

Competition policy in troubled times

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Summary

While recent years have witnessed growing public confidence in the ability of competitive markets to deliver positive outcomes, the credit crunch and the recession have shocked markets, policy-makers and the general public and risk damaging that confidence.

Recession is potentially hostile towards competition policy: the less visible and less immediate costs of restricting competition can look more attractive to policy-makers faced with a range of unpalatable options. Policies to relax competition in the US in the 1930s and in Japan in the 1990s arguably added to the duration of recession in both countries. Learning from history and the robust economic evidence linking competition to productivity growth, we need to ensure that today's solutions do not inadvertently become tomorrow's problems.

It is essential that the causes of the credit crunch are properly diagnosed so that the policy response is targeted 'micro-surgery' rather than drastic amputation. If we mistake regulatory failure for market failure, we risk

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undermining the source of much of the wealth creation that came from the opening of markets to competition.

Intervention to rescue the financial system from systemic collapse in exceptional circumstances can be crucial, but should not be seen as a reason to suspend the importance of competition in other sectors, either via State aid, anti-competitive mergers or cartels.

Subsidies are rarely ideal: they are costly for the taxpayer, can prop-up less efficient firms, create dependency, and ultimately damage competitive incentives. Restrictions on competition are worse. In addition to higher consumer prices and the inefficiency, they are less transparent and can result in permanent changes to market structure. Ad hoc changes to the competition rules can also remove consistency and predictability for business, with additional harm to efficiency. Naturally, incumbent business will rarely object to subsidies or restrictions on competition.

The OFT – and other competition agencies – need to be able to respond quickly to changing priorities, and display a degree of pragmatism in recognising times when other policy interests may over-ride competition policy. At the same time, our role as advocates of competition, within government, with fair-dealing businesses and beyond has never been more important; supporting governments in tackling powerful private vested interests whose solutions would cost us dearly well into the future.

Have we reached a turning point?

We have witnessed a decade or more in which there has been growing and wider confidence in the ability of competitive markets to deliver positive outcomes for consumers and the economy alike. In an era of macroeconomic stability and growth, and high employment in many countries, the deregulation, privatisation, opening and deeper international integration of markets has thrived against the background of evidence that

competition is a key driver of productivity growth and wealth creation.² Competition, and policy to support it, have thrived in this environment. Competition advocacy against disproportionate state restrictions on competition grew. The openness of international trade and the opportunities to compete in wider geographic markets has lessened traditional arguments about competition policy standing in the way of 'necessary' national champions. Governments have opened more markets to foreign investment and ownership, including key strategic industries that had once been nationalised, although many limits clearly remain. Greater appreciation of the importance to business, and thus to consumers and economic growth, of stable and predictable policy towards mergers supported an increasing reliance on politically independent agencies applying a competition framework.

Recently, two things have happened. First, many leading economies have slowed down or entered recession. Second, the 'credit-crunch' has shocked markets, policy-makers and the general public. Recession increases public pressure on politicians to intervene to deal with failing firms, unemployment and consumer vulnerability. The credit-crunch, aside from its impact on the real economy, alters public confidence as between markets or state intervention to deliver good outcomes. Greater demand for public intervention in markets has resulted.

Reduced support for competition?

A recession has the potential to be inimical to competition, and policy to support it, for several reasons. First, competition delivers its best market outcomes when it drives improved efficiency, and this takes time. Second, it does this in part by enabling new entry of efficient firms and driving the exit of inefficient firms. Third, competitive, and especially innovative, markets

² The 2001 White Paper, 'Productivity and Enterprise: a World Class Competition Regime' which preceded the UK Enterprise Act 2002 set out the evidence at that time (available at www.archive.official-documents.co.uk/document/cm52/5233/523301.htm). This evidence was influential internationally: see, for example, the Australian Productivity Commission's Review of National Competition Policy Reforms Inquiry Report, April 2005, available at www.pc.gov.au/projects/inquiry/ncp/docs/finalreport.

For more recent evidence, see Productivity and Competition: an OFT perspective on the productivity debate, January 2007, OFT 887 and our evaluation work programme, available at www.of.gov.uk/advice_and_resources/resource_base/evaluation/publications.

often produce better value for consumers alongside more uncertainty around price, quality, range or service.³

In a recession, the short-run may be prioritised; the exit of failing firms may be perceived to be more costly for society, especially if concentrated in a local area; and tolerance for uncertainty among consumers may reduce. Or, put another way, the immediate costs of competition to existing business, employees and consumers may be up-front and visible, with the benefits delayed and less visible. Tolerance for this will be lower in a recession.

