



# **Competing Concepts of Competition and The Evolution of Competition Policy in the UK**

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## **Introduction**

The central theme of this paper is the development of competition policy in the UK since 1945, a process culminating with the Competition Act of 1998. I shall locate these developments within a wider framework of analysis in relation to the idea of competing concepts of competition and their link, often tenuous, with the conduct and development of policy in relation to monopolies, mergers and restrictive competitive practices. My central point will be that competition is an instituted economic process in which the rules of the game are embodied in publicly accepted norms of business behaviour, norms that regulate the conduct of the competitive process. Policy, and its embodiment in legislation and the function of regulatory authorities, is an important part of this instituted framework. All modern states take a close interest in the workings of the competitive process and claim to regulate it and oversee it in ways that are in the public interest. However, the ways in which they do so differ enormously from country to country in part because neither the notion of competition nor the notion of the public interest are capable of precise definition. It is for this reason that frameworks of competition policy may not translate well from one context to another.

Other national policy objectives also matter and competition policy must be consistent with them. This is particularly clear in the case of the UK, which has its own particular model of capitalism. The British traditions of law and administration have always emphasised pragmatism as a guiding principle of action and the competition institutions reflect this fact. Moreover, changing political currents also play an important role. By the 1960s and 1970s a

concern with industrial policy, with restructuring and with corporatist solutions to industrial development, created a particularly restrictive environment for the conduct of competition policy. In the 1980s and 1990s this post-war tradition was swept away and replaced by a neo-liberal orthodoxy that gave the regulation of competition a much greater range and scope. In particular, the privatisation of the former nationalised industries created new problems of regulating competition to mimic the market process in industries that many consider to be natural monopolies or natural oligopolies. Regulation had a new role, not to create the conditions for competition but to mimic them. The unique problems this created are explored below. A further cross current of great importance has been the emergence of a powerful European policy in relation to the regulation of competition and mergers. From 1973 to the late 1990s the growing strength of the European position created tensions within the UK competition community, tensions that have been resolved, one states this with caution, in the 1998 legislation.

### **The 1998 Competition Act**

It will be useful to begin with the new legislation. We can trace its origins from the 1948 legislation, that established the Monopolies and Restrictive Practices Commission, through the creation of the post of Director General of Fair Trading, and the Office of Fair Trading in 1973, to the transformation of the Monopolies and Mergers Commission into the Competition Commission in April 1999. This provides us with the background to an appraisal of competing theories of competition.

There is no doubt that the 1998 Act changes the formal landscape of UK competition policy in a fundamental way. In that it replaces the pragmatic notion that the authorities take an agnostic position on the merits of each case, with a prohibitive position that aligns the UK with the provisions of European Law. Moreover, the investigative powers of the DGFT are increased and there is a provision for potentially large fines for those who transgress the Act. This is a fundamental change but as always the operation of the new regulations may well give great scope for imaginative interpretation of what does or does not constitute an infringement of the competitive norms.

In his recent, authoritative history of the MMC, Wilks (1999, p.340) has summarised the principles underlying the post-war competition policy settlement in terms of five components. These are, an administrative process defined and managed by the civil service, a bi-partisan approach by the main political parties, a public interest test for evaluating each case, a voluntaristic approach which is non-judicial, and, a case by case approach treating each case on its merits. Against this structure we can see the significance of the 1998 Competition Act.

The principal features of the new position are as follows. The provisions of Articles 81 and 82 of European law (Formerly Articles 85 and 86) are taken as the basis for judging any agreements that restrict competition or any behaviours that abuse a dominant position. To this degree UK law has been harmonised with European law. Secondly, the idea of a public interest test is replaced by a presumption in favour of the promotion of effective competition. The test for monopoly is strengthened, the Office of Fair

Trading is given new investigative powers and for the first time infringements of the law can result in the imposition of fines (up to 10% of UK turnover) and the prospect of third party damages.

These aspects of the legislation mark a fundamental shift away from a voluntaristic process and bargained outcomes, towards a judicial process and legal tests of conformity. Thirdly, the new regime is reflected in the newly established Competition Commission which replaces the Monopolies and Mergers Commission. The old investigative powers of the MMC are retained along with its staff and serving members but a new branch is added in the form of an Appeals Tribunal, headed by a judge, to which the interested parties may appeal a decision and the proposed level of penalties. Furthermore the role of the Secretary of State for Industry and Trade is largely eliminated, in that he is no longer required to make the final decision on the outcome of any investigation, nor is he involved in the process of referring cases to the CC. In many ways this principle of regulatory independence mirrors the position carved out by the utility regulators over the past fifteen or so years. Thus, the tripartite division of powers in the UK system has been eliminated but without destroying its pluralistic basis; investigation and adjudication are kept separate. Fourthly, the emphasis in the new situation is upon attaining benefits for consumers, rather than the former attitude of indifference as to how the gains from greater competition are distributed.

