



**Ad Hoc Expert Meeting on Consumer Protection: The interface between  
competition and consumer policies**

Geneva, 12 to 13 July 2012

**Session 3: Emerging issues in consumer  
protection:  
Complementarities and areas of tension**

**Presentation**

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The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.



# THE RELATIONSHIP BETWEEN COMPETITION AND CONSUMER PROTECTION



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# I. The Roles of Competition Policy and Consumer Protection



# Two Inextricably Linked Policies

- Basic Relationship
  - **Competition Policy:** Relies on **supply side** actions that influence the number and size of firms, and how they interact
  - **Consumer Protection:** Focuses on **demand side** actions influence the way consumers purchase goods and services
- Stated more simply
  - Competition creates conditions where consumers have choice
  - Consumer protection protects that choice from being undermined by unfairness and deception

# History Illustrates the Relationship

- 1914: FTC started as a competition agency: “Unfair methods of competition”
- 1930s: Deceptive selling distorted markets
  - Competitors either lose sales or use the same sales tactics themselves
  - FTC tried to use competition law, but proof of injury to competition was difficult
- 1938: Congress adds prevention of “unfair and deceptive acts and practices” to FTC mandate
  - The basis of consumer protection at FTC
  - Other aspects of consumer protection left with others

# Policy Interdependence

- Lack of competition undermines incentives of firms to:
  - Provide information to consumers
  - Respond to consumer preferences
  - (as well as offer lower prices)
- Unjustified restrictions of non-deceptive information undermines incentives to compete:
  - Firms only innovate if they think they can sell
  - To sell, firms need to be able to promote
  - If restrictions inhibit truthful promotion, less incentive to innovate
- If advertising is not seen as a trustworthy source of consumer information, consumers lose ability to benefit from competition

# Cautionary Examples

- Comparative Advertising
  - Once prohibited in U.S.
  - Now recognized as source of valuable consumer information

**Now 25%  
less than  
Brand X!**

# The Perfect World and the Real World

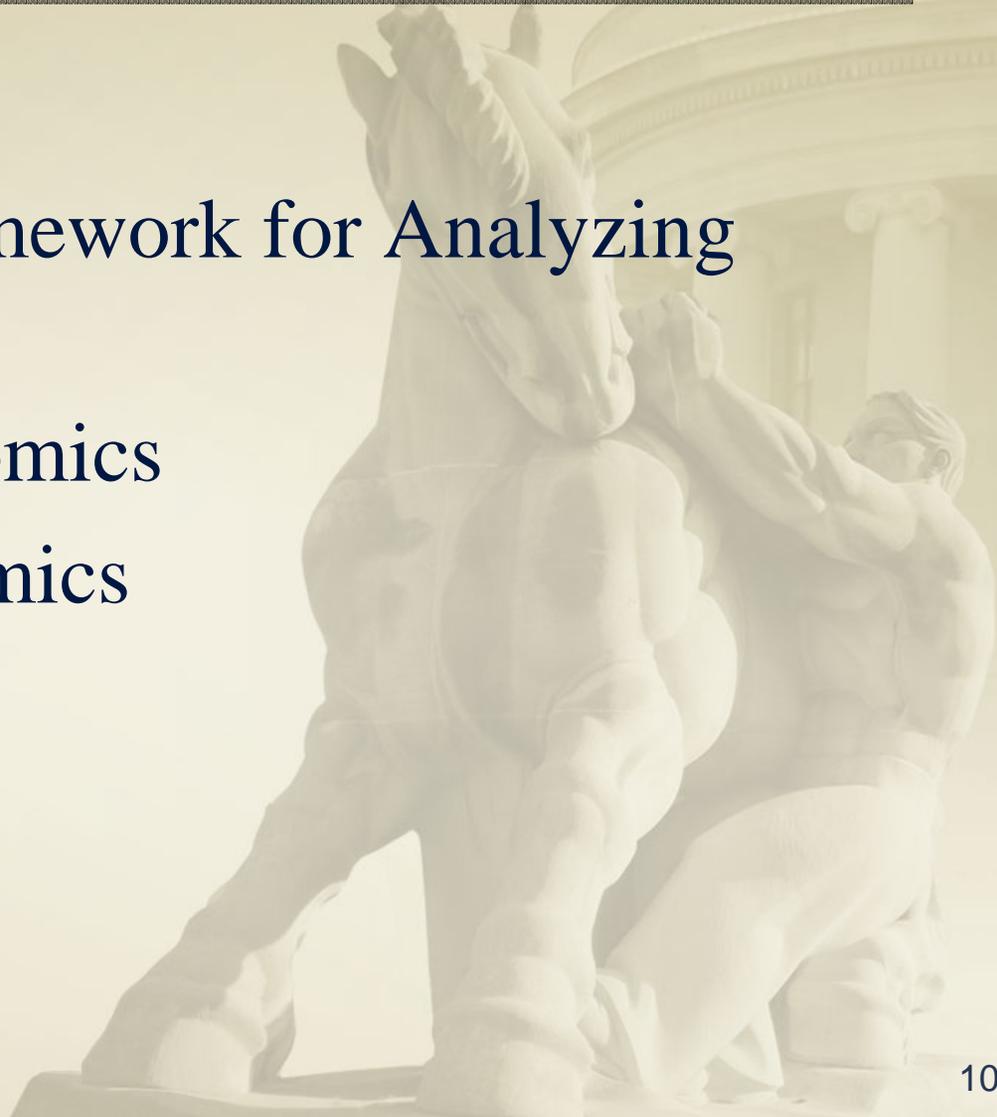
- In a perfect world, there would be no need for consumer protection. In the long run, competitive markets would:
  - Reward producers who offer what consumers want; and
  - Punish producers who fail to deliver for consumers.
  - And government intervention has costs
- But in the real world, markets don't always protect consumers
  - Fraud operators have little need for repeat business
  - Deception is not always easy to detect
  - Sometimes it's too hard to obtain information or to exercise choice
- The short-term cost to consumers of market solutions may be too high, and interests must be balanced