The airline sector in Europe illustrates all three features. The initial liberalisation delivered substantial benefits to consumers and the economy, albeit with more variation in consumer experience.⁴ More efficient new entrants created incentives for incumbents to be more efficient. There was greater tolerance (in the EU) towards allowing failure (for example, Sabena post 9/11) and to opening markets to foreign entry and even foreign ownership of traditional flag carriers. While the initial liberalisation was slow to achieve tangible effects, there has been widespread public support for the benefits. Notwithstanding, many countries retain protectionist ownership rules for airlines and restrict competition in airport and landing slots in ways that continue to limit competition. Positive outcomes such as this might easily be forgotten in times of crisis.

The credit-crunch raises a more general risk that the emphasis on open, competitive markets and the benefits that they deliver is reduced or even lost as part of an over-regulatory response. The suspension of the competition rules by the Roosevelt administration in 1933 is argued to have added to the duration of the Great Depression, and government intervention to restrict competition in 'structurally depressed industries' prolonged the Japanese

³ Standardising, even non-price factors, can inhibit competition, see, for example, Response to the super-complaint on credit card interest rate calculation methods by Which? 26 June 2007, OFT935, available at www.offt.gov.uk/shared_offt/reports/financial_products/oft935.pdf

⁴ Much of this (online sales, more destinations, etc) was for the good. Some of it has required enforcement action under consumer law. See, for example, press release 118/07 'OFT takes action against 13 airlines over misleading holiday pricing', 9 August 2007.

recession in the 1990s.⁵ On top of the clear evidence that competition contributes positively to productivity growth and competitiveness, these episodes should serve as a warning against the attractive sirens of reduced competition.

It is important that the cause of the credit crunch is properly diagnosed so that the policy response is targeted micro-surgery to address this cause rather than crude amputation as a reaction to the symptoms. If we mistake regulatory failure for market failure, we risk undermining the source of much of the wealth creation that came from the opening of such markets to competition. Regrettably, market failure has become a mantra recited whenever economic outcomes do not accord with what a well-organised group of producers want.

The cumulative effect of the recession and credit crunch is that we see more distressed businesses, including banks, turning to government for assistance at exactly the time when support for public intervention is growing.

Responding to the crisis

A recession can facilitate strong growth in long term productivity. Unlike a boom, when inefficient players may survive and even grow, an economic downturn will tend to drive out the less efficient market players. This process of creative destruction leaves a stronger and more efficient supply base, thus driving innovation and productivity growth in the next period of expansion. This is a reason why competition agencies should apply a rigorous failing-firm 'defence', especially in a downturn. And it is a reason why governments should be very careful about propping-up ailing firms via State aid or other means.

⁵ For the US, see Harold L. Cole and Lee E. Ohanian, 2004. '[New Deal Policies and the Persistence of the Great Depression: A General Equilibrium Analysis](#),' [Journal of Political Economy](#), University of Chicago Press, vol. 112(4), pages 779-816, August. See also 'The battle of Smoot-Hawley' (*Economist*, Dec 18 2008) on the negative impact of protectionist tariff raising. On Japan, see Hayashi and Prescott, 'The 1990s in Japan: A lost decade', *Review of Economic Dynamics*, 2002; Porter, *Can Japan Compete?* Macmillan Press 2000, pp 2-3 and Chapter 4; Porter and Sakakibara, 'Competition in Japan' *Journal of Economic Perspectives*, Volume 18, number 1, 2004 p.47; Bill Emmott *Rivals* Chapter 8,; *How the struggle between China, India and Japan will shape our next decade*, Penguin 2008; 'What Ails Japan' (*Economist*, April 20 2002).

The fact that banks are fundamentally different from other businesses may exceptionally justify intervention.⁶ Bank failure risks contagion effects (i.e., the failure of one bank may lead to a run on others, as opposed to other sectors where the removal of one player would normally be in competitors' interests). The collapse of confidence in turn caused liquidity to disappear, and thus removed an essential lubricant for the banking system to function and brought us close to systemic collapse. In this sense, the credit crunch resulted from an exceptional implosion of supply, and not simply a cost increase or a contraction of demand.

The state of the financial sector points to a further rationale for intervention. If the credit market has ceased to function effectively, then firms that struggle could be those whose re-financing is due earlier or which lack a broader conglomerate base, and not those who are least efficient. Put another way, banks or other providers of finance normally play a crucial role in sorting out the efficient from inefficient players: with rationed credit, they may cease to perform this vital function. In this case, efficiency and productivity growth could suffer further.

