



**ACTIVATING COMPETITION:**  
*The Consumer Protection – Competition  
Interface*

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How we think about the connections between competition protection and consumer protection matters.

In Australia, importantly, key provisions relating to consumer protection and anti-competitive conduct and mergers are combined in a single act – the *Trade Practices Act 1974*.

In this paper, I propose, perhaps controversially, that the implicit understanding of the founders of our trade practices regimes – that consumer protection and competition protection are intimately and necessarily connected - has been, if not lost, then at least temporarily misplaced.

Ron Bannerman, an early Chairman of the then Trade Practices Commission, articulated the connection perfectly:

*“Consumers not only benefit from competition, they activate it, and one of the purposes of consumer protection law is to ensure they are in a position to do so. Thus I believe administration is better placed to serve the total interest of consumers if it also has responsibilities to encourage market forces and industry efficiency.”<sup>1</sup>*

I will return to the issue of structure, raised in that quote, later. But the intimate connection between competition and consumer protection law that Bannerman describes is straightforward to illustrate. For example, laws prohibiting misleading and deceptive conduct, which are generally perceived as consumer protections, are in fact also competition protections in that they prohibit competitors from competing unfairly against one another by enticing consumers to purchase one firm’s offering on the basis of inaccurate information. On the other hand, laws outlawing price fixing for example, which are anti-competitive prohibitions, ensure that prices for consumers are not raised unfairly.

This paper argues that current economic thinking and research, and regulatory thinking and practice, would profit from a firmer re-connection of the two disciplines, that a stronger economic policy underpinning for evaluating consumer protection provisions is needed, and that a new approach, which considers market outcomes in a cohesive fashion, would be beneficial for competition and consumer welfare in an economy.

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<sup>1</sup> Trade Practices Commission, Annual Report, 1983/84.

## COMPETITION AND CONSUMERS

There is generally little or no argument about the statement that competition is good for consumers. Much empirical evidence attests to the fact that consumers benefit, in terms of the price-quality proposition, when a market is competitive.

Nor is there much dispute that for markets to work effectively, there must be firms<sup>2</sup> competing for consumers' business, and consumers making choices about various value propositions. Basically, markets have two sides and for a market to be working effectively, the demand side and the supply side need to be operating well: suppliers need to be competitive and consumers need to be able to exercise their market power.

A substantial body of economic work is devoted to detailed study and analysis of the factors which give rise to competitive firms - firm organisational structure and its interaction with competitive pressures within product markets – and those factors which lead to market power. Such study over many years has yielded a body of theory and related regulatory practice designed to control market structure<sup>3</sup> as well as to control certain anti-competitive behaviours for example collusive cartel conduct, specific types of vertical and horizontal price restraints and resale price maintenance.

For reasons which are not entirely apparent, much less economic analysis has been devoted to detailed study of demand side issues, how consumers exercise their market power<sup>4</sup>; there is little study of, for example:

- a) anti-competitive firm behaviour which disables the consumers' ability to make informed choices, and thus activate competition; or
- b) consumer behaviour which leads to market frictions and/or barriers to entry and possible remedial action.

How consumers behave in markets, in reality, and how and when consumers can or cannot activate competition, is certainly now more actively studied – especially within the newly acceptable field of behavioural economics, in the economics of information which includes the lemons and credence goods problems, in the economics of lock-in and switching costs (as much a branch of competition economics as consumer protection economics), and so on; but although a range of work is available, it has not emerged as a unified theory. Nor has the economics of consumer protection been integrated effectively with competition analyses which in my view are essential for the benefit of both disciplines.<sup>5</sup>

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<sup>2</sup> In terms of the existence of competitive firms, a market, depending on its definition, may only have a single firm in a nation state or geographic area but others operating in other jurisdictions which could enter – thus constraining the apparent monopolist.

<sup>3</sup> Merger guidelines or their equivalents exist in all countries with a competition regulator (see for example the Australian version at [www.accc.gov.au](http://www.accc.gov.au)).

<sup>4</sup> A very important piece of preliminary work on the economics of consumer policy has been done by John Vickers, eminent economist and the current chair of the Office of Fair Trading in the UK; see in particular the annex to his British Academy Keynes Lecture.

