Consumer Unity & Trust Society International

The Relationship of Competition and Regulation Policy and Administration

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15 May, 2006

New Delhi, India

1. INTRODUCTION

There are several dimensions to any discussion of the relationship between competition and regulation. First, there is the question of relationship of competition policy to regulation in the most general sense of that term which refers to government, laws, regulations and other edicts. In the modern economy many regulations affect the state of competition, quite often negatively.

Second, there is the question of competition and regulated industries. In most countries this refers to industries, most often public utilities such as in energy, telecommunications and transport. Such industries are usually the subject of economic regulation. Key questions concern how these industries could be made more competitive, how exactly they are regulated and by whom and what is the effect on competition.

Third, there is a related question of how does competition law apply in regulated industries, who applies it and, to the extent that it does apply, what are the special issues?

In this paper we will briefly discuss each of these dimensions.

A recurring issue in each dimension is whether competition and regulatory policies complement one another, or whether they are in conflict with one another.

2. GENERAL REGULATION

A vast number of laws, regulations and government policies affect the state of competition. These regulations apply at all levels of government including local, regional, state or provincial, national and international, and they cover all sectors and they apply in all fields of government activity. Their effect on competition may be positive or negative. No analysis of competition policy in the modern economy is complete without considering the effects of regulations on competition. Indeed many economists argue that the effects on competition of anticompetitive regulations are greater than the effects of anticompetitive practices in the private sector, and that where there is a lack of competition in any industry most often the fundamental cause is a government law that affects competition, for example by restricting entry.

It is this consideration which has given rise to the concept of a comprehensive competition policy. Such a policy involves not only antitrust or competition law which basically applies to behaviour by business but it also includes a wide range of government laws and policies that affect competition.

A <u>comprehensive</u> competition policy includes all government policies that

affect the state of competition in any sector of the economy including policies that restrict as well as those that promote competition.

A national comprehensive competition policy in a federation includes laws and regulations at all levels of government, federal, state and local, that affect the state of competition. A national comprehensive competition policy includes:

- prohibition of anti competitive conduct (traditional antitrust laws)
- liberal international trade policies
- free movement of all goods, services and factors of production (labour, capital etc) across internal borders
- removing government regulation that unjustifiably limits competition, eg legislated entry barriers of all kinds, professional licences, minimum price laws, restrictions on advertising
- the reform of inappropriate monopoly structures, especially those created by governments
- appropriate access to essential facilities
- a level playing field for all participants, including competitive neutrality for government businesses and an absence of state subsidies that distort competition
- separation of industry regulation from industry operations, eg dominant firms should not set technical standards for new entrants

A comprehensive competition policy therefore includes policy concerning amongst other subjects: international and interstate trade; intellectual property; foreign ownership and investment; tax; small business; the legal system; public and private ownership; licensing; contracting out; bidding for monopoly franchises; and a range of other policies. Some of the above policies have a very direct effect on competition, whilst others affect the general economic environment and the general climate of competition of the country, eg foreign ownership and investment restrictions.

A comprehensive competition policy therefore goes far beyond the application of conventional competition law. Conventional competition law prohibits anticompetitive conduct by business enterprises. It prohibits cartel behaviour, monopolisation, anticompetitive mergers, other anticompetitive practices and may extend to prohibitions on false advertising and misleading and deceptive conduct. Typically it applies to private sector behaviour and in most countries these days to government businesses. It does not, however, generally apply to laws that restrict competition, for example by restricting entry, setting minimum prices, exempting businesses or sectors from the reach of competition law and so on, although in some cases in some countries laws that directly seek to override competition law directly (e.g. by purporting to legitimise a cartel) may be invalid.

