Competition Policy and Economic Development

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29 June 2006
(with thanks to Simon Evenett)
Competition policy and economic development

Equity – greater competition makes goods more affordable and more goods available

Efficiency – greater competition increases allocative efficiency and encourages technical efficiency

-- some tension between short-term and long-term efficiency (IPRs)
Competition policy and economic development

Indirect effects -- competition law affects inter-firm rivalry, which in turn can affect:

- Firm productivity growth.
- Innovation.
- Upgrading of human capital.
- Export performance.
- National economic growth.
Competition policy and other economic policies

- Trade policy.
- Foreign direct investment (FDI) policy.
- Sectoral regulation and privatization.
- Industrial policy.
Competition law and advocacy in the economic reform process

- Role of competition policy during reform is to mitigate the negative (and often unanticipated) consequences of trade, investment, sectoral regulation, and privatization reforms that cannot be adequately addressed through further refinements in the reform measures.
Promoting competition during the reform process

• Fostering competition in markets is the aim of many microeconomic reforms, yet proponents often underestimate how far interest groups will go to restrict inter-firm rivalry.

• We need to improve our capacity to realistically evaluate the effect on competition of such reforms before and after they are implemented.

• Central roles for analysis of competition and for competition advocacy.
Objectives and Instruments of Industrial Policy

- Objectives of industrial policy: improve long run productivity growth by
  - shifting resources into faster growing (often manufacturing) industries
  - improving dynamic economic efficiency
  - also often non-economic objectives
Objectives and Instruments of Industrial Policy (2)

Instruments of industrial policy:

• Policies affecting imports and exports
• Policies affecting domestic input markets
• Policies affecting domestic product markets -- can include competition issues such as cartels, merger policy, and national champions
Is there a conflict between competition law and industrial policy?

- Which instruments of industrial policy directly conflict with the application of competition law?
- Are there any equally effective alternatives to those instruments?
- If not, how can competition law be drafted to avoid conflicts?
Competition policy and the goals of industrial policy: is there a conflict?

- Yes
  - Cartels restrict price competition and finance investments for growth
  - Mergers needed to promote national champions
  - Unconstrained rivalry in banking sector and network industries is inefficient

- No
  - Are cartels the best way to finance investment? What about investment credits, subsidies?
  - Do larger firms have higher productivity levels and growth? No.
  - Argument for a sectoral exemption from competition policy, not a general exception
Even if a conflict is perceived, there are ways to accommodate it in a national law.

- Exempt state actions from competition policy
- Allow competition policy to have multiple objectives—as in S. Africa.
- Give dynamic as well as static efficiency a role in competition enforcement—as in the US, Canada, and EU.
- Create sectoral exemptions—almost all laws have them.
- Include mechanisms to create future exemptions.
- Allow national cabinets to over-rule the competition authority.

**CONCLUSION:** The conflict between industrial policy and competition law is more apparent than real. Where it does exist, competition law can be drafted and implemented to accommodate challenges.
Legal functions of the agency tasked with enforcing competition law

- Which types of anti-competitive practices should be included in national competition law? (notably merger review)
- Is there a case for a phased introduction over time of measures against different types of potentially anti-competitive practice (Indian example)?
- Responsibility for (i) undertaking competition advocacy, (ii) enforcing consumer protection law, (iii) enforcing laws against economic concentrations, and (iv) other economic policies?
Legal functions of the agency tasked with enforcing competition law (2)

Policy lessons:

There are practical reasons for sequencing introduction, often starting with competition advocacy and cartel enforcement.

Clarify the criteria that determine which corporate or state practices should be overseen by competition law.

• The 3Ps: potential for anti-competitive impact, prevalence, and prerequisites for effective enforcement (Evenett).
Policy lessons:

There are substantive and strategic reasons for “bundling” competition law enforcement functions with responsibilities for enforcing other economic laws into a single agency.

- The trade-offs involved here deserve consideration and the Korean experience is instructive in this regard.
- General agreement that competition advocacy should be one role of the agency that also investigates anti-competitive practices.
Independence of a competition authority

• Some experiences raise the question: to what extent is the under-enforcement of competition law due to (i) faulty law, (ii) lack of independence and the resources of the implementing agency, and (iii) political interference in enforcement?

• Although the case for an independent agency is strong, many nations’ political processes simply will not allow for independence, particularly when a competition law is first enacted.
Independence of a competition authority (2)

- How can non-independent competition agencies be strengthened (second-best solution)?
East Asian Experiences: Competition Policies

Implementation Problems

• Laws are often too broad and vague

  • Differences in interpretation, especially when implementation is decentralized

• May need supplemental regulations to clarify law
Implementation Successes

- In Korea, corrective measures and penalties have been imposed on chaebols.
- Campaign in PRC to counter anticompetitive acts by public utilities resulted in a large number of antitrust cases especially involving bid rigging.
East Asian Experiences: 
Competition Policy Regimes

• Passage of competition laws has informed consumers and small enterprises of their rights, instilling a competition culture.

• Competition advocacy activities have been implemented to raise public awareness.
Major Lessons Learned

- Industrial policies for development should be accompanied by an effective competition policy.
- Openness to trade and FDI do not always lead to increased competition, as government regulation sometimes creates barriers to entry and protects domestic industries.
More nuanced understanding of the consequences of border and internal reforms

- Danger that these reforms have been oversold—undermining the credibility of reformers and their advisors.
- With respect to sectoral and privatization measures, conduct, not just ownership, is important.
- With respect to FDI and trade reforms, conduct, not just openness, is important.
Potential cross-country comparisons

- Role of FDI in shaping how officials and analysts perceive the current and future role of national competition law (e.g. PRC and Malaysia).

- PRC and Viet Nam on competition law and its role in moving towards a more market-based economy.

- Role of industrial policy in shaping the design and debate over national competition law (PRC, Malaysia, Viet Nam).

- Experience with enforcement of competition law (Korea, Thailand)