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DAF/COMP/LACF(2010)11



Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

16-Aug-2010

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

DAF/COMP/LACF(2010)11
Unclassified

LATIN AMERICAN COMPETITION FORUM

Session III: Strategies for Competition Advocacy

Note by Professor Allan Fels

8-9 September, San José (Costa Rica)

The attached document is submitted by Professor Allan Fels (Dean, The Australia and New Zealand School of Government – ANZSOG) under session III of the Latin American Competition Forum FOR DISCUSSION at its forthcoming meeting to be held on 8-9 September 2010 (Costa Rica).

JT03287369

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-- Session III: Strategies for Competition Advocacy --

Frameworks for Advocacy: Note by Professor Allan Fels*

* This paper is submitted by Professor Allan Fels (Dean, The Australia and New Zealand School of Government – ANZSOG) under session III of the Latin American Competition Forum to be held on 8-9 September 2010, Costa Rica. It was prepared under the responsibility of the author and does not necessarily represent the views of the Inter-American Development Bank, the OECD or its member countries.

TABLE OF CONTENTS

1.	Introduction.....	4
2.	What is the Problem?	4
3.	The Traditional Advocacy Model	5
4.	Other Issues.....	5
5.	The Scope, Forms and Sources of Anticompetitive Laws	6
	5.1 Scope of Anticompetitive Laws	6
	5.2 Forms of Anticompetitive Laws	7
	5.3 Causes of Anticompetitive Laws.....	8
6.	Paths to Reform.....	12
	6.1 Reform.....	12
	6.2 Managing the process	12
	6.3 The Role of Crises	13
	6.4 Reform the Reformers	14
	6.5 Australia’s National Competition Policy.....	15
	6.6 Implications for Advocacy	15
7.	Policy Making Processes.....	16
	7.1 Models of Policy Processes	17
	7.2 Implications	21
8.	Alternative Models.....	21
9.	Dealing with other Parts of Government.....	22
10.	Stakeholder Identification	23
11.	Conclusions.....	24
	Appendix 1 A Note on Dealing with Regulatory Bodies	26

FRAMEWORKS FOR ADVOCACY

Note by Professor Allan Fels

1. Introduction

1. The International Competition Network (ICN) defines competition advocacy as the following: those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition¹.

2. There are two separate but interrelated components to competition advocacy. The first reflects the competition agency's role as advisor to the government and to sector regulatory bodies concerning policies, legislation and regulations that affect competition. The second is as proponent for public understanding and acceptance of competition and competitive markets – the development of a “competition culture.” Both are important.

3. This session concerns intra-government advocacy. This occurs in several contexts:

- regulatory reform;
- comments on proposed sector regulations;
- comments on other government policies;
- comments on proposed legislation; and
- advocacy with regional (state) and municipal governments.

4. This paper relates to the first component of competition advocacy: intra-government advocacy. Before proceeding with this topic, I will first raise some broad issues about competition policy advocacy.

2. What is the Problem?

5. There are two ways to go about analysing the topic of advocacy within government (as well as advocacy generally).

¹ Report by the ICN's Advocacy Working Group, based upon responses to a questionnaire issued to ICN members. In 2009 the Working Group published a second report, *Assessment of ICN Members' Requirements and Recommendations on Further ICN Work on Competition Advocacy*, also based upon responses to a questionnaire. These two reports and other documents produced by the ICN on the topic are available on the ICN website, at www.internationalcompetitionnetwork.org.

6. The first is to discuss actions which competition agencies might undertake to influence competition decisions made within government without much analysis of what the underlying problem that is being addressed is. These actions might include, for example, a list of suggestions about whom the agency sends submissions to and suggestions about the nature of submissions.

7. The second is to begin with an identification and substantive analysis of the policy problems of concern. The policy problem of concern here is the existence of a myriad of harmful anticompetitive laws and then to consider possible policy solutions and then finally consider the role of a competition agency and its advocacy as an element of the solution. An analysis is required as to how this problem can be addressed. What is required is essentially a serious attack on anticompetitive laws. This requires a proper definition of the problem; the involvement of a nation's political leaders and preferably an electoral mandate; a whole of government approach; machinery for implementation; consultation with interest groups; probably financial compensation and/or transition arrangements and community education. The role of a competition law enforcement agency in this context – and of particular note in this paper in regard to its intra-government role – could range from marginal to central.

8. Discussions of competition advocacy generally do not go down this second path. Instead, they usually begin by asking what a competition agency should do by way of general advocacy and advice to governments ('the traditional model'). Such discussions can come to an early end because their role often tends to be seen as quite limited and because the discussions do not deeply probe the fundamental issues concerning anticompetitive laws.

9. Accordingly, this paper focuses on the less explored second path.

3. The Traditional Advocacy Model

10. The advocacy model originates from North America, the home of antitrust. The United States has successfully spread its model of antitrust law enforcement around the world with good results. At the same time, it has tended to promote a model of advocacy based on America's historical and institutional circumstances. The model is not necessarily appropriate for transfer to other countries without adaptation.

11. Some limitations of the traditional advocacy model include:

- the magnitude of the political challenge in overturning anticompetitive laws is usually not considered explicitly and as a result there is little analysis of how governments should deal with the challenge;
- the weak position of the competition agency in applying pressure for change is usually, again, not considered explicitly;
- the possibility that there are other models of advocacy than the USA one is usually not discussed;
- problems regarding the advocacy model in the Westminster or ministerial system are often overlooked.

12. This paper explores some of these issues further.

4. Other Issues

13. This paper also considers a further issue: government policy-making processes are complex. In addition those processes are affected by the power and influence of various political forces discussed in

this paper. In discussing the engagement of a competition regulator with other parts of government, it is necessary to understand these processes if advocacy is to be effective. Accordingly the paper briefly discusses policy-making processes in government and draws out some implications.

14. The paper emphasises that the role, institutional nature and location of a competition agency can also have a major bearing on the answers to the questions to be discussed in this session. Accordingly the paper discusses several different institutional arrangements relevant to competition policy.

15. Finally, the paper addresses some issues relevant to the interaction of competition agencies and industry regulators. This is done in Appendix 1.

5. The Scope, Forms and Sources of Anticompetitive Laws

16. In order to identify the problem of concern it is necessary to briefly discuss the scope, forms and causes of anticompetitive laws (and other anticompetitive actions of government).

5.1 Scope of Anticompetitive Laws

17. Anticompetitive laws are pervasive. They can potentially apply in every sector from agriculture through mining, construction, manufacturing, distribution, services, government activities and so on. They can apply at all levels of government. In China for example, they apply at all five levels of government.

18. The need to reform these laws has given rise to the concept of a national comprehensive competition policy. Such a policy includes:

- prohibition of anticompetitive conduct (traditional antitrust laws);
- liberal international trade and investment policies;
- free movement of all goods and factors of production (labour, capital, etc) across internal borders;
- removing government regulation that unjustifiably limits competition , e.g. legislated entry barriers of all kinds, professional licences, minimum price laws, restrictions on advertising etc.;
- the reform of inappropriate monopoly structures, especially those created by governments;
- appropriate access to essential facilities;
- a level playing field for all participants, including competitive neutrality for government businesses and an absence of state subsidies that distort competition; and
- separation of industry regulation from industry operations, e.g. dominant firms should not set technical standards for new entrants.