<sup>5</sup> There are certain notable exceptions to this general comment, where authors have directed their attention to the issue of a unified theory; in particular, see Averitt and Lande's paper on consumer sovereignty.

Part of the reason why an overall analytical model has not properly emerged may be due to a lack of cohesion in thinking about how markets policy and regulation should be accomplished.

### Towards a coherent approach to enabling markets to function

That “free markets” exist within a web of enabling and controlling law may seem paradoxical. However, all markets, even those that approach conditions of ‘perfect competition’ rely on a framework of rules, at minimum on laws of contract. The history of economic law in modern economies acknowledges that without competition law – such as prohibitions on collusive conduct - and enforcement of that law, competitive conditions would be unlikely to result or be maintained in many markets. Thus, regulation is needed to ensure that “free markets” can work.<sup>6</sup>

Not unreasonably, the emphasis of economic law has been on preventing certain types of conduct from occurring or certain types of structures (firms with market power) from emerging through acquisitions in a market<sup>7</sup> - these are competition protections designed to ensure that competition is not degraded. But preventing certain conduct from damaging competition – that is, stopping competition from being degraded - is not necessarily identical to promoting certain conduct in order to enhance competition.

The purpose of economic regulation (or deregulation for that matter) is to ensure that markets function effectively for the benefit of consumers. The job of economic regulation, in my view, should be defined as “*enabling markets to work*”. Within this framework, anti-trust laws speak to the protection of the *availability* of consumer choice; consumer protection laws, on the other hand, speak to the protection of the *conditions for effective exercise* of consumer choice. Both are crucial to functioning markets.

Two distinctions need to be kept in mind.

Firstly, there are a range of important consumer protection laws that are not strictly relevant to the maintenance of conditions for exercise of choice in the market. Laws requiring minimum safety of products and services are examples, as are laws that goods must be of merchantable quality; such laws recognize that competition may not be the best method or may be an inappropriate method for delivering desired social outcomes. In relation to consumer protections aimed at the conditions for choice – in other words the reduction of market power of firms - the specific issues of relevance could be placed under the label of ‘competition-enhancing consumer protections’ and only these are the subject of discussion in this paper.

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<sup>6</sup> It is crucial to distinguish between “free enterprise” and free markets. Free enterprise is a situation where businesses are free to do as they please; free markets, on the other hand, describe a situation where businesses are constrained from damaging competition or interfering with the consumer’s ability to exercise choice in the market.

<sup>7</sup> There is no law, of course, preventing a firm from achieving dominance of the market through better competitive strategies (such a first mover advantage, better cost controls, etc); in fact, this type of competition is by definition to be encouraged, although the behaviour of any firm achieving dominance will attract a certain level of attention from regulators.

Secondly, within that category of ‘competition-enhancing consumer protections’, a very clear differentiation should be made between the issue of a consumer’s skills (or ability) and willingness to exercise choice, and the conditions in a market that could prevent a willing and able consumer from exercising that choice. Within the former, skills and ability are addressed by education systems, consumer awareness programs and so on, while willingness to “shop around” is dependent on a variety of factors including consumer awareness, the cost of the purchase, time availability, complexity of comparisons, as well as how competitive the market appears to be.<sup>8</sup> Improving consumer rights awareness, education systems ensuring literacy and numeracy, as well as the development of market skills, and other strategies are complementary to, but they are logically separate from, the strategy of protecting the conditions for effective exercise of choice.

Some see an inevitable tension between the perspectives of competition policy and consumer protection policy. Stephen Corones and Philip Clarke, for example, in their excellent text on consumer protection law say “*From a competition policy perspective, markets with low barriers to entry, low sunk costs, many rivals, and rapid rates of entry and exit will tend to conform with the textbook model of a fully competitive market. Yet from a consumer protection perspective, such markets (eg. used cars, home renovations) may present some of the most severe information problems that consumer confront.*”<sup>9</sup> That tension is in fact a very useful tool in thinking about how competition protection and consumer protection might be most usefully integrated.

#### The focus on “making markets work” – what does this look like in practice?

An agency or combination of agencies charged with the task of ‘enablement of a market’s functioning’ would have two main and equally important roles.

