

EXECUTIVE SUMMARY:

Competition policy addresses issues related to the supply side of the market, clamping on business conduct that impinges on market competition and implementing pro-competitive measures encouraging businesses to enhance efficiency and innovation. On the demand side, consumer protection policy deals with concerns regarding consumers' rights, safeguarding their interests against unfair trading practices. Underlying these seemingly contrasting policies is a common goal towards ensuring markets function effectively in allocating resources to enhance social welfare.

Both competition and consumer protection policies have mutual effects of positive reinforcement on each other. Competition lowers prices and offers a variety of products to make options available, thereby furthering consumer interests, whereas consumer protection facilitates rational consumer choice which activates competition. Evidently, there is potential for markets in Singapore to gain benefits from leveraging on their complementary nature.

In light of the dynamics between competition and consumer protection, I propose an approach to integrating the two enforcement functions under CCCS, so as to achieve the ultimate goal of well-functioning markets in Singapore. My approach is propounded through 4 stages. Firstly, the benefits of integration, namely improvements in enforcement operations and advocacy, form the underlying rationale. Secondly, communication and coordination as necessary steps in the integration process are examined. Thirdly, concrete applications of the integrated approach are suggested, and finally, challenges arising from integration and solutions are discussed.

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The nexus between competition and consumer protection policies in Singapore is a complex one. Nevertheless, through an integrated approach that prudently balances and harmonizes the two, Singapore can stand to harness the potential synergy between competition and consumer protection policies to achieve well-functioning markets that maximize social welfare.

(272 words)

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1 Well-Functioning Markets

1.1 Background Information

A well-functioning market efficiently allocates scarce resources amongst competing uses to maximize society's welfare in the absence of market failure, such as information failure and market dominance. Well-functioning markets are productive, innovative, efficient and responsive, benefitting businesses, consumers and the general economy by ensuring a greater variety of better quality goods at lower prices (CCCS 2015, 111).

In Singapore, well-functioning markets are promoted by the Competition and Consumer Commission of Singapore (CCCS), an agency that jointly administers and enforces the Competition Act¹ (CA) and Consumer Protection (Fair Trading) Act (CPFTA)².

¹ The Competition Act prohibits and penalises anti-competitive business practices, including anti-competitive agreements, abuse of dominance and mergers and acquisitions that lesson competition.

² CPFTA empowers consumers to seek redress against unfair trade practices that deceive or exploit consumers.

1.2 Competition Policy's Role

In Singapore, market competition is protected by incentivising businesses to increase productivity, efficiency, innovation and responsiveness to consumer needs (CCCS 2018).

Effective competition is instrumental for well-functioning markets. Firstly, competition promotes efficiency and productivity to cut production costs and lower prices. Secondly, competition fosters innovation for product development. Thirdly, competition aids efficient resource allocation by facilitating entry of new competitors and exit of inefficient businesses. This is evident from liberalisation of Singapore's telecommunications industry, in which market competition brought about lower prices and innovative services³.

To enforce and advocate market competition, CCCS administers the CA, and promotes competition policies⁴ and raising awareness of importance of competition (Figure 1) (CCCS 2018). This leads to well-functioning markets offering more choices, better quality and lower prices for consumers.

³ International telephone rates fell by up to 90% since 2000 and services like Voice over Internet Protocol became easily available (CCCS 2018).

⁴ Competition policy promotes pro-competitive regulations and government measures, enhancing static efficiencies (e.g productive and allocative efficiency) and dynamic efficiency, leading to efficient resource allocation and social welfare maximisation.



Figure 1: Comic by CCCS to raise awareness of competition concepts (CCCS 2014)

1.3 Consumer Protection Policy's Role

Consumer protection policy protects consumers against unfair trade practices. It prevents information failure⁵ and switching costs⁶ from inhibiting rational consumer choice, which leads to market distortion and inefficient resource allocation. For example, infocommunication regulations by Infocomm Media Development Authority requires mobile operators to direct consumers to prices, terms and conditions before providing roaming services to ensure informed decision making (IMDA 2017).

