

Striking the Right Balance Between Competition and Regulation: The Key is Learning from Our Mistakes



Introduction

- Process yesterday - substance today
- *APEC Principles to Enhance Competition and Regulatory Reform*
- *OECD 1997 Report to Ministers on Regulatory Reform*

Main Conclusions

- Strong Case for Pursuing Regulatory Reform with Substantial Competition Dimension
- However, Greater Care Required to:
 - Design reform in a way that minimises risk of failure
 - Ensure that reform not jeopardised by misunderstandings

Overview

- Why Competition Preferred to Regulation
- Principal Justifications for Regulation
- Suggestions for Striking the Right Balance
- Role Competition can play in Designing Universal Access
- How to Avoid Notorious Failures

Why Competition Usually is Superior to Regulation

- Higher Real Incomes and Average Standard of Living
 - Large price reductions
 - Product quality increase
 - Proliferation of new products
- Responding to the Unexpected
- Reinforces Democratic Institutions

Regulation - Principal Justifications

- Market Failure
 - Public goods
 - Natural monopoly: old ones eroding while new ones appear
 - High sunk costs
 - Information asymmetries
 - State-owned enterprises



Public Interest Regulation

- Health & Safety
- Environment
- Energy
- Transportation
- Financial Services
- Telecommunications

Special Interest Regulation

- Supply Management Schemes
- Aspects of Labour Codes
- Licensing Regimes
- Product & Technical Standards
- Foreign Ownership/Entry Restrictions

Transitional Regulation

- Facilitate Transition to Competition
 - To ensure that benefits of regulatory reform not lost
- Need to Strike Careful Balance Between Competition and Regulation
 - Minimise disruption to consumers and others
 - Mitigate abuse of market power
 - Send appropriate investment signals

3. Suggestions for Striking the Right Balance

- General Suggestions
- Establishing the Right Market Structures
- Establishing the Right Rules
- Establishing the Right Institutions

General Suggestions

- “Buy-in” and Active Support of Political Elites
- Clear Objectives
- Transparency and Predictability
- Introduce Competition to All Activities that are Not Natural Monopolies

General Suggestions (Cont'd)

- Need to Focus on Shifting Systemic Bias
- Even for Natural Monopolies:
 - Identify segments where competition can be introduced
 - Create competition “for” the market
- Minimise Transition Period
- Avoid “Over-Managing” Transition -
Maximize Reliance on Competition

Getting the Right Structure

- Horizontal Structure
 - Create several competitors
 - Remove or reduce entry barriers
- Vertical Structure
- Separation Between Regulated and Unregulated Businesses

Establishing the Right Rules

- Adopt an Effective Competition Law
 - Early in reform process
 - Minimise # of exemptions
- Legal Right of Intervention before Regulatory Bodies
- Statutory Recognition of Advocacy Role

Getting The Right Rules (#2)

- Access to Essential Facilities
 - Non-discriminatory access
 - Price based on cost of providing service
 - Procedure for resolving disputes
 - Protection of confidential information

Getting the Right Rules (#3)

- Adjust Prices to Reflect Underlying Costs
- Where Price Regulation Nec'y, Adopt Performance Based Approach
- Flexibility to Accommodate Changing Conditions

Getting the Right Rules (#4)

- Clear Wind-up Provisions
 - “Sunset” clause or clear milestones
 - Determination by third party
- Carrots and Sticks to Provide Incentives
- Voluntary Code of Conduct?
- Address Anti-competitive Conduct with Competition Law, not Sectoral Regulation

Establishing the Right Institutions

- Clear Commitment of Gov't Support
- Well Staffed and Resourced
- Independence:
 - Budgetary
 - Regulated entities
 - Government

Establishing the Right Institutions (#2)

- **Transparency in Laws & Regulations:**
 - Test(s) to be used by regulator in making its decisions
 - Factors to be considered
 - Procedures to be followed
- **Transparency in Policies & Practices**
- **Transparency in Gov't Input**

Establishing the Right Institutions (#3)

- Regulators must be given powers to obtain information
 - Oral testimony
 - Documents/computer records
 - Written submissions

Establishing the Right Institutions (#4)

- Minimise Duplication and Overlap
 - “Saving” clause for Competition law or parts of it
 - Informal Protocol or MOU
- Framework for Co-operation and Coordination

Establishing the Right Institutions (#5)

- Specialised vs. Multi-Sectoral Regulators
 - Higher “up-front” cost vs. losses in efficiency
 - Economies of scope
 - Reduced probability of regulatory capture
 - Availability of Sufficient Skilled People
 - Greater Expertise of Specialised Regulators

Competition and Universal Service

- Universal Service not Incompatible with Competition
- Key is How Universal Service Structured
- Implications of Alternative Approaches Should be Explicitly Addressed

Avoiding Past Mistakes

- Facts Reveal that Notorious Failures Due to Mistakes that Can Easily be Avoided
 - California: flaws went beyond bad design
 - Other jurisdictions have shown reform works
- Opponents Often Forget Costs Associated with Status Quo
- The Few Failures don't Provide a Basis for Abandoning Regulatory Reform

Conclusions

- Competition Leads to Higher Levels of Efficiency and Living Standards
- Reg. Reform should Promote Competition Where Feasible and use Efficient Regulation Where Necessary

Conclusions (#2)

- **Successful Regulatory Reform Should Establish:**
 - The right market structures
 - The right rules
 - The right Institutions

Conclusions (#3)

- Competition Can Help to Make Universal Service Easier to Afford
- Notorious Failures Caused by Mistakes That can be Easily Avoided
- We Can and Must Learn From Each Other's Mistakes