



# Competition Advocacy

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# Scope of a Competition Agency

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- *Primary mandate*: enforce competition law.
- Should participate in the country's economic policies that adversely affect competitive market structure and economic performance?
- Should act proactively in the areas of economic regulation, trade liberalization, state aid (local and federal) and privatization (or PPPs)?



## Why is competition advocacy relevant?

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- NO precise estimates but....
- **The benefits to the economy and to consumers from effective competition advocacy are almost certainly to be significant, at least as great as those from traditional (mergers and abuse of dominant position) enforcement.**
- Very important in small economies
  - Some do not have ex ante control of mergers
  - Few firms with high market shares



# What does the law say?

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- In most of the cases: silent
- If there is not an explicit prohibition the competition agency can actively seek opportunities to state the case for competition in the public forum.



# Advocacy and Trade Liberalization

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- The CA should have a role as an educator: informing policymakers of the true costs of trade barriers
- Conflicts between CA and antidumping office:
  - May have conflicting views
  - Antidumping office may see CA as trying to interfere with its mandate.



# Advocacy and Economic Regulation

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- Some argue that the CA should participate in setting industry standards (I.e safety and environmental standards).
  - Should **not** be involved in the technical aspect (regulator's job). Eventually intervene to assure transparency and nondiscrimination between service providers



## Advocacy and Economic Regulation (2)

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- How can the CA intervene in regulated markets?
  - On a case by case basis
    - If possible in regulatory proceedings (for instance public audiences) to present the case for competition
    - Problem: resource intensive, CA needs technical expertise (could be in-house or contracted out... Cheapest option)
    - Example. Argentina: Electricity distribution and yardstick competition.



# Advocacy and “State Aid”

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- Goal of competition advocacy: ensure equal conditions for all market operators.
  - Equality may be distorted by government policies:
    - Different rules for domestic and foreign firms (impose a “buy local” plan), state owned and private firms, small and large firms.
    - Instruments: subsidies, taxes, preferential loans, capital injections, public procurement.



## Advocacy and “State Aid” (2)

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- Note: CA can help governments prevent bid rigging and price-fixing on government contracts. In most countries cartel conduct in government procurement is a serious problem
- Example: should a CA advocate a change in policy when a government imposes an implicit subsidy to auto natural gas?



# Advocacy and State-Owned Firms

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- In many countries, state (or local) owned firms are exempted from the law.
- It is usually the case that these firms compete with private firms (electricity, transport)
- CA have only 1 instrument to make sure there is effective competition: advocacy. (this case is specially important when the state owned firm owns an essential facility)



# Advocacy and Privatization (or PPPs)

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- Governments want to maximize proceedings from privatization
- Investors and operators do not like intense competition
- CA: through advocacy try to convince policymakers to design privatization to maximize competition in or for the market.
- Advocacy post privatization is difficult and not as effective. Example: gasoline market in Argentina.



## How should a CA approach advocacy?

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- Develop relationships with government ministries and regulatory agencies... based on mutual respect and appreciation of expertise and policy mandates.
- Competition advocacy need not be confrontational: public opposition to other agencies is at times risky, difficult and counterproductive.
  - CA should encourage dialogue, debate and its position must always be supported by accurate information and rigorous analysis.



## How should a CA approach advocacy? (2)

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- CA should suggest alternative policies to address competition concerns. Should be willing to reach compromises.
- Advocacy should be willing in a transparent manner
- Advocacy is likely to be more effective if the CA is independent (insulated from political interference)
- Business press is an invaluable partner for furthering the objectives of competition law objectives. Need to establish good media relations



## How should a CA approach advocacy? (3)

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- The key is education: the CA should organize conferences, seminars... invite members of the judiciary, press, academics, consumer associations...should be a “competition watch dog”
- CA should publish rulings (web page updated!!!) and have easily understandable guidelines.
- International competition network: first topic of interest.  
<http://www.internationalcompetitionnetwork.org/>

# Relations between CA and other institutions

Institution	Agenda	Limitations
Executive Branch	Maximize synergies when designing and adopting economic policies	Independence of CA Executive Branch's wishes to control prices
Congress	Recommendations in competition policy issues (hearings)	Independence of CA
Judiciary	Work coordination (facilitates CA's investigation) Technical assistance to judges	Different methodologies and processes. Possibilities of corruption in CA or judiciary makes cooperation difficult.

# Relations between CA and other institutions

Institution	Agenda	Limitations
Regulatory agencies	Joint training and capacity building programs Cooperation agreements	Potential problems with legal jurisdiction
Consumer protection groups	Recommendations in competition policy issues (hearings)	
Media	Effective tool to reach a wide audience to advocate principles of competition Technical assistance to the media in competition policy topics	Confidentiality. Probability of information being distorted is high.