Competition and Consumer Commission of Singapore Essay Competition

Abstract

In recent years, there has been increased consensus that competition and consumer protection policies are highly complementary policies that can work hand in hand, by filling in the gaps of the other policy. This is because competition protection policy generally focuses on supply-side issues while consumer protection policy focuses on demand-side issues. This merging of the policies has been increasingly adopted by various competition watchdogs, such as the Competition and Consumer Commission of Singapore (CCCS) as it improves consumer welfare, while ensuring market efficiency. When competition policies such as regulation are implemented as stand-alone measures, they are bound to face limitations such as the inability to detect anticompetitive actions by firms. Furthermore, based on behavioral economics theory, in which there is bounded irrationality in consumers, consumers rights are likely to be undermined. Thus, the strategic way to counter the limitations of both policies would be to merge them together. However, such measures are bound to face limitations, such as the difficulty in analysing complex consumer behaviours, potential conflicts between the two policies, which causes the dysfunctioning of both, as well as the difficulty to draw a clear line between bona fide consumer protection policy and anti-competitive restraints. As such, we have proposed several solutions to mitigate these potential conflicts. Additionally, two ongoing case studies, Grab and Uber Merger in Southeast Asia and Tesco Acquisition of Booker in Britain, were analysed to obtain lessons learnt in terms of the usage of both competition and consumer protection policies to analyse behaviour of firms. Hence, it is highly advisable for countries to merge competition and consumer protection policies together to provide a more

comprehensive protection of the economy and consumers, while addressing the possible loopholes of doing so.

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I. INTRODUCTION

In recent years, there has been increased consensus that competition and consumer protection policies are highly complementary. In short, competition protection policies addresses supply-side issues by ensuring that goods and services provided are affordable, high quality and of wide variety. Consumer protection policies tackle demand-side issues, ensuring that individuals are not deprived of consumer rights of having power and opportunity to make active choices, by reducing asymmetric information[1].

The complementary nature of the policies has led to their integration into a single entity such as under the Competition and Consumer Commission Singapore (CCCS)[2]. This integration ensures that consumers' welfare are fully maximised through the efficient functioning of the economy. This would thus encourage continual research and development (R&D) and there is minimal imperfect information for consumers, enabling rational and beneficial cost-benefit analysis[3].

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1 Thomas B. Leary (2004). Competition Law and Consumer Protection Law: Two Wings of the Same House. *Antitrust Law Journal*, 72: 1147-1151

2 CCS is renamed Competition and Consumer Commission of Singapore (CCCS). (2018, April 1). Retrieved May 28, 2018, from https://www.cccs.gov.sg/about-cccs/cccs-updates/ccs-is-renamed-cccs

3 Buccirossi *et al.* (2013). Competition Policy and Productivity Growth: An Empirical Assessment. *The Review of Economics and Statistics*, 95(4): 1324-1336

II. Benefits of Integration

Competition protection policies have a two-pronged approach of regulation and advocacy[4]. Regulation ensures a minimal optimum competition level while advocacy aims to increase incentive for R&D. This promotes allocative and dynamic efficiency for a more optimal economic performance. However, these policies fall short in detecting more subtle forms of anti-competitive measures, like tacit collusion. These methods evade the conventional standards used to detect anti-competitive behaviours[5].

Undesired side-effects also arise from successful implementation of competition protection policies as the effects are subjective based on consumers' perspectives. For instance, an unexpected decrease in price of high-quality expensive goods may not cause an increase in demand due to irrational consumer behaviours, as they may perceive it as quality deterioration. This disobeys the expected utility theory, due to bounded rationality of consumers[6].

Meanwhile, given the increased complexity of goods and services (g&s) and diffusion of information, consumer protection policies can counter unfair practices during the sale of g&s which suppresses consumer rights. This ensures that consumers have access to relevant information and can make informed decisions to maximise welfare and efficiency, tackling market failure. These policies also enhance competition by empowering consumers to exercise their power of choice.

