hand everyone seemed to agree the product was much too expensive, and that ‘something had to be done’.

Perhaps we should not be surprised if others do not see all policy issues through the prism of competition alone. It is perhaps all too easy for authorities like the CC, with its competition-focused statutory remit, to assume that what we have to offer is what others see as desirable.

A timely reminder that this need not always be so comes from the recent House of Lords Select Committee on Regulators Report<sup>4</sup> which considered the statutory remit of economic regulators. This report reminds us that, at least for sectoral regulators, the promotion of competition is just one objective among others and the prioritization of objectives may not be so obvious. The report also reminds us that in regulated sectors it is not always so easy to keep ‘pure’ competition-based solutions separate from the needs of regulation, however desirable that may be, and that one of the CC’s functions is to help strike that balance. So if that is the case in regulated sectors, why not more generally, one may ask?

Let us now turn to ‘Europe’. It was the President of the French Republic who asked the question ‘as an ideology, as a dogma, what has competition done for Europe, actually?’<sup>5</sup> Take the question of the level of international roaming fees in Europe. A year ago the EU Roaming Regulation<sup>6</sup> introduced a price cap for calls made and received abroad within the EU which has led to savings of up to 60 per cent for consumers on these calls. As a result, people have seen their phone bills go down when travelling abroad, not as a result of competition, far less a competition-based decision, but from regulation. Competition, it appears, could not deliver this solution, at least in the short term. Now the same seems to be the case for text messages.<sup>7</sup>

Similarly, at international level, it might be thought that as more and more countries adopt competition laws, this means the triumph of competition over other policies. But even a cursory glance at these developments suggests this may not always be so and that new competition systems may be more subtle than this. For example, China’s long-awaited Antimonopoly Law which takes effect next month, whilst a hugely significant development, nevertheless seems to combine classic competition law with some more ‘mercantilist’ aspects, for example the retention of so-called administrative monopolies, whereby the national government may create or maintain monopolies by state-owned enterprises in certain industries linked to the national economy and state security.<sup>8</sup> It is, of course, far too early to say how these things will develop, but, again, the point is simply that it is always open to governments to set different objectives for competition authorities, or to elevate other policies over competition. There can be no absolute assumptions, although as will be emphasized, the general desirability of competition-based solutions is not something to be lightly put aside.

So, for the sake of discussion, let us consider this basic proposition. Competition is not necessarily regarded by everyone as the solution to every problem. Other policy objectives may be seen as of equal or greater importance, and short-term imperatives, such as cutting prices, not cutting prices, keeping the streets safe or protecting strategic industries may be seen as more important. Extolling the virtues of a competitive economy and the benefits of

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<sup>4</sup>House of Lords Select Committee on Regulators, *UK Economic Regulators*, HL Paper 189-I and II, 13 November 2007.

<sup>5</sup>European Council, Statement made by M Nicolas Sarkozy at post-EU Council press conference, Brussels, 23 June 2007. The remark was made around the time that the goal of promoting competition was moved from the objectives of the defunct Constitutional Treaty to an annexed Protocol to the Lisbon Treaty.

<sup>6</sup>Regulation 2007/717/EC of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC.

<sup>7</sup>*Reding to impose cap on rip-off text charges*, FT, 16 July 2008.

<sup>8</sup>Ross, Lester, *China’s Antimonopoly Law*, *Antitrust*, Vol. 22, No 2, (2008), at p70.

vigorous rivalry in which there are losers and winners clearly does not appeal to everybody, particularly, it must be said, to the losers. One does not have to accept the charge of 'breathtaking naivety and narrowness of mind' to be concerned about this. So, is there anything we can do?

## **The scope of 'competition'**

One approach is to bring as much as possible within the scope of the competition analysis so that we are not needlessly shutting our eyes to the overall context and to other policy objectives. There are several helpful pointers here.

