



Policy framework for investment:
Best practices in promoting investment
Role of competition policy

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Preliminaries

- Current document is a first draft and will be revised in light of feedback.
- Will skip or quickly go through several slides – can talk about these during discussion time

Monterrey Consensus

- Promotion of competitive environment
- Allow all businesses – domestic and foreign – to operate
 - Efficiently
 - Profitably

Benefits of competition

- Enhanced competition could potentially deliver
 - Greater innovation
 - Product – variety, quality, new products
 - Process
 - Higher rates of new investment and entry
 - Lower prices
- The deep-seated benefits emerge in the **longer-run**
 - Many do not have this “longer-run” perspective



Competition policy

- Control or prohibit behavior that could restrict competition
- Three broad areas
 - Mergers
 - Abuse of dominance or monopolization
 - Cartels
- Large number of countries
 - Have some form of competition laws
 - Are in the process of implementing them

Related OECD initiative

- Competition Assessment Toolkit, OECD 2007
 - Broader initiative in fostering competition
 - Relevant to PFI: outlines various rules and regulations, and conduct, that harm competition and affect entry, investment, innovation, etc

- Excellent reading on long flights

Competition law “enforcement” (CLE)



- Often stark gap between **actual enforcement** and what’s in the books
- Variation across-countries **and** within-countries over time in
 - Intensity of enforcement
 - Emphasis on specific areas
- Differences stem from
 - Beliefs – ideology, politics
 - Learning about firms’ behavior and markets
 - Economic conditions
 - Experience
 - Capacity

Competition law enforcement (CLE)

Investment and entry

- Need to identify obstacles to investment
- Evaluation of institutions, mission and operations
 - Information provision
 - Enforcement and consistency
 - Exclusive contracts
 - Resources
- Assess and reform to streamline structure and operations

Competition law enforcement (CLE)

Institution

- Structure of CLE **institutions** vary across countries
 - Administrative and legal processes
 - Independence from political processes
 - Transparency of actions and decisions

- Structure can also change within-countries over time

Competition law enforcement (CLE)

Mission

- Mission of CLE institutions vary across countries
- Some have wider mandate
 - Enforcing competition laws
 - Active participation in regulatory reform
 - Active participation in privatisation
- Others primarily entrusted with enforcing competition laws
 - Consulted and provide input on other matters

- Mission can also change within-countries over time

Competition law enforcement (CLE)

Variation

- Variation in institutional structure, mission and enforcement have implications for investment and entry
- E.g., differences in extent of **recourse** businesses may have to bad decisions, including discriminatory one's
 - Costs of recourse
 - Speed of recourse
 - Likelihood that bad/discriminatory decisions will be overturned
- Mechanisms for effective recourse will promote investment and entry



Competition law enforcement (CLE)

Investment and entry



■ A complex problem

- Myriad types of anti-competitive conduct that need to be monitored, evaluated and weeded out
- An important fraction of eventual actions taken originate in complaints filed by market participants

Competition law enforcement (CLE)

Investment and entry



- Broad themes
 - Information
 - Enforcement and consistency
 - Exclusive contracts
 - Other items – resources, mission
 - A survey instrument

CLE and investment Information

PFI Qs: 4.1, 4.7

- Better information helps firms' decision-making by
 - Lowering transactions costs
 - Lowering uncertainty – procedures, outcomes
- Jurisdiction's CLE needs to be
 - Predictable
 - Transparent
 - Nondiscriminatory

CLE and investment Information

PFI Qs: 4.1, 4.7

- Consider **merger control**. Businesses need information on:
 1. Approvals process
 2. Procedural costs: direct and indirect
 3. Timeline of decisions: well defined or loosely defined
 4. Recent history of decisions: general and industry specific
 - **Reasons for negative decisions**
 5. Preferential treatment for state-owned or regulated firms
 6. Restrictions against foreign firms
 7. Changes in laws and procedures
 8. Recourse to negative decision: procedures, costs, timeline
- Items 1-8 as partial **checklist** of information requirements

CLE and investment Information

PFI Qs: 4.1, 4.7

- Easy access to this information would reduce transactions costs and uncertainty, and streamline entry and investment
- CLE authority should
 - Be **structured** to reduce transactions costs and uncertainty
 - Provide information in a manner easily accessible to all
 - Engage in advocacy, nationally and internationally, to
 - Educate and inform domestic and foreign businesses
 - Attempt to harmonize procedures and information sharing with other CLE authorities

CLE and investment Information

PFI Qs: 4.1, 4.7

- Similarly, assess informational requirements for
 - Abuse of dominance cases
 - Prosecution of cartels
- Generalize checklist items 1-8 to include M&As, abuse of dominance and cartel enforcement
 - Many items will be common
- Compare information provision relative to other jurisdictions

CLE and investment

Enforcement and consistency

PFI Qs: 4.3, 4.5

- CLE authority **should act** when there is
 - Anti-competitive conduct:
 - E.g., predatory pricing, raising rivals' costs, cartels
 - Likelihood of anti-competitive outcomes
 - E.g., mergers that significantly increase market power
- **Non-discriminatory** CLE actions for similar violations
 - If actions taken against unregulated private firms, state-owned and regulated firms need to be equally disciplined
 - If actions taken against foreign firms, domestic firms need to be equally disciplined
- To promote investment and entry, CLE needs to be **active and consistent**

CLE and investment

Enforcement and consistency

PFI Qs: 4.3, 4.5

■ Checklist

- Number of investigations and complaints filed for anti-competitive conduct, and what actions were taken
 - Breakdown by unregulated private firms, state-owned enterprises, regulated firms and foreign firms
- For anti-competitive behavior, if **no action** taken against state-owned enterprises, regulated firms or national champions
 - Was this due to exemption from competition laws
 - What recourse do the affected firms have
 - Administrative
 - Legal

CLE and investment

Exclusive rights

PFI Qs: 4.6

- Exclusive rights have the potential to cause significant harm to competition
- CLE often does target these in the private unregulated sector
- Governments must also focus on this during
 - Privatisation
 - Operations of state-owned enterprises

CLE and investment

Exclusive rights

PFI Qs: 4.6

- In privatisation cases
 - Does government seek advise of competition authority
 - Did government grant exclusive contracts
 - Was government concerned about harm to competition
 - Did government grant exemptions from competition laws
 - Duration of exclusivity and were there sunset clauses
- Similarly, for operations of state-owned enterprises
- Combined checklist for assessing the extent of problems with granting of exclusive rights

CLE and investment

Other items

- Resources: PFI Qs. 4.2
- Mission and scope: PFI Qs. 4.4

CLE and investment

Survey instrument

- Competition authority should initiate a survey instrument
 - Feedback provided by firms who have to interact with the competition authority
- Feedback questions broadly related to
 - Adequacy of information provision
 - Speed and transparency of procedures and actions
 - Consistency of enforcement
 - Whether exclusive contracts granted by the Govt affected their investments and entry
- This bilateral exchange will help reform institutions and procedures and improve the investment climate