

WHAT IS FAIR IN THE MARKET PLACE? REFLECTIONS ON COMPETITION POLICY\*

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Abstract: The paper presents a critical review of issues in competition policy, asking whether a Christian ethic for economic life generates any distinctive position in regard to both the content and the conduct of policy.

1. Introduction

The purpose of this short paper is to ask whether a Christian ethic for economic life has anything distinctive to contribute to the development of competition policy in an advanced market economy. Competition policy is defined as the nexus of legislation, and legal or administrative procedures, by which the authorities in developed market economies seek to regulate the structure, conduct (or behaviour) and performance of the private market sector. The traditional targets of such policy have been monopoly, mergers, collusion (or cartels) and market practices which prevent or restrict competition. The institutional structure varies between economies, but in each case there are bodies which are required to monitor the functioning of markets with a view to identifying situations or behaviour which are potentially anti-competitive. In most jurisdictions these investigations may lead to action being taken against one or more firms, either administrative or legal action, subject to the right being accorded to the firms to present a defence at some tribunal specially constituted for this purpose.

We note immediately that the paper will not deal with the "big issue" of capitalism versus socialism that has attracted a great deal of attention from Christian writers on economic life.<sup>1</sup> The assumption here is that a market economy is under scrutiny, and that policy is restricted to the amelioration of the market economy rather than anything more radical. The interest is in whether, in this more limited area of discussion, a Christian ethic has anything useful or decisive to contribute. The significance of this question goes beyond the immediate focus of this paper. If Christian ethics can only contribute to discussions of the "big issues", then its impact on the vast majority of economic policy issues will necessarily be slight. It is seldom that radical changes in economic systems are being contemplated.<sup>2</sup> Some policy changes are marginal in this respect e.g. shifting a particular economic activity from the public to the private sector, rather than system wide; and most are aimed at getting the market system to work more effectively rather than shifting the locus of economic power. These are the type of policy changes where a Christian ethic needs to have something useful to say, if its contribution to debate is not to become insignificant. There is the added advantage, in concentrating on

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specific policy areas, that the Christian ethicist is required to be more rigorous and precise. A preoccupation with "big issues" can often be a cover for woolly thinking dressed up as "prophetic" pronouncements. With a specific issue, the obvious question is what difference does a Christian ethic make in this area. (If the answer is nothing at all, it is not necessarily a disaster for Christian ethics: at least we have discovered an area of life where we do not have to make the effort to develop a Christian "view").

The scope of the paper has already been defined as competition policy. Before turning to the main arguments of the paper, it should be noted that there are other areas of market failure, conventionally defined, which are not included here, which also give rise to policy issues. The first is the issue of asymmetric information in markets.<sup>3</sup> The asymmetry may affect both consumers and producers. The problem of the market for "lemons" (that is, used cars which are defective in some respect) not only raises issues about the effect on unsuspecting buyers, with which the doctrine of caveat emptor is unable to deal satisfactorily, but also may lead to the disappearance of some markets altogether. The design of policies for consumer protection may be an appropriate response if sellers do not respond by supplying their own (credible) guarantees or quality certification. In insurance markets it is the suppliers of insurance services who are in difficulties: consumers may have incentives to misrepresent their true risks, in order to get more favourable terms (adverse selection), and will definitely have less incentive to take care of their own property once it is insured (moral hazard). A second issue is market failure in the production and supply of information. Once a piece of information has been produced (e.g. an analysis of the quality of a product or the details of an invention) then it is very easy to copy. So there is little incentive to produce the information in the first place. But without the information the market system will be less effective. Patent and copyright laws are some of the policy responses that have been pursued.<sup>4</sup> A third issue concerns the difficulties of creating markets for externalities, and the problems of the supply of public goods.<sup>5</sup> The purpose of listing these issues is partly to make it clear what is excluded from consideration in this paper, but also to alert the reader to the fact that even within the fairly limited focus of markets for goods and services, the market system gives rise to a wide range of potential policy issues.

The structure of the paper is as follows. In section 2 there is a description of competition policy as it is practised in the economies of the U.S.A., the U.K. and the E.C. In section 3, the motivation of competition policy is addressed, including an evaluation of the policy in the light of Christian ethical priorities.

