

Killing Two Birds With One Stone: An Integrated Approach to Consumer Protection and Competition Policy

1. Executive Summary

This paper proposes the establishment of a single government agency to oversee competition and consumer protection policies in Singapore. The paper begins with an overview of the trade-offs and synergies between competition and consumer protection policy. Despite the existence of potential trade-offs, a whole-of-government approach would better facilitate the adjudication of conflicting policy objectives. Furthermore, a single government agency would yield economies of scope, enabling more effective implementation of competition and consumer protection policy. This regulatory agility is vital in an increasingly complex market environment dominated by online commerce and cross-border transactions. Finally, this paper contemplates the drawbacks of such an integration, which may lead to excessive administrative discretion, heighten the risk of regulatory capture, and “crowd out” ground-up advocacy from non-governmental groups like the Consumer Association of Singapore (CASE).

2. Trade-offs and Synergies

Competition and consumer protection policies share a common goal: to correct market inefficiencies and protect consumer sovereignty. Apart from a common purpose, both sets of policies often complement each another by targeting correlated behavior (Kovacic 2007).

In markets where switching costs for a good are high, companies can exploit their dominant market position to engage in unfair trading practices. In 2014, for instance,

prosecutors in California filed nearly-identical lawsuits against Uber and Lyft for misrepresenting the rigor of their background checks on drivers, and for charging consumers an airport toll when they were not in fact authorized to operate at the airport. Whereas Lyft, with only about 8% of the U.S. ride-sharing market share, immediately reached a settlement, Uber, with 91% of the market share, took until 2016 to resolve the case. During negotiations with the state of California, a Uber spokesperson defended the company by pointing out that “Uber is an integral...and established part of the transportation ecosystem.” By restricting alternatives for consumers, market dominance can embolden a firm to pursue deceptive trading practices (Huffman 2010).

This problem has only become more pronounced as consumers increasingly rely on a limited number of online aggregators — such as Google or Facebook — for information on goods and services. By exploiting their monopoly on information, which has itself become a commodity, such firms can distort or misrepresent information in other markets, thereby raising consumer protection concerns. In 2017, for instance, the European Commission fined Google for antitrust violations. By leveraging its dominance in the market for search engines, Google gave an advantage to its own price comparison services while diminishing the visibility of others. Although the Commission’s decision focused on the impact on competition, it is easy to perceive the implications for consumer protection. If a consumer searches for the “cheapest plane ticket to Tokyo” and Google privileges its own advertiser in the results (even if the advertiser is not, in fact, the cheapest available ticket), the advertiser has functionally conspired with Google to mislead the consumer. Indeed, Groupon faced a class-action lawsuit in 2011 for using keywords involving certain tourist sites to trigger ads on

Google, even when it did not offer coupons related to those sites. In such cases, consumer protection and competition policies can complement each other by placing companies under increased legal pressure to alter their behavior.

More rarely, unfair sales practices — if left unchecked — may help companies assume and abuse a dominant market position (Muenker 2015). Following its approval by the Food and Drug Administration in 1998, the sugar replacement Splenda overtook its rivals and assumed 61% of the U.S. market share for sweeteners by 2006. However, part of its popularity stemmed from its “Made from Sugar” slogan, which the Sugar Association claimed to be highly misleading and later sued Splenda for (both parties reached an undisclosed out-of-court settlement). In this way, misleading advertising may help contribute to a company’s monopoly position.

Yet competition and consumer protection policies can also come into conflict with each other (MacLeod, Brunins, and Kertez 2005). In militating against market dominance, competition policy presumes the efficiency of the free market. That assumption fails if consumers do not have access to perfect information. In markets where information is asymmetric because the product is complex or specialized, or because the costs and benefits are uncertain, consumers must often rely on trade associations or professional groups to make informed choices. However, the actions of such bodies may be construed as anti-competitive (Brill 2011). In 2007, the Singapore Medical Association withdrew its price guidelines because its lawyers warned that the guidelines might run afoul of laws against price-fixing. The measures might actually have hurt patients because they no longer had a sense of what constituted a reasonable fee, given the difficulty of comparing prices for highly-technical healthcare

services. Some doctors argued that the putatively pro-competition move may have “led to overcharging and eroded the competitiveness of the private specialist sector.” In 2018, the Ministry of Health reinstated the guidelines, highlighting the tension between protecting consumers and promoting competition.

