

Nexus between Competition and Consumer Protection Policies

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Abstract

This essay will argue that competition and consumer protection policies are complementary to a large extent. Given that both policies have the common goal of enhancing consumer welfare, harmonisation enables regulators to better identify and address anti-competitive and anti-consumer business practices in an ever-changing economy.

This essay proposes that harmonisation should involve a general regulatory framework, as well as industry-specific or sectorial approaches. Furthermore, the functions can be housed in a single agency via the tight synchronisation of competition and consumer policy-making processes. Synchronisation involves the following two procedures. Firstly, both regulators have to decide whether a market issue should be addressed based trade-offs between consumer and competition concerns in the long-term. Secondly, if it is agreed that the problem be addressed, regulators should discuss whether the blunter remedies of competition policy or the more targeted remedies of consumer policy should be applied. Such synchronisation overcomes potential challenges, such as intra-organisational competition for resources and resource wastage arising from duplicated efforts.

This essay will then apply the approach to current market issues, namely, switching costs, deliberate obfuscation of product information, and information asymmetry. While harmonisation reduces switching costs for consumers, it is limited in cultivating an active and informed consumer base. As such, education is essential to addressing such limitations. Additionally, harmonisation enables regulators to weigh the costs and benefits of imposing common market standards in dealing with deliberate obfuscation of product information. In dealing with information asymmetry,

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harmonisation encourages market competition via the creation of comparison platforms. However, transparency can lead to unintended consequences such as collusion, which in turn requires an integrated use of punitive competition and consumer policies to deter such business behaviour.

Lastly, this essay argues how the proposed harmonised policies best enables competition and consumer protection policies to stay relevant in the information economy.

299 words

Introduction

Efficient markets are integral to protecting consumer interests while an empowered consumer base is essential to competitive markets. Given the large extent to which competition and consumer protection issues are interlinked, harmonisation enables CCCS to remain effective and relevant in addressing both traditional and evolving market issues.

How the functions of competition and consumer protection policies can be housed in a single agency

The functions should be harmonised in the form of a general regulatory framework, as well as in the form of industry-specific or sectoral approaches. General regulators who possess expertise in competition and consumer policy are essential in coordinating the two functions on a macro-level. On the other hand, industry-specific teams comprising of competition, consumer and sectoral experts enables the cross-fertilisation of ideas and flexibility in making decisions suitable to the specific industry.

Furthermore, the functions can be housed in a single agency via the tight synchronisation of competition and consumer policy-making processes. Synchronisation involves the following two procedures.

Firstly, both regulators have to decide whether a market issue should be addressed. This is because addressing such issues may be beneficial to consumers but can have anti-competitive consequences, and vice versa. In the short-term, strict enforcement of consumer law might be important in protecting consumer welfare. However, in the long-term, such aggressive actions may increase barriers to entry for new entrants, which hinder competition by protecting incumbents. For example, price

transparency arrangements facilitate price collusion amongst incumbent firms and ban on misleading advertisements prevent new entrants from attracting customers. Similarly, a competition policy solely aimed at liberalising markets can neglect consumer protection concerns in the long-run. For instance, disruptive innovation in traditional markets such as retail can exacerbate information asymmetry respectively.

In deciding whether action should be taken, competition and consumer protection regulators have to consider the trade-offs between consumer welfare and market efficiency. Additionally, both regulators should consider the overall and long-term impacts on the market and consumers. This is essential for a coherent competition-consumer policy.

Secondly, if it is agreed that the problem be addressed, both regulators should discuss the kind of remedies, namely whether CCCS should apply more blunt remedies of competition policy or the more targeted remedies of consumer policy. Such synchronisation overcomes potential challenges, such as intra-organisational competition for resources and resource wastage arising from duplicated efforts.

CCCS should have a single team, comprising of competition and consumer protection experts, dedicated to education efforts aimed at cultivating an understanding of both competition policy and consumer rights, and their complementary roles in protecting consumer welfare. This is because one important objective of harmonisation is to ensure that competition policy remains in touch with consumer welfare. Harmonisation shows the public that competition policy works for the public's interests, which is essential to continual public support for competition policies.

Extent of harmonisation

By discussing how harmonisation can be applied to present market issues, we will argue that competition and consumer protection policies can be harmonised to a large extent. We will also address the limitations of harmonisation and their possible solutions.