# Four Scenarios for Intervention

	When market structure prevents consumer choice	When regulation prevents consumer choice	When consumers should have choices – but don't	When consumers have choices – but can't exercise them effectively
SCENARIO	“Natural monopolies,” such as water, electricity distribution	“Unnatural monopolies” which exist due to government granted privileges	Cartels, abuse of dominance, or anticompetitive mergers eliminate competition	Credence goods and services -- buyer must rely on seller for information; or where search costs are too high to make choice meaningful
INTERVENTION	Sectoral regulation constrains price and quality terms	Competition advocacy seeks market outcomes	Competition law enforcement	Consumer protection enforcement when warranted; Consumer education

# OECD Consumer Policy Toolkit

- Guidance and Framework for Analyzing Consumer Policy
- Information Economics
- Behavioral Economics



# Credence Goods and Services

- In many cases, the consumer must trust the seller for information about products
  - Examples: food ingredients, pharmaceuticals, performance data
- Not all credence goods require intervention
  - Sellers depend on repeat business
  - Third party information sources
- Intervention needed in case of fraud or persistent consumer confusion

# Search Costs

- Sometimes the information consumers need cannot be readily obtained
- Examples:
  - Inconsistent metrics of comparison
  - Sales under time pressure
  - Infrequent purchases
- Possible solutions:
  - Disclosures (caution: hard to make them effective)
  - Consumer education
  - Allow market to solve problem
  - Balance remedy with costs
  - Beware the law of unintended consequences!

# Key Questions

- In deciding whether to intervene or allow the market to solve the problem, how much are we prepared for consumers to endure in the name of allowing competition to function?
- Interventions have cost. Is the cost worth it?
- Factors:
  - What is the harm to consumer?
  - How easily can the consumer avoid the harm?
  - Is the market capable of resolving the problem?
  - Can intervention offer a better solution?
  - What burden are we willing to place on the consumer?

A large, light-colored stone statue depicting a muscular man wrestling a horse. The man is on the right, leaning forward with his arms around the horse's neck. The horse is on the left, rearing up on its hind legs. The background shows a classical building with columns and a dome, all in a faded, light yellow tone. A dark blue horizontal bar is at the top of the slide.

## II. Competition and Consumer Protection: Two Sides of the Same Coin

# Two Sides of the Same Coin

- Competition is our best protection for consumers
- Consumer protection steps in when markets fail – but does not replace them
- “False dichotomy” that competition and consumer protection are opposed to each other
- Competition and consumer protection are natural partners

# Two Sides of the Same Coin

- Sometimes we can use theories that apply both competition and consumer protection principles
- One may be a part of the other
  - Deception can be a means of monopolization
  - Ex. Rambus; Intel
- Or a matter may be reclassified from one type to the other
  - To produce new theories of liability
  - Or new forms of remedy

# III. Consumer Protection Supports Competition Policy



# Consumer Protection Supports Competition Policy

- Consumer protection helps competition enforcers understand how markets work
- Also helps understand rationales offered to justify restrictions on competition
- Transferred experience with remedies
- Builds public support for market economics