### **(a) History**

Perhaps the first lesson is, of course, that we have been here before. Competition policy did not always have its current purist character, at least within the UK. In its original conception neither the law on monopolies nor the control of restrictive agreements was based solely on competition; instead competition was balanced against other factors within an overall assessment of the public interest.<sup>9</sup>

Now it is true that in the past 20 years, competition has come increasingly to the fore, culminating in the Competition Act 1998 enacting the Chapter I and II competition prohibitions and the Enterprise Act 2002 with its SLCs and AECs.<sup>10</sup> But it would indeed be naive to assume these are a 'pattern laid up in heaven' that could not be subject to any further change at all.

### **(b) Public interest**

And the public interest lives on in certain specific instances. Ministers' power to intervene in competition cases is now limited to situations of particular public interest, essentially those concerning national security and certain media issues (freedom of speech, accuracy of presentation of news in newspapers, and media plurality).<sup>11</sup> For these policy fields (media and defence) the UK competition framework explicitly sets out a mechanism which determines their interaction with the competition analysis. Others could of course be added although I would not want to speculate on this. But it is largely true that competition pre-dominates, so let us examine what this means in current UK, and particularly CC, practice.

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<sup>9</sup>See, for example, section 84 Fair Trading Act ('the public interest') for monopolies and mergers and section 19 of the RTPA 1976, for cases considered by the Restrictive Practice Court.

The CC dates back to the Monopolies and Restrictive Practices Commission (MRPC) of 1948. The MRPC had the power to investigate and publish reports and the relevant government department would then take action to protect the public interest. The Restrictive Trade Practices Act 1956 introduced a system of registering and examining restrictive practices and created a Registrar of Restrictive Trading Agreements and a Restrictive Practices Court. In 1965 merger control was included in the (now) Monopolies Commission's (MC)'s remit. The major reforms of the 1973 Fair Trading Act (1973 FTA) saw the establishment of the Office of Fair Trading (OFT), which took over the competition responsibilities of the Registrar of Restrictive Trading Agreements and gained new consumer protection responsibilities. The MC was renamed the Monopolies and Mergers Commission (MMC). Under the 1973 FTA the broad public interest test in market or merger references remained but was increasingly focused on competition. The 1980 Competition Act targeted anti-competitive practices of individual non-dominant firms. The Tebbit doctrine of 1984 established that merger references would primarily be made on competition grounds.

<sup>10</sup>The Chapter I prohibition is contained in section 2 and the Chapter II prohibition in section 18 of the Competition Act 1998. They are closely modelled on Articles 81 and 82 of the EC Treaty. For mergers, the Enterprise Act 2002 provides that the CC shall decide whether a merger 'has resulted, or may be expected to result, in a substantial lessening of competition...' (section 35(2)). For market investigations, the relevant question is whether 'features' of the market(s) in question result in 'an adverse effect on competition' (section 134(2)).

<sup>11</sup>Section 58 Enterprise Act for mergers; section 153 Enterprise Act 2002 for market investigations. Ministers may also refer markets (but not mergers) to the CC for investigation.

### **(c) Market investigations**

If we took a narrow view of how competition should be applied—as some seem to suggest we should do<sup>12</sup>—it could be argued that the only instruments needed to make the competition system work would be Articles 81 and 82 and their national equivalents.

The UK regime has clearly taken a broader approach by retaining, alongside these prohibitions, a system for investigating markets.

It is important to remember that the Market Investigations Regime (MIR), operated jointly by the OFT, which conducts a preliminary examination, and the CC, which investigates in more depth, is, since the Enterprise Act, explicitly competition based. The AEC test is based on market features that prevent, restrict or distort competition. But the regime requires consideration also of customer detriment and customer benefits at the remedies stage. This raises the question of how far the AEC test itself recognizes efficiency arguments in assessing competition.

