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European Markets and National Regulation: Conflict and Cooperation in British Competition Policy[1]

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ABSTRACT

The aim of this article is to examine the politics of competition policy in the United Kingdom by taking into account regulatory cooperation at the European Union level. Adopting a multiple streams approach, the article follows a bottom-up approach placing domestic politics at the heart of the puzzle. The analysis leads to four conclusions. First, pace-setters, such as the UK, may not be interested in playing one dimension of the regulatory competition game, that is, trying to influence the development of EU policy. Second, incongruence between domestic and EU regimes does not necessarily produce change at the domestic level. Convergence is not a top-down process. Third, the activating stimulus for change may be external (the EU), but the process is basially of domestic politics. Fourth, to the extent that the removal of political discretion characterizes a more transparent and strictly enforced regime, British competition policy provides empirical support for the hypothesis that the interaction of regulatory competition prior to regulatory cooperation leads to convergence to the top.

Integrated markets, and more generally globalization, put considerable pressure on domestic competition policies. Working with the perspective of unfettered markets and regulatory competition, one can predict that policy-makers will seek to keep capital in their country by lowering limits to concentration, relaxing standards in mergers and acquisitions, or turning a blind eye to state aids. However, integrated markets are also systems of rules (see Holzinger and Knill, this volume).

The European Union (EU)[2] is an example of an attempt to create a single market in Europe and a competition policy to support it. In Europe more than in other looser systems of integration, regulatory competition does not take place in an institutional vacuum. Regulatory cooperation at the EU level is an important intervening variable. Once the EU is accounted for, the

regulatory competition game has two dimensions. The first dimension is about the power to shape EU rules governing national markets. The second addresses government response to EU policy regimes. Do they ultimately converge with EU templates or do they remain unique and diverse?

The aim of this article is to examine the politics of competition policy in the UK by taking into account the presence of regulatory cooperation at the EU level. Further the article follows a bottom-up approach. Rather than starting with European competition policy and tracking down the responses of British governments, I place domestic politics at the centre of the puzzle. Then I examine how, when, and why European competition policy interacts with actors at the domestic level.

The analysis leads to four conclusions. First, pace-setters, such as the UK, may not be interested in playing one dimension of the regulatory competition game, that is, trying to influence the development of EU policy.[3] Second, incongruence between domestic and EU regimes does not necessarily produce change at the domestic level. Convergence is not a top-down process. Third, the activating stimulus for change may be external (the EU?), but the process is that of domestic politics. Fourth, to the extent that the removal of political discretion characterizes a more transparent and strictly enforced regime, the British competition policy case provides empirical support for the hypothesis that the interaction of regulatory competition prior to regulatory cooperation leads to convergence to the top.

Analyzing the impact of European regulatory cooperation within the context of British regulatory competition is important for five reasons. First, the topic of EU influence has not been adequately examined. Despite the obvious effects on national policy, the mechanisms of influence remain poorly understood (Knill and Lehmkull 1999; Haverland 2000). Second, the UK is a core and influential member of the EU in terms of economic size, trade, and investment. Third, Britain's 'legendary' euroscepticism offers insight into 'the worst case' scenario. It tells us how and why a recalcitrant member will accept European-style regulation. Fourth, competition policy is important because it is at the heart of the EU. It deals with market integration and the ability of firms to compete in Europe. It is therefore an important area for the UK and the EU. Fifth, it is important because of close linkages, whether in theory or practice, with other policy areas, such as regulation, the environment, trade, and industrial policy (Fels 2000; Neumann 2001; Waverman et al. 1997).

Regulatory Competition, Regulatory Cooperation, and Policy Convergence

Holzinger and Knill (this volume) argue that the interaction of regulatory competition and cooperation lead to policy convergence under certain conditions. I first define the terms as used in this article, and then I briefly

review various attempts to explain convergence. Integration refers to a transfer of authority from the national to the European, collective level.

Policy convergence means different things in different contexts. It may be viewed as convergence, or similarity, in economic performance, development, or institutional or policy style (Boyer 1996). For purposes of this article, policy convergence refers to 'the adaptation or adjustment of policy-making patterns in the member states under the influence of European integration towards a uniform, Union-wide policy' (Dimitrova and Steunenberg 2000: p. 202). When analyzing convergence in the context of Europe, some authors (e.g., Liefferink and Jordan 2003; Héritier et al. 2001; see also Bennett 1991b) differentiate between policy content (programmatic and paradigmatic ideas as well as the instruments used to deliver them), policy structure (the constellation of actors and institutions within policy domains), and policy style (the pattern of interaction along national lines). Other analysts (e.g., Cowles et al. 2001: pp. 15–16) also point out that a great deal of European legislation is driven by convergence of results or outcomes. The term here concentrates on two components: institution and content. I do not focus on convergence of results or outcomes because there is no such explicit expectation, desire, or benchmark in Europe. Competition policy, for example, does not seek to create an optimal market share for any one or group of companies as, say, regional per capita income aims to do for regional and structural funds. The way it is used in this article convergence may be attained by creating similar institutions or by allowing institutions to vary while focusing on harmonizing policy outputs. Ideally, full convergence would be accomplished by achieving both. Failure to converge in either area can be termed as partial convergence. Failure in both implies the continuation of the status quo. It is viewed as diversity and evidence of continued regulatory competition. Convergence may also be viewed either cross-sectionally, that is, by focusing on similarities across polities toward an ideal equilibrium, or temporally, that is, by assessing over time the degree of adaptation between practice in a single country and a European standard (regulatory cooperation). The present article adopts the latter conceptualization.

To analyze convergence, analysts typically focus on Europeanization and its effects on national implementation.[4] Europeanization refers to as the 'incremental process re-orienting the direction and shape of politics to the degree that EC [now EU] political and economic dynamics become part of the organizational logic of national politics and policy-making' (Ladrech 1994: p. 69). Europeanization may promote convergence (Radaelli 2003), but there is little agreement on the mechanisms. Scholars assess the degree of adaptational pressure, or goodness of fit, between European and national policies. The higher the degree of misfit, the stronger the pressure will be on the national governments to respond (Cowles et al. 2001). Seeking to avoid

high implementation costs as a result of misfit, economically developed member governments have strong incentives to 'upload' their national policies onto the European level (Börzel 2002). Convergence depends on the ability to 'download' policies at minimal cost varying along national institutional capacities (Knill and Lenschow 2001; Héritier 2001). Others discount the effects of adaptational pressure. Haverland (2000); Héritier et al. (2001: pp. 288–289), and Knill (2001: pp. 221–225) find that domestic institutional opportunity structures account for much of the variation between Europeanization and national responses irrespective of adaptational pressure.

