

Nexus between Competition and Consumer Protection Policies

CCCS-ESS ESSAY CONTEST 2018



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Executive Summary

Competition and consumer protection policies are the twin regulatory pillars in the safeguarding of consumer welfare in economic transactions. There exist clear synergies between them: consumer policies allow consumers to optimally exercise the choices enabled by competition, while competitive markets compel producers to abide by consumer policies to appeal to their consumer bases.

The integration of both pillars in a single agency is a most contentious topic. There exists no global consensus: countries adopt diverse positions, from full single-agency integration to separate agency management, across the spectrum of agency integration.

There are clear merits to integration. Concurrent employment of both consumer protection and competition policy presents a well-rounded approach – acting from both the demand and supply sides – in addressing market issues. Furthermore, introducing a platform for collaboration and discussion increases efficiency in decision-making, allowing market issues to be promptly resolved. Lastly, common processes can be shared by both departments, reducing overlapping efforts and resource wastages.

However, we note that challenges may arise in this endeavour. It is unrealistic for a single agency to effectively monitor the entire market. The agency's capabilities may be further hindered by competition for resources between its two departments responsible for competition enforcement and consumer protection.

To maximise the aforementioned benefits while holistically addressing the challenges, we propose a partially-integrated regulatory framework, with the introduction of a central *Competition and Consumer Protection Authority*. This agency is responsible for examining crucial market issues, as well as instituting an overall regulatory framework. It also thrives through collaboration with non-governmental consumer protection agencies and industry-specific regulators, which provide generic law enforcement. With our framework, we envision a robust regulatory landscape that upholds the highest standard of consumer welfare protection.

(280 words)

1. Introduction

While the bounds of government intervention in the free market are subject to much contention, it plays an undeniably critical role in safeguarding consumer welfare in economic transactions. At the core of this pursuit are two simultaneous policy levers: competition law and consumer protection policy.

Competition law, working through the supply side, aims to secure efficient, competitive markets by eliminating undue competition-distorting acts like competitor acquisition and cartel formation. Through diverse policy pathways (e.g. market liberalisation, antitrust law enforcement), it compels producers to diversify, innovate, and keep prices competitive to stay ahead of competitors, consequently enabling consumers to enjoy a superior product range and quality at lower prices. While it's mostly formulated at the national level, coordination or imposition of competition policy at the regional level is also present, as exemplified by the European Union's blanket competition law and the ASEAN Regional Guidelines on Competition Policy.

Consumer protection policies, working through the demand side, protect consumers through enabling recourse in situations where they have been deceived or exploited in an economic transaction. For instance, the Lemon Law, a provision under Singapore's Consumer Protection (Fair Trading) Act (CPFTA), grants consumers the right to reject and seek repair, replacement, or refund for goods failing to meet agreed-upon standards at the time of delivery.

The synergies between the two policies are well-documented: consumer policies allow consumers to best exercise the choices unlocked by competition¹, while competitive markets compel producers to abide by consumer policies to appeal to their consumer bases².

¹ Consumer and Competition Policies – Both for Welfare and Growth. (2008, February 22). Retrieved from europa.eu/rapid/press-release_SPEECH-08-95_en.pdf

² OECD. (2008, June 5). The Interface between Competition and Consumer Policies. Retrieved from <http://www.oecd.org/regreform/sectors/40898016.pdf>

2. Spectrum of Agency Integration



Figure 1: Spectrum of Inter-agency Integration

With respect to the agencies housing competition and consumer protection policies at the national level, countries adopt varying degrees of inter-agency integration (Fig. 1). Given the complementarity between the two policies, many nations have opted to house them under a single agency to facilitate policy coordination. We note a significant global shift, in recent years, towards this model, as exemplified by the formation of the Danish Competition and Consumer Authority in 2011 and the Netherlands Authority for Consumers and Markets in 2013.

Singapore's case is in line with this shift: the Competition and Consumer Commission of Singapore (CCCS) was restructured and renamed in April 2018 to assume additional responsibility of consumer protection enforcement (through administration of the CPFTA). Promising synergies have already been identified, notably in the agency's recently-concluded inquiry on car part supply, where it deemed car dealers' warranty requirements for customers to service their cars at specific workshops as an impediment to competition in the car servicing market. With its new jurisdiction over fair trade practices, CCCS can ensure that its laws removing relevant restrictions are justly enforced, and that consumers are not misled into believing that these restrictions still persist. In CCCS's upcoming online booking sector study, this synergy is poised to remain critical, given how the modus

operandi of service providers and their competitive dynamics jointly shape consumer experiences.