It should also be recognised that the new Competition Act will be supported by other initiatives. These will include a new Utilities bill, proposals for bringing the regulation of financial services within the ambit of competition

law, proposals on the reform of mergers, and the initiatives to decentralise the implementation of Articles 81 and 82.

The chairman of the CC. (Morris, 1999) recently summarised these developments in the following terms:

- an emphasis on creating the conditions for intense competition throughout the economy;
- a much greater emphasis on translating competition into consumer benefits;
- an emphasis on the role of government in setting the framework and stepping back from the operational basis for implementing policy; and,
- an emphasis on the transparency of regulatory processes together with the provision of maximum information consistent with commercial sensitivity and individual privacy.

It will be helpful at this point to turn away from the recent legislation and consider the principles which underpin the analysis of competition.

### **Competing Concepts of Competition**

The first difficulty that any assessment of competition policy must confront is the contrasting ways in which an economic approach to competition can be formulated. Despite the centrality of this notion in economic theory it has come to attract multiple shades of meaning not all of which translate easily

with the idea of competition held by businessmen. A theory which is designed to understand the allocation of given resources to given ends using given means of transformation will be quite different in scope and character to one which is focused on the development of resources, uses and transformations. If the first were the limiting outcome of the second the different views could be presented as natural complements. But this is not easily reconciled with the fact that the natural outcome of a competitive process is market concentration rather than the dispersal of economic influence. Depending on the theory one starts from one end up with quite different perspectives on appropriate competition policies.

The central difference, for our purposes, between the competing concepts of competition is that between states of equilibrium and processes of change. The modern theory of resource allocation presents competition as an equilibrium state of a market dependent on those fundamental forces of demand and cost structure that determine the number of viable survivors. That is to say the state of competition is equated with the structure of the market which is measured by the number and relative size of the surviving firms. From this follows the familiar taxonomy with perfect competition at one end of a spectrum and monopoly at the other, each defined in terms of a relation between market share and the consequential ability to increase price above marginal costs. Between these extremes lies less clear-cut territory either in relation to the idea of monopolistic competition or in relation to concepts of oligopolistic interaction in which expectations of rivals behaviours have overwhelming significance. The crowning achievement of this approach remains the theory of perfect competition even though the problems of competition policy usually lie in that middle ground. This

brings together three independent ideas: in relation to perfection of the market: in relation to freedom of entry and exit; and, in relation to the number of competitors. In respect of the first and second of these attribute the reasoning mirrors that of classical thinking since Adam Smith; freedom of entry and exit being the groundrule that permits the equalisation of the rate of return on capital across different lines of investment. What is new is the emphasis on market structure and in particular the notion of atomistic behaviour in which each firm is required to take the prices at which it buys and sells as market determined data, beyond its influence. By combining together these three ideas, the doctrine of perfect competition generates a coherent set of standards against which to appraise any market situation. Does a firm earn profits in excess of the competitive minimum? Does a firm influence prices of its output or inputs such that they are higher or lower than they would otherwise be? These are important background issues in all approaches to the regulation of competition but they provide only one possible approach to the competition problem.

A wide variety of economists have expressed their dissatisfaction with the equilibrium, structure, conduct and performance view and have proposed a return to the idea of competition as a process, not a state of affairs. Morgenstern(1972) claims that competition as a word employed by economists has lost touch with business reality because its has replaced concepts of struggle and rivalry with concepts of equilibrium. Georgescu-Roegen (1967) puts it very clearly when he argues that perfect competition involves only *passive* behaviour, and that,

“In every domain, but especially in economics, competition means in the first place trying to do things in a slightly different manner from all other individuals” (p.33)

Hence non-price forms of competition become of predominant significance. Finally, we can consider the insight of Joan Robinson (1954) who claimed that,

“In the broad sense in which businessmen understand it [competition] largely consists in destroying competition in the narrow economist’s sense” (pp.245-246)

Most influential of all is the position taken by Hayek (1948) that an equilibrium view of competition is a contradiction in terms,

“If the state of affairs assumed by the theory of perfect competition ever existed, it would not only deprive of their scope all the activities which the verb ‘to compete’ describes but would make them virtually impossible” (p.92)

What this leads to ineluctably is the discovery process view of competition. Competition is an instituted process, a set of arrangements and institutions to explore the space of possibilities linking human needs and knowledge of the resources and methods at our disposal to meet these needs. This process is open ended and depends crucially on the possibility that firms may behave differently, in short, it is linked inseparably to the possibilities for innovation. This is the great strength of the Austrian and evolutionary viewpoints, competition is the process that guides economic development and it knows no state of equilibrium. Indeed capitalism and equilibrium are

incompatible concepts. Schumpeter is the economist who perhaps has seen this connection most sharply with his clear understanding that capitalism is of necessity a method of economic change, the method known as creative destruction. From this perspective the nature of competition depends on three broad factors:

- The *different* kinds of behaviours engaged in by firms to gain competitive advantage. Of course in the presence of different behaviours the notion of the number of competitors loses all substantive effect. Who is to say that two different firms may not compete more intensively than many identical ones.
- The *openness* of the market place to entry by new rivals and the pressures that lead to the exit of marginal producers, and the processes within the market which establish a link between inter firm differences in profitability and changes in market position.
- The degree to which the *innovation* of new products and production methods can alter the established distribution of competitive advantages.

