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Editorial

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Competition policy aims to tackle situations where there is a clear lack of competition in a market, or a danger that this will develop as a result of actions contemplated (such as mergers). In doing so, it commonly has two incidental positive impacts, one on productivity (because poor productivity can fester under conditions of limited competition) and one on consumers (because competition allows consumers a choice of suppliers). It also commonly has an impact upon employment, which may be either positive or negative. Competition policy can have an impact on consumers outside the jurisdiction as well as inside it. However, there may be a negligible impact upon final consumers in some cases (for example, whether or not a merger between two major suppliers of baby incubators to the NHS takes place) and clearly impact on consumers is not a necessary condition for investigation. At the same time, some competition investigations have a clear and obvious potential impact upon consumers. A prime example must be the current Competition Commission investigation into the groceries sector in the UK, a sector accounting for a significant proportion of consumer expenditure and one that has been the subject of more than one previous investigation.[1]

Consumer policy aims to redress a potential imbalance between (domestic) consumers considering a purchase and firms aiming to satisfy that desire. Firms normally deal with many consumers and in doing so can maintain informational advantages over them. For example, they can take advantage of the fact that consumers may face switching and search costs, or may be unaware of their opportunity to change supplier. Firms can pursue obfuscatory marketing tactics, such as making misleading statements or presenting unanticipated dilemmas. A policy to reduce search costs (for example providing a website on which consumers can compare prices amongst electricity suppliers), or to inform consumers of their rights (for example, that they need not buy their spectacles from the company where they had their eyes tested), or to enforce a standard approach to expressing the true rate of interest on a loan, has a direct impact upon competition. But consumer policy also aims to protect consumers against fraudulent traders who may abscond with their money, which is only tangentially related to competition. Consumer policy is used in many sectors to enforce adequate standards of service, which again is not obviously tackled under competition policy.

Despite the differences, competition policy and consumer policy share one aim, to make markets work more effectively. They tackle different problems that markets may

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[1] I am a member of the Competition Commission. However, I am not engaged on the Groceries enquiry.

exhibit. But a solution to one problem may have a positive effect on the other area, as the examples above have illustrated, and it would be awkward if competition and consumer policy were actually in conflict. Whether they can move closer is a moot point, discussed by some of the contributors to this issue.

The Papers

In 'The Controversies of the Consumer Welfare Standard', the author raises the question of whether it is more appropriate to determine competition cases on the basis of total welfare (consumer plus producer welfare, without regard to distribution) or consumer welfare (assigning producer welfare zero weight). At first sight, the only logical basis for competition policy would seem to be enhancement of total welfare, following the principle of Pareto optimality,[2] and this will often be to the benefit of consumers. A simple, if far-fetched, example illustrates the problem. A policy action to reduce price from monopoly to competitive level enhances consumer welfare more than it reduces producer welfare, by capturing for consumers the previously unavailable deadweight welfare loss,[3] and so enhances overall welfare. However, a policy that supplied a monopolist with sufficient information to enable it to practise first-degree price discrimination between consumers would also enhance overall welfare by enabling the monopolist to capture the pre-existing deadweight loss - each consumer would be charged precisely according to their willingness to pay, so long as this was no less than marginal cost. Yet, this might not meet with social approval! To take a third example, a merger between two competitors that would have clear and demonstrable efficiency benefits (perhaps a tall order!), but at the same time would reduce the industry to a monopoly, yet affect the competitive outcome less than it enhanced efficiency, would be allowed under a total welfare standard, but not under a consumer welfare standard. The difficulty lies in the fact that the overall welfare standard requires only that the gainers can in principle compensate the losers, not that this is at all practicable. Hence one appeal of the consumer welfare standard is that it does indeed entail consumers becoming better off. But for a thorough investigation of the topic, see the paper itself.

The general issue is developed from the particular viewpoint of the link with consumer policy in 'Competition Law, Consumer Policy and the Retail Sector …' the thoughtful second contribution in this issue. This explores the linkages between competition law and consumer protection law in some depth, both in the abstract as a question of logic, and with particular implications drawn from what the author sees as a movement towards international strengthening of consumer protection and an enhancement of its role in competition policy.

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[2] An action is Pareto-optimal if a movement from one allocation to another can make at least one party better off, *without making any other party worse off*. It is the italicized qualification that makes for the difficulty, as I discuss below.

[3] Some consumers are willing to pay more than the resource cost of obtaining the item, but less than the monopoly price. These are the subjects of the deadweight welfare loss.

The third paper 'Representation of Consumer Interest by Consumer Associations …' relates implicitly, like the first, to the Coase Theorem.[4] As the University of Chicago, School of Law website puts it:

> The Coase Theorem can be simply stated: in a world where there are no transaction costs, an efficient outcome will occur regardless of the initial allocation of property rights. This revolutionary idea is simple in statement but extremely useful and complex in practice[5]

To explain the connection, going back to the first contribution, if there were no transactions costs, the overall welfare standard would clearly be superior, assuming the property rights were allocated to consumers, because the gainers could compensate the losers and so Pareto-optimality would be assured. If, to take my third example, the customers in the merging industry held the property rights, then the firm would be willing to compensate them for the increased prices they would then suffer, in exchange for the merger being allowed to go ahead. In practice, of course, consumers are generally a diverse group, whose interests are commonly not sufficient for any one of them to pursue a claim against a firm for proven excessive pricing. The "class action" approach is one solution to this problem, probably explaining in part the much greater prevalence of private actions in competition policy in the US than in Europe, but it is definitely not a solution without transactions costs- lawyers take a substantial cut! An alternative solution to the problem of diffuse consumer interests is the 'supercomplainant'. This paper argues that despite the introduction of representation powers for these bodies in competition legislation, they still have limited ability to represent consumer interests.

The final paper, 'The Supermarket Sector in China and Hong Kong: a tale of two systems' is somewhat different from the other papers included in this issue. This is an interesting case study that brings out a number of points. First, Hong Kong is (or was) a very small economy. As we might expect, in some sectors there will be a very small number of market players due to the small market size.[6] What is less expected, in an economy often thought to be the epitome of competitive capitalism, is that Hong Kong has no general competition law. Therefore we are enabled to see what would happen in a market in the absence of competition policy (something that, paradoxically, some competition authorities would like to be observed, in order that the value of in fact having a competition authority can be demonstrated). The author argues that the supermarket sector has been characterised by abuses of market dominant positions by the incumbent duopolists. In contrast, in the supposedly non-competitive economy of China, competition in the supermarket sector flourishes, it is argued.

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[4] Neither, however, cites the fundamental article: Coase, RH, 'The Problem of Social Cost' (1960) 3 *Journal of Law and Economics* 1-44.

[5] They should know; Coase taught there and evidently still occasionally visits.

[6] For a classic exploration of the (inverse) relationship between market concentration and market size, see Sutton, J, *Sunk Costs and Market Structure*, MIT Press, 1991.

Altogether, the papers included in this issue provide a variety of interesting perspectives on the interrelationship between competition and consumer policy.