Meanwhile, many countries opt to retain a separate agency model, citing institutional autonomy and agency-specific priorities as key rationales³. For instance, Chile's National Economic Prosecutor's Bureau (FNE) manages competition policy while its National Consumer Service (SERNAC) manages consumer policy⁴.

However, a dual-agency system still leaves ample room for policy coordination. For example, Chile's FNE and SERNAC have co-signed the Agreement for Inter-institutional Cooperation, and communicate extensively in addressing consumer welfare breaches. Indeed, different countries' stances do not fall into defined categories, but rather a diverse spectrum. A typical "middle ground" stance is the partially-integrated agency approach, whereby the competition law agency also maintains partial jurisdiction over consumer protection policies – for instance, Hungary's competition authority regulates unfair or deceptive commercial practices when they hold the threat of concurrently distorting market competition. The reverse is also possible: in the United States, the Federal Trade Commission enforces consumer protection policies while also assuming shared authority of competition law enforcement with the U.S. Department of Justice Antitrust Division.

³ OECD, *supra* note 4

⁴ Competition & Consumer Protection Authorities Worldwide. (2018, April 12). Retrieved from <https://www.ftc.gov/policy/international/competition-consumer-protection-authorities-worldwide>

3. Merits of Integration

Competition theory that excludes consumer policy is not only shortsighted but, given the growing importance of consumer issues, can ultimately be self-defeating. Consumer policy that ignores its impact on competition can result in cures worse than the disease.

Former FTC Chairman Tim Muris

There are clear merits to housing the two functions in a single agency, as they should complement each other and amplify their overall effectiveness. In practice, however, the two policies possess fundamentally different approaches, and challenges may arise in the merger of the two functions. It is therefore crucial to examine how the two prongs may be coordinated, without losing sight of the main objective of enhancing consumer well-being.

3.1 Enhanced coherence in policy-making

The joint utilisation of competition and consumer protection policies is critical in holistically evaluating existing issues to best enhance consumer welfare. Separate implementation of the two policy levers limits the scope of action, resulting in not only inadequacies in tackling market deficiencies, but also detrimental side-effects.

For example, competition regulators in Hungary sought to liberalize the telecommunications industry in 2003, introducing competitors to challenge the dominant incumbent *Magyar Telecom*. While this policy should in theory promote competition, leading to increased consumer choice and lower prices, only 19% of telephone users

switched to a new line, with 37.9% of users being unaware that a switch was possible⁵. Market information was not effectively communicated to consumers, resulting in abusive behaviour by the incumbent such as deceptive advertising and unfair contracts. It is hence evident that a single-minded focus on competition policy without complementary consumer protection efforts resulted in side effects like asymmetric information, which limited the proposal's effectiveness.

A single-agency model could prevent such issues by allowing for the concurrent employment of both demand and supply side policies, providing a more balanced and flexible approach in addressing market issues.

3.2 Improved efficiency

A single-agency approach centralizes control over the implementation of both policies, increasing the ease of coordination. It provides a platform for collaboration between the two departments through encouraging information sharing, reducing the need for lengthy and complex communications between agencies. The dynamic nature of our economy necessitates that market issues are promptly addressed to avoid deleterious repercussions for consumer welfare.

⁵ Cseres, K. J. (2008, July). What Has Competition Done for Consumers in Liberalised Markets? *The Competition Law Review*, 4(2), 77-121. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1273611.

For example, the CCCS recently faced criticism over the delay in response to the proposed merger between ride-hailing companies Grab and Uber⁶. While interim measures were eventually introduced, the response was limited in effectiveness, resulting in uncertainty among consumers as well as a poor public perception of the competition watchdog. Incidents like such demonstrate that speed and efficiency are imperative in responding to market issues.

Introducing a central organization responsible for both functions is hence beneficial in avoiding delays and allowing policy-makers to efficiently tailor a suitable response using a combination of both approaches. This is especially relevant in today's digital economy, which demands the prompt introduction of appropriate legislation and regulation to prevent the exploitation of consumers in uncharted, turbulent waters.

3.3 Diminished resource wastage

Furthermore, potential cost-savings can be yielded. Competition and consumer protection policies require common expertise in areas like legislation and economics⁷. Many functions, such as industry research and market forecasting, can thus be shared between the two agencies, thereby reducing wasteful allocation of resources towards overlapping areas. This is particularly relevant to smaller economies with limited human talent like Singapore, as scarce resources could be optimally allocated towards enforcing both competition and consumer laws.