The Europeanization argument provides a good starting point. It emphasizes the impact of regulatory cooperation at the EU level and it helps explain convergence as well as divergence. However, there are several problems with it. First, the literature is inconclusive. There is no agreement on the mechanism, e.g., institutional membership or mimicry. Perhaps disagreement is fostered by the fact that most analyses are sectoral in orientation, suggesting that convergence may vary across countries, policy sectors, or even policy issues (Cowles et al. 2001). But we are not told under what conditions we should expect variation. The case study presents one way to move the debate forward. It keeps country and issue constant, while generalizing across policy sectors in the sense that competition policy concerns firms in many sectors. While it is not representative of policy in general, competition rules apply to such diverse sectors as telecommunications, rail transport, or food retailing. Second, the Europeanization literature typically assumes a top-down adaptational pressure. Studies view convergence as stemming from the need to implement European directives or regulations (Cowles et al. 2001; Knill 2001). But few studies (Radaelli 1997; Radaelli 2003; Héritier et al 2001) have explored the possibility of national convergence to a European standard in the absence of external pressure on national authorities.[5] Can the push come from within a country?

Competition policy: institutional structure and policy content

To gain insight into why competition policy changes, I first explain what competition policy is. Then I specify the essential elements of competition policy under the 1973 Fair Trading Act and contrast them with those of the 1998 Competition Act. The analysis aims to highlight the differences between the two in order to obtain a more precise estimate of the divergence between British and European practice.

Competition policy is defined as promoting 'rivalry among firms, buyers, and sellers through actions in areas of activity such as mergers, abuse of dominance, cartels, [etc.]' (Doern 1996: p. 7). In essence it involves public action to promote and strengthen competition. What exactly constitutes

competition is of course a matter of heated debate, but it generally entails the promotion of allocative and productive efficiencies, freedom of choice, minimal coercion by the state, social justice, and the pursuit of happiness through fulfilment of society's wants and needs for goods and services (Burke et al. 1991).

While competition policy involves a bewildering number of actions and areas, analysis can be fruitfully limited to the following: (1) horizontal arrangements to fix prices or allocate markets; (2) abuse of dominant position or market power; (3) mergers that reduce competition; (4) vertical arrangements that limit consumer or producer choice; and (5) practices that mislead consumers. There is no generally accepted method on how to discourage or whether to prohibit these practices.

Competition policy in Europe grew out of the post-war need to strengthen liberal democracy. Informed by the debates and experience of the 1930s and 1940s, policy makers became concerned with the potential abuse of private power. They, therefore, viewed competition policy as a way of protecting individual freedom from abuses by corporate power (Amato 1997). British policy was similarly informed by debates before and during World War II. Abuses of monopoly and restrictive practices were a cause of concern long before the emergence of competition laws. Throughout the 1930s and in the context of protectionism and the Great Depression, cartelization was not frowned upon under laws that generally gave emphasis to freedom to contract. The 1944 White Paper on Employment changed all this. It linked control of monopoly to the maintenance of employment (Mercer 1995: p. 57). The government committed to 'take action to check practices which may bring advantages to sectional producing interests but work to the detriment of the country as a whole' (quoted in Wilks 1999: p. 12). As a result, the Monopolies and Restrictive Practices Act was passed in 1948.

To keep the analysis focused and manageable, I specify two dimensions: institutional structure and policy content. Institutional structure explores the organizational form that competition authorities take. Policy content looks at the governing principles of competition policy. In the remainder of this section I specify the key elements of the British system along these two dimensions. I first look at the system under the Fair Trading Act of 1973, which provides a convenient point of analytical departure because it coincides with Britain's entry to the EC. I then examine the system under the 1998 Competition Act. Movement from the previous to the latter can then be attributed to the explanatory factors proposed.

Competition policy contains a number of elements which can be analytically reduced to what Wilks (1999) has termed a 'genetic code.' They include a few key features that collectively capture the essence of the competition regime (Table 1). In terms of institutional structure, they include the *organizational form* that competition authorities take, and the *rules* that govern

relations between them and business. In terms of policy content, *competition principles* are the key elements. Competition principles deal with criteria by which anti-competitive practices are judged. In brief, the system changed in 1998 institutionally from voluntary and discretionary to coercive and juridical while it retained its organizationally fragmented form. Content-wise it became prohibitive and effects-based from permissive and public interest-based.

The Fair Trading Act of 1973 transformed competition policy in Britain in several ways. Institutionally it created the position of Director-General of Fair Trading (DGFT). Surrounding him are the staff and resources of the Office of Fair Trading (OFT). Since 1973, competition policy has been exercised by three agencies/departments: the OFT, the Monopolies and Mergers Commission (MMC), and the Secretary of State heading the Department of Trade and Industry (DTI).[6] As Sir Gordon Borrie (1989: p. 247), the former DGFT writes, 'in essence, the Secretary of State decides, the Director General advises, and the [Monopolies and Mergers] Commission investigates.'

In so far as mergers are concerned, the OFT has the obligation to keep informed of prospective mergers and render an opinion within 3–4 weeks as to whether the merger merits further investigation. Several criteria have been proposed to sift through the universe of mergers, namely assets (£70 million by 1994) and market share (25 per cent).[7] But each case is examined on its merits and more criteria, such as effects on competition, consumers, regional employment, etc. may be taken into consideration (Borrie 1989: pp. 257–261). The DGFT may advise the Secretary of State to further investigate the merger by referring it to the MMC. The Secretary of State may decide (or not) to accept the advice. The MMC has up to six months to make a recommendation, which is sent back to the Secretary of State. Ultimate authority rests with the Secretary who publishes his decision along with the MMC's report. Although publicly funded, both the OFT and MMC have independent legal status to preserve the impartiality of their judgment – although Commissioners of the MMC and the DGFT are appointed by the government.