19. A comprehensive competition policy therefore includes policy concerning, amongst other subjects: international and interstate trade; intellectual property; foreign ownership and investment; tax; small business; the legal system; public and private ownership; licensing; contracting out; bidding for monopoly franchises; and a range of other matters.

20. Some of the above policies have a very direct effect on competition, whilst others affect the general economic environment and the general climate of competition of the country, e.g. foreign ownership and investment restrictions.

21. Clearly there is a very large agenda for a national comprehensive competition policy.

5.2 *Forms of Anticompetitive Laws*

22. Anticompetitive laws take many forms. Essentially, they limit the number or range of suppliers; limit the ability of suppliers to compete; or reduce the incentive of suppliers to compete.

23. The forms of restrictions on competition can be classified as follows:

- Limits on the number or range of suppliers.

This is likely to be the case if the proposal:

- grants exclusive rights for a supplier to provide goods or services
- establishes a license, permit or authorisation process as a requirement of operation
- limits the ability of some types of suppliers to provide a good service
- significantly raises cost of entry or exit by a supplier
- creates a geographical barriers to the ability of companies to supply goods or services, invest capital or supply labour

- Limits on the ability of suppliers to compete

This is likely to be the case if the proposal:

- controls or substantially influences the prices for goods and services
- limits freedom of suppliers to advertise or market their goods or services
- sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that many well-informed customers would choose
- significantly raises costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)

- Reduced incentive of suppliers to compete vigorously

This may be the case if the proposal:

- creates a self-regulatory or co-regulatory regime
- requires or encourages information on supplier outputs, prices, sales or costs to be published
- exempts the activity of a particular industry or group of suppliers from the operation of general competition law
- reduces mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers

24. This analysis of the forms of anticompetitive laws also shows, from another perspective, how far-reaching the agenda of a competition policy is.

5.3 *Causes of Anticompetitive Laws*

25. Many, if not most, laws that restrict competition are against the public interest. Moreover, even where they have public interest objectives, those objectives can often be achieved in a less anticompetitive fashion. For example, a law that restricts entry into an occupation ostensibly to protect standards might be replaced by a law that allows entry, but provides for expulsion from the occupation (negative licensing) if there are poor standards of practice by individuals.

26. This gives rise to the question of why anticompetitive laws exist.

27. A variety of explanations and theories have been put forward. The economics literature is mainly based on explanations driven by interest group theories. The main theories are:

- the laws are generally in the public interest;
- the original laws were designed in the interest of the public but the regulators have been captured or the reform has not been sustained;²
- there is also a Marxist theory that sees laws as instruments of capitalist control of the economy; and
- the original law itself is the product of demand by those regulated for such laws. In other words, legislation is used to serve the interests of producers rather than consumers.

5.3.1 *Public Interest Theories*

28. Public interest theories claim that most laws (including ones that limit competition) serve the public interest and respond to problems of market failure or to the need to prevent or limit harm to society in fields like health and safety, environment, consumer protection, financial services and so on. They may also address equity concerns.

29. Critics of these theories emphasise, however, that the legislative process is not so benevolent and that regulation applies in many areas in which it is not needed. It often has little connection with externalities or public harms to which industry production or consumption give rise. Conversely, it often does not apply in areas where it seems to be needed.

30. Moreover, regulation is a costly activity and often imposes a government failure. The costs of intervention, including side effects, often exceed the benefits. Also, in many regulated areas, the likelihood of market failure may have been exaggerated through superficial analysis. There is, for example, a tendency to believe that markets will not work well in fields such as health, education and other public services.

5.3.2 *Capture Theories*

31. Another approach is based on the capture theory. This posits that legislation is generally introduced with public interest purposes but that over time regulators are captured by those whom they regulate. This theory does seem to fit the facts in some fields of regulation. But often the real issue is that the law itself is designed to benefit the regulated industry and that the issue is not that the regulators become captured, but that they are doing the job expected of them under the legislation.

² A recent important study on this topic is Eric M. Patashnik, [Reforms at Risk, What Happens after Major Policy Changes are Enacted](#), Princeton University Press, New Jersey, USA, 2008.

32. Moreover, there are some cases where the reverse cycle may apply. An agency may start by looking captured but ends up taking the opposite approach e.g. Australia's Tariff Board (now the Productivity Commission) was originally seen as pro-tariff protection, but as time passed it became antiprotection. Likewise the Civil Aeronautics Board in the US changed in this manner when Professor Alfred Kahn took over and sought deregulation

33. As noted earlier, there is also an emerging focus on the factors that make good reforms unsustainable.³ These are not necessarily to be equated with "capture" but with political changes that may be triggered by an initial reform.

5.3.3 *Marxist Theories*

34. There is also Marxist approach. Marx saw regulation as an instrument of State power to enable control and oppression of the proletariat by the capitalist classes. There can, of course, be conflicts of interests within big business, for example, between export and import interests, between farmers and industry, between small and big business, and so on. Although his theories have been criticised and qualified, and although the interests of big business do not always prevail the underlying idea that big business plays a critical role in influencing the nature of regulation remains an important insight into the causes of some anticompetitive laws.

5.3.4 *Stigler*

35. The most important modern contribution is George J Stigler's economic theory of regulation⁴. According to Stigler, most regulation takes the form of anticompetitive laws demanded by the regulated industry itself. The coercive power of the state is an important input to the productive process that can be harnessed to the making of profit. Anticompetitive laws can be such an input.

36. According to Stigler, there is a systematic bias in legislation towards protecting the interest of groups that receive concentrated benefits such as protection from competition in their industry. This is at the expense of the wider public that incurs corresponding costs which are, however, diffused; the public therefore has less collective incentive to oppose such laws.

37. Stigler's theory has been criticised. It is apparent that there are limits on the extent to which governments would solely promote the interest of producers. Typically governments set up arrangements under which there is some shaving back on maximum benefits for producer interests in the interests of capturing a wider base of support. For example, cross subsidies to certain consumer constituencies (e.g. rural interests) might flow in a monopoly situation.

38. Stigler's theory first appeared in 1970. It offered a convincing explanation of much industry-specific regulation in the United States, but at the very time it was introduced there had been a wave of public interest regulation that could not be explained as resulting from an industry demand, e.g. environmental, health, safety, consumer and other laws.

39. There is in fact a much wider range of possibilities at work in regulation. As well as laws introduced to benefit powerful concentrated groups, there have been other cases in which sub-groups within industries compete against one another for the benefit of anticompetitive laws. Telecommunications

³ See the 2010 Australia and New Zealand School of Government Annual Conference [Making Reform Happen](http://anzsog.edu.au/Events/?Id=143) <http://anzsog.edu.au/Events/?Id=143>.