The Medical Profession

The medical profession provides an example of how the law can be used to restrict competition ostensibly in the public interest. It is argued, not unreasonably, that there should be restrictions on who can practice medicine. We do not want any citizen to be able to practice brain surgery without professional qualifications (although Milton Friedman has claimed that there should be no restrictions other than that medical practitioners be required to display their qualifications so that consumers know what they are buying.) Economic theory provides some support for the establishment of consumer protection in regard to the medical profession. The economic argument is that there is information asymmetry between the consumer (or patient) and the medical practitioner (whether doctor or specialist). The consumer in particular has no way of judging the quality of the service being provided. There is also the possibility of considerable harm from unqualified practitioners. On this basis it is argued that there should be some regulation of the medical profession.

However, when one examines the nature of regulation**,** it is apparent that there are major restrictive effects on competition. First, the practice of medical work is restricted to qualified practitioners. Moreover, within the medical profession and medical workforce there are sharp demarcations in many countries that may prevent paramedicals e.g. nurses performing elementary medical operations (e.g. giving injections) because performing them is reserved for doctors. In short, medical regulation establishes monopoly and thereby prevents entry both by unqualified persons and by persons who may well be qualified to carry out certain medical tasks competently. This limits supply and competition and allows higher prices.

Second, entry to the profession and or the workforce is severely limited in most countries, by pressure from the medical profession wishing to restrict supply in the name of protecting standards but equally often with the purpose of restricting supply in order to raise income. Often this is supported by governments wishing to restrict supply in the belief that this will reduce medical bills. The basis for this government behaviour is usually the belief that an increase in the supply of doctors will lead to an increase in the amount of treatment and in turn an increase in cost to the public sector and to the community. Whilst it is imaginable that the restrictions on supply are solely aimed at preserving standards, a more realistic view in most countries is that they have an additional substantial anticompetitive purpose.

Third, in many countries there are restrictions on competitive behaviour by medical practitioners. Sometimes there are price-agreements, agreed fees, prohibitions on advertising and so on. These may be authorised by the law or simply exempted from the application of competition law. Alternatively they may not be protected by statute in which case they may be open to prosecution under competition law.

Fourth, there are often special restrictions on entry by foreign qualified practitioners.

Taking these four restrictions together, it becomes apparent that the benefits of regulation could be outweighed by the costs.

Regulation of the medical profession provides an example of competing theories of regulation. One theory is that regulation operates essentially in the public interest, usually to protect the public from harm. The other theory is that regulation generally serves the purposes of those being regulated and operates against the public interest generally by restricting competition.

Deregulation Policies

The economic deregulation movement tries to remove as much regulation of economic activity as possible. In most countries there has been a wave of deregulation but many areas requiring significant regulation remain. Moreover, for every act of deregulation there is often a new form of regulation often with anticompetitive effects. The Business Council of Australia has recently demonstrated that in Australia for each week that the national parliament sits several hundred pages of new laws are enacted and that the amount of new law enacted in the last five years equals in volume the amount enacted in the previous 90 years (to be checked). One difficulty with deregulation policies is that they often focus in an ad hoc manner on selected cases.

A Comprehensive Competition Policy

The most serious attempt at a systematic comprehensive national competition policy comes from Australia. In 1991 the national, state and territory governments agreed that a national competition policy should give effect to the following principles:

(a) No participant in the market should be able to engage in anticompetitive conduct against the public interest;

(b) As far as possible, universal and uniformly applied rules of market conduct should apply to all market participants regardless of the form of business ownership;

(c) Conduct with anticompetitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for review, to demonstrate the nature and incidence of the public costs and benefits claimed;

In order to give effect to these principles, the governments agreed to establish in October 1992 an independent review of national competition policy headed by Professor Fred Hilmer, Director of the Australian Graduate School of Management.

Following the publication of the report in August 1993 a number of meetings between all the governments were held. Although some difficulties arose, eventually in April 1995 the Council of Australian Governments (COAG), consisting of the Commonwealth, State and Territory governments, agreed to a national competition policy based on the Hilmer Report.

There are six main elements in the comprehensive national competition policy. They are:

1. A competition law applicable to all forms of business virtually without exception. The Trade Practices Act was amended so that, with State and Territory application legislation, the prohibitions of anti-competitive conduct contained in Part IV were applied to all businesses in Australia; hence federal constitutional limitations were removed. Moreover, “Shield of the Crown” immunity for State and Territory government businesses was removed.

