Competition Policy and Its Importance for the Economy

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Three topics

I. What is competition policy?

II. Why is it important for economic performance?

III. Competition assessment would be beneficial for APEC economies
I. What is competition policy?

- Two pillars:
  - Competition law
    - Control of cartels
    - Control of anticompetitive mergers
    - Control of abuse of dominance
  - Competition policy
    - Government regulation of economic activity
    - Many areas of government policy affect competition
Resources – Competition Law

- Hard Core Cartel Recommendation and Reports
- Best Practices for Sharing Information in Cartel Cases
- Merger Review Recommendation
- Co-operation Recommendation
- Remedies and Sanctions in Abuse of Dominance Cases
- Prosecuting Cartels without Direct Evidence of Agreement
- Barriers to Entry
- Resale Below Cost Laws and Regulations
- Competition on the Merits
- Predatory Foreclosure
Resources – Competition Law

- Intellectual Property Rights
- Cartels: Sanctions Against Individuals
- Merger Remedies
- Media Mergers
- Substantive Criteria used for the Assessment of Mergers
- Loyalty and Fidelity Discounts and Rebates
- Merger Review in Emerging High Innovation Markets
- Portfolio Effects in Conglomerate Mergers
- Competition Policy in Subsidies and State Aid
- Price Transparency
Resources – Competition Law

- Competition Issues in Joint Ventures
- Airline Mergers and Alliances
- Oligopoly
- Buying Power of Multiproduct Retailers
- Competition Policy and Intellectual Property Rights
- Resale Price Maintenance
- Judicial Enforcement of Competition Law
- Abuse of Dominance and Monopolisation
- The Essential Facilities Concept
- Efficiency Claims in Mergers
- Failing Firm Defense
Resources

WWW.OECD.ORG/COMPETITION
II. Why is competition important for economic performance?

- Why should governments worry about competition?
  - OECD economists link competition, productivity and economic performance
  - OECD country surveys highlight strong economic performance after wide-ranging reforms to promote competition in the US and the UK in the 1970s and 1980s, then in Australia and New Zealand in the 1980s and 1990s.
  - Other recent surveys recommend more competition to improve performance in France, Germany, Italy, Japan and Switzerland
  - A structure for competition assessment / competition advocacy complements competition law
OECD economists link competition, productivity and economic performance

- Recent OECD papers explain how reforms to stimulate stronger market competition affect growth by
  - spurring efficiency and productivity growth
  - disciplining managers
  - increasing investment by removing barriers
  - increasing employment – the employment rate is up to 1.5-2.5% higher where in-depth reforms have been adopted
  - reinforcing incentives for innovation
  - speeding the adoption of new technology and process of adjustment to change
OECD economists link … (2)

Going for Growth 2007:

- “Competition affects growth directly by boosting productivity, including by enhancing innovation and improving the allocation of production factors across the economy. It also strengthens growth by increasing employment.”

- “Enhanced competition induces producers to supply what consumers want at the lowest cost, and hence results in labour and capital resources being employed where they make the greatest contribution to welfare. At the same time, it may also stimulate managerial efforts as there are more firms to serve as reference for comparison and the threat of bankruptcy is more credible …, thereby reducing the slack in the use of labour and capital.”
“An even more important, albeit more debated, channel than these one-off effects is the impact of increased competition on the growth of productivity, which works via enhanced innovation. … Recent OECD research finds that stronger competition has particularly powerful effects on productivity in countries far away from the technological frontier, reflecting stronger incentives to adopt new technologies.”

