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## Editorial

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### Merger Policy: The Second Lilley Doctrine

Having tried and failed to use merger policy as a weapon against foreign State-owned enterprises, Secretary of State Peter Lilley has bowed to the inevitable and refined the so-called Lilley doctrine. In doing so, he has taken several steps back towards the former Tebbit doctrine.

The Tebbit approach regarded competition as the sole ground for deciding whether a merger should go to the Monopolies and Mergers Commission. Lilley 2 stresses that state ownership can have anti-competitive implications justifying a reference: but alone it will not be enough.

So far so good. Lilley 2 also envisages building up a body of caselaw based on MMC decisions. With his powers of referral, Mr Lilley is the obvious starting point for this departure: paying attention to the MMC's previous

decisions will determine what he refers in the first place. Had he adopted this approach earlier, he might not have continued to send the MMC the sort of case which caused the problem in the first place.

His comments, to a recent Law Society lunch, notably failed to address the possible anti-competitive effect of the UK's privatised monopolies, generally viewed as the most pressing problem for UK competition policy. The Secretary of State is likely to be judged by the attitude he takes to the behaviour of the utilities which the present Government and its predecessors have put into the private sector. The MMC's time might be better spent looking into this area rather than the sort of cases which the first Lilley doctrine dictated should be sent: this would be greatly to the political credit of the Secretary of State for Trade and Industry, whose profile is woefully low, and to that of the Government as a whole.

Mr Lilley is known as an unreconstructed free marketeer, perhaps the last in the Government. His approach to competition should, on the face of it, be radical and innovative. His first attempt to take a new direction appears to have foundered, but he must not react by reverting to a *laissez faire* position. Temperamentally, he may not be the ideal person to embark on a crusade, but if the DTI and indeed the Government is to project itself as the champion of market forces, the privatised utilities have to be examined closely.

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