⁶ Cheng, K. T. (2018, April 17). Competition watchdog shouldn't wait till deal is done to react. *The Straits Times*. Retrieved from <https://www.straitstimes.com/forum/letters-in-print/competition-watchdog-shouldnt-wait-till-deal-is-done-to-react>

⁷ OECD, supra note 5

4. Challenges to Integration

4.1 Wide scope of legislation and enforcement

The expansive scope of competition and consumer protection legislation presents a challenge to single-agency integration. It has been argued that it is simply unfeasible for one institution to adequately monitor the plethora of existing industries from the perspective of both functions, as they possess distinct characteristics and styles of regulations⁸. Furthermore, the sheer amount of resources and manpower required may lead to an unnecessarily bloated agency, increasing complexity of coordination and introducing unnecessary bureaucratic processes. Such an endeavour, which decreases regulatory efficiency and leads to inadequate consumer protection, would prove to be counterproductive.

4.2 Competition for resources

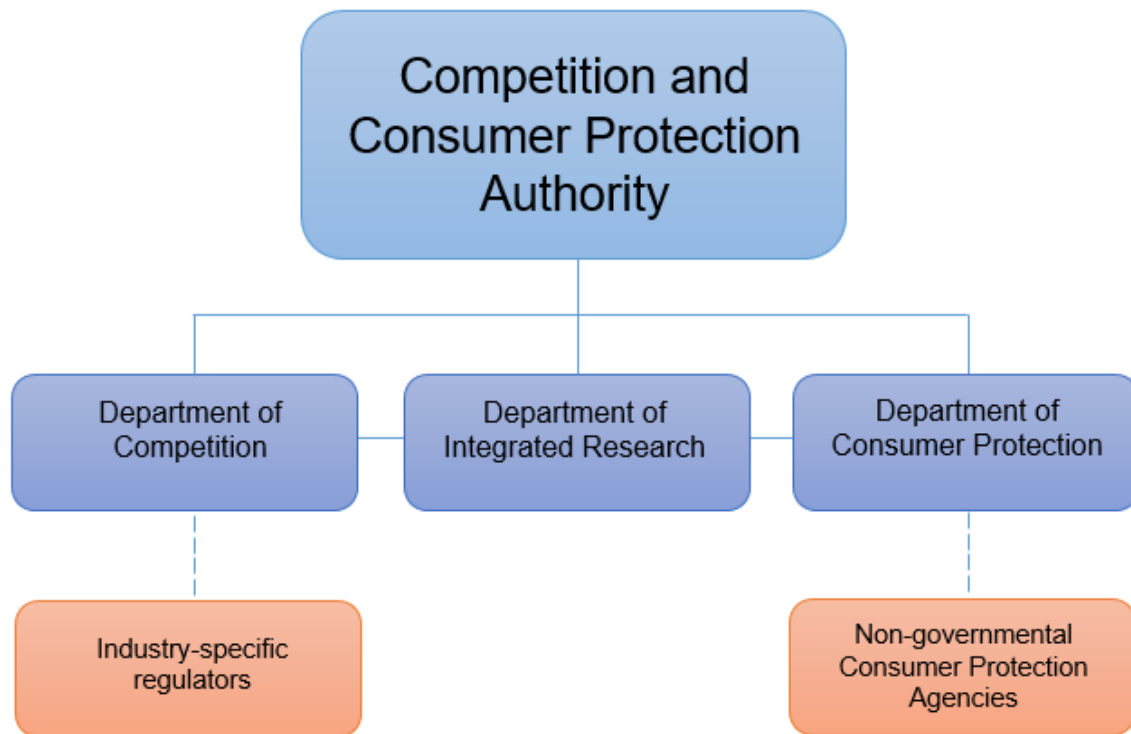
Furthermore, both departments may compete for the limited resources allocated to the institution. Due to the differences in nature between the enforcement of competition and consumer protection policies, one function may dominate over the other, leading to imbalanced distribution of attention and resources. For example, competition policy typically holds more prominence, as it tends to deal with a small number of high-profile cases involving large industrial entities, whereas consumer protection policy is typically distributed across numerous small cases⁹. Consequently, competition policy may disproportionately demand manpower and funding, leading to the neglect of consumer

⁸ Cseres, *supra* note 6

⁹ OECD, *supra* note 5

protection. It may therefore be preferable for the agencies to be separated to achieve greater independence in resource allocation, allowing for the effective engagement of both policy levers.

