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.

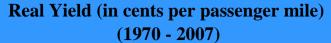
- Entry is an essential component of competition.
 - But protection of entrants does not always foster competition.
 - Danger is that competition policy will be used to protect entrants and harm consumers.

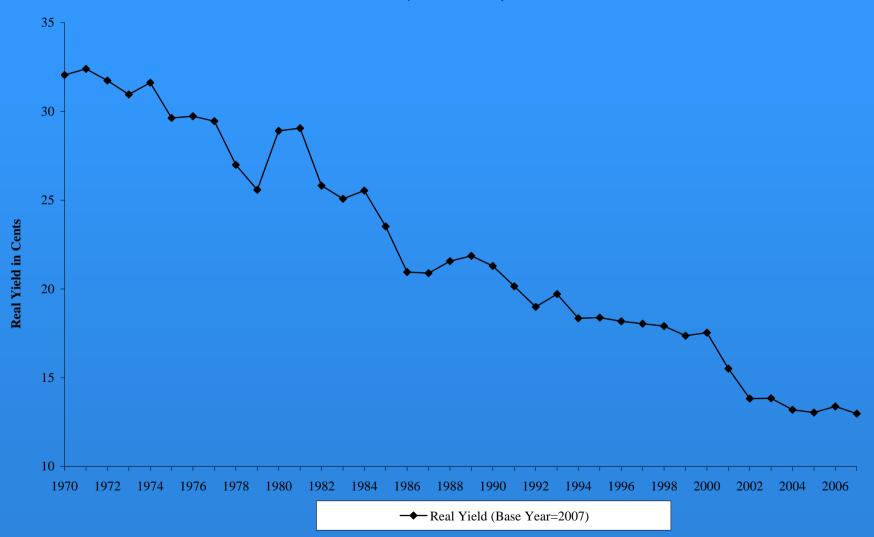
Entry Restrictions

Three Examples of US Entry Restrictions

- Airlines
 - Fares fell
 - Wages fell
 - Capacity increased
 - Entry
- Hospitals
 - Certificate of Need required
 - High prices
 - Corruption

- Wal-Mart
 - Low Prices
 - Especially helps low income consumers
 - Target of local entry restrictions





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 Deterring 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.