Government intervention to get banks lending to business on a vigorously competitive commercial basis would enable banks to resume their critical function for the economy as a whole. This would be far better than directing government State aid to failing-firms or their (non) customers.

Aside from measures to restore competitive and effective banking, there are two ways in which governments can respond to companies in distress: they can give them money directly via State aid, or grant them monopoly profit by allowing anti-competitive mergers. Either way the citizen pays; as taxpayer and/or as consumer through higher prices. In all cases, efficiency and competition are harmed, often with long-term consequences.

The risks with State aid are clear: if the government lacks the expertise and knowledge to sort out efficient from inefficient players, then it may just end up rescuing inefficient firms. A policy that is open to arguments for State

⁶ See John Vickers, 'The Financial Crisis and Competition Policy: Some Economics', *Global Competition Policy* (www.globalcompetitionpolicy.org, December 15 2008).

aids additionally creates incentives for wasteful rent-seeking⁷ activity (businesses seeking profits through manipulation of the economic and/or legal environment rather than trade and wealth production). For these reasons, the EU competition framework uses State aid control to prevent harmful interventions, and independent merger control to prevent mergers that restrict competition.

If it is, exceptionally, necessary for the government to intervene (as in the case of banking outlined above), State aid might be preferred to allowing an anti-competitive merger:

- State aid may have an immediate effect, whereas monopoly profits may not flow immediately.
- It may be that State aid can be limited in duration (and indeed there may be political mileage in so doing). However, State aid may be extremely difficult to remove because of rent-seeking behaviour by powerful vested interests, as subsidising agriculture in the EU and US demonstrate.
- State aid may be tied to specific policy objectives, such as restructuring, whereas an anti-competitive merger hands a licence to charge monopoly prices with no conditions attached. However, absent clear and measurable incentives, State aid could have the same negative effect on efficiency as anti-competitive mergers.⁸
- On the other hand, State aid that is not applied on an equitable basis can further distort competition by creating an uneven playing field. In contrast, an anti-competitive merger will likely benefit rivals because it lessens competition for all players in the market.

These arguments are compelling in the framework of State Aid in the EU, which specifically requires that aid be specific and constrained, transparent in application, time-bound, and with a clear rationale. The EU framework pays close attention to the distortionary effect on the market (i.e., prevents beggar-thy-neighbour approaches) and thereby supports open markets and a level playing field.

⁷ Rent-seeking occurs when companies seek to profit through lobbying or other activity to change the regulatory and legal environment than through trade and wealth creation. See Tullock, Gordon (1967). 'The Welfare Costs of Tariffs, Monopolies, and Theft'. *Western Economic Journal*. See also R. A. Posner, (1975) 'The Social Costs of Monopoly and Regulation', *Journal of Political Economy*.

⁸ 'X-efficiency', see footnote 11 below.

Some may argue for allowing an anti-competitive merger over State aid because it would give rise to synergies: this argument should be treated with the caution normally given to claims about efficiencies made by merging parties, especially in the light of evidence that market power leads to less, not more, efficiency inside firms.

Overall, subsidies harm competition and the consumer and, unless very carefully structured and time-limited, may do as much harm as anti-competitive mergers. The need for intervention to prevent systemic collapse in banking in exceptional circumstances should not cause us to set aside the competitive framework which, in preventing both distortionary State aid and anti-competitive mergers, provides an essential part of the foundation for long-term productivity growth.

Restrictions on competition

I have spoken above about mergers, but the argument applies equally to other forms of anti-competitive agreement. Not all agreements between competitors are harmful to competition and competition law clearly allows collaboration and competitor agreements that are beneficial to efficiency and long-run consumer welfare.

Concerns may arise, however, over certain types of 'voluntary' agreements among competitors that are put forward by government or its agencies as a means to achieve laudable and important health, environmental or other policy objectives. The difficulty of changing consumer behaviour directly – currently a hugely attractive policy goal in many areas – makes it very attractive to do so indirectly by asking, for example, retailers or manufacturers to agree voluntarily not to supply certain 'bads' (for example, fat, salt, incandescent light bulbs) or to raise prices (for example, plastic bags).

Although the long-term impact of such agreements may appear to be less than that of a merger (because they do not alter market structure) their effect may be more costly in other ways, such as weakening competitive incentives in those markets and undermining compliance with competition law in other markets by sending mixed signals to business as to what is permitted and what is prohibited.