[4] International Competition Network (2002), Advocacy and Competition Policy Report

[5] Michael Freed *et al.* (1997). The Detection and Punishment of Tacit Collusion. Loyola Consumer Law Review, 9(2): 152-168

[6] Zavodny Pospisil, Jan. (2010). Irrationality in Consumer Behaviour and its Influence Over the Advertising Messages Perception. *18th Annual Conference Marketing and Business Strategies for Central and Eastern Europe*

Furthermore, behavioural economics suggest that consumers may not make rational decisions, because they have biases, such as, representational biases, framing biases and others[7]. The implementation of consumer policies such as consumer law enforcement and market scans can help to addresses such biases. However, if only consumer policies are implemented, firms may exploit behavioural biases and engage in abusive or anti-competitive behaviours. Thus, from behavioural economics viewpoint, the integration of competition and consumer policies is effective in addressing the failures of each policy.

Hence, it is imperative to integrate competition and consumer protection policies under a single authority to address limitations of both policies, since both reinforce each other in achieving their ultimate goal.

III. CHALLENGES FACED IN INTEGRATION

A. Emergence of Contradictory Impacts

Although competition and consumer protection policies are generally complementary in nature, there are occasions where one policy worsens the goal targeted by the other policy.

Competition advocacy policies, such as deregulation and financial liberalisation, can worsen consumer welfare[8]. An increased number of competitors that resort to aggressive marketing campaigns and price competition can result in complex information, increasing the information asymmetry faced by consumers. This reduces the consumers' ability to exert rational decisions, worsening their welfare according to

[7] Benedetto De Martino (2006). Frames, Biases and Rational Decision-Making in the Human Brain. *Science*, 313(5787): 684-687

[8] Mark Armstrong (2008). Interactions between Competition and Consumer Policy. Munich Personal RePEc Archive, 7258

Varian's model of sales. In the Varian's model of sales (Figure 1), with more suppliers in a more competitive market, the average price paid by an informed consumer decreases while that by an uninformed consumers increases[9]. This illustrates the exploitation of asymmetrical information by firms in more competitive industries. Moreover, incumbent firms may exert their still-existing monopoly power to restrict consumers' freedom of choice to switch to the new competitors by raising switching cost. Hence, although competition advocacy aims to increase consumer welfare in the long run, it has detrimental impacts in the short run.

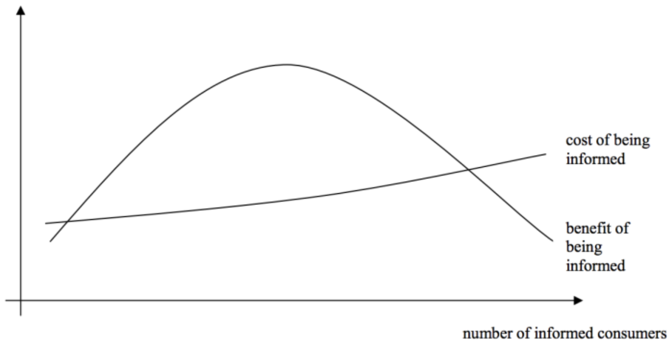

Figure 1: Varian's Model of Sale

Moreover, consumer protection laws may impede competition. Excessive consumer protection legislations, such as standards on transparency and quality of g&s may increase the barriers to entry faced by new entrants, discouraging them from entering the market[10]. This restricts competition in the economy to a less than optimum level.

Therefore, despite the seeming synergism between the two policies, in some cases, they may contradict each other, rendering their integration problematic.

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[9] Hal R. Varian (1980). A Model of Sales. *The American Economic Review,* 70(4): 651-659

[10] OECD Directorate for Financial and Enterprise Affairs (2006), Barriers to Entry

B. Difficulty in Drawing a Clear Distinction between Bona Fide Consumer Protection Initiatives and Anti-competitive Restraints

Thorough evidence and analysis are required to determine whether the consumer protection policy is legitimate. The uncertainty of whether a restraint exceeds the boundaries of proper consumer protection can lead to the wrong assumption that the practice was anticompetitive.

For example, the U.S. FTC challenged advertising restrictions that were imposed by the California Dental Association that the Association claimed were designed to protect patients from unethical advertising[11]. The FTC instead believed that the Association had suppressed both good and bad advertising, harming consumers searching for new dentists and frustrating dentists who wanted to compete. Finding that neither consumers nor competitors had suffered under the Associations rules, the court ordered dismissal of the action. Thus, this shows that the inability to draw a clear line may even aggravate the situation and result in undesirable consequences for both parties.