As we shall see below, it is the analysis of behaviours and not structures that is a central feature of the practice of the British competition authorities. Market structure is at most a test for the possibility of adverse behaviours, it is not conclusive in its own terms.

We can gain further understanding of the relevant issues by a short digression upon the nature of contests, games, sports or races performed

within institutionalised rules of the game. Frank Knight, the great neo-classical economist had important insights into the relation between competition and contest in his famous essay “the Ethics of Competition” written in 1923. Knight argues that any contest has a number of characteristics. Chief among these is an accepted set of enforceable rules of the game that determine the nature of the contest, the principles according to which the contest is organised, and the terms for entry and exit in the contest. The rules of the game, a code of conduct, serve to co-ordinate the actions of the rivals, to define permissible and inadmissible behaviours, and to establish the set of prizes and the terms on which they are awarded. One important issue here is clearly the fairness of the rules, “Do they constitute a level playing field?”

Given the rules the second important element is the set of contestants and their associated competitive characteristics. However should the performances of the contestants be uniquely ranked in each play of the contest we should hardly call this a contest, for the results would be perfectly predictable. Thus the third element, an inherent degree of uncertainty arising from the incompleteness of the rules, the impact of unforeseen contingencies and, most important of all, the lack of predictability in relation to the behaviour of the contestants. Neither the outside observer (and competition authorities are outside observers) nor the contestants themselves can observe and interpret the plans and strategies of the rival players or predict the multiplicity of contingent circumstances that bear on the outcome of a contest. Luck is an essential ingredient, the fall of the favourite the success of the dark horse, are an essential part of the picture. In this sense contests are organised as discovery procedures, social

devices for finding the best among a range of rival behaviours. Albeit that which is best is entirely contingent on the rules the prevailing contestants and the element of luck. As Alchian (1951) remarked so perceptively:

“As in a race, the award goes to the relatively fastest even if all the competitors loaf. Even in a world of stupid men there would still be profits” (p.213)

Of course, the element of luck cannot be overwhelming either, if outcomes are entirely random this would destroy the necessary link between characteristics of the competitors and the outcomes without which incentives fail.

It is this set of ideas that has come also to play a central role in evolutionary accounts of the competitive process. Here competition depends upon the variety of behaviours in a population of firms. That variety is translated into differential profits in markets and thus into patterns of selection in terms of differential growth and decline. Innovation processes continually reshape that pattern of variety and provide the developmental impetus to drive the selection process (Nelson and Winter, 1982, Metcalfe, 1998, Dosi, *et al* 1988)

It is a characteristic of these approaches that the idea of a competitive *equilibrium* has no role in the analysis. Instead there is a competitive *order*, a pattern of co-ordination within and between both sides of the market. Co-ordination, how individual economic behaviours fit together and achieve mutual consistency, is central to any analysis of real-world competition,

equilibrium is not. Capitalism is never in a state of rest, there are always reasons to change, always grounds to challenge established positions. This perspective gives us important insights into the role of market institutions in modern capitalism. As order producing devices, market arrangements are to be judged not only on their efficiency in allocating resources to competing ends but on their role in facilitating adaptation to new possibilities and in creating incentives to explore new possibilities. A competitive order is an open order, an open order that can be transformed by innovations of many different kinds. This order, and the way that it changes, may bear little relation to the conventional idea and measure of market structure.

Two further brief observations are in order before we proceed. The first is the connection between the competitive order and economic growth and development. Competition is a powerful means to stimulate growth. Good institutional frameworks enable firms with better products or better methods of production to increase their share of the market and thus to claim a greater share of an economy's productive resources. Selection works to increase productivity by virtue of this transfer mechanism. Moreover, open markets enable innovations to be injected into the contest so adding further to the possibilities for selection to increase the efficiency of activity. Open markets also signal the benchmarks that any innovation must better if it is to gain a market position. These benchmarks are provided by the prevailing pattern of prices and they form a basis for calculating the profitability of any new venture.

Secondly, we should not forget that the dynamic, restless nature of market capitalism is dependent on the fact that market activity is closely related to the generation of new knowledge: not only scientific and technological knowledge but knowledge of market and organisation. It is the attribute of knowledge that, as Popper (1986) expresses it, every addition to knowledge opens up further opportunities to create yet further knowledge. The production of knowledge by means of knowledge is central to modern economic growth and indeed to the operation of dynamic competition.

### **The Evolution of UK Competition Policy;1948 to 1998**

We can turn now to the more practical question of the conduct and development of competition policy in the UK in the post-war period. After a brief outline of the main pieces of legislation we turn to a more thorough outline of the activities of the Monopolies and Mergers Commission (MMC) in the period 1980 to 1999.

