

Competition Policy: Beware of Using it to Harm Competition

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Introduction

- Competition benefits consumers.
- Goal of competition policy should be to prevent conduct that harms consumers.
- Entry is an essential component of competition.
 - But protection of entrants does not always foster competition.
 - Danger is that competition policy will be used to protect entrants and harm consumers.

Entry Restrictions

Three Examples of US Entry Restrictions

- Airlines
 - Fares fell
 - Wages fell
 - Capacity increased
 - Entry
- Wal-Mart
 - Low Prices
 - Especially helps low income consumers
 - Target of local entry restrictions
- Hospitals
 - Certificate of Need required
 - High prices
 - Corruption

Real Yield (in cents per passenger mile) (1970 - 2007)



Sources: Air Transport Association: <<http://www.airlines.org/economics/finance/PaPricesYield.htm>>.

Lesson

- Large gains from getting rid of entry restrictions.
- One of the most important tasks of a competition authority is to persuade other branches of government that the imposition of entry restrictions can be harmful to consumers.
- Attempts at persuasion may encounter strong political opposition.

Competition Laws To Prevent Entry Detering Conduct

- Appropriate to prevent conduct that prevents entry and thereby raises prices.
- Examples
 - Standard setting
 - Exclusive distribution
 - Price predation
- But.....

- Competition laws can be misused to protect entrants and harm competition

- Common complaint:
“The incumbent erected a barrier to entry so I cannot compete.”
- 3 problems with complaint:
 - Barrier to entry – meaning?
 - No market power alleged
 - No showing of elevated pricing
- Note that competition makes survival difficult for an entrant.

Let's Revisit Previous Cases

- Predation
 - Real or hypothetical
 - Actual examples rare
- Exclusive distribution
 - Efficiency
 - Balance efficiency gain against competitive loss

What Should Be Required For A Violation In Exclusive Distribution?

- a) Market power
- b) No good alternative distribution
- c) If possible, an empirical study, that the practice raised price

Abuse of Superior Bargaining Position

- Not needed if there already exists laws preventing a) use of market power to exclude and b) when effect is to raise price.
- Notions of “unfair” or “unjust” are too vague. Did price go up or not?
- Japan’s Abuse Law
 - a) Not needed in light of abuse of dominance law
 - b) Is vague – bans “unfair” methods
 - c) No requirement of market power
 - d) No requirement of elevated prices

- Such laws likely to protect inefficient firms.
- US has one such law and can't get rid of it.

Conclusion

- Competition agency should promote the view across other branches of government that government mandated entry restrictions are undesirable.
- Competition authorities should avoid the misuse of competition laws to protect firms from competition.
- No need for laws dealing with abuse of superior bargaining position if laws already have abuse of dominance provisions.