   Although the applications legislation was the product of State and Territory legislatures the enactments conferred exclusive public enforcement jurisdiction upon the Australian Competition and Consumer Commission. No State enforcement agencies were established.

   The broad effect of these changes was that the Trade Practices Act now covers public utilities, government businesses, the health, energy, communications, transport, education, sport, agriculture sectors and so on.

   There is a general labour market exemption for employer/employee collective bargaining regarding remuneration and terms and conditions of employment. Intellectual property exemptions remain but are to be cut back.

   The National Competition Policy reforms do not entirely remove the ability of governments to exempt specific conduct from the competitive conduct rules in the process of establishing regulatory arrangements for particular industries. However, the reforms restrict the manner in which exemptions may be made.

2. A process for the review and reform of all laws in Australia at all levels of government that restrict competition to determine if they are in the public interest. Each government agreed to develop a timetable for the review and, where appropriate, reform of all

existing legislation that restricts competition. All legislation was then to be reviewed at least once every 10 years.

The guiding principle in reviews was that legislation should not restrict competition unless it could be demonstrated that:

(a) the benefits of the restriction to the community as a whole outweigh the costs; and

b) the objectives of the legislation can only be achieved by restricting competition.

Each government would also ensure that proposals for new legislation that restricted competition were accompanied by evidence that the legislation was consistent with the above principle and would publish an annual report on its progress towards achieving its timetable for review.

An interesting byproduct was that the agreement on legislation review has made it easier to achieve reviews which would not otherwise have happened.

3. A process for the review and reform of public utility monopoly structures. Each government agreed to abide by various principles in the reform of public monopolies.

   Before introducing competition into a sector traditionally supplied by a public monopoly, governments agreed to remove from the public monopoly any responsibility for industry regulation, and to re-locate industry regulation functions so as to prevent the former monopolist enjoying a regulatory advantage over its rivals.

   Also, before introducing competition into a market traditionally supplied by a public monopoly, and before privatising a public monopoly, governments would undertake a review into a range of matters, including: the appropriate commercial objectives of the business; the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly; the merits of separating potentially competitive elements of the public monopoly, and the community service obligations undertaken by the public monopoly; regulation to be applied to the industry; and ongoing financial relationships between the owner and the public monopoly.

4. A competitive neutrality policy putting government business operations on the same level as competing private sector business operations. Each government agreed to abide by principles of competitive neutrality. The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the

public ownership of entities engaged in significant business activities: government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership.

These principles:

(a) apply to significant government businesses or business activities undertaken by government for profit and in competition with other firms; and

(b) require the neutralisation of any net competitive advantage arising from public sector ownership.

In order to neutralise this advantage, the agreement sets out a number of measures - corporatisation, imposition of full taxes (or tax equivalents), debt guarantee fees, and imposition of regulation on an equivalent basis to the private sector. In some instances, pricing principles can be used instead of these measures. Each government had to (and did) publish a policy statement on competitive neutrality. The policy statement includes an implementation timetable and a complaints mechanism. Each government would also publish an annual report on the implementation of this principle. The issue of state aids to industry is less important in Australia than in Europe. However, a report on this subject was subsequently commissioned from Australia's Productivity Commission.

5. A generic law regarding regulating access to "essential facilities". This is discussed in more detail later in the article.

6. A prices surveillance regime.

These principles recognised that competition was not an end in itself but rather a means for improving welfare. With this in mind, the Competition Principles Agreement adopted an holistic approach, setting out other factors (including ecologically sustainable development, social welfare, consumer interests, and efficient resource allocation) which must, where relevant, be taken into account in implementing the principles.

3. REGULATION OF UTILITIES

There is a range of utilities that are covered by economic regulation – energy, telecommunications (and other forms of telecommunications), transport, water and so on.