“Increased competition may also boost growth by stimulating employment through various channels.”
Recent OECD Economic Surveys link vigorous competition with faster growth

- Australia
- Iceland
- New Zealand
- United Kingdom
- United States
Australia …

From the 2003 EDRC review:

Australia’s current and recent economic outcomes place it among the top performers in the OECD. This owes much to a good combination of prudent, medium-term oriented fiscal and monetary policies, and far-reaching reforms to labour, product and financial markets in the past two decades…
From the 2003 EDRC review:

The implementation of Australia’s ambitious and comprehensive **National Competition Policy** over the past seven years has undoubtedly made a substantial contribution to the recent improvement in labour and multifactor productivity and economic growth. The Productivity Commission estimates that Australia’s GDP is now about 2½ per cent higher than it would otherwise have been, and Australian **households’ annual incomes are on average around A$7 000 higher** as a result of competition policy.
From the 2004 EDRC review:

“In the last decade of the 20th century, Australia became a model for other OECD countries in two respects: first, the tenacity and thoroughness with which deep structural reforms were proposed, discussed, legislated, implemented and followed-up in virtually all markets, creating a deep-seated ‘competition culture’ and second, the adoption of fiscal and monetary frameworks that emphasized transparency and accountability and established stability-oriented macro policies as a constant largely protected from political debate. …
From the 2006 EDRC review:
“Gross domestic product (GDP) growth since the turn of the millennium has averaged above 3% per annum and, including the terms-of-trade gains, growth in real gross domestic income has averaged over 4%, among the handful of OECD countries achieving such rapid growth; the unemployment rate has fallen to around 5%, its lowest level since the 1970s; inflation has remained within the target range; and, following a long stretch of fiscal surpluses, Australia is now one of the few OECD countries where general government net debt has been eliminated. Living standards have steadily improved since the beginning of the 1990s and now surpass all G7 countries except the United States. Wide-ranging reforms, particularly to promote competition, were instrumental in this respect. They promoted productivity growth, most notably in the second half of the 1990s. The greater flexibility engendered by these reforms, together with the introduction of robust monetary and fiscal policy frameworks, has also bolstered the economy’s resilience to a series of major shocks over the last decade: the Asian crisis in the late 1990s, the global downturn at the turn of the millennium, followed by a major drought, the ending of a house price boom and currently, the commodity price boom.”
III. Competition Assessment would be beneficial for APEC economies

- Competition policy is too important to the health of the economy to leave to chance, or to the influence of narrow interest groups. An active policy through Competition Assessment is a better way.

- Competition Assessment is the evaluation of whether one or more potential policy alternatives may unduly restrict competition.

- The goal is to identify ways to achieve the objectives of laws and regulations with the least harm to competition.
Many laws and regulations have substantial impacts on competition, even when aimed at other policy objectives. They may:

- require one company to provide a service (and prevent other companies from providing that service)
- set a price that does not reflect cost
- differ in different geographic areas or between companies that perform similar functions but have a different legal status (e.g. banks vs. savings and loans)
- limit entry by new firms (e.g. by requiring a license that becomes an artificial barrier to entry)
Restrictions on competition can be harmful

- In absence of consideration of competition impacts, laws and regulations may inhibit competition unnecessarily. They can:
  - weaken the incentive for cost control
  - introduce regulatory risk
  - restrict consumer choice
  - unduly limit product variety
- And regulators may become captured by those they are supposed to regulate
What is Competition Assessment?

- Competition Assessment is the evaluation of whether one or more potential policy alternatives may unduly restrict competition. The goal is to identify those laws and regulations that would achieve the government’s objectives with the least harm to competition.

- The 2005 OECD Guiding Principles for Regulatory Quality and Performance state that when analyzing alternatives, “consideration must take account of their costs, benefits, distributional effects, impact on competition and market openness and administrative requirements.”
Competition Assessment Toolkit (1)

- Materials that guide policymakers on how to assess market impacts of laws and regulations have been lacking.
- The OECD Competition Assessment Toolkit fills this gap.
- The Toolkit approach is simple and limited in information & resources required.
Competition Assessment Toolkit (2)

- **Audience:**
  - Materials should be useful for reviewers of existing laws and regulations, gatekeepers of new laws and regulations, regulatory ministries and competition authorities

- **Elements of Toolkit**
  - Competition Checklist
  - High-level “Executive Brief”
  - “Institutional Options”
  - “Integrating Competition Assessment into RIA”
  - Detailed reference manual “Guidance”
Envisioned Use