# Information Cures Competition Issues

- Cures market power with information – encourages customers to support new entry.
- Ex. tying – a dominant firm exploits its market power to force customers to use its own consumable products
- A remedy might require this firm to specify the characteristics of workable aftermarket products

# Google Case

- Google Buzz – social networking service
  - Used information of consumers who signed up for Gmail to populate the network
  - Did not adequately communicate that previously private info would be shared publicly by default
  - Made false and misleading representations about the use of account data
  - Other personal info was shared without permission
- Settlement with FTC – agreed to stop deceptive practices



# Facebook Case

- Made certain information public without warning users or obtaining approval.
- Promised that only necessary data would be made available to 3<sup>rd</sup> party apps – in reality almost all data was made available.
- Shared data with advertisers.
- Settlement barred additional misrepresentations and required them to obtain express consent before overriding preferences.



# Reframing Competition as Consumer Protection

- Deception of a standard-setting organization (Rambus; Dell)
- Coercing the purchase of a license, by threat of bad-faith litigation (patent extortion)
- Benefits of reframing these as consumer cases
  - Correctly characterizes the method of harm
  - These offenses truly do not need market power
    - Need only the ability to deceive, or to impose costs
  - Thus need to prove market power
    - Although market power is often relevant and helpful
  - Helps us recognize corporations as “consumers” or proxies for consumers

# IV. Competition Policy Supports Consumer Protection



# Competition Policy Supports Consumer Protection

- Good economics harmonizes consumer and competition policies
- Examples:
  - Comparative advertising
  - Advertising of professionals services



# Reframing Consumer Protection as Competition

- State restrictions on the commercial practice of optometry
  - Banned corporate practice, or retail settings
  - State claimed that quality would be lowered, or people misled
- FTC tried to challenge these bans on consumer protection grounds
  - Rebutting the CP theories behind the restrictions
  - Failed in court: the state was not deceiving anyone
- Better to put a case in competition terms
  - These are really restrictions on the set of options
  - State regulatory board is a horizontal agreement
  - Only exempt from antitrust laws if supervised

# Intel Case

- Intel stifled competition in market for computer chips – punished its customers (computer manufacturers) for using competitors products.
- Also used deceptive practices to mislead the public – gave impression that other products did not perform well.
- Settlement prevents use of threats to stifle competition, prohibits deception about performance of non-Intel processors, and requires certain disclosures.



## Curing a consumer problem by creating more competition

- Disclosures in formats that encourage comparisons and competitive responses
- Appliance energy-use labeling
  - Shows how a product compares with all competitors
  - Helps decision-making
  - Also encourages firms to compete in these terms and create better options
  - Information helps to create market innovation
- Franchise rule
  - Gives information to people who are thinking about buying a franchise
  - Does so in a standard format that encourages comparisons
  - Hope that this will lead to provision of better opportunities

# V. Linkages Between Consumer Protection and Competition



# Institutional Implications

- Linkages between competition and consumer protection encourage viewing an issue as a market problem
  - Not just as a consumer problem
  - Not just as a competition problem
  - “To a man with a hammer, everything looks like a nail”
- Key linkage: economic analysis informs both



# Benefits of Linkages

- Encourages coordination between competition and consumer protection staffs
- Helps each think more clearly by showing how its law fits into the broader “choice” framework
- Provides a richer set of legal theories and remedies
- A plausible midpoint for trans-Atlantic convergence
- Makes it easier to explain actions to the press, the legislature, and the public

# Operational Models

## Full Integration of consumer protection and competition

- Same staff handles both, chooses competition or consumer remedies as appropriate
- Different skills required
- Risk of distraction by consumer issues with little impact on markets
- Temptation for resources to follow the easy targets

OFFICE OF FAIR TRADING



## Single agency handles both separately

- Joint policy
- Separate enforcement staffs
- Recognizes need for policy coherence but separate skill sets
- Practical problems of coordination



Competition Bureau  
Canada

# Operational Models

## Separate agencies that build linkages

- Policy linkage by shared views or memorandum of understanding
- Requires shared views by agency leadership
- Linkages can erode with changes in leadership



COMISIÓN FEDERAL DE COMPETENCIA  
MÉXICO



**Profeco**  
Procuraduría Federal del Consumidor

## Complete separation between competition and CP

- Allows each to focus on own priorities
- Risk of policy incoherence

# Operational Models Worldwide

- General trend towards consolidating competition and consumer functions
  - Denmark, Ireland, Netherlands, Estonia
  - Financial concerns trump policy issues
- Counter-trend: separation of functions in Iceland