## 2. Competition policy : problems and responses<sup>6</sup>

It is convenient to discuss competition policy under four headings: monopoly, merger, collusion and anti-competitive practices. These are clearly not exclusive categories (a monopoly position may be achieved by merger, and exploited by an anti-competitive practice, for example). There is also the disadvantage that they tend to obscure the historical development of policy in the three jurisdictions under consideration. However the classification does permit a sharper definition of the purpose and content of different policies, for which the international comparisons can be quite revealing.

## 2.1 Monopoly

The concern with monopoly has long been at the centre of competition policy. The earliest definition of the policy is in the 1890 Sherman Act in the United States in the United States. Section 2 of the Act condemns monopolization, attempts to monopolise and conspiracies to monopolise a particular market or industry, and was used to attack actions by firms to acquire monopoly positions, the exercise of monopoly power, and devices to protect monopoly positions. The Act was framed specifically to admit the exercise of rule of reason: it would be unreasonable, for example, for an innovator to be accused of monopolization the moment he launched a new product on the market. Early cases under the Act were much concerned with the issues of intention and "overt acts". The mere existence of monopoly would not be enough to condemn a firm. There had to be evidence that the firm had actively pursued a policy of monopolization, as in the Standard Oil case of 1911, where it was shown that the firm had set out to acquire a 90% market share in refined products, with a view to setting both the price of crude and the price of refined petroleum. In the Alcoa case, the judgement was that the mere existence of a monopoly was not sufficient to condemn a firm. It was the drive by the firm to achieve a monopoly position by methods other than "normal industrial development" (e.g. innovation) which attracted an adverse decision. All this must turn on the definition of monopoly: in the Alcoa case Judge Learned Hand said that a market share of 90% was clearly sufficient to establish that a firm was a monopoly, that 64% was doubtful and that 33% was clearly insufficient. Whatever the merits of these particular numbers, the application of such rules presumes that the market can be defined without ambiguity: this is an issue that has figured prominently in many subsequent celebrated antitrust cases (e.g. IBM 1969-82). The other element under the Sherman Act is that evidence of abuse of monopoly power is required to condemn a firm. The emphasis, historically, was on actions, and on the intentions that motivated those actions, rather than on the effects of those actions: there was no need to produce evidence of ill effects of monopoly.

In the U.K. a concern with monopoly emerged in the Monopolies Act of 1948, and developed in legislation culminating with the Monopolies and Mergers Act of 1965. The criterion for referral of a firm to the Monopolies and Mergers Commission is that it supplies more than 25% of the market in respect of which monopoly is alleged. The first task of the Commission is to establish whether that criterion is actually met in the case under consideration. If it is, then the Commission proceeds to an intensive examination of the firm and the market to make a judgement as to whether the situation is against the public interest. The public interest criterion is deliberately defined very widely, though competition issues are virtually always at the heart of the investigation. The Commission makes its report (publicly) to the Secretary of State for Trade and Industry, who may or may not act on the recommendations contained within the report. The procedure is therefore administrative rather than judicial, though MMC hearings are often treated as adversarial by the firms involved, which will usually be legally represented at the hearings. E.C. monopoly policy is based on Article 86, which relates to the abuse of a dominant position by one or more firms in a market. The procedure is first to establish whether the firms are dominant in relation to a "relevant product market". If they are, then the Commission seeks for evidence of abuse of dominance.

The treatment of monopoly power in all three jurisdictions has some important common themes. There is a presumption that a dominant firm is able to raise prices and earn excessive profits: so the investigation focuses on evidence of abuse of a monopoly position, once some fairly arbitrary market share criterion has been satisfied. But there is also the issue of conduct seeking to monopolise (i.e. acquire a dominant position in a market), or to sustain a monopoly position.