CCCS enforces the CPFTA in taking action against errant traders and promotes consumer protection by improving market transparency and information flow.

⁵ Information failure arises when imperfect or asymmetric information hinders rational consumer choice, leading to inefficient resource allocation in markets.

⁶ Switching costs are costs borne by consumers in switching suppliers, like transaction and search costs.

2 Competition and Consumer Protection Policies

2.1 Different, Yet Similar

Competition policy regulates market competition, focusing on distortions on market's supply side. In contrast, consumer protection concentrates on redressing grievances of an individual consumer on the demand side.

However, both competition and consumer protection policy share a common goal of providing a range of products at competitive prices in efficient markets free of unfair practices. Competition policy spurs efficiency and innovation, offering wider variety of products at affordable prices to satisfy consumer desires. Similarly, consumer protection policy creates market conditions for effective exercises of consumer choice, facilitating efficient resource allocation. Thus, they are complementary — each addresses different market failures using different approaches in contributing to well-functioning markets enhancing social welfare.

2.2 Complementary functions: Synergy between Competition and Consumer

Policies

Competition and consumer protection policies are mutually reinforcing. Competition policy ensures a range of options, empowering customers to exercise rational consumer choice⁷ in switching between products and suppliers. Additionally, some businesses differentiate themselves from rivals by simplifying transactions such as through providing more readable contracts, facilitating consumer's informed decision making (Harvard Business Review 2012).

Likewise, consumer protection policy addresses information failure, preventing distortion of an otherwise competitive market. (Cseres 2006, 2). Furthermore, it forestalls businesses' exploitation of information asymmetries for competitive advantage, which would directly reduce market competition. Thus, protecting consumers' ability to make informed choices would incentivise businesses to remain competitive to attract and retain customers.

Given market competition's role in facilitating information access and consumer decision making, and consumers' role in activating competition, interplay of competition and consumer protection policies would yield synergistic outcomes (Figure 2).

⁷ According to Rational Choice Theory, individuals would pursue their goals efficiently, and thus make feasible utility-maximising decisions among available alternatives in the presence of constraints, based on rational calculations.