⁴ "The Theory of Economic Regulation" in George J. Stigler, [The Citizen and the State: Essays on Regulation](#), the University of Chicago Press, 1975, p114-144.

is such a case. Regulation could then be seen as an unstable contest between large and small interests within an industry to secure certain gains partly by means of anticompetitive arrangements, mainly at one another's expense. The outcome is that a mixture of interests – industry players, some consumers gaining from cross-subsidies, consumers generally – win and lose. Some other laws are the result of a drive by policy entrepreneurs such as Ralph Nader or public interest advocacy groups or even by consumer interest groups and are not driven by anticompetitive motivations. Finally, the theory works poorly in explaining the rise of deregulation in recent years or even the existence of competition laws.

40. A superior approach comes from James Q. Wilson⁵ who divides the world into four kinds of policies, based on the perceived distribution of their costs and benefits: “majoritarian politics” (when both the costs and benefits of a policy are widely distributed over many citizens); “entrepreneurial politics” (when society as a whole or some large part of it benefits from a policy that imposes substantial costs on some small identifiable group); “client politics” (when benefits are concentrated on some narrow group, but a large part of society pays the costs); and “interest group politics,” (when a policy confers benefits on some relatively small identifiable group and imposes costs on another small equally identifiable group).

5.3.5 *Other Theories*

41. There are several other explanations of the existence of anticompetitive laws. Those explanations include ideological, class based, behavioural and other theories. These are not pursued in this paper since interest group theories are especially relevant, and since the aim of this analysis is simply to highlight the complexity of the political forces at work in regulation and a review of interest group theory is significant for our purposes.

5.3.6 *Further Obstacles to Reform*

42. Notwithstanding this focus it is worth noting some particular obstacles to reform that keep recurring.

- Loss aversion: there is evidence to suggest that agents tend to prefer avoiding losses to acquiring gains and that they will therefore run greater risks to avoid loss than to acquire gains.
- Endowment effects: the “endowment effect” is shorthand for the fact that people often value a good or service more once their right to it has been established. This reinforces their tendency to attach a higher value to what they already hold, simply because they already hold it. The result, again, is often a tendency by reformists to overestimate the cost and/or underestimate the benefits of change relative to the status quo.
- The heterogeneity of agents: every economic agent has different and unequal endowments and held in forms that are highly context-specific. This means that reforms have a different impact on different individuals and that even reforms that are generally beneficial may clash with the interests of many individuals.
- Many of the gains from reform are delayed whilst the costs occur upfront.
- There can be hefty transaction costs (e.g. learning costs, costs of mistakes) along the way to reform.
- Who exactly benefits from reform may be unknown at the start, whilst losses are clearly indicated.⁶

⁵ James Q. Wilson, The Politics of Regulation, Basic Books, 1984.

⁶ OECD, Reforms at Risk, What Happens after Major Policy Changes are Enacted; Gary Banks, An Economy-wide View: Speeches on Structural Reform, Productivity Commission, Melbourne, 2010.

5.3.7 *Support for Competition Policy*

43. None of this is to say that there are not forces on the other side that support competition reform.
44. There are significant forces at work that promote the development of competition law institutions and their enforcement work and the need to reform laws that harm competition. These include:
- Since the fall of the Berlin Wall, virtually every country depends principally on markets to supply the goods and services its citizens need. Governments generally recognise that for markets to work well, competition is needed and that they need to promote it. Moreover their performance is judged by the electorate, in part, on how efficiently the economy operates and this is partly determined by how well competition policy works.
 - Competition law has taken on a quasi constitutional status as a near basic law of all economies. Admittedly the idea of a comprehensive national competition policy has less standing.
 - Business interests recognise they can gain from a competition policy. The main concern is that it should not apply to them individually. They often recognise it is to their advantage – and the national advantage – if it applies to all other participants in the economy.
 - There is a degree of public support for competition reform. There is some recognition of the benefits to consumers. A significant part of the community welcomes action against big businesses (without necessarily being supporters of competition policy as such).
 - Some countries come under international pressure to adopt competition laws.
 - The fact that competition law has spread round the world despite frequent opposition by business and that enforcement has become more vigorous is a sign of political support. However, the support is strongest for competition law enforcement rather than repeal of anticompetitive laws.

5.3.8 *Implications of Analysis of Scope, Forms and Sources of Anticompetitive Laws*

45. The preceding analysis raises several issues.
- It is clear, at least to competition agencies and advocates, that laws that restrict competition are very harmful. There are potentially large benefits from reforming those laws.
 - The political forces supporting anticompetitive laws are strong and complex and hard to overturn. But there are some drivers for reform.
 - Generally speaking, competition agencies do not have the authority, let alone the power acting on their own, to make substantial inroads, at least in most cases. Competition agencies are usually politically weak. Their main role is as independent agencies applying competition law and sometimes even the legitimacy of their role as advocates is questioned. It is true that some competition agencies are positioned to exert considerable power e.g. in Europe and Korea as discussed later, but even then their power has limits as a “voice of one” in the government. More typically competition agencies are located at the fringes of government e.g. as attachments to departments of law (or Attorney General’s) that have minimal involvement in law making. Their influence at state and local level is also slight if they are national.
 - Competition agencies often find it difficult to get access to Ministers or political leaders especially outside their own “sponsoring” department. They may, more often, engage with bureaucrats from other departments whose political role may not be as powerful as Ministers.

- Accordingly if a nation is to address seriously the problem of harmful anticompetitive laws it would seem to need to go well beyond the normal scope of advocacy activities by a competition regulator and adopt a comprehensive national competition policy (in which the regulator may play a role of greater or lesser significance).
- The breadth of competition laws, as set out above, requires very large resource demands for anticompetitive laws to be addressed comprehensively and resources for this may not be available. As well, the role of the agency could be transferred, possible in an undesirable way, if it became principally involved in broad advocacy and law reform activities.

46. The important point is that anticompetitive laws result from powerful, complex, mostly self-interested forces and that this presents a challenge for competition advocacy. Is the approach of discussing advocacy techniques by competition agencies a sufficient response? Indeed is it a harmful diversion from the need for a more fundamental analysis of the challenge and the associated need for analysis of deeper and broader policy approaches to the issues? None of this is to say that competition reform cannot occur or that competition agencies cannot play a role through advocacy. We now examine some paths to reform.

6. Paths to Reform

47. What steps can be taken to bring about general competition reform?

48. A recent OECD report⁷ highlights some of the necessary steps. It focuses both on the need for good policy design and the need to devise strategies for securing adoption of such reforms that prevent the opponents of change from blocking reforms, whilst addressing their legitimate concerns about its distributional consequences. It describes the task as “dauntingly complex”⁸

6.1 Reform

49. There is no “one size fits all” formula for overcoming the obstacles to reform or even identifying the most urgent reform priorities. Both reform design strategies and reform adoption need to reflect the specific institutional and cultural context of the country. In this context “transplants” of policies and institutions from one environment to another rarely take root. Some degree of adaptation is usually required. Even so, most countries face some common problems especially in the field of competition policy. The fact is that there has been a degree of policy convergence with respect to product market regulation and competition policy.