Evidence of abuse focuses on the level of prices and profits, the existence of price discrimination and the deployment of "non-standard" market practices (e.g. exclusive dealing, tie-ins, discounts), which will be discussed in section 2.4 below. Leaving mergers to the next section, the main issue in conduct seeking to monopolise is predatory behaviour. The classic example was that of the Standard Oil (1911) case, referred to above, where it was alleged that the company had used price cutting as a device to drive rivals from the market, or to weaken them so that they could be taken over. This raises the possibility that investment (or even R and D) might be used in a predatory fashion: the firm creates capacity to enable it to flood the market with output. However identification of predatory behaviour is far from straightforward. How is it to be distinguished from successful competition due to "skill, foresight and industry": to quote Judge Learned Hand again, "The successful competitor, having been urged to compete, must not be turned upon when he wins". "Beating up the winners" of competition in markets should emphatically not be the objective of competition policy! Predatory behaviour may also be an issue where a dominant firm is seeking to preserve its profitable market position against entrants. Fighting an entrant with a predatory price may be a rational policy, either where the dominant firm can thereby establish a reputation for aggressive response thus deterring future entrants, or where the dominant firm is attempting to signal that it is more cost efficient than it really is. The modern theoretical industrial organization has identified a range of activities that incumbent firms may undertake in order to deter entry. However there is, in the literature, a distinction made between strategic and innocent entry deterrence. Innovation, investment in physical capital, brand proliferation are all associated with sunk costs that are a barrier to entry: but in practice it would be hard to distinguish a dominant firm which is taking advantage of market opportunities in the usual way, from one which is behaving "strategically" to deter entry. It seems difficult to escape from the conclusion that evidence on what a firm has done in a market is inadequate: one needs to know why the firm acted as it did.

## 2.2 Merger

In the U.S. anticompetitive mergers were the subject of the Clayton Act in 1914. The per se doctrine applies: mergers which reduce competition in a market are outlawed, and there is no scope for arguing for a merger on the basis of other benefits. In the U.K. mergers were added to the remit of the Monopolies Commission in 1965, which was then renamed the Monopolies and Mergers Commission. The current procedure is that the Director General of Fair Trading has the task of monitoring merger activity to identify examples which may create a monopoly position. The criterion applied is either that the merged company will have more than a 25% share of a relevant product market, or that the assets involved are greater than #30 million. Once again, the MMC is empowered to examine evidence relating to the firms involved in the merger situation, to evaluate it on a public interest criterion, and to report to the Secretary of State. The EC had no merger policy until the Philip Morris case of 1981 established that Article 85

could be applied by treating a merger as an agreement between the firms involved. (It is still not clear whether a hostile takeover may be counted as an "agreement" in this sense).

The objection to merger is that it is seen as a direct route to establishing a dominant position in a market, with the implication that such a position may be abused by raising prices or predatory behaviour. The major problems for the policy are seen to be, as in the case of monopoly, the definition of markets, the treatment of offsetting gains in efficiency due to scale economies or R and D, the takeovers which represent the rescue of a failing company (as in the British Airways/British Caledonian merger in 1987). The U.S. Department of Justice developed a set of merger guidelines (1980) giving the market concentration levels at which the anti-merger provisions of the relevant Acts will be involved. They also proposed a novel doctrine of market shares which gives much more weight to the economic effects of market dominance. Basically the guidelines ask the hypothetical question as to what might happen to market shares if the dominant firm attempted to raise prices by 5%. The reasoning is that if a modest price rise would generate a flood of entrants to the market, the dominant firm has no scope for abusing its position. (This is reminiscent of the paradoxical conclusion of contestability theory,<sup>8</sup> that the threat of entry can keep prices low, so long as there are no sunk costs which generate barriers to entry). These considerations apply largely to the case of horizontal mergers. For vertical mergers, the analytic issues are somewhat different. On the one hand, there are efficiency gains as the upstream output is effectively transferred to the downstream operation at marginal cost, so that the "double margin" is eliminated, output is higher and prices are lower. On the other hand, vertical merger may make it more difficult for entrants, and competitors may be driven from the market by "foreclosure" (the integrated firm refusing to supply the upstream output to a competitor in the downstream market).

