

Competition law and competition policy: lessons from developing and transition economies

Frederic Jenny
Chairman, OECD Competition Committee

*National Investment Reform
Agenda Workshop- Lebanon*

April 19 , 2007
Grand Serail, Beirut, Lebanon

Issues to be addressed

- 1) **Competition law: an element of competition policy**
- 2) **Why do we need a competition law ?**
- 3) **Competition laws in developing and transition economies**
- 4) **Relationship between competition law enforcement and competition policy**
- 5) **Conclusion**

Elements of competition policy

Four complementary policies must be considered to promote a market oriented economy

Competition law

Deregulation

Trade liberalization

Privatization

Why do we need competition law?

Evidence shows that **trade liberalization, deregulation and privatization** are **necessary conditions for market competition** (and economic efficiency), but that they are **not sufficient conditions** even in small open economies.

In sectors not open to international competition, individually or collectively powerful domestic suppliers have an incentive to restrict competition among themselves, to abuse their market power, to create strategic barriers to entry or to expansion in order to limit potential competition, to swallow their competitors to diminish competitive pressure on the market.

Competition law (adopted by about 110 countries in the world) ensures that anticompetitive practices or transactions **either domestic or transnational** detrimental to efficiency and welfare do not undermine the efforts of governments to promote economic growth, freedom of trade and consumer welfare

Anticompetitive practices which reduce consumer welfare

Many anticompetitive practices are alleged in sectors sheltered from international competition in developing countries such as:

Local agriculture and local fishing

Local telephony

Construction and construction materials

Electricity

Water

Bus and rail transportation (Matutu, taxis, buses)

Local retail trade

Real estate

Services (lawyers etc...)

Anticompetitive practices impairing economic development

At the domestic level

Fertilizers : input for agriculture

Oil : input for agriculture and manufacturing

Construction and construction materials : input for manufacturing

Transportation : input for all production activities

Telecommunications input for all production activities

Banking and financial services: input for all production activities

Wholesale trade

At the international level

Steel, heavy electrical equipment, aluminium etc.....

Weak competition in many markets in Lebanon

A recent study conducted by the Ministry of Economy and Trade in 2003, assessed that **many sectors are shielded from competition.**

According to the study, about **half of Lebanon's domestic markets are considered oligopolistic to monopolistic; and a third of them have a dominant firm** with market share above 40 percent.

The reasons for such high concentration indexes (and hence, little internal competition) are of different natures, but always relate in one way or another to the **existence of barriers to entry and exit.** Some of them are natural, in the presence of economies of scale for instance. Others are **artificial, and stem from rules, regulations and norms that practically restrict entry at least to some enterprises.** The study lists in this regard outdated commercial laws, long delays in commercial disputes settlements, business unfriendly administrative regulations, corruption, and the existence of exclusive agencies as important artificial barriers to entry.

Public and Private Restraints to Competition in the Mobile Telephony Market in Lebanon

Consumers Lebanon president Ali Berro says that there are two problems in (the mobile telephony sector).

"The government decides on a pre-paid mobile tariff that is arguably the highest in the world because the budget of the state comes entirely from the sale of gas, tobacco, telecoms, imported cars, and the value-added tax.

MTC Touch and Alfa - the two operators currently under contract with the government - sell products to approximately 27 distributors approved by the Ministry of Telecommunications charge a 33 percent premium to points of sale, and the distributors sell to the local mobile dealer who then jack up the price for consumers.

"We ask [the ministry] to let Alfa and MTC sell directly to points of sale, but they refuse. Why? Because this is a cartel between politicians, the ministry, and the private sector, and the consumer pays the difference between the \$50 (price set by the ministry) and \$200, \$300, or \$100, whatever points of sale charge," he says.

1) Mobile telecommunications cry out for regulation; Black market helps drive exorbitant prices[^] even higher ,Lysandra Ohrstrom ,11 décembre 2006, Daily Star

Foreign direct investors are attracted by a business friendly environment

An efficient, well-enforced, fair, transparent and predictable legal environment (counter examples Jamaica, Russia, Papua New Guinea).