### **(d) Efficiencies and customer benefits**

In principle there is no reason why identified efficiencies and benefits in a market may not be considered as part of the competition analysis, or may even serve to mitigate or counteract an AEC. An example would be where customers were obtaining a beneficial service as a result of an agreement between several suppliers that could not be offered so effectively by any individual supplier on its own. Or the right to exploit intellectual property in the short term may be necessary to preserve investment incentives for the future (the classic innovation efficiency argument). Such considerations can assist in avoiding too narrow a competition assessment, although they are raised surprisingly rarely and they will not necessarily prevail.

At the remedies stage, the CC may have regard to the impact of its remedies on relevant customer benefits. In our view the parties are best placed to put forward arguments about possible relevant customer benefits and the effect that the CC's remedies may have on them. The CC always considers well-evidenced submissions on this aspect extremely carefully. However, as with the competition assessment, relevant customer benefits considerations will not necessarily cause the CC to modify its remedy decision. An example of a merger which we found did give rise to substantial relevant customer benefits is the recent *Macquarie/National Grid* decision where the decision to adopt behavioural remedies in the first instance in lieu of divestment can be explained on this basis.

### **(e) Competition and consumer protection**

Greater focus on the consumer interest in competition investigations may be another way to avoid too narrow an approach.

It is a truism that competition and consumer protection share a common goal, ie the enhancement of consumer welfare through lower prices, more innovation, higher quality and greater choice.<sup>13</sup> In some jurisdictions such as the UK and the USA, competition authorities<sup>14</sup> are explicitly entrusted with consumer protection duties alongside their competition enforcement role. Following this approach, it is said that competition enforcement looks at the supply side, providing a framework to ensure that markets are open and competitive,

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<sup>12</sup>Ridyard, *The Competition Commission's Northern Ireland Banking Market Investigation: some unanswered questions on the role of Market Investigations*, ECLR 2008, 29(3), pp173–180.

<sup>13</sup>See, for example, OECD Policy Roundtable, *The Interface between Competition and Consumer Policies*, available at [www.oecd.org/dataoecd/22/34/40898016.pdf](http://www.oecd.org/dataoecd/22/34/40898016.pdf).

<sup>14</sup>The OFT and Federal Trade Commission (FTC).

whilst consumer policy looks at the demand side, ensuring that consumers are in practice able to make full use of the opportunities that competition presents to them. It is possible, however, that the distinction is not quite so clear-cut.

The MIR is clearly flexible enough to deal with these issues. In its promotion of market transparency remedies, the CC seeks to increase the number of 'informed consumers' which in turn helps to promote competition. The CC has in a number of cases, for example *Store Cards*, *NI Banks* and *Home Credit*, decided that an information remedy would be appropriate, either alone or in combination with other measures, to address competition concerns. The advantage of an information remedy (eg over price regulation, as was discussed in *Home Credit*) is that it empowers consumers to make their own informed choices when presented with a range of options rather than limiting the choice to a common standard that may not be appropriate for everyone. But both these sorts of measures can be categorized also as consumer protection. And indeed one commentator has suggested that the *NI Banks* case would have been better dealt with under 'ordinary' competition law.<sup>15</sup>

### **(f) Regulated sectors**

Finally, the MIR is expressly required to take account of the conditions in regulated utility sectors. When dealing with market investigations in regulated sectors, the CC, although acting as a competition authority, must have regard to the relevant regulator's duties when framing remedies. These could range from Ofwat's requirement to maintain water quality<sup>16</sup> to Ofcom's duty to ensure media plurality and certain quality standards.<sup>17</sup> To that extent, therefore, and recognizing the CC's unique combination of competition and regulatory functions, market investigations can be used to identify and resolve conflicts between competition and other regulatory policies.

## **Competition and other policies**

But there has to be some limit to the ability to 'flex' the competition analysis to encompass broader policy issues. One can look at countervailing benefits, the effect on innovation, the need to promote well-informed consumers and the needs of regulated sectors, but at some point competition comes up against different and competing policy objectives, much as we suggested in asking our initial question.