TABLE 1: *Basic elements of competition policy, 1973 and 1998*

		1973 Act	1998 Act
Institutional Structure:	organizational form	fragmented	fragmented
	rules	voluntary discretionary	coercive juridical
Policy content	principles	permissive public interest-based	prohibitive effects-based

The rules governing relations between business and the three competition authorities may be characterized as voluntary and discretionary. The voluntary aspect manifests itself in several ways. First, the system is based on the belief that companies volunteer information to the authorities. Formal notice is not compulsory, as opposed to EU rules. Second, there is extensive consultation with business to maintain the integrity of the system. For example, the Confederation of British Industries (CBI) was extensively consulted when changes were proposed. Though it does not have veto power, it has been able to get its way on numerous occasions (Wilks 1996). In addition, certain practices are not examined until business complains. For example, as a former member of the MMC asserts, under the 1973 Act the trigger for OFT investigations into market power and monopoly abuse 'is mainly the number of complaints about monopoly behaviour [sic]. A possible consequence is that there are few such enquiries' (Opie 1990: p. 88). Finally, the system relies on some form of self-regulation in the sense that no fines or remedial action are prescribed by law. Both the OFT and MMC are powerless in this regard.[8] In practice voluntary action is sought from firms found guilty of monopolistic behaviour and only rarely does the Secretary seek remedial action (Clarke et al. 1998: p. 18).

The discretionary aspects are also important. The most important is the fact that the ultimate decision is made by a politician. Under the 1973 Act the Minister has 'unfettered discretion not to refer any 'merger qualifying for investigation' to the Commission' (Swift 1989: p. 265). This means that the Secretary may reject the DGFT's advice or even reject the MMC's recommendation. Naturally, his decision reflects political and other considerations including personal biases and predilections. For example, Michael Heseltine, the Conservative DTI Secretary in the early to mid-1990s stated that mergers might be permitted despite high British market concentrations if they enhanced the competitiveness of British industry. Others, such as Norman Tebbit in 1984 and Ian Lang in 1996, argued that their guiding principle was the 'competition criterion' (Swift 1989; Wilks 1999: pp. 314–315). As Celli and Grenfell (1997: p. 18) boldly assert,

> although the OFT and (particularly) the MMC notionally exercise their discretion independently of government policy, in practice they have regard to the broad thrust of government policy: it would be senseless for the OFT consistently to tender advice to the Secretary of State which he consistently rejected; and, by the same token, it would be regarded as awkward and embarrassing if the MMC, in investigating mergers, made its assessments on criteria different from the Secretary of State's initial assessment.

What are the competition principles? The British system under the 1973 Act and its subsequent revisions prior to 1998 may be characterized as permissive and public interest-based. The permissive attitude stems from the fact that monopolies are not viewed as necessarily bad. 'The presumption is,'

as George (1990: p. 83) puts it, 'against public intervention.' Perhaps the clearest indication of this attitude rests with the fact that the onus of proof that a merger may have negative effects is on the OFT and the government in general, not the companies in question. While the issue was hotly debated by Labour in 1978, it was ultimately decided not 'to reverse the general presumption that mergers are not in the public interest' (George 1989: p. 298). The same has been true of anti-monopoly policy in general – i.e., issues involving predatory pricing, collusion, price discrimination, and so on. The basic supposition of successive governments has been, with notable exceptions, that active intervention in the market to remedy monopolistic abuses should be limited.

The criteria by which anti-competitive practices are judged are collectively known as the public interest test. Article 84 of the 1973 Act elaborates on this notoriously ambiguous concept. Although the article refers to the criteria guiding the MMC's recommendation, it has been applied to the whole competition regime. In order for the MMC to decide whether an undertaking is against the public interest, it may take into consideration the desirability to maintain and promote effective competition in the UK, protect consumer welfare, promote the reduction of cost and development of new techniques and products, and maintain and promote the balanced distribution of industry and employment in the UK (the text is reproduced to a large extent in Celli and Grenfell 1997: pp. 139–171). The number of considerations is indeed impressive and their interpretation has varied widely. Apart from the contested notions of efficiency and competition, it includes regional and industrial policy considerations along with foreign ownership, state ownership, defence and strategic issues, and others. It is interesting to note that the concept of public interest is defined and understood strictly in national terms. Even though Britain was by then a member of the EC, there was little interest among policy makers in exploring its implications in a wider European setting.

The Competition Act of 1998 transformed the British system turning it into a European-style competition system. Its elements are as follows. Institutionally the competition authorities have converged with the EU in rules but not organizational form. In terms of content, there has been significant convergence in competition principles. Given overt scepticism of the EU, one might expect a bitter struggle to retain the distinctly British nature of the system. Interestingly, the 1998 Competition Act was a thoroughly bipartisan affair.

Organizationally, the 1998 Act reveals mostly continuity with some change. The two main institutional protagonists, the OFT and MMC (renamed as the Competition Commission) retain autonomy and legal independence, in contrast to an EU system of having one administrative body, the DG IV (now Competition Directorate-General). On the changing

side, the Secretary of State is removed from the process, but the DTI continues to maintain influence by power of appointment of staff and commissioners. The Commission is also split in two branches: the first maintains its reporting function while the second becomes an administrative tribunal of appeals.

There is a transformation in rules. From voluntary cooperation and discretion, the system changes to coercion and juridical appeal, very much in line with the spirit of the EU system. In general business is no longer assumed to be cooperative although it is hoped that the system will retain this distinctly British feature. First, there are provisions for penalties up to ten percent of UK revenues. As an OFT pamphlet suggests, 'the DGFT intends . . . to ensure that penalties have the necessary deterrent effect to prevent the occurrence and repetition of infringements' (quoted in Wilks 1999: p. 351). Second, reasoned compliance and bargaining are no longer assumed. Rather the calculation is that business will cooperate on the basis of punishment incentives. Third, interested parties may pursue appeals through questioning the essence of decisions and level of damages.

These changes have transformed the system to less discretionary and more juridical. The removal of the Secretary of State from the process signals the end to overt political considerations. Administrative pragmatism and, to a lesser extent, precedent are removed. In their place, participants to the proceedings are invited to pursue their appeals in court. Because of the need to make a strong case in court, decisions in this sense become more accessible and transparent.

