Competition Policy: Beware of Using it to Harm Competition

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Introduction

• Competition benefits consumers.

• Goal of competition policy should be to prevent conduct that harms consumers.

• Entry is an essential component of competition.
  – But protection of entrants does not always foster competition.
  – Danger is that competition policy will be used to protect entrants and harm consumers.
Entry Restrictions
Three Examples of US Entry Restrictions

• Airlines
  – Fares fell
  – Wages fell
  – Capacity increased
  – Entry

• Hospitals
  – Certificate of Need required
  – High prices
  – Corruption

• Wal-Mart
  – Low Prices
  – Especially helps low income consumers
  – Target of local entry restrictions
Real Yield (in cents per passenger mile) 
(1970 - 2007)

Sources: Air Transport Association: <http://www.airlines.org/economics/finance/PaPricesYield.htm>.
Lesson

• Large gains from getting rid of entry restrictions.

• One of the most important tasks of a competition authority is to persuade other branches of government that the imposition of entry restrictions can be harmful to consumers.

• Attempts at persuasion may encounter strong political opposition.
Competition Laws To Prevent Entry Deterring Conduct
• Appropriate to prevent conduct that prevents entry and thereby raises prices.

• Examples
  – Standard setting
  – Exclusive distribution
  – Price predation

• But…..
• Competition laws can be misused to protect entrants and harm competition
• Common complaint:
  “The incumbent erected a barrier to entry so I cannot compete.”

• 3 problems with complaint:
  – Barrier to entry – meaning?
  – No market power alleged
  – No showing of elevated pricing

• Note that competition makes survival difficult for an entrant.
Let’s Revisit Previous Cases

• Predation
  – Real or hypothetical
  – Actual examples rare

• Exclusive distribution
  – Efficiency
  – Balance efficiency gain against competitive loss
What Should Be Required For A Violation In Exclusive Distribution?

a) Market power

b) No good alternative distribution

c) If possible, an empirical study, that the practice raised price
Abuse of Superior Bargaining Position

• Not needed if there already exists laws preventing a) use of market power to exclude and b) when effect is to raise price.

• Notions of “unfair” or “unjust” are too vague. Did price go up or not?

• Japan’s Abuse Law
  a) Not needed in light of abuse of dominance law
  b) Is vague – bans “unfair” methods
  c) No requirement of market power
  d) No requirement of elevated prices
• Such laws likely to protect inefficient firms.

• US has one such law and can’t get rid of it.
Conclusion

• Competition agency should promote the view across other branches of government that government mandated entry restrictions are undesirable.

• Competition authorities should avoid the misuse of competition laws to protect firms from competition.

• No need for laws dealing with abuse of superior bargaining position if laws already have abuse of dominance provisions.