



Relationship between Competition authority and sectoral regulator

**State level Seminar on
“Competition Policy & Law”
6 December 2008**

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What are economic regulations?

- Economic regulations are public constraints on market behaviour or structure
 - ▶ e.g. laws, subordinate legislation, formal and informal orders, regulations issued by institutions created by the government



Why have competition law?

Competition

- Promotes efficiency and innovation
- Ensures abundant availability of goods and services of acceptable quality at affordable price
- Offers wider choice to consumers



How does a competition authority achieve its objective?

- It is an 'off-market' regulator
- Prevents market failure through law enforcement
- Four basic elements of a modern competition law — anti-competitive agreements, abuse of dominant position, combinations and advocacy
- Applies competition law across all sectors uniformly



Advantages of competition oversight

- Maximum impact with minimal intervention
- Uniform competition outcomes across sectors
- Independent and objective — not prone to influence of incumbents



Why have sectoral regulators?

- Sector specific technical expertise necessary to determine access, maintain standards, ensure safety and determine tariffs (especially for merit goods)
- Basic objectives are to prevent inefficient use of resources, meet USO and protect consumers



Which sectors usually have regulators?

- Sectors that are natural monopolies
- Sectors with USO
- Network industries
- Sectoral regulators are, therefore, most prevalent in infrastructure sectors, utilities



How does a sector regulator achieve its objective?

- It is an 'in-market' regulator
- Sets 'rules of the game' – entry conditions, technical details, tariff, safety standards, access, etc
- Direct control – price/quantity/quality
- Quicker dispute redressal mechanism compared to normal judicial process



Complementarity

- Sector specific regulations prevent inefficient use of resources and protect consumers
- Competition law aims at prevention of market power and thus ensures efficiency and enhances consumer welfare



Complementarity revisited

- While sectoral regulation is ex-ante, competition law is enforced ex-post
- Competition law consists of negative commands while industry-specific regulations provide positive commands
- Sectoral regulations are more direct and concerned with structure while competition law is indirect and more concerned with conduct and behaviour



Overlap and Conflict - 1

- complementarity between the two suffers on account of
 - conflict in laws (legislative ambiguity/overlap or omission)
 - interpretational bias (bureaucratic bias)



Overlap and Conflict - 2

- Inevitable in the absence of clear delineation of jurisdiction
- Spurred by turf 'warriors'
 - Market players
 - Enforcers
 - Legal arbitrators



Negative externalities

- Loss of neutrality – “regulatory capture”
- Delay in delivery – “forum shopping”



Can we do without either?

- Expertise available with either is unique and cannot be acquired easily by the other
- Competition law enforcement can overcome insufficiencies in regulations – e.g. predatory pricing
- A sectoral regulator can do what a competition authority cannot- e.g. situations might warrant price fixation in public interest



Conflict resolution

- **Informal approach**

- contacts, meetings and exchange of information
- exchange of officials
- setting up of joint working groups

- **Formal approach**

- right to participate in proceedings before the other
- formal referrals - optional or mandatory
- appeal to a common authority
- abstention –do not interfere in the other's territory
- delineation of jurisdiction –by statute



International experience - 1

- In Australia, the competition authority incorporates industry-specific technical regulators
- The Canadian Competition Bureau is statutorily empowered to intervene before federal and provincial regulatory bodies in policy determination – but RCD is accepted
- In Finland, the competition authority signed an MoU in 2003 with the telecom regulator defining ways to eliminate overlaps



International experience - 2

- In France, a new law provides for mandatory consultation between radio & television sector regulator and competition authority. The sectoral regulator provides technical inputs while the competition authority applies competition law on the basis of given technical inputs
- In Germany, there is division of labour between the competition authority (FCO) and the Regulatory Authority for Telecommunications and Posts (RegTP). Laws were amended to minimize parallel competencies



International experience - 3

- In UK, the OFT and the sectoral regulators have concurrent jurisdictions with a common appellate tribunal (UK CAT) – appeals from sectoral regulators lie to the UK Competition Commission in the first instance
- In Japan, cooperation between JFTC and sectoral regulators is not statutory but is guided by government diktat. JFTC relies heavily on its advocacy role with regulators to prevent anti-competitive policies



International experience - 4

- In South Africa, sectoral regulations were initially exempted from the jurisdiction of the competition authority but later the exemption was withdrawn
- In Zambia, the competition authority is represented on other regulatory boards. In addition, all sectoral regulators are required to consult the competition authority



International experience - 5

- The jurisdictions of the competition authorities and sectoral regulators are blurred in Sri Lanka, Botswana, Kenya and Pakistan. Conflicts are left to be resolved by courts
- If status quo is maintained, India will be in this league



Options for interrelationship -1

- Giving statutory powers to the competition authority for some aspects of sector regulation

Example :

Mexico – competition authority's determination of market power of an enterprise is the condition precedent for regulation of that enterprise by the sector regulator.

EU – Competition authority plays significant role in identification of the relevant market and then the telecom regulator determines market power using competition benchmark before ex ante obligations can be imposed on identified enterprise



Options for interrelationship -2

- **Concurrent power**

Example :

UK – sector regulators in electricity, gas, telecommunication, water and railways have concurrent jurisdiction with OFT – Concurrence Working Party (CWP) decides which authority is best suited to deal with the matter – disputes resolved by Secretary of State – regulation guided

- **Convergence of appeals**

Example :

UK – appeals lie to a common body UKCAT – uniformity in approach



Options for interrelationship -3

- Mandatory consultation

Example :

France – legislation enabled co-operation – sector regulator **must** consult competition authority

Ireland – formal co-operation agreements in accordance with law

- Non-mandatory consultation

Example :

India – sector regulator **may** refer a matter and then pass an order 'as it deems fit' – no reciprocal provision in competition law



Options for interrelationship -4

- High-level status of head of competition authority

Example :

South Korea – given Cabinet rank – useful when government retains control over economic decisions – hierarchy helps in pushing pro-competitive agenda



Options for interrelationship -5

- Right to intervene - in sector regulation

Example :

UK - competition authority has statutory right to study existing as well as proposed sector regulations and issue a public statement- government responds within 90 days

Italy – opportunity to competition authority to air their views to which sector regulator must respond.



Legal provisions in CA 02

- formal referrals – Sections 21 & 21A
- referrals by Central/State Governments – Section 49



Thank you

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