One is the standard competition regulator role - ensuring that firms trade competitively and fairly by, for example, preventing or prosecuting anti-competitive acquisitions, or prosecuting anti-competitive behaviour towards competitors.

The second is a pro-active and enabling role – ensuring that consumers have the conditions in a market to choose and thus activate competition by, for example, prosecuting for misleading conduct, requiring certain forms of disclosure, providing comparative information to reduce the complexity of choosing between alternatives, proscribing anti-consumer practices in an industry (such as a refusal to provide consumers with their podiatry consultation results thus limiting where they can shop for their orthotics).

The first role – the standard competition regulator function – is extensively studied as noted earlier and it is widely accepted that vigorous intervention is needed to stop competition degrading; the second role, the enabling role, except for the type of action

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<sup>8</sup> Somewhat paradoxically, there is evidence that the more competitive the market appears to be, the more likely consumers will not spend a large effort on ‘shopping around’ since significant savings are less likely. See Waterson for more on this issue.

<sup>9</sup> Corones and Clarke, p 17.

taken under misleading conduct laws, is only beginning to be more clearly understood and emerge as an area for serious economic study.

For whatever reasons, remedial actions on the “demand side” of the market are often pursued with much more reluctance than those on the “supply side”. In fact, one can still hear comment that such interventions are nothing more than an interference with the consumer’s freedom of choice – on the basis presumably that in a market situation, the value of choice is more important to consumers than any other value (behavioural economics in particular raises issues about this, especially given our bounded rationality and the ease of getting to choice overload).

Nevertheless, interest in enabling consumers to activate competition more effectively appears to be growing and there are indications that thinking is becoming more sophisticated.<sup>10</sup> This is due, in part, to the deregulation of a number of sectors of the economy such as banking, telecommunications and energy – carried out often with insufficient attention to the potential market and welfare failures for consumers and with a perhaps naïve understanding of the power of incumbency. Community backlash, in some cases substantial backlash in a number of countries, has led to a variety of remedial interventions – not all of which have been either successful or useful. More positively, the change is also due to a clearer recognition by governments that consumer empowerment is essential for achieving competitive markets and thus, competitive economies. That notion is explicitly articulated in such documents as the UK Department of Trade and Industry’s work on extending competitive markets – one element of which is empowered consumers.<sup>11</sup> This interest in consumer empowerment, in turn, is leading to a new body of work for generating tools to examine data on markets in order to screen them for problems – and identify whether the possible remedial action is a supply side or demand side one.

### Problem or Dysfunctional Markets

In looking to achieve market dynamics where consumers can better drive competition, the US and the UK have engaged in a range of research on specific markets that I would call “problem markets” and which the OECD calls “dysfunctional markets”. But whatever the language, the definition in the work commissioned in the UK from the consulting firm NERA was “not confined to markets in which there was a lack of effective competition but encompassed any market where there was a consumer detriment, including for example markets where complaints suggested that consumer protection was inadequate.”<sup>12</sup> In other words, the focus was on markets not working from both a competition protection and consumer protection perspective.

The triggers for examining a market include 17 indicators:

- Entry barriers
- Market share
- Concentration indices
- Concentration ratios

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<sup>10</sup> Proscription of unfair contract terms and ‘lock in’ contracts, significant government funding for information provision, strong disclosure laws in complex markets are all becoming more common in most jurisdictions.

<sup>11</sup> DTI, 2004.

<sup>12</sup> NERA, 2004.

- Price behaviour
- Switching costs
- Search costs
- Dispersion of prices
- Focal competition
- Bundling/aftermarkets
- Commission payments
- Complex products
- Infrequent purchases/credence goods
- Profitability
- Productivity
- Growth
- Consumer Complaints<sup>13</sup>

Among the industries which were identified as the 15 worst sectors, based on a weighted average of indicators, the top 3 were: the processing of nuclear fuel, the retail sale of cosmetics, and the wholesale supply of tobacco products.