6.2 Managing the process

50. The OECD report emphasises a number of major themes to emerge from its analysis of reform progress across a range of policy fields in its member countries.

- Elections matter: it pays to have a mandate for change.
- Political leadership is important.
- Successful reform also requires strong institutions and associated leadership.
- Effective communication, underpinned by good research, can help secure such a mandate.

⁷ [Making Reform Happen: Lessons from OECD Countries](#), OECD 2010.

⁸ Ibid, p13.

- Successful reform takes time.
- It pays to engage the opponents of reform and may be necessary to compensate them (although the extent and nature of compensation for “reform losers” depends on a number of factors which make generalisation difficult).

51. Regarding competition law and policy, there have been several special key drivers of reform. They include:

- determined efforts to quantify the costs of the status quo and the potential benefits of reform and to communicate these to stakeholders and the public;
- appropriate transition arrangements to avoid the experience of abrupt changes in economic conditions;
- international competitive pressures and international organisations and agreements can play a very large role in driving policy change often in conjunction with major crises;
- sequencing can be especially important if there is international trade liberalisation (reform begins “at the border” with foreign trade liberalisation). This often creates pressure for “behind the border” reforms under which sectors exposed to international competition press strongly for greater efficiency and policy reform in the non-traded goods sector that supplies many of their inputs;
- technological change can also be important if somewhat ambiguous. In some sectors it has created new possibilities for introducing competition into activities previously characterised by a high degree of natural monopoly. On the other hand, the technical complexities involved in the creation of well functioning markets in sectors like electricity and telecommunications have sometimes created additional obstacles to reform. While the technical problems are real enough, it is also the case that protected insiders can use them to resist reforms that would in fact be quite feasible.

6.3 *The Role of Crises*

52. Crises can create significant reform opportunities by demonstrating the unsustainability of the status quo and by disrupting the interest coalitions that have previously resisted reform. They may also increase the willingness of agents to accept the risks of change.

53. On the other hand crises can also promote anticompetitive laws. The depression of the 1930s is a major example. It led to numerous anticompetitive mergers and cartels and restrictive trade practices which took years to undo. In the current world economic crisis there has been considerable consolidation in the financial services sector and a number of counter measures have had anticompetitive effects e.g. the provision of guarantees to certain classes of financial institutions but not to all, the provision of state aid or funding etc.

54. A crisis may trigger initial reform but that reform may not be sustained if it does not have a stronger political basis. Ideally, reforms should be backed by a political mandate. Moreover, if reforms are announced in a crisis it is important to sustain the political support for them as recovery proceeds otherwise there is a high chance that they will be undone.

6.4 Reform the Reformers

55. The report also emphasises the need to “reform the reformers”. The report emphasises that across a wide field of economic reform such as in healthcare, education, climate change, competition policy and other fields, there are major public administration challenges and there is the need to win the support of public sector stakeholders who may be directly affected by the reform and/or may be key players in its implementation. Some of the key lessons include:

- efforts to raise citizen awareness of and support for reform that feed through to affect the public sector;
- extensive consultation with the officials dealing with reform, whether elected or not. They are more likely to accept and even take ownership of a reform if they are clear about its underlying values and goals and their role within it;
- governments may also reduce uncertainty and therefore opposition to reform by accepting a degree of incrementalism allowing reform to proceed in stages with adequate provision for feedback and adjustment along the way. However, sustaining such an incremental reform over an extended period requires consistent leadership;
- public managers’ perception of political support for public administration reforms appears to have a direct influence on their implementation;
- given the likelihood of government turnover, this points to the need for independent permanent organisations for steering reform, especially after the initial stages; otherwise there is a great risk that incrementalism will give way to inertia and reforms will stall. Since such institutions need broad authority across the state administration, senior levels of government often had a key role to play here;
- there is also a role for international organisations in helping to generate knowledge, citizen awareness and support through the sharing of knowledge and information, policy evaluation and the promotion of co-operation among national administrations by providing international benchmarks and channelling peer pressure. By these means they can increase incentives for reform;
- progress in all domains can be enhanced by institutionalising better policy processes. It is important to look at the policy process as much as the substance of policy reform. A background factor is a gradual evolution in the understanding of regulatory reform in that in many parts of the world this was once seen as an essentially episodic reform (a one off set of interventions aimed at deregulation) but is now understood as an ongoing process that is increasingly integrated with policy making and that comprises a mixture of deregulation and reregulation.

56. The OECD identifies a number of features that characterises the institutions and processes associated with producing high quality regulation. The first is the articulation of a clear and well structured general policy framework under which the roles and competences of the actors are clearly defined; that the system is structured so as to make a “whole of government” approach to reform feasible, by taking into account interactions among institutions; and that there is a strong commitment to a regulatory culture that favours information sharing, trust and co-operation, as well as an explicit high level commitment to the regulatory reform agenda.

57. The report identifies a number of areas in which there has been a degree of international institutional convergence. These include:

- growing reliance on independent regulators;
- more institutionalised and explicit procedures for consultation with stakeholders in the course of policy making;
- the growing popularity of “reform advocacy” bodies and the spread of regulatory impact analysis; and
- institutions to address problems of multilevel governance in the field of regulatory reform.

58. Before considering some implications for competition advocacy, it is useful to outline Australia’s experience of a full assault on anticompetitive laws.

6.5 *Australia’s National Competition Policy*

59. Australia’s experience of conducting a comprehensive national competition policy illustrates the massive political and administrative requirements of an ambitious comprehensive policy approach. This was the approach adopted by Australia in its National Competition Policy introduced in 1995. It was a ten year process of review and reform of the mass of anticompetitive laws and government actions that limited competition.

60. Elements of this model included:

- a serious attempt to change the competition culture of the community.
- enlisting the support of the top political leaders of the federation and their governments.
- the adoption in advance of critical principles of competition policy. These in summary were that nothing that limited competition was warranted unless it could be demonstrated at an independent public inquiry that the restrictions were justified and that the public interest objectives could not be achieved in any other manner including a less anticompetitive manner.
- the establishment and resourcing of institutional machinery to identify and then to review all anticompetitive laws.
- a process for evaluation of those reviews.
- financial rewards for governments which complied with those principles.

61. Understanding this process placed major demands – political, legal and administrative – on Australia’s national and state and territories.

6.6 *Implications for Advocacy*

62. The OECD report and the Australian experience reinforces the view expressed later in this paper that the task of securing national competition reform is much broader than emphasised by the normal statement of tasks for competition advocacy. Clearly most of the lessons set out in the OECD report are very relevant to competition reform and to competition advocacy whether pursued in the broad (as part of a

national competition policy) or narrow (as part of a traditional advocacy approach). This section of the paper does not repeat those lessons but adds a few points relevant to the “narrow” and the “broad” approaches.

63. The point in this paper is not so much to advocate the comprehensive Australia approach – it would be that a more sectoral, one by one approach, works better in many countries. Rather it is to indicate the demands of a complete policy.