### 2.3 Collusion and cartels

Section 1 of the Sherman Act 1890 in the U.S. prohibits contracts, combinations and conspiracies in restraint of trade. The early cases brought under the Act established the per se illegality of restrictive agreements, and this was later extended to information agreements. The per se rule applies to the intent, and economic effects were not, initially at least, brought into consideration. The main difficulty is that of proof. If prices in a market move in parallel, is that evidence of collusive behaviour? Unfortunately, the interpretation of the evidence is ambiguous: prices would indeed move in parallel in a cartel, but so they would in a non-cooperative equilibrium in a homogenous oligopoly market. In the EC Article 85 prohibits all agreements and concerted practices among firms, and the Commission has acted quite rigorously against cartels that involve more than one member country. In the U.K. a series of Acts between 1956 and 1976 have dealt with Restrictive Trades Practices. All agreements, except those of the most trivial nature, must be registered with the Office of Fair Trading and be scrutinised in the Restrictive Trades Practices Court. The presumption is that they are against the public interest, unless the firms are able to show that there are substantial benefits under other headings (or "gateways") defined in the legislation, and that these benefits outweigh the detriments. In practice, the Court was initially rigorous in rejecting arguments for exemption in the cases that came before it, and as a result, many agreements were simply abandoned without a contest. While an official review of the policy in 1988<sup>9</sup> showed that it was far from perfect in its

application, it is widely regarded as the most effective part of U.K. competition policy. But it can only deal with formal collusion or cartels. Tacit collusion is covered by the "complex monopoly" provisions of the 1965 Monopolies and Mergers Act, which provides for a Monopolies Commission investigation where two or more firms with joint market shares of more than 25% of a relevant product market are believed to be acting in concert, so as to restrict competition, but without a formal agreement.

The target of the policy in all the jurisdictions is any cartelization of the market with an intent to raise prices. Potential benefits for such agreements, such as "orderly marketing" or stabilisation of investment in markets with lumpy investments, are usually dismissed as special pleading. The main difficulty for the policy is the demonstration by oligopoly theorists that under certain conditions joint profit maximisation can emerge by tacit collusion with no formal agreements of any kind between the firms<sup>10</sup>. (Indeed, it has been suggested that the existence of a formal cartel is a sign of great difficulty in colluding due to the market structure or the nature of the market). By concentrating on formal collusion, the policy fails to address what is possibly a much more pervasive problem of parallel pricing and tacit collusion.

#### 2.4 "Anticompetitive" practices

The term "anticompetitive" practices covers a wide range of conduct observed in real markets for goods and services: resale price maintenance, refusal to supply, exclusive dealing, tie-ins, full line forcing, discounts and price discrimination, whether practised by a single firm or a group of firms. They are presumed to be "anticompetitive" in their effects, though this presumption often owes more to a line of reasoning which supposes that firms would not do these things unless they restricted competition, than to any strict economic analysis. Once again, policy on these practices developed earlier and more extensively in the U.S. jurisdiction. Thus section 2 of the Clayton Act 1914 (as amended by the Robinson Patman Act 1936) banned price discrimination partly on the grounds that it served as a cover for predatory behaviour, but also because it was thought to be unfair that large customers could get favourable deals relative to those offered to small customers, the differences not being justified by differences in the costs of supply. Unfortunately, this final caveat is one which is very difficult to evaluate in a particular case. Also prohibited by the legislation are "bottleneck" agreements to deny supplies to potential or actual competitors, and joint refusals to supply retailers who cut prices. In the EC, such practices are attacked under Article 86 (dominant firms). In principle, the procedure is to establish first that a firm has a dominant position, and then examine market practices for signs of abuse of that dominant position. In practice (e.g. the Michelin Tyres judgement), the procedure may be reversed: "unusual" market practices may be taken as a sign that the firm is dominant. In the U.K., resale price maintenance is per se illegal under the 1976 Act unless exemption has been granted by the Restrictive Trades Practices Court. Such exemptions are rare: the Net Book Agreement, which is currently under critical scrutiny, is one of the few to have been granted immunity. All other anticompetitive practices are dealt with under the Competition Act 1980. The MMC had invariably found against such practices as full line forcing, selective discounts and tie-ins, when practised by firms with dominant market positions. The Act defines a number of such practices, and gives the Office of Fair Trading the power to investigate them. If the Office believes that competition is being restricted, then it may seek undertakings from the firm or firms involved.