When it comes to market failure, two wrongs do not make a right: creating a second market failure by restricting competition is not a sound policy response to a market problem that is due to information failure.⁹ The highly costly and ineffective use of barriers to entry in markets such as taxis and pharmacies to 'correct' informational market failures also illustrates this point, and our economies are still riddled with the long-term legacy of such flawed policy measures.

There are several reasons why restrictions on competition may be chosen even though they are more costly to society than alternatives. First, the costs are generally less visible and less immediate; this combined with generally low levels of transparency means accountability for them can also be unclear. Moreover, the persistence and nature (for example, X-inefficiency¹⁰ and rent-seeking) of the costs are likely to be underestimated. Second, such policy-making rightly relies on a close-working relationship with business and, more generally, the business voice (especially in a particular sector) is louder and more focused than that of consumers. Many businesses will likely prefer less competition. In contrast, alternative instruments such as regulation and taxation tend to involve more visible, up-front costs and a greater degree of transparency. The move to better (that is, less) regulation and the pressure on consumer budgets from higher food and energy prices during 2008 made regulation and taxation less attractive as policy responses.

The case for a consistent framework

Perhaps the most compelling reason for favouring other instruments to deal with the recession and credit-crunch is the potential cost in terms of deterrence and compliance.¹¹ Setting clear and consistent rules for business (and if possible also for policy makers) creates a predictable environment for investment. When combined with strong competition, such investment

⁹ The same is true for externalities, which is relevant to policies addressing environmental issues.

¹⁰ 'X-efficiency' is the effectiveness with which a company converts inputs to outputs. Firms facing competitive pressure are less likely to be inefficient. See Leibenstein, Harvey. 'Allocative Efficiency versus X-efficiency' *American Economic Review*, June 1966, 56(3), pp. 392-415.

¹¹ For an examination of the importance of deterrence effect see, *The Deterrent Effect of Competition Enforcement by the OFT*, A report prepared for the OFT by Deloitte, OFT 962, November 2007.

brings and innovation and results in long term benefits for consumers and productivity growth.

This applies equally to private and public decision-making. In essence, our aim should be to support mergers and policy measures that increase efficiency and consumer welfare without increasing market power. In doing so, we should avoid unnecessary train-crashes that arise because the chosen track proves to be a siding.

Consider, for example, merger policy as an example of private decision-making. At the outset, a company may have several alternatives in terms of merger, takeover, etc., involving different potential partners. However, the company will generally need at an early stage to select one of these for development and implementation. When companies know the merger rules, the project that they develop will be one that keeps within (or perhaps on the edge) of the rules. This minimises two costs: first the risk that the deal falls foul of the rules and gets blocked, and second the risk of choosing safer but less efficient deals. Such an approach has substantial cost-savings for the economy, both in avoiding big failures, the waste of resources and time, and in lower risk for the companies involved. In a failing-firm situation, the initial choice is particularly crucial because the company is unlikely to have time for alternatives.

The public sector analogy might be a proposal to achieve a policy objective with public benefits (for example, raising the price or restricting the supply of an environmentally harmful product). Here the alternatives centre on the policy instruments available (for example, taxation, regulation). The policy-maker must outline the net benefits to be obtained and work out the most effective instrument. Just as an anti-competitive merger may be a company's preferred alternative because it ignores the wider social costs of the market power (resulting from a behavioural or structural measure which generates anti-competitive effects) it may also be the policy-maker's first choice because the long-term impacts of reduced competition are less visible than the immediate costs of other instruments. In the policy-making context, the costs associated with favouring the more socially costly instrument at an early stage are also high. If the proposal does not go ahead, there is the waste of time and effort, and possibly damage to support for an alternative approach. If the measure is implemented, it can result in substantial and

often persistent harm to consumers and society that could have been avoided by a less restrictive approach.

Two features of UK competition policy incentivise consistent decision-making that improves welfare. On the merger side, decisions are taken by independent and accountable agencies (the Office of Fair Trading and the Competition Commission) using a competition test.¹² Guidance, reasoned decisions, speeches and meetings with business and its advisers serve to increase consistency and predictability, thereby assisting business in their investment planning. The combination of not regularly being faced with substantial anti-competitive transactions and regular and significant use of remedies suggests that the UK system increasingly minimises the costs and risks identified above.¹³