A level playing field and protection against economic abuses by incumbents, whether they are competitors, suppliers, or customers (counter examples Hong Kong).

The Importance of Competition for Investment: the example of Turkey

More rapid and consistent implementation of rules and regulations that ensure a level playing field for all companies would be assisted by the EU accession process, and in turn would enable Turkey to take full advantage of investment-related benefits.

Competition and investment: the case of Lebanon

« Simulation results suggest that **Lebanon would largely benefit from a liberalization of its domestic markets, through the reduction of anti-competitive practices.**

The impact would be particularly pronounced on investment opportunities (as investment costs become cheaper), but also very favorable to wage earners.

Domestic liberalization would allow reduction in the cost of several key domestic industries - to the benefit of others, and would hence render the economy overall more productive through allocation gains.

Part of the rents that currently accrue to foreign companies would also be eliminated, hence relaxing the balance of payments constraint ».

Competition law in developing and transition economies

- 1) **Competition laws provide the most benefits when they are implemented in the context of a wide pro-competitive reform agenda** (ex Mexico' success, Morocco's failure)
- 2) The **core objectives are the same in all competition laws** (elimination of exploitative and exclusionary practices or transactions (mergers) which restrict competition and reduce consumer welfare).
- 3) Yet, there is **no « one size fits all »**. The designs of competition laws reflect:
 - **Specific national objectives** (ex: Market integration in the EC, Fight against « chaebols » In Korea, economic integration of blacks in South Africa)
 - **Specific national constraints** (ex: Ministerial status of the federal antimonopoly service in Russia, administrative sanctions versus civil or criminal sanctions)
- 3) **Competition laws evolve over time** as countries gain more experience

Core functions of the competition authority

Enforcement of provisions against anticompetitive practices (horizontal agreements tacit collusion, vertical agreements, abuses of dominance)

Market and industry studies

Merger control

Competition advocacy :

- with government privatization, deregulation, legal barriers to entry
- with business community
- with press

Cooperation with sectoral regulators (must be defined in the law):

Mandate driven division of labor

Joint decisions

Mandatory consultations

Design of the competition authority

Composition (including legal and economic expertise)

Appointment of members (transparency of the process) , **duration** (long enough)
status of members (protection of independence),

Independence of the authority(financial and substantive) and **autonomy** (ability to bring cases)

Who can refer cases? (Minister, Business firms, Trade associations, Consumer Organizations, possibility for the authority to decide to open an investigation)

Investigatory powers (investigation personnel, powers of search and seizure?)