Let us therefore examine the types of conflicts and tensions that can arise when competition is considered alongside matters such as industrial policy, intellectual property, public health, social policy, the environment and defence. After all, just because other policies may fall outside the scope of competition analysis does not remove the tension and conflict inherent in having multiple policy goals. It merely means that the competition authority has externalized the conflict and that a resolution needs to be found through other processes.

### **(a) Industrial policy**

One policy that can appear to conflict with competition is industrial policy. Competition advocates tend to regard the creation of 'national champions' with suspicion and on the whole to dismiss the idea that in order to create players of sufficient scale to compete successfully internationally, the application of competition law at the national or local level must be compromised. The argument for national champions often arises in industries with strategic significance, such as defence (which I will be referring to later on) or energy.

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<sup>15</sup>Ridyard, *op cit*.

<sup>16</sup>Section 68 of the Water Industry Act 1991 as amended by the Water Act 2003.

<sup>17</sup>Section 3 of the Communications Act 2003.

Here it is instructive to see how the European Commission has recently embarked upon a programme of liberalizing and opening up national energy markets, to creating more cross-border trade in energy and to challenge the position on national markets of incumbent suppliers, in part through the separation of vertically-integrated companies.

The *E.ON/Endesa*<sup>18</sup> and, more recently, the *Enel/Acciona/Endesa*<sup>19</sup> mergers, show that the European Commission has met with some resistance from national governments. In the latter case, Spain imposed certain conditions including a requirement to maintain the merged entity as an independent company and to retain its decision-making centre in Spain. The European Commission regarded these measures as a breach of the Treaty, and the disagreement continues before the European Courts.

Another industrial policy issue is that of reciprocity, often loosely called 'the level playing field', or more precisely, asymmetric competition. In other words, what happens when one country opens up a particular market while neighbouring countries retain protection for the incumbent? And how should competition authorities deal with a situation where a foreign incumbent who is not subject to competition 'at home' makes substantial acquisitions in the host country which has liberalized the relevant sector? This is by no means an academic issue and is very relevant also in relations between EU member states and third countries and their undertakings. Does competition policy require that we simply ignore these factors?

### **(b) Intellectual property**

The interaction between competition and intellectual property rights is well known for causing controversy. Intellectual property rights confer (mostly) time-limited exclusivity on owners, authors and inventors to encourage innovation which limits or excludes competition for the duration of the exclusivity. Competition authorities have over many years in practice applied competition policy in a way that recognizes the goal of encouraging innovation whilst at the same time limiting the exercise and in some cases the scope of the exclusivity involved.

The tension between the two policy goals is illustrated by the *Microsoft* case.<sup>20</sup> One aspect of this case was the requirement for Microsoft to disclose to competitors the necessary interface information to enable non-Microsoft work group servers to 'talk' to the Windows Operating System. The conflict with intellectual property rights was addressed by protecting the source code and providing for reasonable remuneration, but no-one would regard these issues as straightforward.

Another example is the *AstraZeneca* case.<sup>21</sup> The European Commission found that AstraZeneca had abused a dominant position by obtaining patent term extensions for a particular pharmaceutical in some cases by giving misleading information. Whilst this may be a slightly unusual case, it illustrates competition law overriding what is on the face of it a valid intellectual property right.

### **(c) Public health**

Competition in retailing has potential impact on public health in several ways. One is the widespread use of promotions and discounts for alcoholic drinks leading, it is said, to increased consumption, the risk of 'binge' and underage drinking, bad behaviour, violence and alcohol-related disease.

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<sup>18</sup>COMP/M 4672.

<sup>19</sup>COMP/M 5171.

<sup>20</sup>COMP/C-3/37.792, Commission Decision of 24 March 2007.

<sup>21</sup>COMP/A.37.507/F3, Commission Decision of 15 July 2005, on appeal Case T-321/05 AstraZeneca/Commission.