As Wilks, has correctly observed, this institution, changes of name apart, has survived the many radical changes in the political landscape that followed the unravelling of the post-war consensus in the 1980s. Few other organisations can make such a claim. Table 1 indicates the main but not all the main items of legislation in this period. The current institutions were established with the 1948 act albeit at a time when competition policy was scarcely centre stage in terms of economic policy. The Restrictive Trade Practices Act of 1956 was the first major step forward, setting up the Restrictive Practices Court and the system for registering anti-competitive

agreements, so separating the administrative control of monopolies and mergers from the judicial control of anti-competitive practices. The next major change was the Fair Trading Act of 1973 that established the position of Director General of Fair Trading, (DGFT), supported by the Office of Fair Trading, and the public interest test for evaluating particular cases, (see table 2). Section 84 of the Act introduced the idea of ‘effective competition’ and the interest of consumers into the assessment of monopolies and mergers for the first time. The inclusion of a clause on the link between competition and innovation and of open entry conditions is also instructive. It was indeed the first sign of the influence of European competition policy and thought upon British practice.

The final step of significance prior to 1998 is the similarly named Competition Act of 1980, introduced by the new Conservative government. This legislation can rightly be said to have put the conduct of competition policy at the centre of economic policy, and it followed a long period of reflection and criticism of the practice of competition policy in the UK. The new law enabled the MMC to tackle market dominance rather than monopoly, it provided for the efficiency review of nationalised industries (Section 11 enquiries) and it enabled the targeting of anti-competitive practices. Reflecting the influence of Article 85, this made unacceptable any conduct that ‘is intended to have or is likely to have the effect of restricting, distorting or preventing competition’. The 1980 Act set the stage for a great growth in the volume of investigation by the MMC and presaged the role that it would soon come to have in adjudicating the licence conditions of newly privatised industries. Market forces had an explicit recognition at the

heart of policy. Indeed the promotion of competition became the industrial policy of the UK.

Figure 1 charts the volume of reports and the scale of staffing at the MMC. The growth after 1980 is clear, as is the volatility of the flow of enquiries, often a function of the predilections of the particular Secretary of State. The peak in the early 1990s is a function of the burgeoning privatisation programme. Table 3 provides a statistical breakdown of the reports, showing quite clearly the changing balance of work. Merger and Monopoly reports dominate, of course, but the effect of the 1980 legislation is also clear in terms of the Section 11 and utility enquiries.

In relation to staffing, figure 2 shows the general structure of an MMC enquiry team. As well as a chairman (drawn from the Chairman or Deputy Chairmen of the Commission) an enquiry would usually contain three to five other Commission members, all of them in part-time positions. Drawn from all walks of professional life they provided, and continue to provide, a powerful pool of expertise and experience of industry commerce and the law. A relatively small number of academics, economists or lawyers normally, leaven this mixture. The important point is that the members were and are independent of government and that the Commission did not originate cases. That task fell to ministers, often following advice from the DGFT, and to the relevant regulators of the privatised industries. To this group is added the first rate skills of professional civil servants, normally drawn from the Department of Trade and Industry, as it is currently known. Under the guidance of the reference secretary this team would assemble the relevant information to conduct the investigation. They held hearings with

the main and subsidiary parties and conducted further hearings with as wide a range of witnesses and experts as was deemed to be necessary for a proper appraisal of the facts. Enquiries were normally completed within six months, a far cry from the extremely leisurely pace of activity in the 1950s when investigations might spread over three or so years. The whole process was and is highly professional, and there is no better indicator of this than the fact that a resort to judicial review of an enquiry has never succeeded in establishing a case of mal-investigation.

The operation of the MMC can be summarised in the following terms. Its function was to investigate and report and it had no executive powers other than those necessary for it to conduct its enquiries. It was required to establish the facts, identify any adverse public interest consequences that flowed from the facts, and, only if there were adverse consequences, would it suggest remedies. In deciding the later it engaged in hypothetical discussions with the parties to whom the remedies apply, it did not bargain and haggle. In forming a view it had regard to the matters set out in the 1973 Act in relation to effective competition, (See Table 2). Every case was treated on its own merits, there were no precedents but it was in a position to compare like with like. In relation to matters of process the general framework of an investigation was to define and investigate the relevant markets to establish whether or not a monopoly position existed, to investigate the profitability of the relevant parties, and to investigate any anti competitive practices that could be identified. The findings in relation to the facts were all important in that they determined the next steps defining the remedies.

The independence of the Commissioners was total, Government Departments could be summoned to give evidence and there was no power of appeal on the substance of its judgements.. The ultimate regulators of its judgements were the Courts and the process of Judicial Review. This imposed a requirement for fairness, for the substantiation of conclusions by appropriate reasoning, and, for the observance of due process in the conduct of its investigations.