On the policy side, there are several measures in place to ensure that policy-makers take account of the implications and costs of their decisions on competition and the competitive process. All new policy proposals must be supported by an Impact Assessment, which explicitly takes account of possible competition effects. The OFT supports that framework and co-chairs a cross-Whitehall competition forum.¹⁴ The OFT's Advocacy Unit works more closely with individual government departments and on specific issues to advise on the costs and develop alternatives that are less-restrictive of competition. Our experience is that early engagement is most helpful. In addition, market studies¹⁵ enable the OFT to examine existing restrictions and to make recommendations to government: the government commits to respond within 90 days, or to refer the market to the Competition Commission. The ability of consumer organisations to make a Super-

¹² If firms are restricted to considering mergers that are consumer welfare enhancing, or at least not detrimental, they will choose the one that is most profitable from amongst those that do not harm consumers. This profit-maximising behaviour against a consumer harm constraint is likely to be better for total welfare. See M Armstrong and J Vickers, 'A Model of Delegated Project Choice' <http://else.econ.ucl.ac.uk/papers/uploaded/268.pdf>.

¹³ Efficiencies may be taken into consideration alongside certain anti-competitive effects. However, it should be noted that this is a necessarily high but not insurmountable evidentiary standard (see completed acquisition by Global Radio UK Limited of GCap Media plc ME/3638/08, 27 August 2008).

¹⁴ In 2007 the OECD published a 'Competition Assessment Toolkit' that provides a methodology for identifying unnecessary restraints of competition in existing and draft laws and regulations, while at the same time developing policies that are less restrictive of competition. www.oecd.org/dataoecd/15/59/39679833.pdf.

¹⁵ See *The OFT's Market Studies*, Beesley Lectures on Regulation Series XVIII 2008 available at www.of.gov.uk/shared_of/speeches/spe0908a.pdf.

Complaint is the most innovative of a range of measures to ensure that the consumer voice is better represented. Some of these features are unique to the UK system.

So what should agencies do?

So what are the lessons for the OFT and our counterparts around the world?

Flexibility and prioritisation

First, agencies need to be both pragmatic and flexible in their application of competition policy. I favour a 'Goldilocks' approach to flexibility: it needs to be just right; if too inflexible, we may cause wider harm to the economy in the short-term; if too flexible, we may cause greater long-term harm by undermining investment, incentives and innovation. This is not about moving away from the core aim of making markets work well for society, or weakening our enforcement stance, but simply recognising that, in crisis and recession, the types and areas of intervention that best achieve this may change.

The OFT's prioritisation principles reflect the balance described in the preceding paragraph.¹⁶ There are eight principles grouped under the headings of impact, strategic significance, risk and resources. The principles are not applied in a mechanistic way: they focus our efforts and resources on deterring and influencing behaviour that poses the greatest threat to consumer welfare, and intervening in order to protect long-run consumer welfare and, in the process, drive higher productivity growth. They also demonstrate that we recognise the need to avoid imposing unnecessary burdens on business. In a similar vein, our annual plan consultation¹⁷ explicitly builds in our desire to have greater flexibility to ensure our resources are deployed in the way that best furthers the OFT's mission of making markets work well for consumers.

In terms of individual issues, agencies will need to be creative and engaged at the outset. All too often, restrictions on competition result not so much from malign intent as from a lack of awareness of the full costs and imaginative alternatives, especially early in the process. Here it will be

¹⁶ OFT Prioritisation Principles, OFT 953, October 2008 available at www.oft.gov.uk/advice_and_resources/publications/corporate/general/oft953.

¹⁷ Annual Plan 2009-10, An OFT Consultation, OFT 1036con, November 2008 available at www.oft.gov.uk/about/what/annual/.

particularly important to ensure that other frameworks (for example, industrial policy, financial services policy) harness strong competition to deliver their objectives. At the same time, we must recognise that there will be situations where competition in the market may not be the answer. Our existing competition framework and our application of it already does this well.

What is important here is that these costs, especially the longer-term ones, are fully included in the decision-making process. If, having weighed up all the pros and cons, a restriction on competition is considered necessary, then we should attempt to be creative in terms of narrowing its scope and, if possible, its duration.

Advocacy

Second, agencies will need, individually and collectively, more than ever to engage in competition advocacy. The OFT already engages in a great deal of advocacy on individual issues, and I suspect we will need to do more. But we will also need to engage in 'framework advocacy', that is, for the competition framework. In many countries, competition authorities have a statutory role in advising government on the effects of restrictions on competition: a feature generally designed to help counter-balance the power of strong producer vested interests that lobby for less competition.