In Scotland, for example, there have recently been measures suggested which would include raising the minimum age for off-licensed sale of alcohol to 21, setting a minimum price for a unit of alcohol, and restricting promotions; all measures which, in one way or another, would restrict retailers' ability to compete with each other. And there are recent press reports of proposals to control retail sales of alcoholic drinks in England also.

#### **(d) Social policy**

Increased alcohol consumption can be seen as a social policy issue also; but social policy issues can arise in many competition cases. Another example from *Groceries* was the argument I have already mentioned that competition between retailers was destroying town centres and damaging social cohesion. It is interesting to see the various legislative and planning initiatives now being brought forward to address these issues directly.

#### **(e) Environment**

It is often suggested that the way market economies work does not take account of the adverse environmental effects that result from competition. Examples from the *Groceries* inquiry are the encouragement of pollution through car use, 'food miles' for the transport of food over excessive distances, and the environmental impact of large-scale distribution systems.

An example going the other way is the EU's Common Fisheries Policy which restricts total allowable catches of fish, providing quotas to ensure that fish stocks remain sustainable. However justified in environmental terms, this clearly affects competition between fishermen.

#### **(f) Defence**

Defence and national security objectives often, although by no means always, conflict with competition policy objectives. We have already mentioned that national security is one of the policy fields where UK Ministers have retained the power to intervene<sup>22</sup> and this is by no means unique to the UK. So one could argue that defence is recognized as a relevant 'external' policy within the current competition framework.

A good example of the softening of competition toward the defence industry is the current collaboration between main industry players in the design and building of nuclear submarines.<sup>23</sup> The background of this measure is the Ministry of Defence's (MoD) Defence Industrial Strategy (DIS, December 2005),<sup>24</sup> under which, among other things a need is identified for the UK to maintain sufficient indigenous capacity to deliver, operate and maintain nuclear submarines. The Government has recently sought to exempt these companies from Chapter I for certain commercial activities.<sup>25</sup>

So we could go on looking at the possible conflicts between competition and other policies. How then are these conflicts to be resolved?

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<sup>22</sup>Section 58 (for mergers) and section 153 (for market investigations) of the Enterprise Act specify the interests of national security, which includes public security and has the same meaning as in Article 21(4) of the EC Merger Regulation.

<sup>23</sup>See Submarine Enterprise Collaborative Agreement (SECA) Consultation Document and Impact Assessment, February 2008.

<sup>24</sup>Available on:

[www.mod.uk/nr/rdonlyres/f530ed6c-f80c-4f24-8438-0b587cc4bf4d/0/def\\_industrial\\_strategy\\_wp\\_cm6697.pdf](http://www.mod.uk/nr/rdonlyres/f530ed6c-f80c-4f24-8438-0b587cc4bf4d/0/def_industrial_strategy_wp_cm6697.pdf).

<sup>25</sup>Competition Act 1998 (Public Policy Exclusion) Order SI 2008 No 1820 laid before Parliament 10 July 2008. See also SI 2006 No 605 (maintenance and repair of surface warships) and SI 2007 No 1896 (complex weapons and supporting technology).

## **Resolving conflicts between policies**

### ***(a) Substance***

Before turning to the institutional aspects there is one important point of substance to make first. This is that in many cases the so called 'conflict' is not as clear-cut as may appear. The need for strong companies able to compete internationally can be just as well delivered against a strong domestic competition framework; the intellectual property policy goal of encouraging innovation is shared with competition policy. Environmental detriment is not the inevitable result of competition in a market economy, and so on.

More particularly, the existence of contrary policy imperatives does not mean we simply abandon promoting competition as an objective. Instead it can continue, albeit within a more limited scope, and still bring benefits. Competition remains 'the best instrument yet found to deliver benefits in an economy' and we should not be reticent in saying so. But let us examine institutional arrangements for dealing with inconsistent policies.