It was a typically British institution. The formidable combination of the experience of ‘amateur’ members and the intellectual strength of ‘professional’ officials within a framework of checks and balances is what made it (and its successor the CC) so powerful. To illustrate the work of the MMC it may be helpful to briefly consider two of its recent reports that may be considered to be representative of its general approach.

### **Contact lens Solutions**

The MMC reported on the supply of contact lens solutions in 1993 and its report is fairly typical of its kind. This is an important market with some X thousand users in the UK. The enquiry found that a complex monopoly existed in the supply of solutions, with two companies Allergan and Ciba-Geigy holding 72% of the market between them, and in retailing, where Boots held 36% of the market. As a consequence of their market position Allergan and Boots were found to have acted in such a way that prices were higher than they would otherwise be. In Allergan’s case this finding was underpinned by the very high rate of return it earned on its assets, calculated to be of the order of some 80 % to 100%. Ciba-Geigy earned a

much lower rate of return and no adverse findings were attached to it. Structure does not imply conduct.

Two very interesting aspects attach to this report. The first is the way the commission treated Allergan's claim that its profitability reflected its superior innovative and marketing capabilities. It claimed that after entering the market in 1980, it had captured 38% of the market, and that Ciba-Geigy had seen its share fall from 87% in 1976 to 47% in 1991. In short it was engaging its rival in fierce competition. The Commission took the view that not all Allergan's profits could be rationalised as rents to superior business ability. Rather to a considerable degree they flowed from the practice of setting recommended prices for solutions and in discriminating in the prices at which it supplied to different outlets.

The second interesting aspect of the report is that the MMC traced back the source of the problem to the regulatory regime for approved medicines in the UK. It was the *institutionalised basis for competition that was found to be at fault*. The Commission reasoned that the practices of the Medicines Control Agency had had the (unintended) effect of restricting the number of suppliers in the UK market. Thus the MMC recommended that their procedures should take much greater account of prices to consumers when determining applications for licences to supply contact lens solutions. What is interesting is that this remedy goes well beyond the conduct of the companies and raise matters in relation to the organisation of the market. Only if this remedy failed to increase the number of suppliers should consideration be given to setting price controls on Allergan's behaviour. In relation to the behaviour of the dominant retailer the MMC found a simple

solution, namely to permit supermarkets and other kinds of retail outlet to compete in the solutions market alongside the established pharmacists.

In short, in both cases the remedy to the lack of competition was to be found in new institutional arrangements for this market.

### **Gas Transportation**

This enquiry, completed in 1998 was one of the most demanding of the utility regulation reports completed by the Commission. As with all the 'monopoly privatised industries', gas transportation was regulated by an independent regulatory office (Ofgas) responsible for the terms and conditions of the operator's licence to supply. This licence has a five-year term and sets out the broad parameters for the operation of the business over this horizon. A new licence had been proposed for the period from 1997. In what was by then becoming a familiar scenario, the new licence was rejected by the licence holder (Transco, an arm of British Gas at the time), and the regulator was obliged to refer the case to the MMC for adjudication. In effect the Commission's was being asked to settle upon rules of regulation to mimic the competitive supply of gas transport services. Mimic because it is clear that the transportation of gas falls squarely into the category of natural network monopolies. In carrying out this complex task the Commission was required to decide upon a number of key issues where the regulator and the operator held widely divergent views.

Gas transportation is the subject of a regulatory regime based upon the so-called RPI-X principle. A figure is arrived at for the revenue stream needed to ensure the continuing conduct of the business and from this is calculated a time profile for the prices of the regulated products. This profile is then uplifted by the forecast of retail price inflation and discounted by the X factor to create an incentive for the regulated company to improve its efficiency. If the company increases its efficiency by more than the X factor it is allowed to keep the additional profits until the formulae are revised at the next licence review. This method of regulation has been designed as an explicit alternative to the rate of return regulation, employed in the USA.

Several key factors impinge on the identification of the allowable revenue stream. First and foremost is the determination of the capital base and the cost of capital. In relation to the latter the enquiry team settled on the figure of 7%pa. Due account being taken of the risks of the business. This figure was becoming established as an appropriate figure for UK circumstances and was the same as the figure proposed by the regulator but lower than the figure desired by Transco.

Much more difficult to resolve was the question of the capital base of the industry. For British Gas had been privatised at a substantial discount that gave a stock market capital valuation well below the book value of the assets employed. This market to asset ratio problem (MAR) had taxed greatly the previous 1993 MMC enquiry into the regulation of the gas industry. The regulator argued for a regulatory asset base of £12.4bn that would be rolled forward by adjusting depreciation outlays on a MAR basis, so reducing the implied gross cost of capital for the business. Transco, quite understandably

wished for the allowance of full depreciation. The MMC settled for a capital base of £11.6bn, with pre 1992 assets based on a 60% MAR value and rolled forward by reference to changes in the RPI. For the purposes of calculating allowable revenue, MAR adjustment would apply to the depreciation of pre-1992 assets with full depreciation allowed on subsequent investments.

