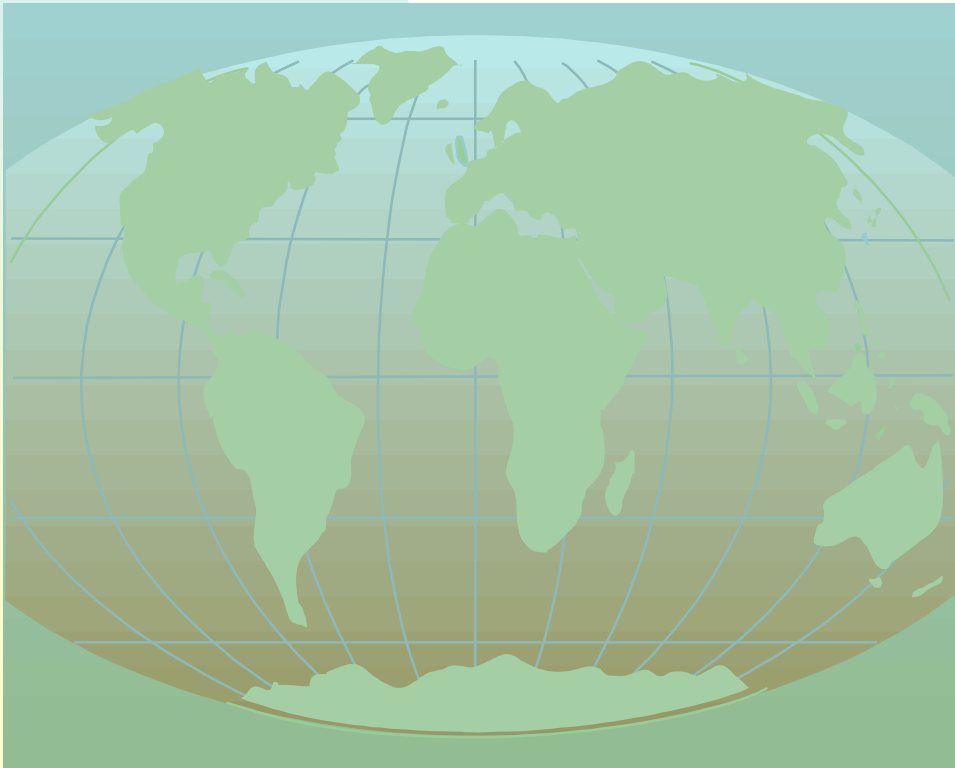


IDA REGULATORY WORKSHOP

Sector Specific Regulation vs General Competition Law



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Competition Law - 2005

- Singapore to enact a general competition law by 2005
- However, Singapore already has sector-specific competition law in telecommunications, media and energy
- The task is to determine whether a general competition regulator in a small, open economy should:
 - ◆ enforce all competition law issues, or
 - ◆ accepting that the introduction of competition law is not starting from a clean slate, work out what the relationship should be between the general competition regulator and the various sectoral regulators enforcing their own competition law

Competition Law Usually Prohibits

- Anti-competitive **horizontal agreements** (ie between competitors) on:
 - ◆ price (eg cinema owners agree on price of tickets)
 - ◆ non-price (agreeing on the sales areas that each competitor will sell their products in)
- Anti-competitive **vertical restrictions** imposed unilaterally or by agreement (ie down the distribution chain) on matters such as:
 - ◆ price (called resale price maintenance)
 - ◆ non-price (eg a manufacturer agreeing with retail outlets that retail outlets will have exclusive sales territories)
- **Abuse of a dominant** market position eg predatory conduct such as:
 - ◆ pricing below cost,
 - ◆ making it impossible for other competitors to obtain retail outlets etc
- **Mergers that reduce competition** (prohibited on the basis that allowing the merger will lead to increased collusion or increased market dominance in the future - better to prevent future problems)

Regulation vs Competition Law

- **Economic regulation**
 - ◆ controls specific industries -eg output or input (access) prices
 - ◆ aimed at **substituting for competition** (eg price, quality or entry regulation can replace competition or can try to reproduce competition eg subsidising entry)
 - ◆ justified on basis of **market failures** (eg natural monopoly, externalities, to provide public goods, information deficiencies) - needed where competitive forces may not lead to desirable outcomes (natural monopolies, a transition from a public monopolist to private competition)
 - ◆ is **prospective** - legislation, regulations, conditions in licences and product quality etc specified in advance
- **Non-economic regulation** (social, administrative & technical)
 - ◆ goods etc essential for public welfare or as inputs to important services (electricity, gas, water, waste management, telecoms, cable TV, mail distribution and transportation (air, road, rail)-eg universal service obligations)
- **Competition law**
 - ◆ aimed at promoting competitive processes and curbing market power- can be better than inflexibly applied sectoral regulation
 - ◆ is **really economic regulation** but applied **retrospectively** on a **case by case** basis (eg enforcement of price-fixing prohibition in the courts)-not mergers