In terms of policy content, the transformation is remarkable. The 1998 Act adopts an explicitly prohibitive approach. By incorporating major portions of Articles 85 and 86 (now 81 and 82) of the Treaties of Rome, the Act prohibits agreements which restrict competition and abuse of dominant position. Rather than looking at certain activities, cartels, monopolies, and the like as permissible unless ruled otherwise, the Act explicitly forbids them. It is now up to the companies, not the competition authorities, to show that these activities have beneficial effects. True to precedent, the intellectual/political origins of the Act are Conservative although it was passed by Labour.

The most important transformation perhaps has been the guiding principle. The Act explicitly rejects the public interest criterion in favour of a narrower construct revolving around effects on competition. The main argument is that any undertakings that effectively restrict, prevent or distort competition are prohibited. This is part and parcel of the EU competition law, which is now superimposed on British law through 'governing principles.' The Act specifies that decisions must have regard to the decisions of the European Commission suggesting that guidance is provided by EU law, not UK law. Of course an effects-based principle is also difficult to apply in

concrete cases. It is doubtful that it will be contrary to the 'public interest' although it will certainly be difficult to now make decisions on the basis of regional policy or foreign ownership. Competition is now implicitly elevated into an 'end' status as opposed to a 'means' to an 'end' (public interest), which it was previously.

A multiple streams model of policy-making

I apply a multiple streams model of national policy-making to assess the impact of the EU on British competition policy. The model allows me to draw upon insights from the broader policy-making literature and connect them to the particulars of competition policy and European integration. Three factors account for policy change: the launch of the single European market in the mid-1980s, intra-partisan politics within the Tory party, and civil servants and other members of the competition policy community. While each factor provides a piece of the puzzle, it is the interplay or coupling of all three during an open policy window that made convergence possible. Labour's election to power in 1997 opened that window. The model has important merits. It adds a dynamic component to the process, policy windows. Windows open 'a political space for reform allowing strategic action by elites' (Héritier 2001: 53). Moreover, the model allows for the possibility of solutions being generated from within policy communities rather than being imposed from above, in this case the EU. Finally, it links macro-political phenomena to meso-(sectoral) political events, making the model well equipped to draw inferences from issues that cut across many sectors.

Multiple streams purports to explain national policy-making under conditions of ambiguity. Basing his work on Kingdon's (1995) logic, Zahariadis (1999, 2003) developed a model that views a policy system as containing three streams: problems, solutions (policies), and politics. Each stream flows largely independently of the others, containing its own dynamics and obeying its own logic. The problem stream consists of 'real-world' problems on the minds of policy makers, such as inflation, unemployment, the budget deficit, etc. Problems contain a perceptual element. They are conditions, which come to be defined as problems. Consequently, problems contain several dimensions whose salience is activated strategically by policy entrepreneurs for the purpose of advocacy and mediation. Solutions are ideas floated by specialists in narrow policy communities looking for a problem to solve. Whether an idea will float to the top of the community's agenda depends partly on the institutional configuration of the community and the degree of its consensual or competitive mode of exchange (Zahariadis 2003). Politics is the third stream, consisting of policy makers who are charged with making national decisions. They include members of parliament, ministers, and the like.

Issues become salient, that is, rise to the top of the government's agenda, when policy windows open in the problem or politics stream. Policy change is more likely when all three streams are joined together during open windows. They may be predictable, such as budget cycles, or unpredictable, such as natural catastrophes. For example, the events of 11 September in the US opened a policy window, which made several changes possible. Policy entrepreneurs used the window to push through pet proposals ranging from defence contracts for missiles to more funding for scientists to create vaccines to better preparedness programs for local and state health departments. While the September events catapulted the programs to the top of the government's agenda, it was the political context of the time (the presence of George W. Bush's Republican administration) and the extent of the tragedy that made it all possible. In other words, it was the joining together of the three streams that led to the adoption of all those policies.

I use similar logic to assess the impact of the EU on British competition policy. I begin with the assumption that diversity in national policies exists and the task is to explain why there is a movement from diversity to convergence. Hence the continued presence of national exceptionalism is viewed as resistance to change. When is policy change (convergence) more likely to take place, or conversely when does resistance to such change collapse?

Agreement about a desired solution in the policy stream is a necessary but not sufficient condition for policy change. The option of converging British competition policy closer to European standards was debated in the British competition policy community since Britain's entry in the EC. Some advocates, mainly in the CBI, were convinced that convergence would be good for British industry. But so long as the problem of competition was defined in national terms, policy makers were unwilling or unable to see any benefits from adapting what they perceived to be a superior system to a European standard.

Policy makers in the politics stream generally favour the status quo and are resistant to change. The fear of losing power is much greater than the potential gains politicians may achieve through change. They are risk averse because they fear that change will have unanticipated, negative consequences. Besides policy change will almost certainly result in the mobilization of opposition groups, who stand to lose from the proposed changes. Each policy represents a collection of ideas and a constellation of interests that have a stake in the status quo. The more radical the departure from prevailing 'wisdom,' the greater the resistance against it will be. Although the process may only faintly resemble Lindblom's idea of 'disjointed incrementalism,' the empirical record shows that significant departures from current policy in democratic societies are relatively rare, typically constrained by limits on information and the need to bargain for concessions

(e.g., Lindblom and Woodhouse 1993; Hayes 1992). Hence the distribution of power in the political stream among legislators and high level government officials is unlikely to favour change unless a window of opportunity paves the way for political reform.

Windows of opportunity are conceptualized as opening either in the problem or in the politics stream. In the British case they opened in both streams. The launch of the single European market in the mid-1980s opened such as window in the problem stream. It shifted the terms of the debate by making it possible to think of competition in broad European terms. Hence policy designed to strengthen competition that was based on ministerial discretion became suspect. How could foreign companies compete on equal footing in Britain without the benefit of political leverage? Moreover, decisions prohibiting, say, mergers on the basis of regional development or national employment policy would inhibit rather than strengthen the single market. Therefore, the application of old policies in new contexts became problematic. New ways had to be found to deal with these issues. Elections bringing new people to power open windows in the political stream. New parties and new ideas may come with different agendas, preferences, and ideological proclivities. An idea that did not go far under one government may actually find a more receptive audience under another.