### ***(b) Institutional framework***

The UK is by no means unique in having a sophisticated competition enforcement regime that enables competition-based solutions to be asserted. Where these do conflict with other policies, resolving the conflict is of itself part of policy making and indeed is the essence of government. The resolution and synthesis—choosing which policy should prevail over others—is central to the process of administration and in the UK is handled by the Executive under the control of Parliament. There is indeed no other sensible way to do it; whilst one can applaud the delegation of decision-making power to independent agencies—whether in competition, health or environment, it is surely for Government to resolve conflicts and decide on the appropriate resolution.

Somewhat paradoxically, the European Union, which is sometimes criticized for lack of democratic accountability, has an instrumental framework that is particularly suited to the resolution or combination of different policies. As competition policy is delegated operationally to DG Comp, whilst remaining under the responsibility of the College of Commissioners, there is a ready-made institutional mechanism to consider the merits of competition policy in comparison with other policies and if possible to combine them. For example, the European Commission's programme to liberalize energy markets has been given greater impetus by the combined application of competition and regulatory policy instruments towards a single objective.

But it is important that this process of assessing the relationship between policies and resolving conflicts is rational, open and transparent and does not lead simply to the competition imperative being diluted or even shelved just because there are other policies covering the same topic.

## **Is competition everything?**

We have suggested that not everyone sees competition as the answer to every problem. We have shown how the UK's current approach to competition evolved and how the competition analysis can be surprisingly accommodating to wider issues. We have examined instances of clear conflict with other policy imperatives, whilst pointing out that the overall policy objectives may not always be irreconcilable. And we have said that where there is conflict of policies it is the essential role of government, whether at national or EU level, to resolve it. So, is competition everything?

As we know, the CC—and this must be equally true for other competition authorities—is sometimes told that competition analysis does not address many of the relevant issues. Consumers want tangible results soon, and it may be tempting to achieve these through direct intervention rather than through the longer-term effect of market forces. This temptation is especially strong in times of an economic downturn, when it becomes more apparent that competition may for a time create more losers than winners and it may take time to balance out supply and demand. We have to bear in mind that consumers are interested in outcomes that matter to them, rather than the processes behind those outcomes, however interesting they may be to us. That can sometimes be a problem for competition policy and for the authorities.

There are several things that can be done to limit the problems.

The competition authorities should manage expectations in explaining what can and cannot be achieved. We should also take great care to make the best possible use of those instruments which allow some flexibility in the competition analysis. We should not hide behind a narrow orthodoxy and should be willing to take account of the overall policy context.

There are things others can do also. One is to ensure a measure of rigour and openness about the processes for determining which policy prevails in a conflict. Competition analysis is usually fairly rigorous—it is important to ensure that decisions based on apparently conflicting policies are made equally rigorously.

Another is to minimize the lessening of competition in any policy ‘trade-off’—competition must still be allowed to operate within whatever limits are ultimately set by other policies.

But that is as far as things should go. The idea that competition is just another policy to be weighed in the balance against others is insidious and potentially dangerous to the functioning of the economy. Two years ago, Martin Wolf reviewed in the Financial Times, *The Power of Productivity: Wealth, Power and the Threat to Global Stability*,<sup>26</sup> by William Lewis, a leading US commentator and founding director of the McKinsey Global Institute. After examining the various constraints on productivity, he summarized the conclusion so: ‘Undistorted competition ...is the most important long-run determinant of productivity and so prosperity. Competition is how productive companies win out’. But he emphasized that appreciation of the merits of competition can never be taken for granted: ‘Competition upsets intellectuals who glory in the notion of state benevolence, bureaucrats who administer state programmes, businessmen that receive state favours and in short all those who gain, directly, or indirectly, from distortions.’

That sets out the challenge clearly enough. It is up to us to rise to it.

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<sup>26</sup>FT 18 January 2006.