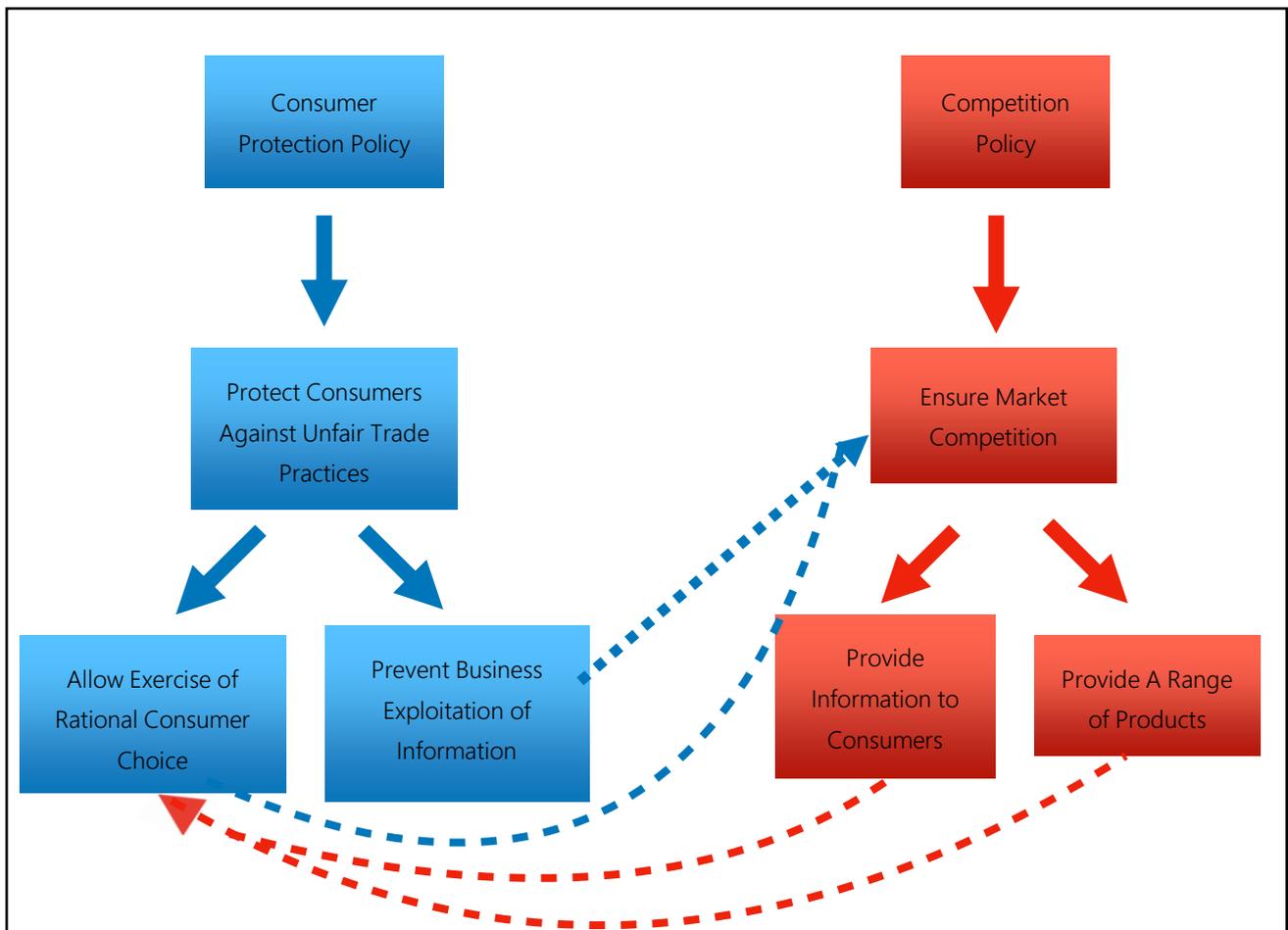


Figure 2: Overview of Competition and Consumer Policies' Complementary Functions

3 Integrating Competition and Consumer Protection Functions under CCCS

3.1 Why Integrate?

In an evolving market, complex market failures emerge from both demand and supply sides⁸. Simplistic remedies with an isolated focus on either side hardly suffice in tackling market-wide problems involving both anticompetitive and unfair business practices.

Integrating competition and consumer protection enforcement functions would enhance CCCS's capacity to regulate and promote well-functioning markets, bolstering its two-pronged approach of enforcement and advocacy.

Improvement in Enforcement Operations

Integration would streamline enforcement operations, owing to administrative efficiency from economies of scope in developing and sharing of expertise across competition and consumer protection domains (Cseres 2013, 15). CCCS would also better identify and assess overlaps, conflicts and opportunities for coordination between both domains (OECD 2008). This would guide CCCS in issuing optimal decisions that produce desirable market outcome without incurring substantial tradeoffs in either domain.

Improvement in Advocacy Efforts

Moreover, integration may create synergies in raising profile, as well as gaining public accountability and support from other stakeholders for each domain, strengthening CCCS's advocacy efforts. In particular, the additional consumer protection role would allow CCCS to appeal directly to consumers, promoting awareness of its competition function amongst consumers, who would otherwise lack awareness due to limited exposure (Cseres 2013, 35).

⁸ For example, the European Commission's energy sector inquiry detected market failures on both supply and demand sides.

3.2 How to Integrate?

To successfully reap benefits of integrated functions, active interdivisional cooperation is crucial, especially with the new Consumer Protection Division (Gondal and Shahbaz 2012, 136). Cooperation can be achieved in two ways: communication and coordination.