Having established a regulatory charge for capital, the next step was to assess the appropriate scale of investment and the permitted levels of operating expenditure, each item of which was contested ground between Transco and Ofgas. Table 4, drawn from the enquiry report summarises the different positions taken by the parties and the MMC.

By adding together capital charges, operating costs and allowable investment a revenue figure is obtained that is then up-rated by the forecast of inflation as measured by the RPI index. From this an X value of 2.0% was deducted, and an adjustment made to the prevailing transportation charge levels to place them on the desired path. This amounted to an immediate reduction of 21%. The outcome was allowable revenue of £2.9bn in 1997/98 (at 1996 prices) declining to £2.75bn in 2001/02.

The proposed licence modification appeared to be satisfactory to all the parties. Ofgas declared itself pleased that the recommendations were in line with its final proposals, and Transco had the regulatory uncertainty surrounding its operations greatly reduced. No doubt this contributed to the rapid strengthening of the British Gas share price that followed the publication of the MMC report.

## Assessment

It will be clear from the above account that the conduct of competition policy has evolved considerably in the post-war period. Assessed in terms of the competing concepts of competition it is also clear that the process perspective has increasingly dominated the judgement of particular cases. Structure provides the excuse to investigate a case but the adverse findings relate always to behaviours and actions. Hence the central importance of the instituted context of the competitive process. Remedies may occasionally require companies to divest a business (especially in merger cases) but more often the solution was to be found in opening the market to new entrants. In many cases this required changes to other aspects of government regulation. Moreover, anti-competitive behaviours generally involved attempts to limit the market selection process and thus negate the effects of a rival having better products or providing better customer services. A lengthy litany of vertical restraints, of full line forcing, of limitations on supply, and of exclusive dealing marks the reporting of the MMC and its predecessors. These are not practices that in general are visible to consumers or depend on the perpetrators enjoying substantial market power. They reflect the fact that businesses compete to gain and protect market share and that such practices are a low cost alternative to more effective forms of competition through innovation, whether technological or organisational. It is a very interesting question to speculate upon, “Will the new provisions of the 1998 Act have their effect by encouraging more innovation-based competition?” That indeed is an agenda for the Competition Commission.

**Table 3**

**Reports signed by the MMC, 1949 – 99**

<b>Years</b>	<b>Monopoly</b>	<b>Merger</b>	<b>Anti- Competition</b>	<b>Utility</b>	<b>Section 11</b>	<b>Total*</b>
1950-59	22	-	-	-	-	23
1960-69	19	10	-	-	-	33
1970-79	35	21	-	-	-	65
1980-89	32	58	7	2	30	144
1990-99	35	80	4	15	7	154
Total	143	169	11	17	37	419
%	34	40	3	4	9	

- The table excludes 34 newspapers enquiries and 8 general enquiries.

Calculated firms Wilkes 1999. Original source MMC data base.

**Table 1**

**Principle Legislative Acts**

Monopolies and Restrictive Practices (Inquiry and Control) Act	1948
Restrictive Trade Practices Act	1956
Resale Prices Act	1964
Monopolies of Mergers Act	1965
Fair Trading Act	1973
Competition Act	1980
Competition Act	1998

## Table 2, Section 84: the public interest test

Section 84 of the Fair Trading Act 1973 specifies the public interest test as follows:

In determining for any purposes to which this section applies whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall take into account all matters which appear to them in the particular circumstances to be relevant and, among other things, shall have regard to the desirability –

- (a) of maintaining and promoting effective competition between persons supplying goods and services in the United Kingdom;
- (b) of promoting the interests of consumers, purchasers and other users of goods and services in the United Kingdom in respect of the prices charged for them and in respect of their quality and the variety of goods and services supplied;
- (c) of promoting, through competition, the reduction of costs and the development and use of new techniques and new products, and of facilitating the entry of new competitors into existing markets;
- (d) of maintaining and promoting the balanced distribution of industry and employment in the United Kingdom; and
- (e) of maintaining and promoting competitive activity in markets outside the United Kingdom on the part of producers of goods, and of suppliers of goods and services, in the United Kingdom.

**Table 4: Main elements of MMC and Director General's analysis, 1996 prices**

	MMC	Director General		BG 1997
		August 1996	March 1997	Transco Plan*
Cost of capital (%)	7	7	7	8
Treatment of depreciation of pre-1992 assets	MAR-adjusted	MAR-adjusted	MAR-adjusted	Full
Regulatory value at March 1997 (1996 prices) (£b)	11.6	12.4	10.9	11.8
Capital investment † (£b)	4.1	4.0	2.4	4.5
Operating expenditure ‡ (£b)	7.1	6.6	6.1	7.7
- excluding meter reading (£b)	6.7	N/A	N/A	7.2
Initial price reduction (%) §	21	20	29	2.25
Storage revenue cap (£m) ¶	160	160	160	N/A
Size of X	2.0	2.5	2.5	2.25
Source: MMC				

