# Nexus between Competition and Consumer Protection Policies

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# Abstract

The advancement of consumer welfare and competition are common themes for governments around the world. Yet, approaches on achieving this goal differ greatly on the level of integration deemed necessary between consumer protection and competition policies. While the pursuit of one mission often reinforces the other, the inverse has also been noted. Deregulation can become a culprit of undesirable circumstances such as the rapidly decreasing robustness of the global financial system. Equally so, firms can also abuse consumer protection to edge out competition. These grievances reflect an urgent need for sensible institutional design that balances these two missions.

The proper coordination between competition policy and consumer protection requires a careful analysis of the interactions between the two. To that end, we hold the opinion that despite certain trade-offs between the two, the pursuit of one objective generally reinforces the other. More significantly, new insights can be generated by considering these issues as a collective rather than in isolation. All these factors strengthen the case for a single agency to capitalise on the harmonisation of consumer protection and competition.

Nonetheless, inherent differences in terms of temporality, or sector-specificity could lead to potential incoherence within the organisation. These limitations must be made key considerations during the institution design process. Furthermore, the original functions of both competition and consumer protection agencies must still be preserved even in

the new agency. Measures such as expanding current decision-making process to include other industry stakeholders also help to give structure to the coordination process.

Through a rigorous experimentation and refinement process, a well designed agency can ultimately improve the robustness of current regulatory measures. To navigate our economy through strong headwinds, this agency must also adapt better to changing market dynamics, allowing Singapore to remain innovative and efficient.

(292 Words)

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# 1 Introduction: Multiple Models for the Modern Market

Anti-competitive behaviour and consumer exploitation introduce inefficiencies into markets. Competition and consumer protection agencies are thus established to identify, regulate, and combat these distortions.

Although there is a general consensus on the necessity of such entities, since these agencies are now commonplace around the world, there exists much debate over the institutional design of these agencies. For one, the overlaps between these agencies motivate some governments to house both functions under one organisation. In actuality, countries adopt a variety of models, including fully integrated (Netherlands), partially integrated (Hungary), and separate agency models (United Kingdom).[1]

Should competition and consumer protection agencies be brought together? This essay seeks to discuss the various factors involved in making this decision.

First, we shall examine the extent of overlap between the two separate forms of policies.

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[1] Cseres, K. (April 11, 2013). Integrate or Separate - Institutional Design for the Enforcement of Competition Law and Consumer Law. *Amsterdam Law School Research Paper No. 2013-03; Amsterdam Centre for European Law and Governance Research Paper No. 2013-01*. Retrieved from SSRN: https://ssrn.com/abstract=2200908

# 2 Seeking the Nexus: Interactions between Competition and Consumer Protection Policies

## 2.1 Opportunities

Competition policies alleviate unfair market dominance, while consumer protection empower consumers, generally by tackling information imperfection. Evidently, both policies address market failures, albeit different forms. This overlap in the objectives of these policies lead to favourable outcomes for both cause, even when a single tool is employed.

### 2.1.1 Competition policies

Competition aligns firms' objectives with that of the consumers.

Competition policies empower consumers, who in turn reward market behaviour that furthers their interests. In a competitive market, firms have to engage in customer-centric behaviour to capture market share. The ubiquity of manufacturer warranties in the modern market is a showcase of both the manufacturers' commitment to product quality, and their voluntarily restriction of moral hazard. In practice, market competition indirectly protects consumers from a variety of consumer issues such as false advertising and shoddy products.

Market competition also empowers consumers by increasing informational availability. To lower switching costs for consumers, consumer agencies issue publications that educate consumers on issues such as price trends and product research.[2] In a competitive market, firms are also incentivised to help lower switching costs; convincing consumers to switch away from a firm's rivals increases its own market share. Collectively, marketing measures such as complimentary product sampling and advertising campaigns[3] can enhance information availability in the market.