- Mere explanation and exposition though desirable is unlikely to have a big effect on some agencies. Here, we are talking about ministers, politically appointed agency heads, and so on. Moreover, some departments may feel they depend for their survival on supporting interest groups. Also departments tend to want to defend their patch and their constituents.
- This is not to say that there is not value in advising departments about the public interest aspects of their favourite laws. Rather, it is to recognise the limitations of this process.
- As noted above, we also need to consider the fact that a competition agency is often on the outer parameters of government.
- Very often antitrust agencies are located in a legal area of a government. The Trade Practices Commission of Australia was for many years in the Attorney General’s Department, a department which took no interest in broad economic matters. In later years it was shifted to the Treasury Department and had a much larger input into economic policy. In the United States the Department of Justice is not a general economic agency. The Federal Trade Commission is an independent agency outside the government. As a result these agencies are often not involved or can be very marginal when key policies affecting competition are introduced. An example is the recent measures taken to deal with the global financial crisis in the United States. The competition agencies were seemingly not involved despite the far reaching impact of GFC countermeasures on competition.
- The agency may even fear an intrusion on its independence as it starts becoming involved in politics. Agencies are not elected and their job is to enforce the law, not be advocates. Advocacy is sometimes seen as illegitimate and it may conflict with enforcement.

64. None of this is to say that there should not be approaches and attempts to inform and educate government departments. Rather it is simply to acknowledge the powerful drivers of anticompetitive laws and to suggest that if there is to be action against them it needs to be based on much more than the traditional advocacy model.

7. Policy Making Processes⁹

65. It is also important to understand policy making processes in government. There are two reasons why this is necessary. The first is that even on a traditional limited view of advocacy within government it is necessary their competition agencies understand how governments work. The second is that a similar

⁹ For three general accounts of these issues see books by my colleagues at the Australia and New Zealand School of Government: Claudia Scott, Karen Baehler, [Adding Value to Policy Analysis and Advice](#), ANZSOG Series, UNSW Press, Sydney, 2010 page 37-38. // Sarah Maddison, Richard Dennis, [An Introduction to Australian Public Policy: Theory and Practice](#), Cambridge University Press, Cambridge, United Kingdom, 2010. // Catherine Althaus, Peter Bridgman, Glyn Davis, [The Australian Policy Handbook](#), 4th Edition, Allen & Unwin NSW, 2007.

understanding is necessary if a broader approach to the achievement of competition reform is being pursued.

66. There is a myriad of broad accounts and models of how policy is made. They include:

- the rational, comprehensive model. This also is sometimes referred to as the “authoritative choice” model or sometimes as the “insider” model;
- the network interaction model. This sees policy as “structured interaction” between all involved whether inside or outside government;
- the incrementalist model and models which emphasise the somewhat chaotic, ad hoc, random nature of policy making processes; and
- models which focus on the circumstance in which policy is made.

67. A brief account of some of these models follows. As we do so, it is useful to note the distinction between material changes in the law (i.e. changes which have an effect) and symbolic changes which are intended to have a symbolic effect but do not necessarily have any serious impact.

7.1 Models of Policy Processes

7.1.1 The Rational, Comprehensive Model

68. The rational-comprehensive model sees policy making as involving a well structured, orderly sequence of activities, characterised by rational decision making and more likely than other processes to achieve ideal outcomes. This is sometimes called an insider model. One of many versions identifies the following sequence:

- *Identify issues:* the recognition of a problem as needing attention, so that it joins the government’s policy agenda
- *Policy analysis:* the assembling of information to frame the issue and understand the problem
- *Policy instruments:* determining the appropriate tools and approaches to design a policy response
- *Consultation:* a structured process to seek and respond to views about a policy issue from relevant interest groups or individuals, or the community generally
- *Co-ordination:* ensuring that politics, policy and administration work together
- *Decision:* confirmation of policy by government, usually via a formal resolution of cabinet
- *Implementation:* giving expression to the decision through legislation or a programme
- *Evaluation:* a process to systematically examine the effects of a policy programme).¹⁰

¹⁰ The Australian Policy Handbook, Katharine Althous, Peter Bridgman and Glyn Davis, 4th Edition, Allen and Unwin, Sydney, 2007).

69. This model can also be translated into a related concrete institutional process, sometimes referred to as the policy cycle. An Australian example is set out below:

Managing the policy process 203

Table 12.1 Indicative timetable for a policy cycle

Policy step	Process	Indicative times	
		Short	Long
Identifying issues	<ul style="list-style-type: none"> a briefing paper is prepared minister and agency agree a policy problem exists work is commissioned 	3 weeks	2 months
Policy analysis	<ul style="list-style-type: none"> data collected about the problem agency seeks information on responses in other jurisdictions a policy paper is prepared and considered by the agency and minister 	4 weeks	4 months
Policy instruments	<ul style="list-style-type: none"> potential policy instruments considered, compared, and a choice made if necessary, draft legislation prepared for consultation 	2 weeks	5 months (drafting legislation can take longer)
Consultation	<ul style="list-style-type: none"> discussion with relevant government agencies discussion with external interest groups intra- and inter-governmental negotiations may be undertaken concurrently with other tasks 	4 weeks	3 months
Coordination	<ul style="list-style-type: none"> analysis by central agencies links to budget and legislative program established negotiation over cabinet submission clearance for inclusion on cabinet agenda 	2 weeks	3 months
Decision	<ul style="list-style-type: none"> consideration by cabinet decision issued as a cabinet minute 	2 weeks	1 month
Implementation	<ul style="list-style-type: none"> agency secures resources to act necessary legislation passed by parliament and given assent (parliamentary times depend on available sittings and are not included) subordinate legislation developed and promulgated program established and operational 	5 weeks	6 months
Evaluation	<ul style="list-style-type: none"> program review, report and modifications 	26 weeks	1 year
Timing range	<ul style="list-style-type: none"> assumes legislation takes no longer than six months to prepare, and excludes parliamentary stages 	48 weeks	3 years

70. No one suggests that policy making necessarily proceeds in such an ideal and orderly fashion, nor that the emphasis in this account on events inside the government proceed in isolation from the outside world. Nevertheless, this model highlights the stages and complexities of a policy process and suggests that a competition agency advocacy effort must take account of these processes in fashioning its contribution.

71. This model has some certain virtues.

- as a normative model it sets out an ideal process for rational decision making;
- as an empirical model it highlights the role of processes involved in government decision making and makes it clear that it is not just a matter of working with institutions, but of taking account of processes and the many elements that are involved in the decision making process; and
- it captures the link between rational policy analysis and rational process, although in practice this link is not very well developed. It also builds in a role for knowledge and research.

72. For agencies it means that they must learn to accommodate their advocacy within the established processes of government and recognise the many elements of decision making.

73. Sometimes, as the model implies, timing of an initiative is important. The struggle to get onto the agenda is quite relevant. The connection to other parts of government, besides the immediate department dealing with the matter, is also apparent.