5. Proposed Model



In consideration of the aforementioned benefits and challenges, we propose the formation of the *Competition and Consumer Protection Authority*, an agency which assumes the central role in the crafting and enforcement of competition and consumer protection laws. This agency comprises three sub-departments – Competition, Consumer Protection, and Integrated Research – each containing experienced policymakers and domain experts.

This central agency is able to effectively coordinate both policy sub-departments by containing them within one institution, providing a platform for discussion and collaboration. Furthermore, introducing a centralised research function, which provides information regarding market information and trends to the other sub-departments,

encourages the sharing of information and allows for consistency in legislation. This structure reduces overlaps in resource usage present in separate-agency models, such as holding separate research departments despite analysing the same markets.

While the central agency dictates the regulatory framework for the relevant policy domains, its purpose is not to enforce laws for the entire market. As previously mentioned, such an ambitious scope is impractical to achieve. This agency aims to identify and examine select markets which are especially lacking in consumer protection, such as fledgling industries or ones that are the subjects of much public criticism. For instance, the increasingly popular consumer-to-consumer businesses enabled by the rise of electronic commerce has introduced several concerns regarding the inadequate consumer protection arising from their decentralized nature and obsolete privacy laws¹⁰. The centralized agency should dedicate its resources towards such urgent issues rather than attempting to pursue every infraction, so as to effectively respond to critical consumer needs and avoid unnecessary bloat.

There hence still exists a need for generic law enforcement across the market. This responsibility will remain with industry-specific regulators and non-governmental consumer protection agencies – independent agencies that do not directly report to the centralized agency. This prevents competition for resources, as each agency possesses its own resources, which can be fully dedicated to achieving its distinct policy objective.

¹⁰ Cudjoe, D. (2014). Consumer-To-Consumer (C2C) Electronic Commerce: The Recent Picture, *International Journal of Networks and Communications*, Vol. 4 No. 2, 2014, pp. 29-32. Retrieved from <http://article.sapub.org/10.5923.j.jinc.20140402.01.html>

It has also been suggested that this arrangement could uphold the clarity of purpose of ensuring both market competition and consumer protection¹¹ and consequently prevent regulatory capture¹².

Overall, this proposal seeks to harmonise both functions to provide a comprehensive approach towards protecting market consumers. We conclude that a partially integrated model is most effective, as it can harness the benefits of policy integration while still keeping relevant challenges at bay.

¹¹ Ohlhausen, M. K. (n.d.). One Agency, Two Missions, Many Benefits: The Case for Housing Competition and Consumer Protection in a Single Agency. Retrieved from https://www.ftc.gov/system/files/documents/public_statements/596131/141029-1agency2missions.pdf

¹² Cseres, *supra* note 6

6. Concluding Remarks

Taking into account all relevant benefits and challenges, we are convinced that the partially-integrated model is optimal in today's business regulatory climate. With the *Competition and Consumer Protection Authority* at the helm of a coordinated collection of stakeholders, our framework ensures an efficient and holistic approach to advancing consumer welfare.

We acknowledge, however, that inefficiencies are inherent in any model. For our proposal, we note two key potential causes of operational ineffectiveness: stakeholder conflict of interest arising from partial integration and inconsistency in approach between central and peripheral regulating bodies.

Firstly, while an integrated research function can enhance efficiency, it may suffer from a lack of specificity in its direction, and be torn between the needs and demands of the two policy departments. Even in cases where both competition and consumer protection policies are relevant, the details to be studied to facilitate each policy may differ, and hence the more "generalised" research function may lack the specificity necessary to optimally direct individual policy levers. Secondly, having the central agency and non-governmental regulators assume shared responsibility of legislation enforcement may reveal inconsistencies in enforcement. While all parties ultimately abide by a unified set of laws, the style of enforcement may differ distinctly from agency to agency. This could potentially result in misunderstandings by industry stakeholders regarding the regulatory framework, especially when similar laws are enforced differently in different industries.

In the long run, refinements to our framework should focus on further streamlining the interactions between the different regulatory stakeholders. For instance, annual forums could be held for representatives from the *Competition and Consumer Protection Authority*, non-governmental regulators, and industry representatives to engage in discourse over key regulatory challenges, rationale for specific laws, and optimal enforcement methods. The central authority's different departments could also enhance mutual appreciation through collaborating in joint case studies and scenario planning projects. These efforts will further allow our regulatory force to become more than the sum of its parts, together securing a robust landscape for the protection of consumer welfare.

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