If such undertakings are not forthcoming, then the matter may be referred to the MMC. A group of firms with similar or uniform practices may also be referred to the MMC under the "complex monopoly" provisions of the 1965 Act. In recent years, for example, car manufacturers were investigated by the MMC in respect of their contracts with dealers for the supply of spare parts.

The precise rationale and economic effects of some of these practices are not fully understood. One argument is that they can only have adverse economic consequences where the firm or firms in question are dominant in the particular market. An alternative view is that the practices indicate dominance. The former view has prevailed in the Easterbrook-Bork "doctrine" in the United States. The idea is that firms without market power may try a number of alternative marketing strategies in order to please customers. Arrangements that are unacceptable will soon be eliminated, as customers switch to other suppliers. There is no need for the competition authorities to be involved. The U.S. Department of Justice has issued a set of Vertical Restraints Guidelines, setting out the market shares in both upstream and downstream markets at which market dominance becomes an issue, and therefore an investigation of vertical restraints will be appropriate. The spirit of the Easterbrook-Bork doctrine was illustrated neatly by a U.K. MMC case concerning Raleigh Bicycles (1981). The manufacturers would only supply their bicycles to Raleigh dealers, and not to discount stores who would be unable to supply after sales service. In practice, this was an unsuccessful marketing strategy, as Raleigh steadily lost market share to their competitors over the 70s: even a dominant firm is not immune from market pressures.

### 3. The Objectives and Scope of Competition Policy

The sketch of policy in the previous section generates three main issues for discussion and evaluation. The first is whether the policy should focus on the form of a market practice, and on the intent of the firms involved, or whether the authorities should be solely concerned with the effects of the practices. The second issue is the definition of the public interest in competition policy cases: should there be a fairly narrow focus on economic efficiency, or should other criteria reflecting the social impacts of markets, be adopted. The third issue is whether legal procedures, including the possibility of private action, are more appropriate than administrative review. These three issues are now considered in turn, with Christian ethical commentary where appropriate.

The emerging consensus in the economics profession, though not necessarily among the competition authorities, is that form and intent do not matter, and that policy should only be concerned with effects, evaluated narrowly in terms of economic efficiency. This emphasis on "effects" is quite new in competition policy. For example, U.S. policy traditionally has focused on the intent to monopolise, and on collusive behaviour (e.g. secret meetings to fix prices). In the U.K., the MMC has generally focused, in monopoly references, on the abuse of dominant positions: in the area of restrictive trades practices, the condemnation of formal collusive arrangements contrasts with the impotence of policy in dealing with tacit collusion. The logic of the new consensus is that it is only worth bothering about behaviour (form or intent) if it can be shown to have adverse effects. The older view, that some forms should be per se illegal, e.g. cartels, resale price maintenance, restrictive vertical arrangements, might be justified on the basis that in 99 cases out of a hundred the

effects will be adverse: so there is a presumption against them, and a blanket prohibition gives reasonable results. But such a justification requires at least some re-writing of history: the early legislation was motivated to a great extent by the strong sense that some things are simply "unfair". The Sherman Act, for example, was motivated by concern for the small producer who is being squeezed by the predatory tactics of the large firm, and by the desire to protect consumers from exploitation by cartels. In the U.K. the 1973 Act was called the Fair Trading Act. Is this kind of terminology confused, or does it capture proper concerns of the authorities that go beyond a narrow focus on economic efficiency?

Modern industrial organisation theory makes a distinction between "innocent" and "strategic" behaviour. Innocent competitive behaviour involves R and D and investment to lower costs and to improve products. Lower prices and higher quality in turn generate market share increases, and, in the long run, higher profits for the successful firm. Compare this behaviour with that of a firm whose intent is to drive a rival from the market, and to destroy incipient competition. Theory at least enables us to distinguish the direct (innocent) and indirect (strategic) effects of a decision.<sup>11</sup> An American antitrust consultant described, at a seminar, a case where a supermarket chain had destroyed a competitor, in one of the towns in which it operated, by matching or undercutting any price offers made by the competitor. The competitor brought an action alleging predation, but failed on the grounds that lower prices were a benefit to the consumers, and that the competitor had failed to establish that the behaviour of the supermarket chain was other than normal business practice. When a participant in the seminar expressed the view that what had happened was "unfair", the consultant replied, "You need a priest, not a lawyer". Why are we uneasy about such cases? Presumably because the deliberate intention to put another firm out of business, with all the consequences for those involved, offends against our normal notions that the stewardship and responsibility for resources exercised by a competitor is not something to be taken from him lightly.<sup>12</sup>