C. Complexity of Consumer Interests

Consumers have differing interests due to their irrationality in certain situations, which may be difficult for behavioural economists and consumer experts to understand. Therefore, it is challenging to cater to the complicated definitions of consumer interests, in both competition and consumer protection laws[12]. Both laws assume differing contexts hence it is difficult to consolidate the exact consumer interests

[11] Jenisha Parikh and Kashimra Majumdar (2012). Competition Law and Consumer Law: Identifying the Contours in Light of the Case of Belaire Owners Association v. DLF. *NUJS Law Review*, 5(20): 249-277

[12] University of East Anglia, Centre for Competition Policy (2013). Behavioural Economics in Competition and Consumer Policy

underlying the needs. For instance, in competition protection laws, it is assumed that consumers prioritise greater variety and low cost g&s which might not hold true when an oligopoly with strong consumer base exists. Moreover, in consumer protection laws, it is assumed that irrational consumers would be misled in the same thought process, which is a sweeping statement.

Hence, this is a major obstacle in integrating competition and consumer protection laws together as the complex consumer interests behind them renders a one-size-fit-all approach ineffective.

IV. SOLUTION TO THE CHALLENGES

A. Solution to Contradictory Impacts

To reduce the contradictory impact of competition protection laws, market studies can be conducted in various sectors. These studies are conducted to obtain indicators on how confused consumers are regarding the price, quality, terms and conditions for the g&s provided by different firms and compare the trend with respect to the number of firms in that particular sector. Using this trend, the optimal carrying capacity of the sector can be determined, such that the degree of competition freedom can be limited to prevent over-complexity of information which lowers consumer welfare. To further reduce this issue, stricter regulations on advertising can be placed to ensure straightforward advertising without excessive or manipulative information that aim to undermine the information perfection and rational decision making by consumers.

Regarding consumer protection laws, a limit should be placed on extent of the protection. One example would be occupational licensing which restricts who can work in the industry based on qualifications in order to ensure quality and safety of the g&s

provided. However, a balance needs to be struck to ensure that there is still sufficient occupational mobility to reduce the possibility of development of monopoly power within the industry, as only a narrow selected group of people are able to enter the industry. This achieves the middle ground between protecting consumers in terms of safety and quality of g&s, and obtaining a healthy level of competition.

B. Solution to Draw a Clear Distinction between Bona Fide Consumer Protection Initiatives and Anti-competitive Restraints

A rule could be enforced whereby firms have to provide a full analysis or action plan which shows the potential eventual impacts when implementing changes, especially the impacts on their competitors to analyse impacts on competitiveness of industry. Furthermore, consumer rating systems could be introduced to rate the actions of the firms so as to better ascertain the desirability of these actions on consumers. The above measures would provide a clearer picture for regulators to determine whether intervention is required and desirable.

C. Solution to Complexity of Consumer Interests

The psychology of consumers could be studied by behavioural economists to understand consumer behaviour for making different decisions under separate situations. Moreover, market surveys can also be done to determine the trends of the consumer interests for different g&s. Hence, specialised policies can be used to tackle different sectors. These would enable economists to develop a more nuanced consumer protection and competition policy that addresses the wide range of consumer interests more specifically.

V. CURRENT CASE STUDIES

A. Southeast Asia: Grab and Uber Merger

CCCS has issued Interim Measures Directions (IMD) to ensure the competitiveness of the private hailing transport market as a result of the Grab and Uber horizontal merger in Singapore. Some of the key measures to ensure healthy competition and protection of consumer well-being include the ceasing of exclusivity arrangements with all taxi fleets in Singapore, fair treatment towards new incoming drivers and obtaining operational data from Uber to enhance its market dominance[13]. However, these measures may contain some loopholes. For instance, the transfer of the personal data of riders from Uber to Grab utilised an opt-out default, equivalent to presumed consent of the riders. However, based on the ‘nudge effect’, consumers are more likely to go with the default option of agreeing to transfer of their personal data[14]. The lack of choice given to consumers in such circumstance may potentially infringe on their personal privacy rights, negatively affecting consumer welfare. Therefore, a possible suggestion would be to implement opt-in defaults instead to ensure more transparency in terms of data privacy. Furthermore, less than 2 weeks after the merger, there have been complaints by the public that Grab had reduced the availability of promotional codes, and that the process became more complicated[15]. This has increased the cost of the service provided to the consumers, worsening consumer welfare.