74. Having said this, this model has considerable limitations in failing to take into account the very messy processes that are involved in much policy making. The model also is top down and tends to ignore the role of interest groups and networks as discussed below.

7.1.2 *Network Interaction Models*

75. The second broad approach to policy causality focuses on group or collective forces – social groupings, networks and coalitions across society and across policy sectors, as determinants of policy. These include class analysis and pluralism approaches.

76. The class analysis emphasises the concentration of power and influence among an elite group or economic class and concludes the policy decisions tend to favour them.

77. A somewhat different view was developed by pluralists who emphasised the widespread distribution of power among other competing groups. This tends to see the state as a relatively neutral decision making institution open to influence by a variety of interest groups and political decisions as the outcome of bargaining and compromise between groups.

78. Both these approaches have their critics. The main criticism is that while there is a degree of truth in their theories they have exaggerated their significance.

79. Others stress the importance of theories that focus on the role of the state rather than the influence of society. Theories of institutionalism emphasise the important role of institutions as political actors in their own right. The term institutions refer to formal institutions such as the bureaucracy as well as legal and cultural codes and rules that affect actors calculations of their strategies and actions. Most such theories emphasise that policy makers have little influence or control over outcomes.

80. Another variant, “statism”, emphasises organised social structures and political institutions as important but sees the state as such as a key agent in political processes. Rather than focussing on institutions statisticians argue that the central and critical role of the state in society allows it to organise and structure social relations and institutions and that policy preferences are dependent on the social context in which the state is embedded.

7.1.3 *“Real World” Model*

81. A third broad set of models tries to focus on what it sees as more realistic or “real world” accounts of how policy is made. An early model is the so called incremental model expanded in the influential article by Charles A. Lindblom “*The Science of Muddling Through*”.¹¹

82. This emphasises the messy processes, political compromises, limited information and analytical bases, attachment to minor variations to the status quo, focus on ills to be relieved rather than goals to be

¹¹ “The Science of Muddling Through”, Charles A Lindblom, Public Administration Review, vol 19, no 2, pg 79-88 1959.

achieved, lack of clear goal definition and a myriad of other features that represent departures from a rational decision making model. Once again there are strengths and weaknesses in this model. For the competition agency advocate there is an important emphasis on understanding what is going on during the time that one makes policy recommendations. Later models include the “Garbage Can Theory” in which various elements or streams – problems, solutions and participants – slosh around and occasionally mix.¹² John Kingdom has established the “window of opportunity” model¹³. This focuses on how particular moments provide unique opportunities to generate policy decisions, and to instigate and take control of policy agendas. This implies that competition policy advocates should have solutions ready to deploy when the right opportunity arises often once in a generation. Baumgartner and Jones apply the concept of “punctuated equilibrium” from the fields of evolutionary biology and computer science to describe policy change. They suggest that policy tends to remain stable over long periods with only incremental changes until the perpetual and cognitive errors in these policies accumulate to cause sudden changes in public and elite understanding of problems. These punctuations alter the balance of power between groups representing entrenched interests and those seeking to fight them. The theories suggest that it is the entry of new participants to a debate, and the multiple interactions among groups and policy subsystems, that result in strong pressures for change which cannot be resisted. The theory also emphasises the role of the media in cycles of punctuated equilibrium, as media portrayals can contribute to the instability of images and institutions.¹⁴ Once again, this implies the need for agencies to be ready with agendas for change when deregulation occurs.

7.1.4 *Alternative Policy Scenarios*

83. A fourth approach concentrates on specifying different kinds of circumstances or scenarios under which policy is made. These include:

- *comprehensive reviews* (which correspond roughly to the rational comprehensive model described earlier).
- *ritual combat* (in which there is a clash of interest groups especially governments and opposition parties).
- *learning from experience* (often arising from circumstances where policy goes wrong and there is an attempt to redesign and improve it).
- *crisis and reaction models* (where some kind of crisis provokes the reaction).
- *entrepreneurial models* (where a policy entrepreneur champions ideas that lead to change).
- *interagency dances* (where sets of agencies working in conjunction or in conflict generate pressures for change).
- *policy at arm’s length models* (in which independent enquiries are conducted into policy).
- *anticipation models* (in which anticipation of future changes leads to changes in policy e.g. climate change).
- *delivering on the mandate models* (in which government election commitments have to be implemented).

¹² Cohen M, March J and Olsenjay, “A Garbage Can Model of Organisational Choice”, Administrative Science Quarterly, vol 17 pg 1-25, 1972.

¹³ John Kingdom, Agendas, Alternatives and Public Policies, Harper Collins New York, 1995.

¹⁴ For a description of the model see Claudia Scott, Karen Baehler, Adding Value to Policy Analysis and Advice, ANZSOG Series, UNSW Press, Sydney, 2010 page 37-38.

7.1.5 *Other Features of Policy Making*

84. The literature on policy making emphasises a range of other issues. First, decisions are interdisciplinary and multivalued (i.e. not just about efficiency but fairness etc.). The approach of law or economics is only one consideration. Second, in a democracy, public opinion is important. No matter how compelling an argument is, it may count for little if public opinion does not support it now - and further on in time, can accept its consequences.¹⁵ Third, Governments are at anytime considering a wide range of policies. They may simply give higher priority to the implementation of other policies and push others back in the queue.

7.2 *Implications*

85. This account of the policy making process has many implications for advocacy.

- It highlights the complex processes at work in making policy in modern governments. It also brings out how powerful outside forces have an impact on the process, not to mention more random and episodic events.
- On a broader view of advocacy and the need for competition policy reform, this account also draws attention to further layers of complexity and difficulty that are involved in bringing about reform.
- Even on a relatively narrow and traditional view of advocacy, agencies need to have an understanding of policy processes to maximise the timeliness and impact of their advocacy.
- There are also some important issues about the degree to which an agency becomes involved in the internal mechanisms of government. In the Westminster system the agency may seek to exercise its influence mainly through its “sponsoring” department. It can then be important which department this is – a powerful central economic agency which supports competition law and policy (not all do) or, say, a law department or an industry department (which may be pro-businesses or sometimes the opposite). In this system Ministries may or may not welcome competition advocacy by a competition agency.
- There are issues about how deeply involved an agency – especially one whose main task is politically independent law enforcement – becomes involved in intra-government machinations.

8. **Alternative Models**

86. Before proceeding further it is desirable to consider the alternative institutional frameworks in which competition agencies work.

87. The United States advocacy model is not the only possible model for dealing with these matters. The alternatives include:

- The European/Korean model. In this model the head of the competition agency is a member of the commission (Europe) or the cabinet (Korea). This is potentially important because the regulator is present when major decisions are being made affecting all areas of the economy. They are “inside” government and “at the top”.
- There is a range of institutional arrangements in different countries which bring agencies to varying degrees of closeness in their interaction with government. This also has a bearing on law they seek to bring about competition reform.

¹⁵ Eric M. Patashnik, *Reforms at Risk, What Happens after Majority Policy Changes are Enacted*, Princeton University Press, New Jersey, USA, 2008.