Switching costs

Switching costs refer to obstacles that deter consumers from actively searching and switching to a product with a better price and quality. Such obstacles include time or expense and can be real or perceived. Information asymmetry or the lack of information compounds the problem of switching costs as it makes it more arduous and expensive for consumers to actively search for alternatives and compare prices and product information. Switching cost also has a competition policy element to it, in that it benefits market incumbents. Consumers who are already patronising existing firms will be deterred from switching to new market entrants. Consumers might not search for and switch to alternatives because they might feel more comfortable sticking to the existing company due to unfamiliarity with alternative products. This is further exacerbated in markets where consumers do not fully understand the costs of switching from one provider to another. For instance, there can be penalties for switching from one plan to another.

Harmonisation helps in addressing switching costs. Consumer protection law can be integrated with competition policies by allowing for cancellation and recourse. This complements competition policy that encourages switching in a competitive marketplace. This is because both cancellation under CPFTA and switching

encouraged by competition policy financially penalise a deceptive firm by enabling consumers to seek recourse and leave the transaction with the firm.

However, switching depends on availability of alternative products and services in the market. In a market with a dominant incumbent, even if consumers search, searching will not necessarily lead to switching. For example, for the liberalisation of the electricity energy market in Singapore to be successful in spurring competition, higher consumer awareness is critical as consumers are "ignorant of their power to choose or fearful about maintaining reliable electricity supply when they switch retailers." (Soh, 2018) This is anti-competitive because the incumbent, Singapore Power, retains an advantage not because of superior product quality, but because consumers perceive incumbents as more reliable in a market in which they do not fully understand. This shows that competition policy is necessary but insufficient. Consumer protection policy, in the form of education, should be included in facilitating market competition.

In formulating efforts at empowering consumers, it is crucial to note that consumers are not a homogenous entity. Broadly, there are two distinct groups of consumers, namely proactive consumers who take the initiative to search for information and a second group of consumers who are more inert in searching and switching. This inertia arises from preferences rather than cognitive bias. As such, education is important in encouraging this particular group of consumers to be alert and proactive.

The importance of education raises a crucial limitation of harmonisation as the magic bullet in addressing competition and consumer protection issues. Relying on harmonisation potentially creates a moral hazard, in that consumers become reliant

on regulator's policy interventions rather than be personally responsible for their own choices. For instance, policies that limit price dispersion or impose minimum standards of quality within the market for similar goods have the perverse effect of rendering consumers less inclined to be informed about available choices in the market. Since policymakers cannot solve every single market issue, inert consumers could result in higher prices or lower quality in the market as firms take advantage of a less informed consumer base. As such, harmonisation must be accompanied by education aimed at cultivating an active, informed consumer base. One possibility is collaboration with CASE on education efforts.

Furthermore, a competitive market can reduce consumers' switching costs because firms compete for customers by signalling information regarding the price and quality of their products. For instance, advertising has the function of conveying essential product information to consumers in less complex manner. Advertisements better allow consumers to compare between different brands. In addition, firms stand to benefit from having a reputation for price and product information transparency.

Firms that attempt to make it hard to search and switch will lose customers to firms that have strong reputation in product and price transparency. However, reputation effects, which punish bad behaviour, cannot take hold if there is only one firm or a colluding oligopoly in the market. Competition policy should be utilised to ensure a competitive market, so as to reap the benefits of market forces in regulating firms' behaviour. For instance, competition policy strengthens consumer protection policy by encouraging fair price-comparison platforms such as Trivago or TripAdvisor and preventing the manipulation of data in favour of specific firms. Similarly, such reputation effects, encouraged by harmonisation, guard against firms' deliberate obfuscation of product information.

Deliberate obfuscation of product information

An example of deliberate obfuscation by firms is the practice of product tying, which involves forcing consumers to buy complementary products. Since such products are essential to the full utilization of product or service, this effectively creates a monopoly at point of sale. This is a means of obfuscation as it hinders consumers' ability to decide whether they want the complementary products or not.

Furthermore, optimism bias worsens this problem. For certain products like mobile phone services, firms put a premium on contingencies that arise. However, since consumers perceive that such contingencies are unlikely to arise, they do not factor this consideration into the product price. One example is the premium charged for exceeding data limits.

One approach that can be taken from a consumer protection policy angle involves establishing common industrial standards in how product information and prices are presented. Such industry standards not only enhance competition between firms, but also protect consumers through creating better quality products at lower prices. Examples include energy usage benchmarks for electronic appliances like fridges and air-conditioners and requiring prices to include GST and service charges.

However, too rigid standards limit the creation of potential markets and alternative businesses, which reduce consumer choice in the long-run. For example, mandating minimum product standards or 'full service packages' unfairly curb services such as budget airlines and budget hotels. For instance, standardising means of pricing prevents price discrimination, which enables the creation of mobile plan contracts that tailor to unique consumer preferences such as elderly and students.