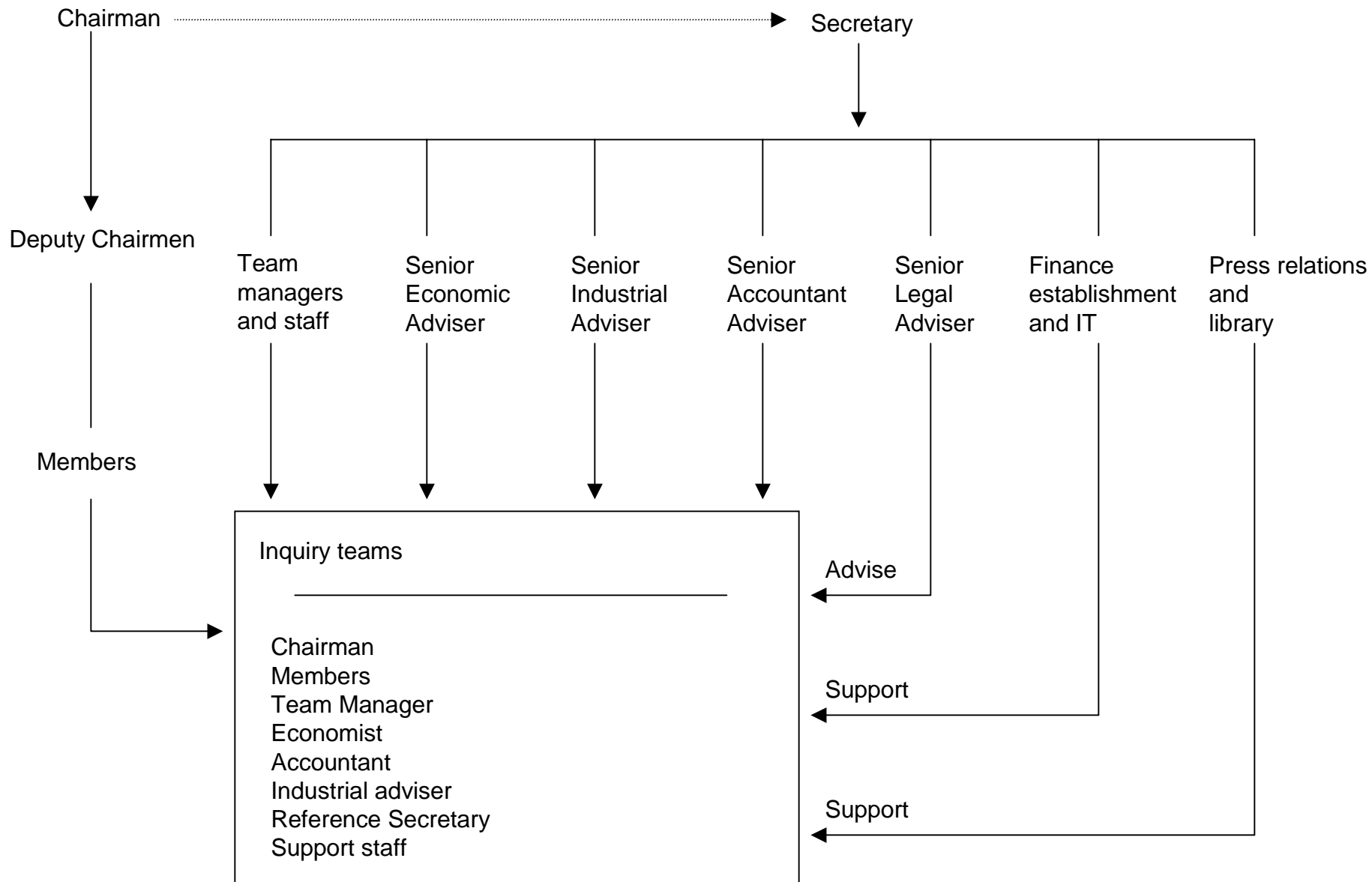
\* As noted elsewhere, the 1997 Transco plan was also developed from BG's previous submissions to the Director General.