Conversely, consumer protection policies can also erect barriers of entry by increasing the costs of regulatory compliance for businesses, thereby hurting competition. As an illustration, bigger car manufacturers and dealerships can more readily afford to absorb the costs associated with “lemon laws,” which entitle consumers to refunds or repairs for defects in a product. In contrast, smaller outfits may find it hard to do the same and leave the market, thereby leading to market consolidation. By advocating for tighter regulation in the name of consumer protection, bigger firms can engage in rent-seeking behavior to further increase their marketshare (Armstrong 2008).

3. Benefits of a Single Agency

At present, the Competition Commission of Singapore (CCS) oversees competition policy in Singapore. In contrast, different bodies share responsibility for the enforcement of the Consumer Protection (Fair Trading) Act (CPFTA) of 2003. Singaporean residents may lodge complaints with CASE, while tourists may approach the Singapore Tourism Board (STB). CASE and STB only have the authority to administer voluntary resolutions, but may escalate more serious cases to SPRING Singapore, which can file and enforce injunctions against errant suppliers.

Housing these functions within a single agency will yield several advantages. A single agency would prioritize cases where the deadweight loss to the consumer is greatest, which will often be those where the objectives of promoting competition and protecting consumers coincide (Waller 2005). In cases where this is a conflict between competition and consumer protection, a single agency would more appropriately adjudicate the tradeoffs and arrive at a balanced solution (Leary 2005). In both instances, a single agency would ensure the most efficient use of government resources.

By averting unnecessary duplication, a single agency would also offer economies of scope (Averitt and Lande 1997). At present, both competition and consumer protection agencies engage in similar activities: they educate companies and the public about their rights and responsibilities; negotiate resolutions when issues arise, either from a complaint or a proactive investigation; and seek civil remedies in court when voluntary compliance is inadequate. While some of these functions are highly-specialized and require siloed expertise, others — like public education — would benefit from coordination, streamlining, and the cross-pollination of ideas (OECD 2008).

Moreover, combining capabilities would give a single agency greater reach, and allow it to take on more complex cases involving cross-border transactions. Indeed, the Government has recognized the need to regulate such commerce. In the 2018 budget, it announced that it would impose the Goods and Services Tax (GST) on imported e-services like Netflix and Spotify. In the future, Singapore might need to adopt a similar approach with respect to competition and consumer protection policy.

Present legislation already contemplates this possibility. The Competition Act 2004 covers conduct which takes place outside Singapore, as long as said conduct has an impact on markets within Singapore. While less expansive in scope, the CPFTA also has extraterritorial reach, insofar as either the consumer or supplier is resident in Singapore, or if the transaction is made in Singapore. However, practical difficulties raise questions about the feasibility of such enforcement. Burton Ong (2011) argues that transnational cases would be difficult to take up, given the CCS' "limited resources and relative inexperience," as well as the "potential interstate diplomatic minefields." Based on publicly available information, CASE, STB, and SPRING Singapore have also never engaged in cross-border enforcement. A single agency would have more capacity to pursue transnational cases, which may involve dealing with foreign courts and regulatory counterparts.

Finally, a single agency would harness the comparative advantages of the CCS and CASE, STB, and SPRING Singapore. Established in 2005, the CCS has sophisticated legal and macroeconomic expertise. In contrast, CASE, STB, and SPRING Singapore are front-facing agencies with "street credibility," deeper institutional memory and more practical microeconomic knowledge. By leveraging the strengths of these organizational cultures, a single agency would both be more professionalized and more in-tune with ground sentiment (OECD 2008).

4. Case study: Ireland's Competition and Consumer Protection Commission (CCPC)

Foreign precedents evinced the benefits of a single agency. Out of 150 national jurisdictions which have enacted antitrust or consumer protection laws, about 35 have enforcement bodies that oversee both policy areas. Of these, Ireland's CCPC is one of the most recent. The Irish experience is particularly instructive for two reasons. First, Ireland and Singapore are similarly-situated in terms of market size and sector composition. Second, and perhaps more critically, both Singapore and Ireland derive their regulatory frameworks from the same Anglo-European jurisprudence (Ong 2006).