Sometimes the list is wider especially in developing countries. Even in

developed countries there is a range of competitive or potentially competitive industries which over the years have been regulated e.g. airlines and trucking for many years in the United States prior to deregulation; the professions; much of agriculture; the energy sector. In many of these areas the broad policy need has been for deregulation.

More complex is the case of utilities which are natural monopolies – or arguably that – or which are monopolies by virtue of existing protective laws. Most often the policy approach is regulation – but in fact there is a range of possibilities for dealing with them.

Take electricity and gas as examples. Most often gas and electricity utilities have been publicly owned, highly vertically integrated from production or generation through to retail. They have usually been monopolies at each horizontal level. Rather than simply regulating them or ensuring through public ownership that there is public control, some governments have adopted a range of policies to introduce more competition and efficiency. This range of policies has included:

- Ownership and control policies. This has included moving public utilities from full public ownership and control governments through such stages as commercialisation, separation, and privatisation. The aim here has been to separate them as much as possible from governments, to put them on a more commercial footing, sometimes to reduce union influence by separating them from political control, and sometimes to raise revenue by selling them.

- Exposure to increased interstate, interregional and international trade and competition.

- Structural breakup. This has involved both vertical and horizontal breakup of utilities in the interests of generating competition. Horizontal breakup usually promotes competition. There is sometimes a case against this based on the loss of economies of scale. Vertical breakup also can be important for competition. At some stages of the production chain there is obvious scope for competition whilst at other stages there may be a pure monopoly situation e.g. in some cases at transmission or gas pipeline level. Incumbent utilities typically control monopoly facilities such as the above and may use them to hinder competition when they also operate in potentially competitive parts of the industry. The problems can often be best overcome by vertical separation.

- Application of competition law

- Access laws.

- A variety of other government policies intended to promote competition e.g. competitive bidding to own or manage monopoly facilities.

There are similar questions regarding telecommunications. There is much to be said for the view that the best way of introducing competition into former monopoly telecommunications areas is through divestiture either on a horizontal or vertical basis. The advantage of this is that it avoids the need for subsequent regulation and provides a competitive market based solution to resource allocation and production problems in a particular sector. However, when this has not been possible, direct regulation has been chosen as the policy instrument typically involving regulation of access to essential facilities.

Regulation of water is another important policy area. Most often the policy issue of principal concern has been the failure to price realistically in relation to supply and demand factors.

Access Laws

Telecommunications is the best known field in which access laws apply. Generally the field is characterised (or believed to be characterised) by natural monopoly in some activities and competitive conditions in others. Policy in most countries has been driven by a general belief that "the last mile" is uncompetitive. This refers to the fact that the copper wires that carry phone calls from the home to telephone exchanges is a natural monopoly. It would involve uneconomic duplication to "dig up the streets" (in fact with improved technology not a great deal of street digging is required these days) to install competing wires. This is generally thought to be an area of natural monopoly (although in the longer term it is gradually being eroded by new technology e.g. mobile phones and other forms of non-wire communication). However, in most countries the assumption of natural monopoly has been made and has driven policy. Without access by competitors to the use of such lines owned by the monopolist it is very difficult to compete. Supposing someone wants to compete at other levels of the industry, say on long distance calls. Competitive conditions would apply in that dimension of a telephone call even if the call from the home to the exchange which transmits long distance calls is a monopoly. Competition in other sectors would not occur without there being access to the home or small business via the "last mile".

The answer then is access laws. Under them the "new" entrants are allowed access to the use of the monopolist's facilities to compete with it. These are sometimes called "essential facilities". These are facilities which are essential as inputs at some point in the production process whether downstream or upstream for there to be productive operations at other levels of the production process. An ability to carry calls from the home or business to the relevant local or other relevant exchange using

the incumbent's facilities is essential if there is to be say competition in the market which say covers long distance calls (which is a contestable market). The other element of essential facilities doctrine is that the facility is a monopoly (or perhaps part of a small group of firms which could be seen as a collective monopoly by virtue of closely coordinated behaviour).