### 2.1.2 Consumer protection policies

Consumer protection policies also promote competition. These policies eliminate misleading claims and promote productive sharing of information. Consumer choice would then accurately reflect the quality of their experience with producers, rather than being swayed by unjust practices such as false advertising. With quality becoming the key factor for a firm's success, healthy competition can be achieved. For instance, when suboptimal price competition was identified in Hungary's mortgage loans sector, consumer protection policies were instituted to resolve the issue, in the form of promoting information transparency.[4] While the problem seemed to resemble a competition issue, it actually stemmed from informational imperfection as consumers were unable to evaluate and exercise choice between different offers. In this case, consumer protection was crucial in restoring price competition in the market.

[2] The US nonprofit Consumers Union has been publishing its *Consumer Reports* since 1930. Similarly, for Singapore, CASE publishes *The Consumer*.

[3] For example, in 2017, Gillette gave out complimentary razors to National Servicemen, and launched its "#GilletteSalutes" social media campaign, in line with SG50.

[4] Cseres, K. (April 11, 2013).

### 2.2 Policy trade-offs

Despite their similarities, competition policies and consumer protection policies differ in their scope and execution, leading to unintended consequences.

#### 2.2.1 Unintended consequences of competition policies

Competition policies incentivise firms to proactively disseminate information to consumers. However, availability does not necessarily imply accuracy. Intense competition may motivate firms to manipulate information in bids to draw consumers. For instance, the digital journalism industry has seen a recent surge in “click-bait”[5] journalism, due in part to the lowered barriers to entry as a result of technological advancement. While such practice is more prevalent among newer entrants seeking to gain traction, this trend of “click-baiting” has nonetheless reduced the overall quality of online journalism, ultimately hurting end users.

Apart from welcoming entrants, competition policies also invigorate markets by encouraging innovation. Notwithstanding its benefits to consumers, the increase in product and service variety may lead to hidden costs unbeknown to society. The same novelty that appeals to consumers may also encompass dangers that lie outside the periphery of existing regulation. Most notably, the United States’ deregulation of its financial industry in the late 20th century permitted financial institutions to aggressively pursue financial innovation beyond the pace of regulatory development.[6] Pressured by

[5] Where article titles are sensationalised to imprecisely represent content.

[6] Eichengreen, B. (2015, January 16). Financial crisis: Revisiting the banking rules that died by a thousand small cuts. Retrieved April 20, 2018, from http://fortune.com/2015/01/16/financial-crisis-bank-regulation/

growing competition in the sector, financial institutions undertook risky endeavours[7] that misled investors and disrupted markets.

### 2.2.2 Unintended consequences of consumer protection policies

Consumer protection policies may limit the room for competition by raising barriers of entry into an industry. In some markets, the risk of safety lapses and dangers greatly raises the importance of protecting end users. Regulations such as licenses are thus introduced to impose minimum standards. While these measures serve consumer interest, they also inadvertently restrict competition. A New York Times exposé revealed that the US hotel cartel has made deliberate plans to thwart the growth of AirBnB[8] by citing safety and security concerns. While the cartel may truly have the consumers' interest at heart, it may also be attempting to raise barriers to entry for disruptive entrants, in the name of protecting consumers.

Certain consumer protection policies also regulate producer behaviour. When practices that do not overstep ethical or legal boundaries are restricted in the name of consumer protection, competition can be unduly suppressed. For instance, public outcry against ride-hailing companies' practice of surge-pricing have led to some cities imposing caps and bans on this practice.[9] However, surge-pricing not only optimizes resource

[7] For example, the repackaging of subprime mortgages into theoretically low-risk “Collateralized Debt Obligations” is a notoriously convoluted process, even to professionals and regulators.

[8] Benner, K. (2017, April 16). Inside the Hotel Industry's Plan to Combat Airbnb. Retrieved May 12, 2018, from https://www.nytimes.com/2017/04/16/technology/inside-the-hotel-industrys-plan-to-combat-airbnb.html

[9] New Delhi, India has banned this practice, with its chief minister labelling it as “daylight robbery”; Victoria, Australia has planned to cap surge-pricing, with its Public Transport Minister citing “consumer protection” as the reason behind the new law.

allocation, but also sustains the business by attracting more drivers. Excessively focusing on consumer protection can lead to unjust restrictions that limit competition.

# 3 Building the Nexus: An Integrated Approach to Competition and Consumer Protection Policies

## 3.1 Leveraging on opportunities

Having considered the impact of these policies from a single-agency approach, we shall now make sense of these interactions through a dual-agency perspective.

