



Relationship between Competition authority and sectoral regulator

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What are economic regulations?

- Economic regulations are rules that affect business conduct, e.g. laws, subordinate legislation, formal and informal orders, regulations issued by institutions created by the government.

Why have competition law?

Competition

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

How does a competition authority achieve its objective?

- 'Off-market' regulator
- Prevents market failure through law enforcement
- Three basic elements of a modern competition law – anti-competitive agreements, abuse of dominant position and combinations
- 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
- Based on the belief that market driven economy spurs development

Why have sectoral regulators?

- These prevent inefficient use of resources and protect consumers
- Technical expertise necessary to determine access, maintain standards, ensure safety and determine tariffs (especially for merit goods)

Which sectors usually have regulators?

- Regulations are usually contemplated in natural monopolies, i.e., when characteristics of market prevent competition
- Sectors with universal service obligations
- Network industries
- Sectoral regulators are, therefore, most prevalent in infrastructure sectors, utilities

How does a sector regulator achieve its objective?

- 'In-market' regulator
- Sets 'rules of the game' – entry conditions, technical details, tariff, safety standards, access, etc.
- Direct control – price/quantity/quality

Complementarity

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

Overlaps

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

Conflicts

- Inevitable in the absence of clear delineation of jurisdiction
- Spurred by turf ‘warriors’
 - Market players
 - Enforcers
 - Legal arbitrators
- Regulatory capture
- Forum shopping

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

Can we do without either?

- Expertise available with both are unique and cannot be acquired easily by either
- Competition law enforcement can overcome insufficiencies in regulations
- Competition authority can assist sectoral regulator in achieving its objective
- A sectoral regulator can do what a competition authority cannot- e.g.situations might warrant price fixation in the interest of consumers

International experience - 1

- In Australia, the competition authority incorporates industry-specific technical regulators
- In the EU, certain sub-sectors of the telecom sector are out of purview of regulators
- 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
- The Canadian Competition Bureau is statutorily empowered to intervene before federal and provincial regulatory bodies in policy determination – but RCD is accepted

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

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 and India. Conflicts are left to be resolved by courts.

Options for interrelationship -1

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

Examples :

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 relevant market and determination of market power before sector regulator can impose ex ante obligations 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 – one exercises forbearance on formal communication from the other – disputes regarding jurisdiction settled by government

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

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

- **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

- Convergence of appeals

Example :

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

Thank You

Website:
competitioncommission.gov.in