But just because policy windows open while policy communities are warming up to the idea of convergence does not necessarily result in change. All three streams need to be joined together at the same time in the presence of a policy window. In the 1970s the political stream was not receptive to a divided policy community's advice. Even when a window opened with Labour coming to power in 1974, change was not forthcoming because Labour was not interested and because the problem of competition was defined in national terms. The launch of the single European market in the 1980s altered the equation opening up a window and enabling the redefinition of the competition problem. But change was again not forthcoming because the political stream was not receptive to the idea of convergence. The presence of staunch eurosceptical ministers in the DTI precluded this option. While enlargement of the policy community and frequent interaction with European counterparts gradually helped the idea gain acceptance in the policy stream, policy makers were still indifferent if not hostile. Only with the opening of yet another policy window, the general election of 1997, was convergence made possible. By then there was wide agreement among specialists in the competition community that convergence was desirable. The problem of competition was widely defined in European and not in national terms. What was needed was a receptive political audience. That became possible when Labour, supporter of the proposed change, was swept into office in 1997. Convergence was the result of the joining together of the three streams during an open policy window.

In summary, I have proposed an argument that explains policy convergence by reference to a multiple streams model. Solutions to specific problems are likely to be generated or at least advocated by members of the domestic policy community. The timing of policy change is influenced by the opening of policy windows and by the presence of a receptive political audience. The shape of legislation is most likely to be the product of political discourse within narrow policy communities. In the specific case of British competition policy, I will show that the creation of the single European market opened a policy window and helped redefine the problem of competition. Partisan conflict within the Conservative party delayed change until the election of a Labour government in 1997. Finally, the actual shape of the 1998 Competition Act was informed by academic debates and determined largely by bargaining between British competition authorities and the Confederation of British Industries.

Integration talk and national divergence: 1973–1989

I examine developments in the first 15 years of British membership in the EC. I show how the degree of misfit that existed throughout this period did not create a serious interest in 'uploading' the policy onto the European level or adapting the British system along European lines. Being a pace-setter did not turn out to be an asset. Rather British elites were content to view competition developments in the isles and the continent as parallel phenomena. The launch of the single market shifted British thinking away from national to European terms. It opened a window of opportunity for regulatory reform. As a result, problems were redefined making reform more likely. But the political stream was not ready. The presence of eurosceptical secretaries at the helm of the DTI produced much talk but little action. The time period begins with EC membership and the 1973 Fair Trading Act and ends with the enactment of the 1989 Companies Act and the 1989 White Paper on Restrictive Trade Practices advocating a prohibitive approach modelled on EC guidelines.

Britain has been exposed to EC law since its entry in 1973. Since 1973 the OFT has participated in meetings and hearings keeping abreast of developments and cases. Nevertheless, the adoption of an EC-style competition regime was not considered feasible. An opportunity presented itself in the early 1970s, in the debate on the Fair Trading Act. In a revealing statement, the CBI recommended a legal framework that would be closer to EC law. Though the CBI was not enamoured of the EC merger guidelines – British policy was thought to be far superior at the time – it did see considerable benefits in Europeanizing restrictive and anti-competitive practices: 'the Government has the opportunity by this Bill to bring British law and practice

into accord with . . . the Rules of Competition in the European Communities. If this opportunity were taken, the benefits to British industry would be immense.' But being a pace-setter was not viewed terribly positively. What benefits could the EC system have over the more developed British regime? The response of DTI minister, Sir Geoffrey Howe, was instructive. 'I have considered the CBI's arguments . . . I am afraid I am not persuaded by them' (quoted in Wilks 1999: pp. 184–185).

The next ten years saw a flurry of reviews of competition policy, but little interest in convergence with the EC. The two systems developed in parallel. In its 1978 review of merger and monopoly policy, the Labour government argued that the present pattern 'is still best suited to the needs of our economy. No fundamental change is needed in the light of EEC policy and practice' (Department of Prices and Consumer Protection 1978: p. 2). When the Conservatives took over in 1979, a window of opportunity opened in the political stream. But reform along EC lines was not on the agenda. Tory attitude toward Europe and the EC betrayed a marked hesitancy about the worth of EC law. They immediately adopted several of the recommendations put forth by Labour in their 1980 Competition Act, but remained silent on aligning the system any closer to that of the EC. To be fair, the Competition DG in Brussels was still small and hesitant. Several of the landmark decisions by the European Court of Justice that had a strong impact on competition, such as the *Hoffman La Roche* case which defined the concept of market dominance, were too new to be absorbed into national legislation. Perhaps the biggest obstacle to any discernible EC impact on the UK was the ambiguity that Conservatives showed toward Europe. Margaret Thatcher was keen on renegotiating Britain's EC contributions. Besides, the objective of European competition policy, British officials argued, was market integration and not concentration and mergers.

Minds began to change, however, in 1985 with the debate over the single European market. It opened a policy window for reform. Thatcher had gotten the rebate and dues reduction that she wanted from her European partners. The political climate was therefore far more receptive to Europe. Moreover, the creation of the single market suited British interests well. First, it fit well with the general ideology of laissez faire capitalism, something that the Conservatives had pioneered at home and abroad. Second, it represented an economic vision of Europe, which coincided with the British idea of the EC. Third, competition policy became an integral component of market integration (Cini and McGowan 1998; Zahariadis 2002a). If the market is to provide a level playing field, it is essential to have a rigorous and proactive competition policy dealing with mergers, monopolies and restrictive trade practices (Swann 1996). It is no surprise that the single market idea was partly a British creation by Lord Cockfield, who spent some time at the DTI in the 1980s as Secretary of State.

How exactly did the single market influence British policy? It shifted the terms of the debate from strictly national to European lines. By redrawing the contours of the market, it opened a window of opportunity for reform. It transformed the dynamics of the policy and problem streams although it did not make as much headway in the politics stream. Secretaries of State remained for the most part unconvinced.

Institutional membership is not a prerequisite for convergence. In some instances, such as state subsidies, non-EC members may behave no differently than EC members (Zahariadis 2002b). What matters is the increased frequency of interaction among members of the British policy community and their EC counterparts brought about by the creation of the single market. It opened up the British competition policy community to new members whose preferences were more aligned with European-style regulation. Interaction has taken place within the context of Advisory Committees set up to liaise national authorities and the Competition DG. Not surprisingly, the increased frequency of committee meetings parallels the development of the single market. The number rose from fifty-four in 1984 to over two hundred by the late 1990s (Wilks 1999: p. 305). Since 1997, the OFT is in almost daily communication with the Competition DG in Brussels.

