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"Balancing Public Policy Considerations: Competition policy interactions with other policies; Competition authorities *vs* Sector regulators"

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Balancing Public Policy Considerations

How does Competition policy interact with other policies?

Competition enhances efficiency, promotes innovation and leads to wider product choice and better quality, thereby providing and improving consumer welfare.

Competition stimulates **innovation, productivity and competitiveness**, generating **economic growth and employment.**

It **guarantees a level playing field for all businesses** and creates **possibilities for small and medium sized enterprises**.

Competition therefore i**ncreases a country's attractiveness as a business location**, triggering national and foreign investments.

Balancing Public Policy Considerations

How does Competition policy interact with other policies?

Competition policy aims to **preserve and promote competition among market players** and to **promote other government policies and processes that enable a competitive environment to develop**.

It **focus on business conduct that restrains competition** - anticompetitive agreements - and **on public measures that undermine competition.**

Competition policy is **a tool to achieve economic development as recognized by the UN Set of Principles and Rules on Competition** (1980), the only multilateral instrument on Competition policy.

UNCTAD serves as the **focal point within the United Nations Secretariat for all matters related to competition policy.**

Balancing Public Policy Considerations

Coherence between Competition policy and other public policies, namely sectoral policies, is therefore **a concern and should be a goal in the pursuit of global welfare**.

2 examples of other public policies:

- **Trade policy**
- **Industrial policy**

UNCTAD (since 1964): **broad mandate on trade and development within the UN system**. Supports developing countries in better integrating in the international economic system, conducting analysis, promoting consensus-building, and providing technical assistance.

Competition policy and Trade policy

- **Trade liberalization and market openness** were key features of the international economic order Post-World War II, as the **Havana Charter (1948) and the GATT - General Agreement on Trade and Tariffs** (1948) illustrate;

- **Trade policy** fosters economic development and growth and consumer welfare through the reduction of unilaterally imposed barriers and restraints to international commerce by individual countries or groups of countries. Since 1995 this has been achieved through consensual international negotiations, within the **World Trade Organization** at the multilateral level.

- **Competition policy** fights anti-competitive practices of companies that impede access to, or the efficient functioning of, markets, through collusion and/or abuse of market power, focusing also on public measures that distort competition.

Competition policy and Trade policy (2)

Yet, **Competition policy** emphasizes **consumer welfare** assessing if efficiency gains are passed to consumers and users, while **Trade policy** tends to consider producer interests more favourably, the negative impact in domestic industries prevailing over possible benefits for consumers and users.

Also **Competition policy** tends to encompass very powerful instruments against anticompetitive practices, in the form of per se prohibitions or on the basis of a rule of reason, accompanied by important investigative tools and harsh sanctions that may be imposed in case of serious infringements.

That contrasts with **Trade policy**, which is based on cooperation between counterparts, thereby relying on cooperation and consensus.

Competition policy and Trade policy (3)

Economic research suggests that **open markets, liberal legal framework rules and a sound competition policy play a key role in fostering economic growth, innovation and continuous upgrading of productivity and product quality**.

Trade policy and **Competition policy** have **complementary roles** in promoting economic efficiency, development and growth., neither being fully successful in the absence of the other.

By limiting protectionist abuses of both government and private market power, they **reinforce one another** and result in a more efficient use of resources.

Competition policy and Trade policy (4)

Trade and investment liberalization can not replace Competition policy:

(i) a large number of **markets** (e.g., non-tradeables or tradeables with high transportation costs) **remain local in nature**, and are, therefore, not subject to effective discipline from imports;

(ii) even in regard to tradeable goods, and where formal trade barriers have been removed, **competition can be affected by Government measures including regulations, standards and licensing requirements**;

(iii) even in the absence of the latter type of measures, **the ability of imports to discipline the exercise of market power can be affected by a wide range of anti-competitive practices of firms** (market division through price-fixing or geographic market-sharing cartel agreements, or vertical market restraints).

Competition policy and Industrial policy

Industrial policy is defined in broad generalities, but corresponds to the encouragement, the promotion and/or the protection of a specific industry or economic sector with an array of policy tools.

There seems to be a consensus that it translates into **Government measures applied selectively to advantage sectors or industries and to accord them a competitive advantage.**

Industrial policy may operate to influence firms' rivalry at the level of

- **product markets**: aimed at the domestic market;
- **factor markets**: FDI performance requirements and restrictions (capital and finance), labour market and equity objectives;
- **external markets**: international trade measures - import tariffs, quotas, licensing and local content programmes, export promotion measures (export subsidies, export processing zones, subsidized credit).

Competition policy and Industrial policy (2)

It may pursue **short-term goals** - such as employment increase, enhance foreign exchange earnings, reduce income distribution gaps - as well as **long-term development goals**.

Industrial policies of developing countries have been strongly influenced by the world economic situation and varied due to each country specific economic conditions.

Measures aiming towards

- **infant industry protection,**
- **investment into selected priority sectors,**
- **technology enhancement and**
- **export performance subsidies**

have been identified.

In some cases, industrial policy targets specific firms, encouraging **national champions**.