Separation of decision making from investigation and prosecution

Due process and transparency of decision making

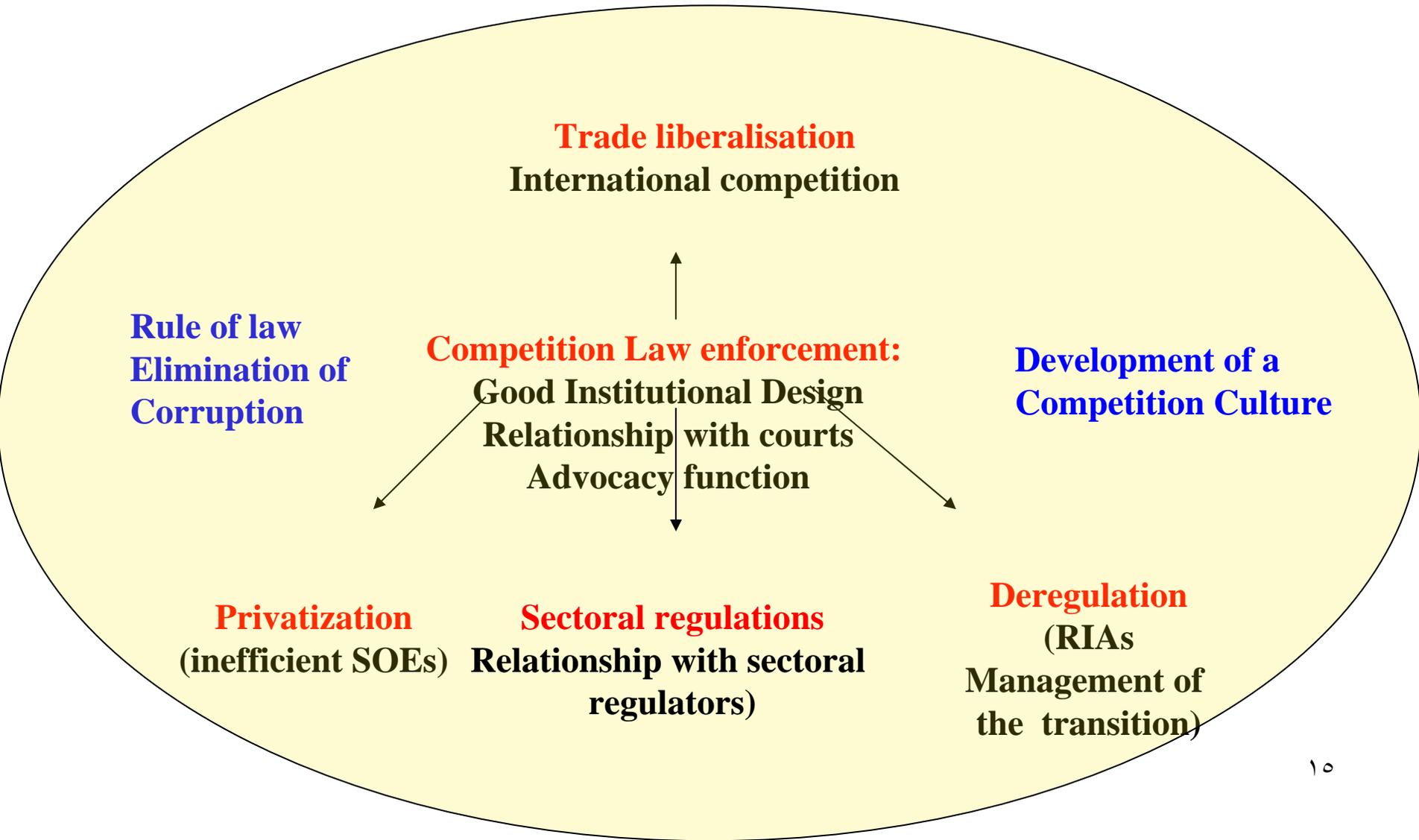
Confidentiality of sensible business information

Review of Decisions

Publicity of Decision, Market Studies, Advisory Opinion, Annual Report

Relationship with sectoral regulators

Relationship between competition law enforcement and competition policy



Relationship between the competition authority and sectoral regulators in Lebanon

« The key components of of the telecom privatization plan are:1) the establishment of a regulatory authority by the first quarter of 2007 »(...)

Issues

1) The division of labor between the telecom regulatory authority and the Competition Authority (ex: the telecom regulator sets interconnection prices, the Competition Authorities makes sure that telecom operators do not fix prices to consumers)

2) Coordination mechanisms (through exchange of non binding opinions) Between the telecom regulator and the competition authority on questions of mutual interest(for example market definitions, exclusionary practices) must be established.

3) Same issues with other present or future regulators

Participation of the competition authority in the privatization program

The key components of of the telecom privatization plan are:3) the sale of a Majority stake in ,or, 100 per cent of the mobile sector's assets and relevant Licenses,4) the privatization of Liban telecom (once it has been corporatized) (...) By law proceeds from all privatization effortsare to applied to publicdebt reduction.

Issue

In some countries (for example in **Turkey or in Mexico**), the competition authority participates in the privatization process at two levels:

-first in the establishment of the privatization plan;

-Second, through the merger control provision in assessing which firms should be authorized to bid and which firms should be prevented from bidding for the privatized assets so as not to lessen competition.

Similar issues with privatization in electricity, water, ports, airlines

Conclusions

- 1) Competition law is a necessary tool for economic development**
- 2) The institutional design of the competition authority must be adapted to the local specificities**
- 3) Competition law must be part of a wide pro-competitive agenda**
- 4) The role of the competition authority in regulatory reform and privatization is crucial**
- 5) The relationship between the competition authority and the sectoral regulators must be made clear in the law so as to avoid gaps or duplications.**