In Australia for there to be access under the law there are three necessary criteria:

- The use of the facility is a necessary input in a production process.
- It would be uneconomic to duplicate or develop that facility, or, more simply, that it is a natural monopoly.
- It would be in the public interest to give access as it would promote competition and efficiency.

If access is granted under these laws then the further question remains as to the terms and conditions, especially the price at which access is given. There has been a vigorous debate over pricing criteria over the years. The most popular form of control is so called long run incremental cost (LRIC). The regulator sets a price which covers the costs including the capital costs of the facility being used by the access seeker and includes in it a reasonable profit.

The Australian Competition Policy Reform Act 1995 inserted a new generic legal regime providing for third party access to services from a range of facilities of national importance.

This is a somewhat complex piece of law. It balances a number of policy variables. These include the benefits to competition of granting competition; the probable detriments to investments if new entrants can use the facilities of an established player, possibly with ultimate detrimental effects on "facilities based competition"; property rights issues (requiring appeal processes and the involvement of the Courts and Tribunals); federalism issues; and issues about the role of governments (reflected in the role of designated minister).

Retail Price Control

Utilities are usually also subject to price control of prices to consumers. For many years regulation was conducted on the basis of setting prices that covered the costs of the utilities and which also provided for a "reasonable" rate of return on investment. This form of regulation was seen as providing few incentives for efficiency since all costs could be passed on. Indeed some argued that in certain cases price regulation actually provided an incentive to overspend on capital facilities in order to maximise profit. An alternative approach developed in the 1980s was

dubbed “incentive based price regulation”. This took the form of “CPI-X” pricing. A firm would be given a formula for several years in advance under which is was allowed to raise its prices by the increase in the consumer price index minus an allowance for improved productivity. This was seen as giving firms maximum encouragement in keeping costs down and to operate efficiently. If their productivity performance was better than the X-factor all the profits could go to themselves.

The other general pricing issue which invariably arises in this area is the role of cross subsidies. Numerous public utility monopolies are expected to set prices that provide cross subsides to parts of the population e.g. the rural population or sometimes to consumers, or sometimes to small business have distorting effects on competition and resource allocation.

4. THE INTERACTION BETWEEN COMPETITION POLICY AND REGULATION

There has been significant debate in many countries as to the most appropriate framework for administering economic, technical and competition regulation. Among the issues debated have been the merits of general versus industry specific competition regulators and of integrated versus separate administration of economic, technical and competition regulation. There has also been debate about the role of national and state regulation.

Australia has broadly adopted the approach of incorporating as many economic regulatory functions as possible in its national competition regulator, chiefly on the grounds that a competition culture should drive regulatory decisions.

However, competition law and regulatory institutions have generally been kept separate in most countries, with provisions making it clear where the boundaries between the activities are, and providing for some degree of coordination.

a) The Issues Are Important

As a result competition authorities generally believe that they face large challenges in their relationships with sectoral regulators.

This is why the issue is often at the top of the agenda for international competition regulation agencies; it is why, whenever competition regulators or policy makers are invited to nominate topics conferences, they always vote for the topic ahead of others; it is why there have been so many previous discussions, and why there will be many more.

There are four reasons why the issue is seen as important:

- Some of the most important competition policy challenges arise in regulated sectors. Typically these are the sectors which more than any other require large injections of additional competition.

- There are considerable constraints on the ability of competition policy makers and regulators to take the necessary steps to achieve the best possible competitive outcomes. Many of the constraints arise from the existence of regulation and associated regulatory bodies.

- There is a close interrelationship between the work of competition bodies and regulatory bodies. Their work often overlaps. There is a need for cooperation but it can be difficult to achieve in practice. There may also be conflict. There may be competition for turf. Inevitably there are considerable tensions which exercise the minds of regulators.

- The issues seem very large in developing countries.