Civil servants drew lessons from the benefits and drawbacks of European-style regulation largely through contacts with EC authorities. Because British competition administrators now *had to* take into account EC directives, as a result of the supranationalism contained in the Single European Act, civil servants spent many hours conferring with their EC counterparts. Although the Green and White Papers of the late 1980s bear the Minister's name, the contents probably more accurately reflect the civil servants' growing preoccupation with developments in EC law. For example, although Lord Young was not entirely convinced by the primacy of EC authorities, his department issued a consultative Green Paper in March 1988 proposing an 'alignment,' to use the term of the paper, with EC cartel law. After extensive consultation with business and consumer groups, the DTI issued a White Paper in 1989 expanding on this framework. In the case of monopolies and mergers bureaucrats were not as enthusiastic. The system appeared to work reasonably well. As a result, the White Paper in 1988 and the Companies Act of 1989 proposed minor incremental changes. But the adoption of the 1989 Mergers regulation in the EC also brought mergers under the vigorous scrutiny of the European Commission.

The launch of the single European market also provided ammunition to business firms to point out problems in the British system and the benefits of the European one. Academic debate and business focused on the competition criteria and noted the emphasis in Europe on competition. The CBI continued to insist that British competition policy should first and

foremost promote the international competitiveness of British firms (Borrie 1989: p. 251). This focus would entail a significant shift in policy: what's good for British business is also good for Britain. It was an argument explicitly rejected by the DGFT (Borrie 1989), as well as by several British DTI Ministers. But business was convinced of the rightness of its approach.

Academics and civil servants in the policy community gradually came to view the problem of British competitiveness along the lines of British business, albeit for different reasons. The flurry of mergers in the late 1980s, many of which were an explicit response to the single market's imperative for economies of scale, also stirred a vigorous debate on the nature of competition criteria. As policy entrepreneurs, several of them pushed for or against particular solutions. Members of the MMC differed substantially on what the particular criteria ought to be, but they generally fell into two camps. Although both stressed the need for emphasis on competition, they differed on the particular indicators. The first camp accepted the need for clarification of competition criteria but also expressed the desire to look at the bigger picture in deciding on the most appropriate merger policy. For example, Kenneth George (1989) argued that consideration should be given to macroeconomic performance. If there is successful performance at home, UK companies will look to internal merger candidates for growth and investment. If not, they will increasingly invest elsewhere in Europe. The second camp disagreed. Merger policy should be minimally focused only on barriers to entry (Littlechild 1989). Mergers were not seen as detrimental to competition; the market would eliminate unprofitable or inefficient firms. Enhanced profitability and market share were the result of increased efficiency. Hence the appropriate merger and monopoly policy should examine only barriers to entry that may reduce competitive pressures and efficiency gains. Although the implications are profoundly different, both camps converged on the need to enhance competition and downplay the importance of non-competition criteria. Such views pointed out the inadequacies of the British system and indirectly implied the adoption of a system more squarely focused on economic considerations. This is precisely what the EC regulations aimed to do.

Despite receptivity in some political quarters, the political stream was not ready for reform. Although not thoroughly convinced, politicians certainly became more sensitive to EC affairs. The creation of the single market fundamentally altered the relationship between state and market. It challenged the old notion of regarding public services as natural monopolies and insulating them from competitive pressures. While that idea may have made sense in a national market, its utility (or desirability) became obsolete in a European market (Zahariadis 1995: pp. 187–188; Smith 2003). Because the goal of the single market was to tear down national barriers to market entry,

national governments found it increasingly difficult to justify the absence of competition in those areas. In this way, the EC was converging on the British model of competition with private providers subject to legally independent but rigorous 'state' regulation (Dumez and Jeunemaître 1996: p. 237). At the DTI, successive ministers warmed up to Europe. Though not convinced by the rigor or principles of European competition authorities, they nevertheless had to contend with them. For example, Lord Young, DTI minister in 1987, describes his meetings with Peter Sutherland, EC Competition Commissioner, as 'the most important in my entire decade in government' (quoted in Wilks 1999: p. 306). Moreover, the increased judicial activism in EC and the hefty fines that the Commission was determined to impose on violators necessarily made British policy makers more aware and more sensitive to EC concerns. But policy makers were reluctant to push for reform.

Nevertheless, the British system was judged as having some superior elements despite the shortcomings. First, unlike the EC case, ultimate decision in the UK rests with a political authority accountable to an elected Parliament. While decisions involving mergers or monopoly questions may conceivably be made by any of the two quasi-independent UK bodies on competition grounds, the MMC and OFT, decisions involving monopoly questions on the basis of industrial policy or international competitiveness should be made by politically accountable bodies. As Sir Gordon Borrie argued, the European Commission, the body responsible for making them in the EC is not so politically accountable (cited in George 1990: p. 113). Second, there is value in keeping the tripartite system intact. The European model concentrates all powers – prosecutor, judge, and jury – in one institution. For all the efficiency gains, the EC system certainly does not enjoy some of the arm's length independence and case-by-case pragmatism that characterizes the British system. In order to maintain faith in the system, some argued, it was necessary to keep it as is.

Policy delay and policy adoption: 1990–1998

I have argued the launch of the single market opened a policy window for reform. It changed administrative and business thinking about the contours of the market and the importance of EC law. Nevertheless, transformative change did not come until almost a decade later. If the Conservatives seemed to be leaning toward the adoption of a European-style competition regime, why did they not enact one? I explore developments since 1990 to show that the issue of timing was influenced by intra-partisan conflict. The final shape of the 1998 Act was determined largely by an extensive consultation process in the British competition policy community between business and civil servants.

Despite the Green and White Papers in 1989, key policy makers were reluctant to initiate change. Intra-partisan politics lowered the salience of reform. As much of the policy-making literature suggests, major change may come if well placed policy entrepreneurs persistently push for their pet proposal and help 'soften up' the key policy makers (Kingdon 1995; Zahariadis 1995). This implies that change would come only if the key minister in charge of competition was in favour of transforming the competition regime along the lines advocated in the Command Papers. But this was not the case in Britain. Although by 1989 Tories had warmed up to Europe, DTI ministers were resolutely eurosceptic. In 1989 Ridley replaced Lord Young at DTI. He was in favour of free competition but also vigorously anti-European. His successor, Peter Lilley as well as the Parliamentary Under-Secretary of State, John Redwood, were also profoundly distrusting of Europe. Any talk of aligning competition policy along EC lines would surely fall on deaf ears. Redwood made his opposition to such plans very clear. During a parliamentary debate in 1997, he stated so unambiguously: 'officials proposed this sort of Bill when I was competition Minister, and I . . . turned it down. I refused to introduce it to the House' (House of Commons Debates 1998: col. 43). This is an example of an entrepreneur rejecting rather than promoting change. Besides the Tories at the time were too preoccupied with the 'coup' against Thatcher to give serious consideration to other issues.