### 3.1.1 Integration of policy tools

Conventionally, anti-competitive behaviour have been addressed primarily from the supply-side. An agency with a broader portfolio would be able to expand and augment existing policies, as well as identify multiple sources of market inefficiencies.

In recent years, research in behavioural economics has revealed that consumers are often susceptible to cognitive biases during decision-making. For example, Microsoft was investigated in 2009 for bundling *Internet Explorer* with its Windows operating system. While this does not appear to be anti-competition initially, consumers do not switch from the preloaded Microsoft program due to the endowment effect[10], and thus other web browser providers have to expand resources to overcome this inertia of consumers. Eventually, the European Union compelled Microsoft to increase informational availability by displaying eleven additional web browsers upon the installation of a new system. Recognising that firms can engage in anti-competitive

[10] A phenomenon where people ascribe more value to things merely because they own or because it is the default option.

behaviour through avenues such as consumer biases, a unified agency can adopt similar demand-side measures when combating these issues.

### 3.1.2 Greater awareness of market dynamics

While competition and consumer policies can be deemed as complements, it is also possible to view them as substitutes. Compared to two distinct agencies, a unified agency can better cut across bureaucratic red tape and switch to alternative policies when existing policies fail to keep up with changing market dynamics.

One case in point would be the taxi industry in Singapore. Prior to the entry of Uber and Grab, the industry was subjected to comprehensive oversight[11] following incessant complaints from commuters of being unable to get a cab.[12] Yet, as market dynamics changed with new entrants, existing regulations become less relevant since consumers had a wider variety of suppliers to choose from[13], and were able to get a ride more easily. In this case, creating room for competition led to better outcomes for consumers, replacing existing consumer protection policies. In view of the ever-changing nature of markets, a unified agency can be best positioned to monitor and evaluate these changes, and intervene only when necessary.

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[11] Taxi operators had to ensure that each cabbie clock at least 250km daily mileage and that 60 percent of its fleet to be available during peak hours. Lim, A. (2016, December 17). LTA scrapping minimum daily mileage for taxis. Retrieved May 10, 2018, from https://www.straitstimes.com/singapore/transport/lta-scrapping-minimum-daily-mileage-for-taxis

[12] Chia, J. (2017). Revisiting the Sharing Economy in Singapore [PDF]. Singapore: Lee Kuan Yew School of Public Policy at the National University of Singapore. Retrieved May 10, 2018, from https://lkyspp.nus.edu.sg/docs/default-source/case-studies/revisiting-the-sharing-economy-(updated-092017).pdf?sfvrsn=eaa8950b_0

[13] A YouGov survey in October 2015 reflected the close substitutability between taxis and private-hire cars; 29 per cent and 23 per cent respectively indicated that they would simply take whichever was the cheaper, or more available, option.

### 3.1.3 Holistic appraisal of policy tools

A unified agency may be more sensitive to unintended consequences by paying attention to potential trade-offs. For instance, in industries that may pose direct harm to the safety of consumers, a potential trade-off may exist when consumer protection regulations disproportionately raise barriers to entry. In Singapore's solar energy industry, companies have alleged that safety regulations from the SCDF could restrict the industry growth[14].

While safety concerns are indeed valid, consumer choice may be affected in the long-run due to a reduced number of suppliers. Such situations call for a more holistic appraisal of regulatory measures. A panel of industry experts can be convened to reach a compromise between consumer safety and consumer choice. A possible resolution would be to permit consumers to undertake certain risks, provided that they can demonstrate a reasonable understanding towards potential dangers.

### 3.1.4 Reinforced support for both missions

A unified agency can help to garner support for both missions and promote understanding between different stakeholders.

In Singapore's context, dominant players are not punished per se, but only when they are engage in abusive business practices that prevent rivals from competing. Such a position may lend itself to attacks by the public who may not fully understand the rationale behind decisions of the agency, such as allowing certain acquisitions to pass

[14] Zengkun, F. (2016, October 25). New fire safety rule for solar panels. Retrieved May 18, 2018, from https://www.straitstimes.com/singapore/new-fire-safety-rule-for-solar-panels

(e.g. Grab-Uber merger[15]) or refraining from regulating certain industries perceived to be anti-competitive (e.g. affordability of infant formula[16]).