- The Chinese model. The model embodied in the Chinese Antimonopoly Law 2008 incorporates a prohibition on the abuse of “administrative monopoly” by any agency of government at any level. Even though the enforcement mechanisms in the Chinese law appear to be rather weak at this stage this does represent another approach.
- The independent advocate. Under this model most of the advocacy is done by an agency that is independent of the competition law enforcement body. An example is Australia’s Productivity Commission.
- The matter is left to government departments.

88. These are not the only imaginable models but the important point which emerges is that there is a need to look at other institutional options than the USA advocacy model. Also, the policy recommendations which would be made to these bodies about how they conduct their business in regard to trying to achieve competition policy reform would be quite different depending on their location in the political context.

9. Dealing with other Parts of Government

89. This brings us back to some of the specifics of the topic under consideration, which is the role of competition advocacy in relation to other parts of government.

90. It should be clear from the discussion thus far that there are many approaches to competition advocacy regarding other parts of the government than just intimated by the traditional advocacy model. Policy guidance on dealing with other parts of government must come out of a consideration of a range of models. The Europeans and Koreans do not have to go cap in hand to other parts of government to get a hearing; the Chinese actually have a law that overrides other laws at least in principle if not in practice, and so on. The Europeans again can override or give directives to sector regulators at least in principle in certain matters.

91. Even so, this paper will proceed to look more narrowly at ways of dealing with other parts of government.

92. Some dilemmas arise, no matter what level of advocacy is being pushed.

- The seeming legitimacy of the competition agency may be questioned. Some say the agency is set up to enforce the law and that it is not its business to “stick its nose” into other parts of government. Moreover, if it goes public it is often very unwelcome and it may be punished, e.g. by reduced resources, loss of jurisdiction and so on.
- In the Westminster system, agencies are meant to work through their sponsoring department (who may see itself, not the agency, as the policy advocate within government).
 - There is the question of using the most powerful departments as an ally.
 - It is a good idea to talk to departments generally about competition rather than pursuing them on individual matters. Try to set a general framework rather than go in on single issues.
 - Try to be involved in advance of competition issues.
 - Recognise that it is outside pressure that leads to change not meetings inside the government.
 - Consider using publicity as a weapon.
 - Consultation mechanisms should be employed but they have their limitations.

93. Much of the power of competition policy derives from its general concepts and its general application across the board. An enforcement decision in one sector may have profound effects not only across the rest of the private sector but it may also influence attitudes of different government departments. When there is serious enforcement there is a wide educational effect.

10. Stakeholder Identification

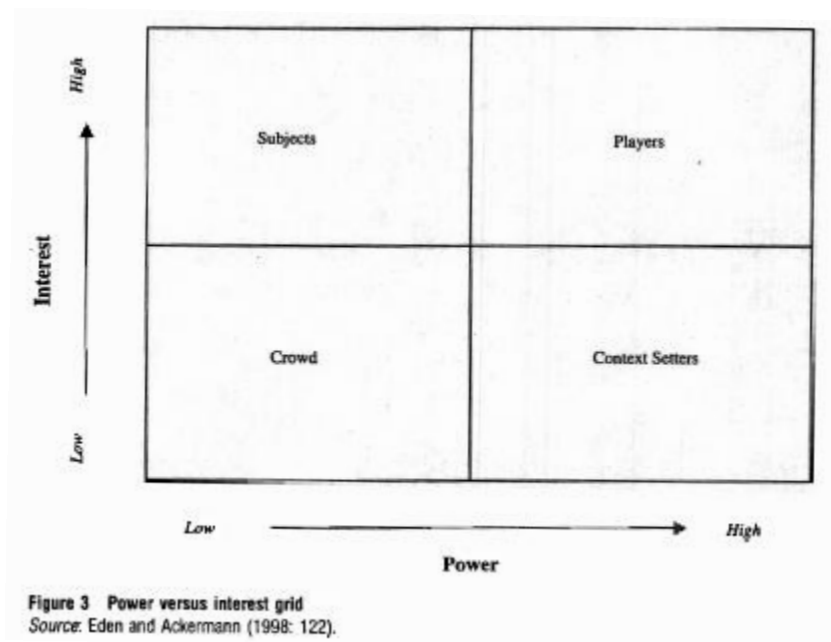
94. It is important to identify “stakeholders” i.e. “any groups or individual who can affect or is affected by the achievement of the organisation’s objectives.”¹⁶ Paul Nutt’s Why Decisions Fail illustrates this with a study of 400 strategic decisions. 200 “failed” largely because decision markets did not attend to interests and information held by key stakeholders. More specifically most public policy decisions require the establishment of a “winning coalition” to achieve and sustain reform so stakeholder identification is required.

95. An array of techniques is available for this exercise. According to JM Bryson this can be grouped under four headings:

- Organising participation;
- Creating ideas for strategic interventions;
- Building a winning coalition around proposal development; and
- Implementing, monitoring and evaluating strategic interventions¹⁷

96. One of the best known of the myriad of stakeholder identification techniques is the “power versus interest” grid where a two by two matrix sets out the dimensions of stakeholder interest (direct economic interest rather than intellectual interest) and the stakeholder’s power to affect the outcome.

97. A typical such grid would be as follows:



98. Four categories of stakeholders result: *players* who have both an interest and significant power; *subjects* who have an interest but little power; *context setters* who have power but little direct interest; and the *crowd* which consists of stakeholders with little interest or power.

99. This technique is one of many used in stakeholder analysis. Reference is made to it in this paper mainly to draw attention to the body of knowledge which competition agencies can consider dealing with in their advocacy efforts.

11. Conclusions

100. The role of advocacy within government can be viewed from two perspectives. One is a traditional view which sees the agency as being outside government and having a somewhat limited role in making submissions, providing briefings and writing papers about particular issues requiring competition reform. Another view starts by identifying the nature of the problem which competition advocacy is concerned with and then considering some of the broad challenges presented to government and some of the possible broad responses which may include a role for a competition agency.

101. This paper devotes more its space to considering the broad approach.

- The paper discloses that there is a vast range of anticompetitive laws at all levels of government. They also take many forms. This suggests the breadth and complexity of any approach to deal with them.
- The paper also considers the sources of anticompetitive laws. Anticompetitive laws are driven by major complex political forces, many of which are resistant to pressure for change.
- It is important that these laws are dealt with properly and comprehensively by governments.
- The task of eradicating such laws, or even some of them, is difficult and far reaching.
- Despite the difficulties, there have been significant improvements in competition reform in many countries. A recent OECD report highlights some of the ways of bringing about reform. Many of these methods have relevance for the role of the competition agency as an advocate whether it plays a large or a small role in reform.
- What is needed is a careful consideration of how a country can best eradicate anticompetitive laws. The challenge is difficult, large, lengthy and requires a considerable investment of a political and bureaucratic time.
- Much of the challenge of dealing with national anticompetitive laws goes beyond the statutory powers, conventional roles and capabilities of competition agencies.
- A competition agency on its own is unlikely to be able to achieve a great deal.
- They operate at the wrong level of government often. That is, they may be national regulators and their influence at state and local level might be very slight.
- Competition agencies are themselves not very central to government. They are fringe players at best. Moreover, in the interest of independence they often do not want to get too close to government.