Communication

Firstly, interdivisional communication can be facilitated through regular exchange of information, such as through consultations, periodic cross-reviews and expertise sharing. For example, Consumer Protection Division's expertise can be applied in preparing consumer and business education materials (CCCS 2018) on competition issues, where such materials are less frequently utilised. Transfer of solutions and cross-application of market-specific learning can be adopted as well, as previously proven useful in other agencies like FTC⁹.

Overall, communication would help divisions leverage on one another's expertise, which can inform and enhance operations in respective domains.

Coordination

Interdivisional coordination can be facilitated through combined trainings and workshops, increasing exposure to other divisions' mandates, goals, and policy tools, beyond the context of specific cases.

Joint expert teams can be assigned for market-wide issues involving both competition and protection concerns. Cross-functional collaboration enables comprehensive analysis of both competition and consumer protection issues, facilitating assessment of both

⁹ FTC's health care antitrust policy benefited from transferring learning from enforcement of laws concerning advertising and marketing practices (Muris, 2002).

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consumer detriment and competitive harm (Cseres 2013, 33). This would help issue proportional decisions which optimally apply regulatory tools from either or both domains as appropriate (Kovacic and Hyman 2013, 38), forestalling under- or over-regulation.

Hence, coordination enables a holistic market screening approach, which can preempt the parochial pursuit of one goal at the expense of the other, to better balance interests of both competitors and consumers.

3.3 What Integrated Measures?

As discussed earlier, melding intelligence and enforcement expertise in competition and consumer protection domains under the integrated approach would collectively improve CCCS's operations. The following outlines concrete applications of the integrated functions for optimal enforcement in competition and consumer protection domains respectively.

Firstly, competition enforcement can be improved using consumer protection expertise to assess justifications for anticompetitive business conduct and proposed policies that are couched in consumer protection grounds. Consumer protection policy can also be applied to competition issues — improving consumers' access to information and reducing switching costs would facilitate informed decisions and ease of switching, increasing competition, as evident from Hungarian Competition Authority's (GVH) sector inquiry¹⁰.

Secondly, consumer protection enforcement can be improved by capitalizing on CCCS's competition expertise in considering market impacts of consumer protection enforcement (Parnes and Holman 2011, 72). For example, proposing mandatory product standards to protect consumers from information asymmetry may raise entry barriers and reduce competition, to further detriment of consumer choice. Competitive assessment can identify and forestall anticompetitive effects, possibly by suggesting voluntary business participation in industry standards instead. Moreover, competition policy can complement consumer protection enforcement, by lowering prices and increasing availability of options to facilitate consumer choice.

¹⁰ GVH conducted a sector inquiry, finding that switching was a fundamental factor of competition in the financial sector (Cseres 2013, 30).

Application to Singapore: Removal of Warranty Restrictions of Major Authorised Car Dealers

In 2017, CCCS concluded a market inquiry into the supply of car parts in Singapore.

Consequently, CCCS worked with major car dealers to remove warranty restrictions from car warranties to increase competition in the car repairs and servicing market and provide more choices for car owners.

With integration of a consumer protection function, CCCS can consolidate its powers under the CA and CPFTA to enhance its operations. In this case, CCCS can better identify potential consumer harms of its decision and hence take measures to protect consumers from being misled into thinking that such requirements exist after removing these clauses.

3.4 What Challenges?

Notwithstanding benefits of integrating competition and consumer protection enforcement functions, challenges may arise from integration.

Blurring the Lines between Competition and Consumer Protection

Integration may lead to inappropriate and unhelpful obfuscation of competition and consumer protection, impeding effective and transparent enforcement for both.