The election of 1992 opened a window of opportunity in the political stream. The Conservative government was voted back into office, albeit with a slight majority, with a new Europhile face in charge of competition. Michael Heseltine's arrival at the helm signalled a possible change in policy. Because he did not share the euroscepticism of his predecessors, one might expect the adoption of European-style policy. But reform was put on the back burner. Heseltine adopted the CBI's view of competition. He thought that competition policy should not serve competition for its own sake, but it should help British industry adjust to the reality of globalization. His view implied a wider interpretation of the public interest in favour of British business, another term for old-fashioned industrial policy. It was hardly the time to introduce stringent competition-based criteria along EC lines.

Although delays in transformative change may clearly be attributed to intra-partisan disputes over Europe, the competition policy community was also warming up to change. Debates in the House of Commons (particularly the Trade and Industry Committee's reports in 1991 and 1995) as well as overt conflict between the Secretary of State and the DGFT widened the gap between reformers, such as civil servants and many academics, and the political leadership. The two reports by parliament pointed out the deficiencies of the British system urging change. They also appeared to adopt the position advocated by policy entrepreneurs, such as Sir Brian Carsberg, the

DGFT at the time, who openly argued for a unitary authority as opposed to a tripartite system. Their main area of concern was the MMC's seeming pro-industry bias. However, they failed to make a strong impact. Heseltine prominently dismissed the DGFT's recommendations for inquiry into several mergers in 1995, leading to Carlsberg's resignation. Political leadership at the DTI was simply not persuaded, to use a term from the past. Sensing a winner, Labour came out in 1996 in favour of transformative change along EC lines (a unitary authority with an Article 81-type of prohibition).

The policy community seemed to be in broad agreement of general reform. The CBI came out in favour of change along EC lines in restrictive trade practices – a position it had held for quite some time – although it objected to an Article 82 type of change in mergers and monopolies. The definition of abuse of dominant position in that Article is not clear, leading to undue and prolonged legalism. Rather business preferred the pragmatism of the British system which, despite the shortcomings, was permissive and considered issues on a case-by-case basis, which fit nicely within the British legal tradition. The CBI argued for strengthening the current system, rather than introducing abrupt change, but it curiously reversed its position in 1996 when it dropped its opposition to Article 82 type of legislation (Wilks 1999: p. 318). Perhaps individual firms eventually became comfortable with European Competition authorities and finally decided that European style convergence was inevitable.

In addition, British industry as well as some prominent politicians were dissatisfied with the slow pace in opening up other European markets. The Single Market initiative did not work as well as they had hoped. Part of the problem was attributed to the peculiarities of the British system and its lack of consistency in applying competition rules. Therefore, it was hoped that the design of a system closer to European standards would 'level the playing field' between British and European firms and open the way to correct some of the flaws in the EU system. Thus the CBI remarked during the consultation exercises in 1997 that 'we hope that the new competition regime will serve as a model for reform of the EU system' (cited in Wilks 1999: p. 318).

In 1995 a new Secretary of State came to the DTI, Ian Lang. Unlike Heseltine, he reverted back to the principled emphasis of his predecessors. As a policy entrepreneur with resources and power he gave new salience to the possibility of reform. Synthesizing information from the previous consultation exercises and Command Papers, officials at DTI drafted a bill which was was tabled in parliament in August 1996. However, the legislative timetable was interrupted by the general election in early 1997.

One of the changes proposed in the Conservative Bill and later incorporated into the 1998 Competition Act was the role of competition in

utility regulation. It indicates a shift in problem definition regarding competition. By the mid-1990s, there was a perceived need in the UK to inject a consistent sense of competition into regulatory competence. Being a relatively new phenomenon in Britain, utility regulation developed haphazardly without the benefit of an existing overall program (Doern and Wilks 1998; Beesley 1992; Bishop, Kay and Mayer 1995). On the one hand, competition had to be injected in some industries, e.g., telecommunications and gas, because the main nationalized firms operating in those sectors were not broken up prior to privatization (Zahariadis 1995). In later privatizations, such as electricity and railroads, firms were broken up prior to the sales thus creating a somewhat competitive environment. Each privatization built on previous experience creating a system of sectoral peculiarities. By the mid-1990s it was clear that the regulatory patchwork needed to be streamlined in terms of sectoral regulators and their relationship with competition authorities. Indicative of this need was the appointment of Sir Brian Carsberg as Director of OFT in 1992 after a distinguished career as OFTEL regulator. Moreover, the appointments of other architects of the UK regulatory regime, such as S. Littlechild and M. Beesley to the MMC, which also serves largely as adjudicator in matters of the privatized utilities, highlighted the need for closer cooperation over competition.

The advent of a new Labour government in office provided a new window of opportunity. True to its campaign commitments, Labour presented a competition bill. Consistent with tradition, the new bill was a bi-partisan affair. It retained many of the provisions outlined by the Conservative bill of 1996 although it also introduced some changes in accordance with campaign promises and wide consultation. In terms of streamlining competition in regulatory matters Labour needed to be seen as 'doing something.' It broadly accepted the system of regulation inherited from the Conservatives. The Competition Act also provided a nice opportunity to 'do something' by adding more transparency and consistency to the system as well as by conceiving each regulator as a 'mini' competition authority under a similar set of attitudes to policy and under a rationalized institutional structure for competition. The government also embraced European-style regulation with fervour, perhaps to show contrast from the previous Conservative governments but it also retained some aspects of the British system. It transformed the MMC into a new Competition Commission by adding a tribunal to it, in response to business complaints. It also introduced more certainty by defining legal criteria with more precision, Articles 81 and 82 are far more precise than 'the public interest.' But the Bill also avoided the trap of the Competition DG's compulsory notification to 'ease' the load on the OFT. Despite the major changes in policy content, there is considerable institutional continuity.