The issue of the relationship between different arms of government is far from unique to competition and sectoral regulators. Modern discussions of government in nearly every country are dominated by such terms as "joined-up government", "interagency collaboration", "co-production of public value", "networked governance", "connected government", and "whole of government management". The need for proper coordination between agencies arises in nearly all fields of government, at nearly all levels, and often between levels of government, whether relating to security threats, or intractable social issues such as drug dependence, or environmental issues, or rising community expectations for easier access to government by integrating service delivery. Not only are the policy challenges of integrating the work of regulatory bodies no more difficult than exist for other parts of government – indeed they look easier – but also they encounter a common attitude – the public does not lightly tolerate non-cooperation, conflict or turf battles between overlapping parts of government.

A great deal of previous discussion has related to what competition regulators and policy makers regard as the perfect outcome. It is useful to discuss ideal outcomes and so their nature needs to be debated, and proclaimed to policy makers. One reason is that many countries are gradually moving closer to ideal outcomes. However, equally important is to take the customary discussions a step further than in the past by acknowledging that the ideal outcomes desired by the competition community are rarely achieved. We need to consider what the actual real world, non ideal relationships are; what problems they give rise to; how to live with them, how to make the most of an imperfect situation, as well as how to work towards getting it changed. The solutions to the problems of collaboration with other regulators cannot be fully analysed today, let alone be implemented but it will be valuable for the problems with the present arrangements – as well as the satisfactory features – to be laid out by as

many competition regulators as possible, so that understanding can be advanced and some progress at the analytical level at least can start to be made.

b) Ideal Outcomes

The competition community tends to see something like the following as ideal:

- There should be no regulatory laws that restrict competition. But if they are absolutely necessary and there is no alternative, the restrictions on competition should be minimal.

- The competition body should have paramount decision making power in relation to any matters affecting competition.

As a general comment it should be noted that competition authorities and sectoral regulators should be on the same side because:

- economic growth is enhanced by pro-competition regulation, and

- the objectives of competition authorities and sectoral regulators are very similar.

This is, not, however, always the case in practice.

c) Competition Culture

I wish to challenge the important point that the ideal relationship between competition authorities and regulators is driven by a central government that promotes broad review of existing regulations with a pro-competitive lens, ensuring that a competition culture encompasses both sector regulators and competition authorities.

d) Australia

This paper is influenced by Australian experience on which I will now briefly digress. A recent OECD review of Australia attributes a large part of its recent excellent economic results to the adoption of a serious competition policy. The Governments of Australia – the Commonwealth (or national) Government and the State and Territory (or regional or provincial) Governments reached a general agreement in the 1990s to promote competition policy – in all sectors, including regulated ones, to the maximum extent that it was in the public interest to do so – and competition was assumed to be in the public interest, unless the contrary was demonstrated publicly and transparently at an independent review. All laws and regulations that were anticompetitive were reviewed from this

perspective with independent, public, transparent processes; exemptions from competition law were largely abolished and a culture of rigorous enforcement of competition law across all sectors was encouraged; monopolistic structures of public utilities, such as in energy, telecommunications faced rigorous reviews of their monopoly positions and some disaggregation followed. There was also a strong push for the competition regulator to take over economic regulation in telecommunications and energy, and this has largely happened, spreading a culture of competition to regulatory discussions. A key point in Australia's drive was strong pro-competitive pressure from the central, most powerful parts of government.