Conflating competition and consumer protection issues may lead to inappropriate injection of either consideration into investigations of the other, creating problems in determining liability for alleged violations and even statutory basis of such liability. This may also affect remedy formulation, as evident from FTC's case against Intel Corporation in 2009 (FTC 2009) for alleged anticompetitive conduct and product misrepresentations, in which it initially contemplated imposing corrective advertising requirements (but ultimately did not). FTC's approach to this case potentially blurred lines between competition and consumer protection violations and remedies (Ohlhausen 2014).

To avert this problem, integration should be carried out judiciously, bearing in mind that competition and consumer protection policies are complements, not substitutes. Despite their common goal of achieving well-functioning markets, they diverge in focus and approach. Thus, it is crucial to seek cooperation within boundaries of their respective areas of specialization, not forcibly impose unnecessary cross-application to the detriment of effective operations. The right approach to integration should be recognising potential for cooperation while maintaining respect for each domain in their own right.

Policy conflict: Tension Between Competition and Consumer Protection

In some cases, conflicts between competition and consumer protection arise when pursuit of one goal necessarily incurs tradeoff in the other. For example, when businesses justify alleged anticompetitive behaviour on consumer protection grounds, it is difficult to issue decisions to increase competition without impinging on consumer protection¹¹.

To resolve policy conflicts, CCCS should carry out cost-benefit analysis to strike an appropriate balance between competition and consumer protection enforcement. Before establishing one concern's priority over the other, any legitimate tradeoffs must be evaluated. For example, in considering advertising restrictions to protect consumers from deceptive advertising, CCCS should review the market context to accurately weigh the consumer protection issue against competitive harm. To ensure optimal market outcome, CCCS should seek to prevent tradeoffs by exploring alternative remedies (such as consumer education in the aforementioned case) or minimise them so they are not greater than necessary to achieve policy objectives.

¹¹ California Dental case (Brill 2011, 10-11) is an example.