As seen, this issue could lead to consumer welfare being compromised. Thus, to address this oversight, more market studies and surveys could be conducted to understand the consumers’ receptiveness towards such changes and laws should be

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13 Uber/Grab merger: CCCS Issues Interim Measures Directions. (2018, April 13). Retrieved May 28, 2018, from https://www.cccs.gov.sg/media-and-publications/media-releases/uber-grab-imd-13-april-18

14 Paul Rainford and Jane Tinkler (2011). Designing for nudge effects: how behaviour management can ease public sector problems. *London School of Economics and Political Science Research Online*.

15 Kit, T. S. (2018, April 30). Fewer promo codes for your rides on Grab these days? Retrieved May 28, 2018, from https://www.channelnewsasia.com/news/business/grab-promo-codes-fewer-10189526

enacted accordingly to protect consumer interests while maintaining ideal competition levels.

B. Britain: Tesco's Acquisition of Booker

Competition and Markets Authority (CMA) of UK has approved the vertical acquisition of Booker, the largest wholesaler, by Tesco, the largest retailer[16]. The acquisition was conducted such that Tesco could gain greater control over their source of factor of productions to enable it to expand into the grocery sector at a faster rate. One of the primary concerns of CMA is whether it reduces competition in the wholesale and retail sectors and the trickle-down effects on consumers.

Analysis discovered that Booker's share of grocery wholesale (10-20%)[17] is not large enough to substantially reduce competition across the entire market and that rival wholesalers will be able to sell goods at competitive prices as the merged entity. Hence, the wholesale market will remain sufficiently competitive. As retailers have a large range of close substitutes to purchase wholesale from, the merged entity is unlikely to increase retail prices in fear of loss of consumer base.

Additionally, the competition in the convenience grocery stores sector is unlikely to decrease by a significant magnitude given that Tesco accounts for only about 28% of grocery retailing and consumers tend to switch between other competitors. Moreover, it is predicted that the merged entity can potentially accumulate £60 million a year in distribution and fulfilment savings[24], which can be passed on to consumers.

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[16] Monaghan, A., & Wood, Z. (2017, November 14). Tesco's £3.7bn takeover of Booker given green light. Retrieved May 28, 2018, from https://www.theguardian.com/business/2017/nov/14/tescos-37bn-takeover-of-booker-given-green-light

[17] Appadu, N. (2018, May 24). Sainsbury's and Asda merger: It's all about market share. Retrieved May 28, 2018, from http://theconversation.com/sainsburys-and-asda-merger-its-all-about-market-share-95822

After in-depth analysis as seen above on the various effects, the authority eventually approved the acquiring of Booker by Tesco. This is a successful case study from which many lessons learnt can be gleaned from. The impacts of vertical mergers are more complex thus many market studies in the various sectors need to be taken, together with the considerations of the differences between the merged entity and its potential competitors. Such detailed studies would enable the economy to permit mergers that bring an overall welfare boost to the society and not put a blanket ban on the mergers of all large companies. This analysis was conducted more efficiently as the analysis of the competitiveness of markets and impact of consumers was done simultaneously under the same authority.

Hence, such detailed and widespread analysis should be implemented for any potential mergers in Singapore.

VI. CONCLUSION

In conclusion, competition and consumer protection policies are highly synergistic in most situations. Hence, it is highly beneficial to house them under a single entity, to provide more efficient and comprehensive protection. However, the limitations of have to acknowledged and dealt with to maximise the benefits. The usage of both policies simultaneously enables better analysis and decision makings regarding the behaviour of firms today, as seen in the case studies. Eventually, the impact of integrating both policies is still a relatively new idea which needs to be monitored.