

Consumer protection: should it be allocated to competition authorities?

Belgrade, 2-3 June 2016



European Bank
for Reconstruction and Development

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Outline of the discussion

- The interplay between consumer protection and competition policy
- Does “irrational behavior” justify a paternalist approach to consumer protection?
- Institutional design features: the case for integration and separation of the two policies
- Conclusive remarks



The interplay between consumer protection and competition policy

- Competition and consumer policy share the **same fundamental objective**
 - ✓ to deliver well-functioning market/protect consumer welfare
- They approach the objective from **two different angles**
 - ✓ Competition policy – supply side tool to address anti-competitive conducts by firms
 - ✓ Consumer policy – demand side tool to address consumers' imperfect information
- Competition policy aims at protecting the range of choices available to consumers – consumer policy aims at protecting the quality of those choices



The interplay between consumer protection and competition policy

- The two policy instruments can be used to advance the goal pursued by the other
 - ✓ Competition policy can alleviate consumer protection concerns (switching costs, role of reputation)
 - ✓ Consumer protection interventions may force firms to compete on the merits
- ✓ At the same time, each instrument poses **challenges** for the other
 - ✓ Liberalisation of previously highly protected markets (financial markets, network industries, professional services)
 - ✓ Incumbents' reaction to opening-up of markets
 - ✓ Consumer protection interventions may have negative consequences for competition and competition policy



Does “irrational behavior” justify a paternalist approach to consumer protection?

- Cognitive limitations and consumer choice – departures from rational decision making (behavioural economics)
- Increased competition and “too many choices” could yield negative welfare results → demand for more paternalist approach
- This approach overlooks two fundamental aspects:
 - ✓ Profit maximizing firms have incentives to exploit gains from trade also when they arise from intense competition leading to complexity of choices (“confusopoly”)
 - ✓ Costs of regulatory errors to be weighed against the benefits of a more pro-active intervention
- However, truth is that we assist to a proliferation of choices in many markets which exposes to risks the **most vulnerable categories** of consumers



Institutional design features: the case for integration and separation of the two policies

- Should consumer protection and competition policy be housed within the same organisation?
- Benefits of integration:
 - ✓ The possibility to use the two instruments **interchangeably** (address competition issues in a sector in a systemic way)
 - ✓ **Avoid inconsistencies** in policy setting – e.g. harmful consequences of consumer protection may be more easily revealed
 - ✓ **Sharing of expertise** – relevance for small countries, manage resources more efficiently
 - ✓ **Gaining support for competition policy** through consumer protection (and potentially vice-versa)



Institutional design features: the case for integration and separation of the two policies

- Costs of integration (or the limits to integration):
 - ✓ Very different policies – especially in relation to the instruments used
 - ✓ Competition law – administrative proceedings, litigation in courts, small number of cases, investigations can last long, need complex investigative tools (dawn raids) and economic analysis
 - ✓ Consumer protection – much more varied set of instruments (conventional enforcement; standards, industry codes, professional regulation); highly sector specific, policy making more complex and decentralised; huge number of cases.
 - ✓ More credibility to consumer protection with one authority
 - ✓ Risk of focusing enforcement on “easy wins” from a political and media perspective and not invest in competition law



Conclusive remarks

- No clear and definitive answer on the main question
- The bottom line is that whatever formula – coordination should be ensured (protocols)
- Food for thought for the round table – how is this debate “special for SEE countries”?
- Looking at the countries participating, different solutions seem to have emerged (two separate agencies; consumer protection within Government ministry; no single “house” for consumer protection; concurrent competencies)