3.5 Overview of Integrated Approach

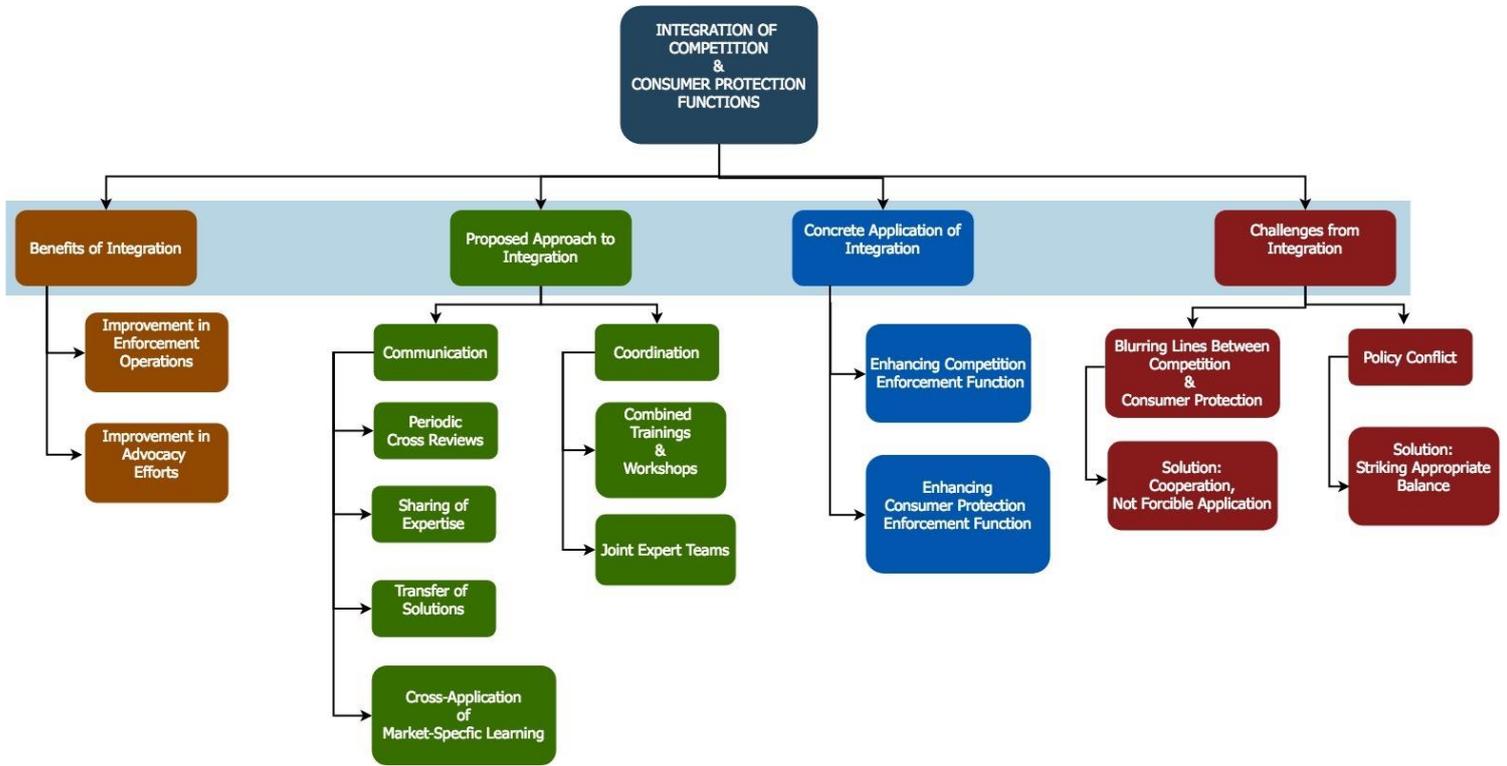


Figure 3: Infographic of Integrated Approach

4 Application of Integrated Approach to Singapore: Business Advertising

Under the integrated approach, competition and consumer protection policies can work together in regulating business advertising to produce optimal market outcomes enhancing social welfare.

4.1 Cooperation with Advertising Standards Authority of Singapore (ASAS)

Firstly, CCCS can work with ASAS to enhance efforts in promoting truthful, non-misleading advertising to provide useful market information for consumers without undermining market competition. Regular reviews of the Singapore Code of Advertising Practice (SCAP) can ensure relevance in light of constant market developments, especially in burgeoning e-commerce markets (Mato 2018). Additionally, developing educational materials teaching consumers to discern misleading information and make informed choices independently would promote competition and consumer protection.

4.2 Promotion of Accreditation Schemes

Secondly, CCCS can also actively promote benefits of accreditation schemes in business advertising. Accreditation allows businesses to differentiate their product to gain competitive edge, while providing consumers access to reliable information on product quality, promoting both competition and consumer protection. In particular, CCCS can work with CaseTrust to expand the scope of CaseTrust Accreditation Scheme¹² to cover more industries (CaseTrust n.d.). Advocacy efforts can encourage businesses to acquire CaseTrust Accreditation as a viable means of advertising products, while raising general consumer awareness.

¹² CaseTrust Accreditation in Singapore certifies the business' commitment to fair trading practices and compliance with industry-specific standards.

5 Closing Words

Examining the nexus between competition and consumer protection policies reveals their complementary nature. The interplay between competition and consumer protection policies creates a mutually reinforcing system gearing towards well-functioning markets that benefit both businesses and consumers.

Considering the dynamics between competition and consumer protection, integrating the enforcement functions would allow CCCS to leverage on their synergy, as consolidating expertise would grant market oversight, enhancing efficiency and effectiveness of its operations. For successful integration, CCCS must take steps to facilitate active interdivisional communication and coordination. Challenges arising from integration can be overcome by striking a prudent balance between the two functions for effective complementation and practical application.

Looking forward, as long as effective integration mechanisms are implemented, an integrated approach to competition and consumer protection enforcement would enhance each other's capacity to create well-functioning markets, successfully serving the best interests of both businesses and consumers in Singapore.

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