Basically, what is being asked for is that the competitive behaviour should accord with some notions of "justice" or "fairness": the competitors should certainly strive to offer customers a better deal, but they should not seek to succeed by actions designed deliberately to damage the competition. The difficulty, of course, is with the identification of unacceptable behaviour. However there is a considerable case history of predation and trade restrictions which might be appealed to in an attempt to define market behaviour which should be outlawed.

The second issue is whether the public interest should be defined narrowly, in terms of economic efficiency, or whether a wider range of considerations should be included in the definition of the public interest. In the U.K., for example, the public interest is defined to include effective competition, consumer interests, innovation, the balanced regional distribution of industry and employment and the international competitive position of U.K. producers. Admittedly the U.K. government has more recently announced that it will only refer to the MMC cases which raise issues of competition. But the wider public interest criterion remains on the statute book. The economic efficiency criterion is generally applied with a cost-benefit analysis model. The monopoly model due to Williamson<sup>13</sup> focuses on the trade-off between productive efficiency (due to economies of scale, for example), and allocative efficiency measured by the consumer surplus triangle "deadweight loss". The analysis usually ignores the excess

profits, a transfer from consumers to the producers: a more comprehensive analysis might wish to consider the welfare implications of such transfers. The cost-benefit analysis approach generates a number of problems, even in its own terms. The measured net welfare losses from monopoly are often quite small, which prompts the question why bother with competition policy. One response is that it is precisely the existence of competition authorities, which acts as a brake on the aggressive tactics of large firms. A second problem is that the trade-offs are in practice difficult to quantify, but without quantification the analysis breaks down. One route out of this dilemma is to establish presumptions that certain market practices or forms are likely to generate welfare losses, but to allow a particular firm to argue for exemption on the basis of demonstrable offsetting benefits to the public.

It should also be noted that this approach to competition policy is disputed by neo-Austrian economists, who wish to promote competition as a desirable process in itself. The effects of competition, they suggest, are unlikely to be measurable. This approach comes from an emphasis on the role of entrepreneurship, and a desire to act against all market forms or behaviour that prevent innovation and competition.

From the standpoint of a Christian ethic for economic life, the main criticism of the cost-benefit approach is its narrow focus on issues of economic efficiency. While a Christian ethic is concerned about the good stewardship, which must include a requirement not to waste resources, its scope is much wider. There will be a concern for the effects of market behaviour on small businesses and on employment, for the consequences for employees of pressures on firms to compete, for environmental issues, and for distributional issues - the injustice of prices that exceed costs and thus transfer income from consumers to producers. Thus a Christian ethic would wish to keep the "public interest" criterion, and allow it to be widely construed. An objection to this approach is that it ignores the fact that there are other branches of government concerned with issues of income distribution (social security systems), employment and regional policy. These matters are not therefore neglected: there is no need to make them the responsibility of the competition authorities, who may concentrate on economic efficiency alone. However the cases which the authorities are required to consider are very specific, and it is difficult to look at them as anything other than a package. For example, a merger proposal will have effects not only on competition in the relevant markets, but also on the employees of the firms involved and hence on the communities within which they are located. Given that the motivations of the shareholders are to maximise value, a wider scrutiny of the merger on a "public interest" basis seems appropriate.