Through linking competition policies to the consumer protection agenda, this agency can enhance public acceptance of competition policies, even when such policies defy public expectations.

### 3.2 Challenges facing policy integration

Despite the various benefits, such a proposal may encounter barriers during the institutional design process.

#### 3.2.1 Conflicting objectives within agency

Given the dual responsibility of the agency, the absence of a single, clear defined mission can lead to irresolute or inappropriate decision-making.

When consumer agenda conflicts with competition, the unified agency may be forced to reach a compromise between conflicting objectives. A loss of focus in either objective can in turn result in ineffective or delayed actions.

On the other hand, an unbalanced prioritisation of objectives can also limit the potential of this agency. For one, the pursuit of short-term, measurable accomplishments as a result of bureaucratic pressure may cloud policymakers' judgment. Whereas the

[15] Uber/Grab merger: Appointment of monitoring trustee to monitor compliance with CCCS's Interim Measures Directions. (2018, May 7). Retrieved May 21, 2018, from https://www.cccs.gov.sg/media-and-publications/media-releases/grab-uber-merger-7-may

[16] Written Reply to PQ on Affordability of Infant Formula. (2018, March 29). Retrieved May 21, 2018, from https://www.cccs.gov.sg/media-and-publications/parliament-questions-and-answers/written-reply-to-pq-on-affordability-of-infant-formula

effects of consumer protection can be felt almost instantly, competition policies tend to have delayed impact as they seek to reshape market dynamics. As such, consumer protection policies may be favoured over competition policies solely for its fast-acting nature rather than its significance, thereby leading to an unjustly skewed prioritisation of objectives.

### 3.2.2 Inconsistencies in style

Competition policies are top-down, and broad-based in nature. Further, their implementation processes tend to be generic and transferable across industries i.e. the issuance of financial penalties and blocking of mergers.

On the other hand, consumer protection is bottom-up and industry-specific. The formulation and application of such measures require specialized knowledge of the industry and careful customisation of the policies to suit the industry.

Housing these stylistic differences under a single agency can lead to inefficiencies. With its dual responsibility, the unified agency may eventually drift apart into two separate entities overlooking competition and consumer protection respectively, which defeats the purpose of the single-agency approach.

## 3.3 Proposed integration framework

Despite the numerous barriers, a single-agency approach can still be developed. The extent and method of integration has to be carefully considered during the process of institution design.

To prevent the dilution of support for either objective, the unified agency could have a portfolio encompassing the existing works of both competition and consumer protection agencies, on top of a common platform for shared expertise and policy research. For instance, the competition department can monitor and deter anticompetitive practices, and enforce legislation for one-off cases. The consumer protection department should also continue to address consumer complaints, mediate isolated disputes, and educate consumers.

Fully leveraging on the opportunities of the single-agency approach, inquiry committees can be convened to effect potentially industry-wide policies. When deemed necessary[17], these inquiries should holistically assess the inefficiencies of the current industry, taking into account both competition and consumer protection issues. Such committees would also require the congregation of policymakers from both regulatory disciplines, together with industry experts and stakeholders. The result of these inquiries can be the introduction of a set of policies, that only not abide by competition and consumer protection guidelines, but also tailored to the nuances and needs of the specific industry.

[17] For instance, following a surge of issues raised by market participants, or in anticipation of disruptive changes.

# 4 Conclusion

This paper has illustrated the interactions between competition and consumer protection, as well as the rationale for housing both missions under a single agency.

In most cases, we have argued that the two missions are able to harmonise and provide the optimal outcomes to consumers. While we acknowledge the trade-offs present in specific cases, proper institutional design can help to overcome such challenges in the form of a unified agency.

A unified agency has access to a wider variety of tools to correct market inefficiencies, and is more flexible to adapt to the ever-changing nature of markets. At the same time, it must be noted that there also exist limitations to the effectiveness of such an agency. Differences in terms of scope, purpose and instruments used to achieve the respective missions require the close monitoring of the agency.

Looking forward, Singaporean consumers would be best served by an agency that includes both competition and consumer protection mandates in its portfolio.

(2500 words including footnotes)

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