Under our proposed sectoral approach, even if standardisation has the benefit of price transparency, price discrimination is acceptable as it is suitable for these markets. Furthermore, tight synchronisation of policy-making processes prevents consumer policy from entrenching incumbents' interests as rigid standards could hinder new entrants.

Harmonisation enables CCCS to decide what kind of trade-offs to make when deciding whether common standards should be applied in a certain market. General and sectorial regulators should deliberate such trade-offs based on factors such as long-term impact and the nature of the industry. For example, in the healthcare or food industries, regulators may want to veer on the side of caution in favour of consumer protection rather than competition effects.

Additionally, supposing CCCS forgoes common standards in order to promote competition, product information comparison platforms can mitigate the potential negative effects on consumer welfare. Furthermore, such platforms can simultaneously address another existing market issue, namely information asymmetry.

Information asymmetry

Information asymmetry arises where firms, especially dominant firms, possess more information about their products than consumers. Information asymmetry poses consumer protection concerns because it allows firms to opportunistically sell lower quality products to consumers and causes consumers to buy products unsuitable to their needs. Information asymmetry also poses competition concerns, as firms with

more information are able to collude with each other in raising prices or reducing product quality at the expense of consumers.

Harmonisation could take a two-pronged approach. First, it could require firms to provide information about their products. Such information would be placed on accredited product comparison platforms. These platforms should be independent from firms, in order to safeguard competition and consumer protection interests. Transparency about product information also enhances competition because it encourages firms to compete for customers based on the merits of their products and improves the ability of firms to signal.

Second, harmonisation could empower consumers by allowing them to share product and price information on such platforms too. These platforms simultaneously enhance competition and consumer protection policies in two ways. First, it alerts regulators to anti-competitive practices that harm consumers, thus enabling harmonised policies to remain relevant to an ever-changing market economy. Second, it helps consumers make better decisions by facilitating the free flow of information, which enables consumers to better understand products via the feedback of other consumers.

Transparency can promote consumer protection only in a competitive market, where consumers can switch away from unethical firms that abuse asymmetric information. Furthermore, enforcing transparency about product and price information has the unintended effect of encouraging collusion. As such, consumer protection policies have to be harmonised with punitive competition policies to deter such anti-competitive behaviour.

Staying relevant in the information economy via harmonisation

The highly disruptive nature of the information economy means that unexpected anti-competitive or anti-consumer business practices may catch regulators off guard. Harmonisation enables CCCS to quickly identify and address such ever-evolving risks. For example, firms increasingly use consumers' personal data as part of their business strategies.

Business deals such as Mergers and Acquisitions increasingly involve transferring large amounts of personal data. Such transfer of personal data has harmful consequences for consumers' privacy rights, consumer welfare and market competitiveness. "Big Data" facilitates anti-competitive practices and entrenches incumbents' market dominance because such data is unavailable to other firms in the market. One clear example is the recent Uber-Grab merger, where Uber transferred travel, contact, and bio-data of its customers to Grab (Tan, 2018).

Additionally, using the data acquired, dominant firms can unfairly price discriminate as they are better able to assess consumers' purchasing habits (Antitrust risks and Big Data, 2017). Furthermore, firms with the capability to gather significant amount of information can break into other markets and gain a significant, anti-competitive advantage in those markets. Anti-competitive practices such as abusing market dominance are likely to occur where access to a particular dataset is essential to enabling competition in a downstream market.

Harmonisation allows regulators to use consumer welfare as a benchmark to determine whether such agreements involving the transfer of personal data should be allowed. Harmonisation is vital for two reasons. First, consumer protection laws are inadequate in preventing the abuse of consumers' data because the impact of such

practices on consumers is indirect and diffuse. For instance, gradual higher prices and lower quality products. Second, preventing such practices lies in competition policy, which can only do so if informed by long-term analysis of the impacts of such practices on consumer welfare.

Additionally, it is proposed that CCCS consider refining its conception of consumer welfare in this information economy to include protection of personal data (CCS Occasional Paper, 2017). Furthermore, CCCS should encourage companies to compete based on how they handle private information, for instance, by requiring firms to incorporate privacy protection into their business model (Brill, 2011).

Conclusion

Ultimately, harmonization should be focused on protecting consumers from deceptive business practices by firms, and not consumers who make objectively poor consumer choices. The latter approach takes up too much resources. Additionally, consumers, rather than regulators, have a better understanding of their own preferences. Even if there is such a focus, this should be solved by education, ensuring a balance between the government's duty of care and consumer choice.

2496 words (including references and citations)

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