The third issue is that of procedures. A Christian ethic gives responsibilities to the authorities to order the affairs of community life not least in respect of market behaviour.<sup>14</sup> The responsibilities include creating conditions where the citizens can be good stewards of their personal resources, and ensuring that those in an economically strong position do not exploit the weak. Both of these are broad objectives of competition policy within a Christian framework. The preference is for the authorities to act within a framework of law rather than bureaucratically or administratively. A legal framework is more likely to ensure that the treatment of individuals is evenhanded, and that unnecessary interference in the affairs of individuals is kept to a minimum. The use of resources is clearly to be seen as the responsibility of the owners of those resources,

and not to be subject to direction by the authorities. The difficulty, of course, is to achieve this objective for the competition authorities, while at the same time maintaining a wide definition of the public interest. Framing legislation which is sufficiently precise to act as a guide both to the competition authorities, and to firms, is probably incompatible with a public interest criterion. One means of handling this complexity is to state a set of rules that regulate a range of market behaviour and conduct, where there is reason to believe that in general such behaviour is likely to have adverse effects, not merely for economic efficiency but more generally. But it should also be open to the firm or firms involved to argue for exception from the rules, if they can show that there are substantial countervailing benefits. This kind of procedure has been successfully applied by the Restrictive Trades Practices Court in the U.K.<sup>15</sup> Over time a body of case law helps to define the situations in which exception is likely to be permitted, and thus provides useful information to firms. These may usefully be codified as general exceptions to the application of the rules, thus defining a set of acceptable activities.

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There is also the issue as to whether the application of competition law in the appropriate courts should be restricted to some public body, or whether private actions should be permitted. The advantage of private actions is that they give scope for redress where the competition authorities have been neglectful of their duties, or ignorant of a particular abuse. The difficulty with private action, apart from the problems of litigious behaviour, is that it does not conform easily with a general public interest criterion, particularly where the respondent to the action wishes to plead for an exception. On balance, it is probably better not to permit private actions.

The potential educative effect of competition law should not be overlooked. Indeed, the hope is that by defining the competitive framework, firms will be able to pursue their business without arbitrary intervention from the competition authority by avoiding any behaviour that might be challenged under the rules. However it is arguable that some kinds of undesirable market behaviour cannot be effectively legislated against. We have already noted that some predatory behaviour may be difficult to legislate against, because of the absence of a clear empirical distinction between acceptable and unacceptable forms of competition. One possible solution to this problem is the development of codes of ethical behaviour in markets which could be promoted in the business community. Codes of conduct are well established in the professions: given the developing professional status of managers, a code to regulate business practice would not be out of place. One advantage of such a development could be a diminution of the role of the competition authorities.

In the first part of the paper, we asked whether a Christian ethic for economic life could have anything specific to say about competition policy issues. The discussion of the previous paragraphs suggests that a Christian ethic does favour particular solutions to some of the major issues. In the debate on form (or intent) versus effects, we conclude that the policy should continue to consider the intentions of the players in a market, and not just the effects of their behaviour. We suggest that a wide definition of the public interest is appropriate, and not just a narrow focus on economic efficiency. We also have argued for a rule-based policy, with a legal framework, to ensure that the treatment of firms is even handed and consistent; and for the development of codes of practice to promote good behaviour in markets. No doubt all these points require further discussion:

but enough has been said to establish the point that a Christian ethic for economic life does have something distinctive to contribute to the debate.

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Notes

1. See, for examples, Hay (1989) Chapters 4 and 5, Preston (1979) and Wogaman (1977).
2. The developments in Eastern Europe over the last year or two, with the search for economic systems to replace the centrally planned economies of the Communist states, are a striking, but rare, example. It is not evident that Christian ethical thinking has contributed much to these developments.
3. See, for an accessible review of these issues, Rasmusen (1989).
4. See, for example, Hay and Morris (1991), pp 652-660.
5. See, for example, Boadway and Bruce (1984), Chapter 4.
6. This section draws on Hay and Vickers (1987) pp 1-60, Hay and Vickers (1988) and Neale and Goyder (1980). The choice of references here is obviously idiosyncratic: but they contain a range of references to the extensive literature on this subject.
7. Tirole (1988) Chapters 8, 9.
8. Baumol (1982).
9. Department of Trade and Industry (1988).
10. Tirole (1988) Chapter 6.
11. Fudenberg, J. Tirole (1984).
12. For a full discussion of the concept of stewardship of resources in Biblical ethics see D.A. Hay (1989), Chapter 2, section 2.
13. O.E. Williamson (1968).
14. See D.A. Hay (1989) Chapter 2, section 3.
15. This is not to suggest that the legislation and the Court are without their defects: see Department of Trade and Industry (1988).

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