Competition policy and Industrial policy (3)

During the 90s the general **trend of trade liberalization, privatization and deregulation** was accompanied by the **adoption of competition law and policy** throughout the world.

Industrial policy: is not necessarily based on legislation, even though there may be national frameworks for industrial policy.

It may seek to **improve the country's competitiveness and have a positive impact on development and competition**: for example, East Asian industrial policy measures in the late 80s, early 90s.

This outcome contrasts with the experience of some Latin American countries (Brazil, Chile), where in spite of an import substitution industrialization strategy, protected industries never matured to be competitive and were even driven out of the market.

Competition policy and Industrial policy (4)

Competition policy and **Industrial policy** may have **synergies and tensions**. They may reinforce each other or conflict.

Where an Industrial policy goal is to promote export competitiveness, effective competition law enforcement can contribute to the achievement of this goal.

If the goal is to promote SMEs flourishment, as in many developing countries, competition legislation can support the participation of the SMEs in the economy through the recognition of their overall negligible market share.

But **there can be tensions arising from the harm to competition entailed by Industrial policy measures**, as is the case of **subsidies, of export cartels, of discriminatory international trade and procurement provisions, of exemptions due to economic crisis**.

The most thorny relationship, especially in troubled times.

Competition policy and other public policies

The issue of **coherence between Competition policy and other Government policies** that have a bearing on competition can't be ignored.

Governments pursue many objectives which may not always be compatible.

Coherence is an increasingly important element of development policy: it requires policymakers, when designing domestic policies, to **be aware of the possible impacts on their economies and try to avoid duplication, tensions and unnecessary conflicts**.

Strategy to achieve coherence:

- **Advocacy**
- **Transparency**
- **Accountability**
- **Targeting**

Competition policy and Sectoral Regulation

In order to ensure the success of market reforms, in several countries privatization was followed by the creation of sector regulators, the central bank being traditionally the oldest regulator.

Regulated sectors where sector-specific regulatory bodies in areas such as

- **telecommunications,**
- **energy,**
- **financial services - banking and insurance,**
- **transportation** (namely airline), etc.

are responsible for overseeing market access and for economic and technical regulation, also **coexist with Competition authorities** and may raise other overlaps.

Competition policy and Sectoral Regulation (2)

Earlier work on the relationship between regulators and competition authorities was conducted by the OECD (1999).

UNCTAD's Secretariat study "Best practices for defining respective competences and settling of cases, which involve joint action by competition authorities and regulatory bodies" (2006) - some highlights:

- **Different mandates and approaches**:

Sectoral regulation	Competition
Substitute for lack of competition; broad range of socio-economic goals;	Protects and promotes the process of competition: emphasis on efficiency goals and consumer welfare;
Ex-ante prescriptive approach	*Ex-post* enforcement (except in merger review);
Impose and monitor behavioural conditions.	Impose behavioural and structural remedies.

Competition policy and Sectoral Regulation (3)

Overall common goals but **differences in the scope of work and methods used.**

However, jurisdiction over certain areas may not always be clear-cut and may lead to conflicts due to the frequent ambiguities in the law.

Relationship: is also an issue at the regional economic level.

Regional trade agreements usually incorporate competition law provisions and may refer to sector regulation, namely in connection with public services.

Most countries and international organizations (OECD, UNCTAD) recognize **the need to foster close cooperation and policy coherence** in the implementation of Competition authorities and Sector Regulators' mandates.

Regular exchange of information and consultations are advisable.

Competition policy and Sectoral Regulation (4)

UNCTAD Model Law on Competition - *substantive possible elements for a competition law, commentaries and alternative approaches in existing legislations:*

drafted in 1993/1994, it is regularly revised and updated with chapter-by-chapter commentaries on respective provisions.

Model Law - Chapter VII (2010 revision): The relationship between competition authorities and regulatory bodies, including sectoral regulators. One source of inspiration on how to handle this issue.

The Model Law suggests that **competition authorities should assess regulatory barriers to competition incorporated in economic regulation and that public interest obligations should be set out in a transparent manner**. It highlights the **advocacy role** of Competition authorities.

FINAL REMARKS

- Public policies coherence can be achieved through discussion and **coordination** to maximize synergies, requires **transparency and cooperation** by different public authorities in its implementation.

- It also requires **monitoring and evaluation** of the policies' impact for **accountability.**

- Since competition policy addresses all economic sectors, it is of the utmost importance to develop the **competition assessment of new legislation and amendments to existing laws as well as of all public measures**, namely sector-specific regulation.

FINAL REMARKS (2)

- Public policy considerations out of national interests often arise in times of economic crisis but should not lead to relaxing competition law enforcement nor to a more favorable treatment of domestic industries.

- The **advocacy role of Competition authorities** near the Government, public bodies, sector regulators, the judiciary, business and media **is crucial for an informed debate and to support competition policy benefits.**

- **Sector regulation** and **Competition policy need to cooperate regularly but differences will remain**: the experience of joining both responsibilities in a single authority in some countries illustrates that cooperation can be increased.

Materials

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