e) Arrangements Between Regulators Are Usually Less Than Ideal

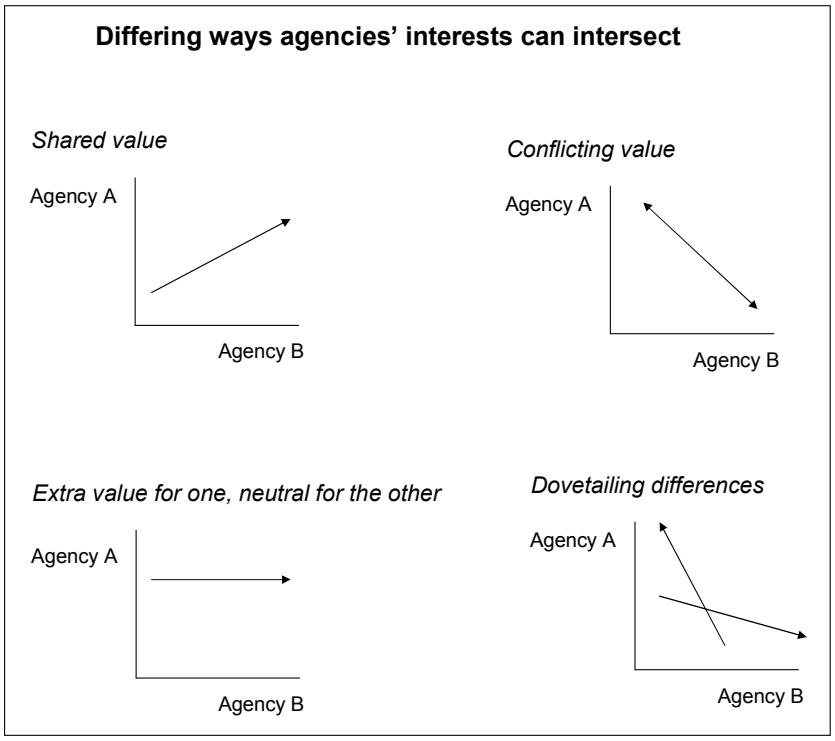
In practice, however, many countries have not achieved the optimum outcomes desired by competition advocates. It is necessary to know why. It may be that, in part, competition advocates seek more than is reasonable, given the fact that governments pursue a variety of objectives other than competition ones. Also, competition agencies and regulators may have different core competencies and should each separately do the tasks for which they are most suited. However, it is also the case that less than ideal outcomes reflect other factors – interest groups lobbying; a weak competition culture; failure of top policy makers to recognize the value of competition and the desirability of strong, effective competition agencies; a general lack of institutional capability in the public sector especially in developing countries; a slow emergence or non acceptance of truly independent regulatory agencies and so on.

Another factor is that governments see a number of regulatory tasks as being necessary in regulated sectors, including technical, wholesale, retail, and public service regulation, as well as dispute regulation and competition oversight itself. This mixture of activities with their many varying goals tends to obscure the need to adhere to competition principles as much as possible. It also creates complex institutional arrangements. Competition agencies and their goals are only a part of the brew.

How well the compatibility of competition and sectoral regulation bodies works out in different countries varies. In the United States, for example, there appears to be relatively strong public support for competition policy, and this can spill over into making it more likely that regulatory arrangements will be relatively more attuned than in many other countries to competition sensitivities. At the other end of the spectrum the difficulties seem large in developing countries.

In the end it is important that discussions of the relationship of competition agencies and national regulation acknowledge that in many cases arrangements fall short of ideal. It then becomes important to discuss practical ways of dealing with these situations rather than just complaining

and advocating ideal arrangements that are not achievable. The diagram below shows a range of possible relationships between agencies.



f) Tasks For Competition Authorities Who Are Not Primary Enforcers

Competition authorities can provide valuable input for the tasks for which they are not primary enforcers. Instruments of cooperation that merit consideration include:

- Giving statutory powers to the competition agency for some aspects of sector regulation e.g. determining whether there is substantial market power as a precondition for the applicability of regulation.

- Giving competition authorities and regulators concurrent powers of enforcement of the national competition law.

- Placing senior officials of competition agencies on oversight boards for sectoral regulation and vice versa.

- Providing competition authorities with the standing to submit public comments on the application of regulations that require written responses by the regulator prior to final decisions.

- Establishing a written framework which governs cooperation between sector regulators and competition authorities.

- Encouraging personal transfers or exchanges between the sector regulator and competition authority.

- Exchanging information informally between sector regulator and competition authority.

- Head of competition authority can be given a cabinet level standing.

- Regulator and competition authority can be unified, ensuring internal consistency with respect to competition decisions.

g) Consistency In Application Of The Law

In addition, steps can be taken to ensure consistency in the application of competition laws. This would include:

- The appeals route for competition decisions should converge.