OECD Report 1999

Five Regulatory Frameworks

Type	Division of Functions	Countries
1	Reg. body in charge of technical + economic regulation + competition regulation	None
2	Competition body in charge of enforcing competition law + economic regulation	Australia, NZ Netherland, Swed
3	No de-regulated industry subject to special economic regulation	None
4	Regulatory agency in charge of technical + economic regulation Comp. Authority in charge of competition law	Korea, US Germany Japan,
5	Regulatory authority in charge of technical + economic regulation and also enforces competition law together with competition authority for the specific industry	UK and US for some

Regulation vs Competition Law

- Competition law is ex post (penalty imposed if breach of competition law proven) - so in designing competition law, account needs to be taken of likely **deterrent** effect of law
- Regulation imposes remedy before potential liability for breach of law (eg price regulation imposed in advance rather than an ex post ie an after-the-event investigation of a possible abuse of market power)
- Competition law may be a better approach in some circumstances because:
 - ◆ competition law looks at **effects** of market of conduct whereas
 - ◆ regulation tends to impose **conduct** standards in advance where the welfare effect may be uncertain in different circumstances (even though the conduct can be precisely measured and dealt with)
- Choice of approach should depend on effectiveness of each in achieving regulatory goals

Regulation vs Competition Law

- Some possible questions in choosing between an ex ante sectoral regulation and a (mainly) ex post competition law
 - ◆ is a sectoral regulator or general regulator/court in the best position to **obtain and process the information** necessary to decide whether to intervene in order to achieve desired goals?
 - ◆ is a general competition regulator better able to **resist interest-group pressure** - including pressures by competitors?
 - ◆ what are the **relative costs** of each system for a given level of enforcement 'benefit' (regulators are more costly because they deal with all conduct whereas competition regulators and courts only deal with complaints about possible breach of comp. law)?
 - ◆ which system can better **correct mistakes**?
 - ◆ what are the **costs of allowing bad conduct**? Bad conduct may persist longer under a competition law regime if no-one complains and evidence may be difficult to get) - an empirical issue
 - ◆ what is the availability of experts?

Regulation vs Competition Law

- However, it may not be necessary to choose between:
 - ◆ sectoral regulators administering competition law codes or
 - ◆ a general competition regulator
- Can have a hybrid system
 - ◆ For example, an independent competition regulator could:
 - ❖ administer competition law for economy apart from specific regulated sectors
 - ❖ give policy advice to Minister
 - ❖ provide research and policy advice to sectoral regulator
 - ❖ review a sectoral regulator's competition policies
 - ❖ contribute to a sectoral regulator's investigations
 - ◆ Irrespective of function, teams from different agencies could investigate jointly - perhaps this could be required by legislation
 - ◆ Specialist economists could be made available to both agencies from a central pool

General Competition Regulation

■ Advantages

- ◆ less chance of **capture** by industry being regulated
- ◆ **economies of scope** in administration ie more efficient for general regulator to apply same principles
- ◆ **uniform application** of rules + greater consistency in decisions
- ◆ regulator can focus on industries that yield **greatest public benefit**
- ◆ **'one-stop shopping'** by those regulated
- ◆ however, need to make good use of sectoral expertise

■ Disadvantages

- ◆ lack of specific industry expertise
- ◆ regulator/courts may not be able to deal with technical and economic complexities of sector
- ◆ **competition between regulators** may provide better regulation

Separate Sectoral Regulators

■ Advantages

- ◆ greater industry knowledge to deal with impact of competition rules - fewer errors, compliance costs, one-stop shop for those in industry
- ◆ ensures consistency between competition regulation and other forms of regulation (economic, access, technical)
 - ◆ may help to trade-off different objective in different sectors eg telecommunications regulator may be solely concerned with trading off efficiency and productivity with Universal Service Obligations while transport regulator may be concerned with trading off efficiency and low-cost and convenient access

■ Disadvantages

- ◆ may be more administratively costly in a small country eg duplication of scarce skills (eg economic pricing skills)
- ◆ possibility of inconsistent reasoning between sectoral and general competition regulator (eg different rules on predatory pricing)

Regulation and Competition Policy

- Economic regulation and competition policy (includes competition law, trade policy, privatization and deregulation policies) are all designed to:
 - ◆ curb market power - which is the ability to:
 - ❖ control price and
 - ❖ determine competitive conditions in a market
- Different times and economic circumstances may call for different regulatory solutions eg
 - ◆ privatization may require initially require sectoral regulation to curb a former monopolist until sufficient competition allows transition to general competition law
 - ◆ price control may be required at certain times due to insufficient competition (and competition law really only corrects for the problems of excess market power and does not promote competition directly, except through advocacy)