It is our role, and duty, to repeatedly emphasise the importance for long-term business investment and decision-making of a consistent and clear framework of competition and consumer enforcement. When the current recession is over, the UK and the EU will face even stronger competition from growing economies such as China, India, Russia, South Africa and Brazil. Restrictions on competition would represent a long-term drag on the economy in the future. Similarly, the UK has had an enormous influence on the development of a policy of open markets, challenging protectionism, and leading best practice in the EU and beyond in the past decade. We should not lightly ignore the potential long-term cost to our future welfare of any diminished leadership, especially at a time when key international standards in this area are being determined.

Another aspect of this is that, in a recession, agencies will often face a difficult trade-off between doing work that addresses 'real' harm (washing dirty laundry) and addressing issues that raise huge public concerns but

where there is not a competition problem, or not an intervention that could make things better (washing clean laundry that looks dirty). Agencies should not underestimate the broader value of the latter in terms of public confidence in market outcomes, and this value may be much higher now (in a more mature competition regime and in light of the current financial climate) than it was in recent years. The UK competition regime, and in particular market studies and market investigation instruments, can and should be used to build public confidence in markets, not just by solving problems but also by ensuring and demonstrating that markets are publicly accountable.¹⁸ Recent market studies and market investigation references in markets such as groceries¹⁹ and homebuilding²⁰ have provided an independent review of the evidence and usefully set aside concerns that weak competition was a problem in these markets.

Furthermore, it may not be enough to advocate competition without putting forward suggestions for how to deal with the side-effects. We need to practice smart medicine. For example, often markets work well, but have adverse distributional consequences. Should competition agencies advise governments on the magnitude of these effects so as to assist wider government policy on equity?

Vigilance and coherence

Third, agencies need to think about how they work, and understanding and anticipating what is happening across the economy. The OFT's recent study on sale and rent-back is a good example of responding quickly to a new and potentially very harmful form of exploiting financially distressed homeowners.²¹ We must also be equipped to deal with more failing-firm mergers; for this reason, the OFT recently restated its approach to these issues whilst

¹⁸ See page 31 of speech, The OFT's Market Studies (the Beesley Lectures) Lectures on Regulation Series XVIII 2008 available at www.of.gov.uk/shared_of/speeches/spe0908a.pdf.

¹⁹ Market Investigation into the Supply of Groceries in the UK, available at www.competition-commission.org.uk/inquiries/ref2006/grocery/index.htm.

²⁰ Homebuilding in the UK available at www.of.gov.uk/advice_and_resources/resource_base/market-studies/current/home1.

²¹ Available at www.of.gov.uk/shared_of/reports/consumer_protection/of1018.pdf.

announcing that it will offer informal advice to parties in appropriate cases that involve potential failing-firm issues.²²

Other areas are less immediately obvious, but nonetheless could be important. For example, we may see greater temptation to cartelise markets with rising competition between existing suppliers for a shrinking demand. The UK's criminal and civil cartel law should have a powerful deterrent effect. It is important that we are vigilant to the potential rise of cartels in a recession, and have the resources to respond to a rise in immunity applications. In this regard, achieving early resolution of cases may be a useful way to increase efficiency, and free up resources to address other issues.

All this also requires good communication and co-ordination within government, across business and consumer stakeholders, and across international partners. Working with international partners is key not just to ensuring that our responses to the crisis and recession build on best practice and are co-ordinated, but more so that long-term business investment can be based on a consistent international approach.

Conclusion

It is widely accepted that open and competitive markets deliver benefits. The existence of competition law and policy recognises public intervention is necessary to support strong competition and resist the market failure that arises from monopoly, cartels and other restrictions. The legal framework in the UK is relatively new, but is based heavily on both the EU (more in terms of the formal law) and US systems (more in terms of methodology and enforcement tools).

The competition frameworks in both those jurisdictions have stood the test of time very well, and dealt with hugely varying economic conditions on both sides of the Atlantic. We can see clearly the benefits brought, and the costs inflicted, when not applied. The example of airlines in Europe illustrates the former; the example of delayed recovery from the depression in the 1930s the latter.

²² Restatement of OFT's position regarding acquisitions of 'failing firms', 18 December 2008, OFT1047, available at www.of.gov.uk/news/press/2008/146-08.

Both regimes have demonstrated an ability to balance the flexibility to deal with changing economic conditions alongside the need for a stable and consistent approach to foster long-term investment. The priority for competition agencies should be to continue to demonstrate the benefits of that framework, and to do so consistently internationally so that our economies are poised to grow on the back of strong competition and open markets, delivering better outcomes for consumers and societies.