The CCPC was formed in 2014 and merged the functions of the Competition Authority and the National Consumer Agency. In its crudest formulation, it was part of the Irish government's effort to cut its budget following the 2008 economic downturn (Lucey 2015). Although Singapore is in a far stronger fiscal position, government spending is similarly under pressure, given Singapore's needs in social services, infrastructure, and homeland security. In the 2017 budget, the Government announced a permanent 2% reduction in spending caps for most ministries.

Beyond the impetus of fiscal discipline, however, the CCPC was more than the sum of its parts. With its broader resources, the CCPC engaged in ambitious projects that its predecessor organizations were unable to carry out. In 2014, for example, it carried out the first-ever nationwide study of consumer detriment to establish strategic priorities for future enforcement. In Singapore, the Public Service has increasingly committed itself to a Whole-of-Government Approach, in order to develop strategies for a complex operating environment. The establishment of a single agency would support this effort, as the experience of the CCPC illustrates.

The legislation which created the CCPC also accorded it greater investigative powers than its predecessor bodies, including the powers to inspect business premises and take possession of material protected by legal privilege. While these changes were — on their face — independent from the merger, the establishment of a unified agency gave legislators the confidence that the CCPC had the professional and enforcement capacity to wield such powers. As a corollary, the merger of the Media Development Authority (MDA) and Infocommunications Development Authority (IDA) in 2016 in Singapore led the successor organization, the Infocomm Media Development Authority (IMDA), to close enforcement gaps by amending the Film Act.

Finally, the CCPC has focused on the nexus of competition and consumer protection, addressing issues that defied the reach of its predecessor agencies. In so doing, it killed the two proverbial birds with one stone. For instance, the CCPC took charge of enforcing the Grocery Goods Regulations (2016), which regulated the relationship between suppliers and grocery retailers with a worldwide turnover of over 50 million euros. Among other things, the Regulations prohibit retailers from seeking payments from suppliers for the display or advertising of goods. The issue in question spans both competition and consumer protection issues: although the retailers were exploiting their monopolistic position to extract monopsonistic advantage, the Regulations were made under the Consumer Protection Act (2007) because of their implications for consumer access to information. A single agency in Singapore would be better situated to deal with similarly complex and multifaceted issues.

5. Challenges to a Single Agency

Despite the benefits of a single agency, challenges may also arise from integrating consumer protection and competition bodies. First, a powerful single agency may be more susceptible to regulatory capture, particularly cognitive or cultural capture. Multiple agencies create a division of labor and serve as a hedge against industry lobbying or public-private sector revolving doors. Given the Singapore Public Service's reputation for integrity and good governance, however, this is unlikely to be a significant issue, as long as the amalgamated agency is alive to the heightened risk of capture.

Second, a single agency may have excessive discretion over enforcement, eroding a rules-based approach toward compliance in favor of a principles-based approach. From a legal perspective, asking a regulator to adjudicate the trade-off between different policy goals shifts a legislative pejorative into the ambit of an executive agency. However, the reality of scarce government resources necessitates this discretion. Indeed, other regulatory and prosecutorial agencies regularly make such adjudications.

Third, an enlarged agency might "crowd out" grounds-up advocacy efforts and suffer from a deficit in public understanding and trust. Founded in 1969 under the ambit of the National Trade Union Congress, CASE, in particular, has acquired buy-in into its mission from the public, which it might lose if amalgamated into a new agency. Moreover, its status as a non-governmental organization — despite its close ties to the government — enables it to advocate for legislation and condemn companies, when it would be inappropriate for an official body to do the same. But these problems are not intractable, as long as care is taken to preserve institutional memory and organizational ethos during the transition period.

6. Implementation

If a single agency is to be set up in Singapore, the organizational structure of Ireland's CCPC provides a useful model. Although there are separate units for "Consumer Enforcement" and "Competition Enforcement and Mergers" to preserve the specialist expertise and intelligence required in the respective fields, other units, like Criminal Enforcement, Advocacy, and Legal Services, engage in both areas. Each case team can therefore draw on experts from both disciplines. Where synergies or trade-offs between consumer protection and competition arise, the chief executive's office can coordinate these cases and determine enforcement priorities.

7. Conclusion

Since the early 2000s, when the Competition Act and CPFTA were passed, Singapore has made important strides in establishing a regulatory framework the enforcement of competition and consumer protection policies. Given the nexus between these two areas, housing them in a single agency would represent the logical next step for Singapore's evolution as a regional regulatory hub.

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