Conclusion

I have examined the interaction of regulatory competition and cooperation on British competition policy. Applying a multiple streams model of policy-making, I argued that convergence was the result of the interplay of three factors at opportune times: the creation of the single European market and its consequences, euroscepticism within the Tory party, and eventual broad agreement in the competition policy community which favoured consensus and consultation.

The analysis points to four conclusions. First, being a pace-setter may be more of a liability than an asset. The Europeanization literature typically identifies those economically developed member states with substantial regulatory capacities and resources as engaged in shaping European legislation in their favour in order to reduce implementation costs and give to their firms competitive advantages in European legislation (Börzel 2002). In other words, European standards, particularly in regulatory domains, will more closely resemble those of economically developed states. The British case suggests it is not necessarily true. Having a developed competition regime relative to others in the EC may actually be a liability in the sense that it gives a state the impression that European (or other) experiences have little to contribute to the national debate. In fact, it may lead to greater divergence due to positive feedback. The closer the fit between the domestic market and national competition policy, the more country-specific policy will become over time. This was precisely the attitude exhibited by both Conservative and Labour governments in the 1970s, who were content to view competition developments in Britain as parallel to those on the continent. It was only after the introduction of the single market that the preferences of many policy makers began to change significantly. The Single European Act shifted the terms of the debate making it possible, if not imperative, to look at the effects of competition policy on British industry not on a national but on a European basis. Once the problem of competitiveness was redefined to a broader, more international conceptualization and the British policy community was consequently augmented to incorporate frequent interaction with European actors, it became obvious that some form of convergence had to take place.

Second, the presence of a mere incongruence between domestic and European policy is not enough to produce change, much less convergence. It simply points to inconsistencies that may serve as the basis for policy makers to seek change. In other words, convergence need not be a top-down process as some analysts assume (e.g., Cowles et al. 2001).[9] Rather solutions can just as well creep up from below with adaptation serving as an activator, not as a catalyst, for change.

The mechanism for change is increased interaction of members of the domestic policy community with their European counterparts. It is not the mere possibility of institutional membership as Kassim et al. (2000) assert.

There was certainly no evidence of any imposition of European values on national policy as a large portion of the British public and elite seemingly believe. Rather some lesson-drawing took place, particularly among members of the competition policy community as it was augmented transnationally (Bennett 1991a). As Rose (1993: p. 2) asserts, 'a common experience of problems is the starting point of lesson-drawing.' Several of the consultation exercises (Green Papers and TIC reports) indicate that the British thought long and hard about common problems shared by themselves and their European counterparts. They also assessed the value and shortcomings of the EC competition regime. The 1998 Competition Act tried to overcome those problems while still converging on the European model.

Third, while the activating stimulus may be external, policy convergence is largely the result of domestic politics. Changes in the distribution of political power, such as elections or a cabinet reshuffle with new ministers at the helm, open windows of opportunity. Policy change is more likely to occur while these ephemeral windows remain open. The case study has explored the long and tortuous process of reform illustrating the ephemeral nature of policy windows. The appointment of Ian Lang as Secretary of State could have resulted in change, but the parliamentary timetable precluded legislative action. Of course entrepreneurs work both ways. Some may push for change, such as Carsberg, but others, such as Redwood, may vigorously oppose it.

Fourth, to the extent that the removal of political discretion characterizes a more transparent and strictly enforced regime, the British competition policy case provides empirical support for the hypothesis that the interaction of regulatory competition prior to regulatory cooperation leads to convergence to the top. The British system of discretion, however pragmatic and useful it may be, cannot work in a broader market which might depend on the discretion and administrative culture of other European countries as well. The end result had to be a more transparent system, one that relied on objective criteria that were spelled out because of the need to level the playing field. Given that regulatory cooperation at the EU level was designed to accomplish precisely this goal, it is only natural to expect lesson-drawing and policy borrowing to have been going in one direction, mainly from the centre, Brussels, to the periphery, London. But of course, this is not the end of the cycle of cooperation and competition. Regulatory cooperation at the EU level is not without flaws. If Britain succeeds in implementing a European-style competition regime without the flaws of EU law, one may expect a rekindling of the regulatory competition game. Only this time, Britain may actually be leading the way of policy convergence.

NOTES

1. The paper was presented at the conference on 'Britain and the EU: At is Heart or on its Edge?' Norman, OK, October, 24–26 2002. The author would like to thank the sponsors, the EU Center of

the University of Oklahoma, the British Politics Group, and the British Consulate in Houston, TX. Mitchell Smith and other participants provided helpful comments.

2. I use the term European Community (EC) to denote the institution prior to the name change in 1993.
3. The situation has changed since the passage of the Enterprise Act in November 2002. In the areas of monopolies and anti-competitive practices Britain plans to change the current principle of prohibition based on abuse of market power by way of dominant position and instead follow the American model of 'substantial lessening of competition.' It is feverishly lobbying Brussels to adopt this model as well. Looking at British behaviour over time, however, this is the exception that proves the rule.
4. There are other studies that look more broadly at effects on institutions, such as judicial politics and national party systems, not just policies (e.g., Mény et al. 1996; Goetz and Hix 2001).
5. The studies by Héritier et al (2001) and Knill (2001) make the point of adaptation without pressure in terms of implementation. They point to some EU decisions in the areas of the environment and transport which, while not binding, are explicitly intended to facilitate convergence. My case is somewhat different in that the policy space between national and EU authorities is very clearly delineated with no expectation, intent, or pressure that the two should converge.
6. In so far as restrictive trade practices, prices, and regulation of natural monopolies are concerned, several other institutions are involved such as the Restrictive Practices Court, and the various utility regulators. Nevertheless, the OFT, DTI, and MMC collectively constitute the backbone of competition authorities in the UK.
7. There was one more criterion since 1989 and that was to ensure that the merger did not create a concentration with a European Community dimension (Celli and Grenfell 1997).
8. An exception is the Restrictive Practices Court, now abolished, which may find companies guilty of contempt.
9. In his contribution to the Cowles et al. (2001) volume, Risse leaves open the possibility that socialization effects, such as the ones mentioned here, account for national variations. However, he still frames his argument in the same top-down (goodness-of-fit) model.

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