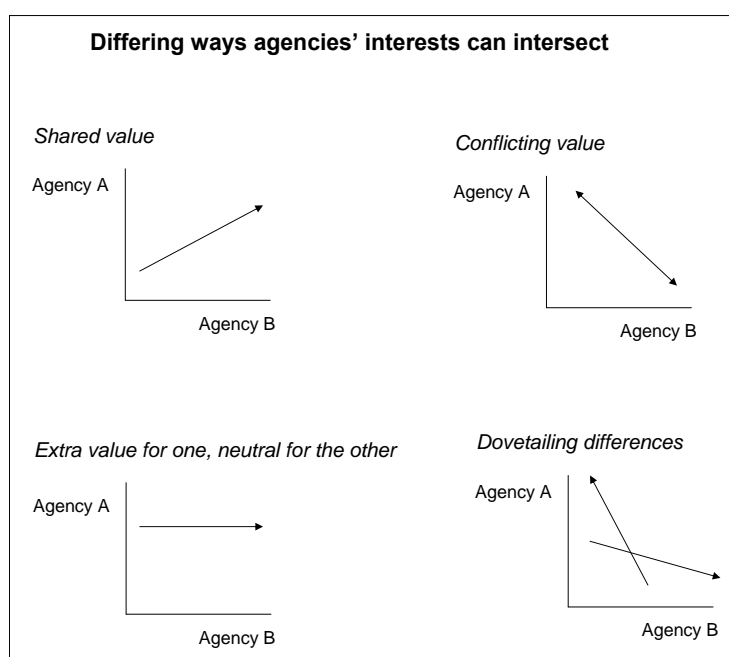
- Even so, it is likely that agencies will play a role that is growingly important as reforms of anticompetitive laws get considered.
- A consideration of the range of institutional arrangements in regard to competition agencies suggests that varying roles might be played by competition agencies in any national competition policy depending partly on their institutional situation. There are many lessons for competition agencies from a broad analysis of a comprehensive national competition policy and the associated policy processes even where agencies play a limited role.
- In all situations some fundamental features are still very important. The first is that agencies have a good enforcement record to add to their credibility. The second is an ability to clearly communicate important messages about the value of competition.
- Another implication is that to get change requires:
 - General community support
 - The support of politicians, especially national political leaders
- Yet, it is important from a policy perspective that an assault is made on these anticompetitive laws.

APPENDIX 1

A NOTE ON DEALING WITH REGULATORY BODIES

Arrangements between regulators are usually less than ideal

1. In practice many countries have not achieved the optimum outcome for competition regulatory agency relationships desired by competition advocates. It is necessary to know why. It may be that, in part, competition advocates seek more than is reasonable, given the fact that governments pursue a variety of objectives other than competition ones. Also, competition agencies and regulators may have different core competencies and should each separately do the tasks for which they are most suited. However, it is also the case that less than ideal outcomes reflect other factors – interest groups lobbying; a weak competition culture; failure of top policy makers to recognise the value of competition and the desirability of strong, effective competition agencies; a general lack of institutional capability in the public sector especially in developing countries; a slow emergence or non acceptance of truly independent regulatory agencies and so on.
2. Another factor is that governments see a number of regulatory tasks as being necessary in regulated sectors, including technical, wholesale, retail, and public service regulation, as well as dispute regulation and competition oversight itself. This mixture of activities with their many varying goals tends to obscure the need to adhere to competition principles as much as possible. It also creates complex institutional arrangements. Competition agencies and their goals are only a part of the brew.
3. How well the compatibility of competition and sectoral regulation bodies works out in different countries varies. In the United States, for example, there appears to be relatively strong public support for competition policy, and this can spill over into making it more likely that regulatory arrangements will be relatively more attuned than in many other countries to competition sensitivities. At the other end of the spectrum the difficulties seem large in developing countries.
4. In the end it is important that discussions of the relationship of competition agencies and national regulation acknowledge that in many cases arrangements fall short of ideal. It then becomes important to discuss practical ways of dealing with these situations rather than just complaining and advocating ideal arrangements that are not achievable. The diagram below shows a range of possible relationships between agencies.



Tasks for Competition Authorities who are not Primary Enforcers

5. Competition authorities can provide valuable input for the tasks for which they are not primary enforcers. Instruments of co-operation that merit consideration include:

- Giving statutory powers to the competition agency for some aspects of sector regulation e.g. determining whether there is substantial market power as a precondition for the applicability of regulation.
- Giving competition authorities and regulators concurrent powers of enforcement of the national competition law.
- Placing senior officials of competition agencies on oversight boards for sectoral regulation and vice versa.
- Providing competition authorities with the standing to submit public comments on the application of regulations that require written responses by the regulator prior to final decisions.
- Establishing a written framework which governs co-operation between sector regulators and competition authorities.
- Encouraging personal transfers or exchanges between the sector regulator and competition authority.
- Exchanging information informally between sector regulator and competition authority.
- Head of competition authority can be given a cabinet level standing.
- Regulator and competition authority can be unified, ensuring internal consistency with respect to competition decisions.

Consistency in Application of the Law

6. In addition, steps can be taken to ensure consistency in the application of competition laws. This would include:

- The appeals route for competition decisions should converge.
- Regulatory impact assessment should take into account competition objectives, among other goals.
- Competition authorities should be given the right to intervene with respect to existing and proposed regulations that are potentially harmful to competition.
- An absence of legislative obstacles to co-operation.

7. These conditions are often hard to realise. They need further study if there are to be good results when regulatory power spreads across more than one agency.

Productive Interagency Collaboration

8. Having identified these steps as desirable in an imperfect situation, we need to note some of the conditions under which interagency collaboration is conducive to productive relationships. They are:

- Shared culture and values - for example, a general culture of competition in the community that leads noncompetition agencies to see the value of competition. Likewise, competition agencies need to recognise the values and objectives which drive sectoral regulators. This is likely to lead to greater interagency agreement on objectives, and a willingness to co-operate.
- Strong direction from the most powerful parts of government that the agencies should collaborate effectively.
- Legislative recognition of the desirability of co-operation
- A recognition and acceptance by agencies that they need to work together -on an ongoing basis – to achieve their goals.
- Agreement on the allocation of roles and responsibilities.
- A willingness to commit resources.
- A willingness to commit authority to problem-solving.
- Ongoing arrangements rather than ad hoc problem-solving
- Careful management of the political environment (which involves a wider number of forces than each agency is used to dealing with)

9. What is important is to collect an inventory of problems in relationships of competition authorities and sectoral regulators; to acknowledge that in most cases the legislative allocation of powers and responsibilities of the competition authorities and sectoral regulators will be less than ideal; to identify the problems; and to analyse and implement solutions that maximise the public value of interagency collaboration.