- Can be used as part of an overall, high-level review of the existing stock of laws and regulations, as Australia did.
- Can become part of an Regulatory Impact Analysis process for new laws and regulations.
- Can be used by competition authorities to structure their competition advocacy efforts.
- Governments can adopt and adapt the materials for domestic use.
Competition Checklist

- Initial Review: Does the law or regulation:
  - Limit the number or range of suppliers?
  - Limit the ability of suppliers to compete?
  - Reduce the incentive of suppliers to compete vigorously?
Limit the number or range of suppliers?

- This is likely to be the case if the law or regulation:
  - Grants exclusive rights for a supplier to provide a good or service
  - Establishes a license, permit or authorisation process as a requirement of operation
  - Limits the ability of some types of suppliers to provide a good or service
  - Significantly raises cost of entry or exit by a supplier
  - Creates a geographical barrier to the ability of companies to supply goods or services, invest capital or supply labour
Limit the ability of suppliers to compete?

- This is likely to be the case if the law or regulation:
  - Controls or substantially influences the prices for goods or services
  - Limits freedom of suppliers to advertise or market their goods or services
  - Sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that many well-informed customers would choose
  - Significantly raises costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)
Reduce the incentive of suppliers to compete vigorously?

- This may be the case if the law or regulation:
  - Creates a self-regulatory or co-regulatory regime
  - Requires or encourages information on company outputs, prices, sales or costs to be published
  - Exempts the activity of a particular industry or group of suppliers from the operation of general competition law
  - Reduces mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
A positive answer to any of the items noted in the Competition Checklist will warrant a detailed, full competition assessment of the policy under consideration as it potentially signals a significant competition concern.
Next step: a full Competition Assessment Review

- The detailed evaluation would examine all the issues related to whether the rule or regulation might
  - Impose barriers to entry of new businesses
  - Force certain types of incumbent businesses (e.g., smaller firms) to exit the market
  - Increase the prices of goods and services
  - Reduce product variety
  - Significantly increase concentration in the relevant market
  - Reduce innovation
  - Affect related markets
    - If yes, evaluate effects on all the relevant related markets
Institutional options (1)

- Launch a high-level review of existing laws and regulations
  - Australia 1995 – 2001
  - Canada 2007 (trial program being organised within Industry Canada)
  - Mexico 2007 (Minister of the Economy announced decision to launch a broad review)

- Integrate competition assessment into law-making bodies
Institutional options (2)

- Integrate competition assessment into RIA process
  - U.K. (part of RIA)
  - European Commission (part of RIA)
  - Australia (part of RIA)
  - U.S. (part of RIA)
  - Japan 2007 (initial report of an Advisory Group to the Cabinet Office)
  - Turkey 2007 (instruction by the Prime Minister’s Office to ministries)

- Integrate competition assessment into agencies with broad oversight over government actions
  - Mexico
  - Korea
Integrating Competition Assessment into RIA: UK example

- In 2002, Competition Assessment made one part of standard RIA process, revised in 2006
- One question in the (proposed) summary review is:
  “Will this [proposal] prevent, restrict or distort competition?”
- Detailed guidance on how to answer and address this question developed by the OFT, released November 2006
Integrating Competition Assessment into RIA: Australia example

- Australia launches in November 20, 2006 a revamped RIA process
- Process includes OECD Competition Assessment checklist as part of preliminary assessment of impacts of regulations
- Draft approach open for 7 months consultation prior to formal adoption
Conclusion: APEC economies should consider Competition Assessment.

- Competition is high on policy agendas around the world.
- National competition laws do not cover the full range of monopoly / competition issues.
- Monopoly issues in some sectors are tangled with other major policy issues such as sector development, restructuring of state owned enterprises, pricing of strategic products, foreign investment and trade and intellectual right protection.
- Competition Assessment provides a policy framework for the government to analyze and resolve such monopoly issues in parallel with national competition laws.