† Including customer contributions

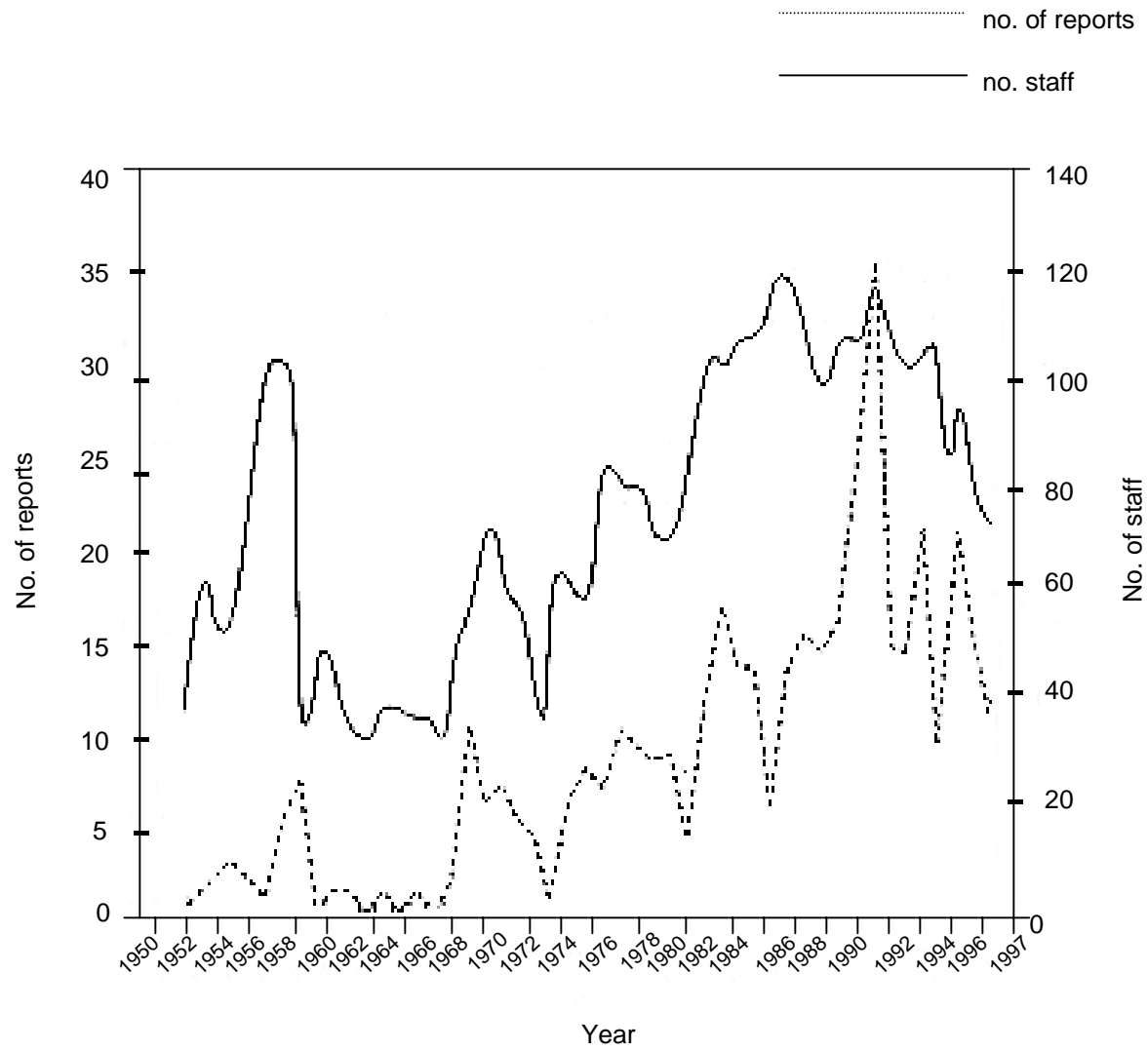
‡ Including decontamination, restructuring and transition costs.

§ 1997/98 allowed revenue (excluding correction factor) per therm compared with 1996/97 figure after adjusting for inflation.

¶ 1997/98 maximum allowed revenue at out-turn prices.



**Figure 1** *The make-up of inquiry teams*



**Figure 1** Staffing and reports, 1949-97

## **REFERENCES**

Alchian, A., 1951, “Uncertainty, Evolution and Economic Theory”, Journal of Political Economy, Vol.60, pp. 211-221.

Dosi, G., (*et al*) 1988, Technical change and Economic Theory, Pinter, London.

Georgescu-Roegen, N., 1967, “Chamberlin’s New Economics and the Production Unit”, in R., Kuenne,(ed) Monopolistic Competition Theory. Studies on Impact, Wiley, New York.

Hayek, F.A., 1948, “The meaning of Competition” in Hayek, F.A., Individualism and Economic Order, University of Chicago Press.

Knight, F., 1923, “The Ethics of Competition”, Quarterly Journal of Economics, Vol.37, pp.579-624.

Metcalf, J.S., 1998, Evolutionary Economics and Creative Destruction, Routledge, London.

Monopolies and Mergers Commission, 1993, Contact Lens Solutions, HMSO, London.

Monopolies and Mergers Commission, 1997, BG plc, HMSO, London.

Morgenstern, O., 1972, “ Thirteen Critical points in Contemporary Economic Theory” Journal of Economic Literature, Vol.10, pp.1163-1189.

Morris, D., 1999, A New Dawn for Competition Policy in the UK, mimeo, Competition Commission, London.

Nelson,R.R., and Winter, S.,1982, An Evolutionary Theory of Economic Change, Belknap Press, Harvard.

Popper, K., 1996,

Robinson, J.V., 1954, “The Impossibility of Competition”, in E.H., Chamberlin, (ed) Monopoly and Competition and their Regulation, Macmillan, London.

Wilks,S., 1999, In the Public Interest, Manchester University Press.