- Regulatory impact assessment should take into account competition objectives, among other goals.

- Competition authorities should be given the right to intervene with respect to existing and proposed regulations that are potentially harmful to competition.

- An absence of legislative obstacles to cooperation.

These conditions are often hard to realise. They need further study if there are to be good results when regulatory power spreads across more than one agency.

h) Productive Interagency Collaboration

Having identified these steps as desirable in an imperfect situation, we need to note some of the conditions under which interagency collaboration is conducive to productive relationships. They are:

- Shared culture and values - for example, a general culture of competition in the community that leads noncompetition agencies to see the value of competition. Likewise, competition agencies need to recognise the values and objectives which drive sectoral regulators. This is likely to lead to greater interagency agreement on objectives, and a willingness to cooperate.

- Strong direction from the most powerful parts of government that the agencies should collaborate effectively.
- Legislative recognition of the desirability of cooperation
- A recognition and acceptance by agencies that they need to work together -on an ongoing basis – to achieve their goals.
- Agreement on the allocation of roles and responsibilities.
- A willingness to commit resources.
- A willingness to commit authority to problem-solving.
- Ongoing arrangements rather than ad hoc problem-solving
- Careful management of the political environment (which involves a wider number of forces than each agency is used to dealing with)

What is important is to collect an inventory of problems in relationships of competition authorities and sectoral regulators; to acknowledge that in most cases the legislative allocation of powers and responsibilities of the competition authorities and sectoral regulators will be less than ideal; to identify the problems; and to analyse and implement solutions that maximise the public value of interagency collaboration.

5. APPLYING COMPETITION LAW TO REGULATED INDUSTRIES

Most deregulation has been brought about by a wish to remove restrictions on competition. However, deregulation can give rise to various concerns and questions. Often the prederegulatory situation involves the establishment and protection of a monopoly. Deregulation often entails open entry by small players in to fields dominated by former monopolies or dominant firms. What is often required is not only the application of competition law but also some additional laws e.g. access laws. Also if deregulation includes the breakup of monopolies on a horizontal or vertical basis special attention to the application of competition law is usually required on the part of the regulator. One cause is merger pressure. The other reason is the possibility of collusion between entities and people that were formerly in one organisation.

6. CONCLUSION

In regards to the several topics discussed above in this paper, there is a recurring theme. Do competition and regulatory polices complement one another? Or are they in conflict with one another? On the first view, competition law and policy is applied in particular areas to bring about

competitive, efficient markets. In some situations, however, it is not possible to have a competitive solution either because there is some kind of natural monopoly situation, or because legislation itself restricts competition. Given then the existence of market power there is the possibility of such phenomena as monopoly pricing and resulting inefficient resource allocation. The role of regulation then is to bring about efficient outcomes by, for example, setting prices at levels that would apply if there were competition. Such an outcome would mean that competition and regulatory policies complement one another. Likewise, there may be instances where regulation is needed to achieve desirable social outcomes such as enhanced safety or environmental protection. Once again, the ideal policy is to promote as much competition as possible whilst having safety or environmental regulation that achieves objectives that cannot be achieved by competition policy alone. Again, there is complementarity.

However, in practice there is often a different outcome - conflict. Regulation obstructs the promotion of competition and economic efficiency. Regulation may limit entry in to an industry in the name of protecting safety, environment or consumers. It may apply prices in such a way as to discourage competition. It may, for example, set a low price for the incumbent which discourages new entry. It may impose cross subsidies under which, for example, high profits are made in one area and used to subsidise low prices in another area – not only does this distort market forces but it may also inhibit competition in low prices areas. Also laws may have to be enacted to protect the high priced activity from new entry that seeks to engage in “cherry picking” by only supplying in the profitable area of activity. Much regulation, in fact, hinders competition and economic efficient outcomes.

Accordingly, the relationship of competition and regulation is a complex one, varying from one situation to the next, and not capable of easy generalisation.