Having examined markets, and ascertained the nature of the competitive or consumer protection problems (or both), policy makers and regulators would then have to decide on what proactive measures, if any, need to be taken, on the basis of:

- the importance of intervention for the economy
- the transience or stability of the problem
- the toolkit of available strategies some of which may be non-intrusive in markets and others more so
- the likelihood of amelioration of the problems – not all problems can be solved - and finally
- whether the benefits to consumers and the economy of ameliorating the problems outweigh the costs of doing so.

For example, the fact that the retail sale of bread, cakes, flour confectionery and sugar confectionery is in the top ten industry sectors in the NERA assessment, may prove to be far more important to the government than the possibility of reforming the nuclear fuel processing market. The next steps that the regulator in the UK will be taking now that this study has been published will be of considerable interest.

One of the requirements for this type of “joined up” approach to competition and consumer protection is the need for good data both on industry indicators and behaviour linked with good data on consumer indicators and behaviour. The latter is often much more difficult to obtain.

#### The task of a truly “joined up” agency

In terms of the practical aspects of looking at the ideas and theories that are being considered, one ultimately must ask – how exactly does a truly markets oriented agency (i.e. one as equally interested in competition outcomes as in consumer

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<sup>13</sup> NERA, 2004.

protection outcomes) behave? This would be a regulator/policy maker that knows that competition delivers very important consumer and competitive economy benefits and is central to consumer welfare, but also knows, that consumer protection and consumer empowerment are essential for a well-functioning market.

The following is a framework that might assist. .

In the best of all possible worlds, a competition action (such as preventing an anti-competitive merger, prosecuting a cartel, reforming an unproductive industry, and so on) can not only protect competition but can improve consumer protection/empowerment at the same time. Equally, a consumer protection action can improve consumer protection and can improve competition at the same time, for example, prosecuting a firm engaged in misleading conduct which is attracting business dishonestly to the detriment of competitors and consumers.

On the other hand, some competition actions improve competition but may have detrimental effects on consumer protection/empowerment. An example would probably be segments of the telecommunications industry where liberalisation which has resulted in more competition for some consumers, more costs for other consumers, but often where complex analysis to exercise product choice is required such that consumers are damaged through poor choices and cannot easily drive more responsive competition.

Some consumer protection actions may improve consumer outcomes but may have detrimental effects on competition. For example, a requirement to serve a free meal on all flights over 5 hours may look good on the surface, but could well prevent a low cost carrier from competing in an innovative way (such as lower fares – but the consumer buys the meal on offer or brings their own).

And, finally, in the worst of all possible outcomes, some competition actions could fail to significantly improve competition and also cause damage to consumer protection. An example here might be an attempt to disaggregate energy markets only to have them reaggregate and ending up with firms with market power while consumers remain unable to shop around given the often complex calculations involved in exercising informed choice. And some consumer protections fail in their goal of improving consumer protection while also damaging competition. An example might be the highly complex disclosure regimes required in some countries for pension or superannuation products, where the disclosure can result in 40 or more pages of unreadable fine print with consumers even more unable to pick the best product for themselves. Consumers are damaged through poor choices, are forced into the use of intermediaries, and cannot easily drive more responsive competition because the tools are unavailable; businesses bear the costs of ineffective disclosure and do not compete in ways which lead to an overall more competitive industry (i.e. in many countries, the industry is characterised by the use of tied commission agents with competition for intermediaries the result rather than for consumers directly).

The matrix results in the following outcomes:

## The intersections between competition protection & consumer protection policy

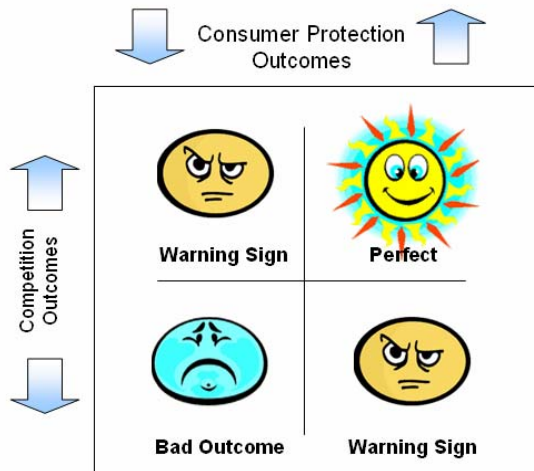
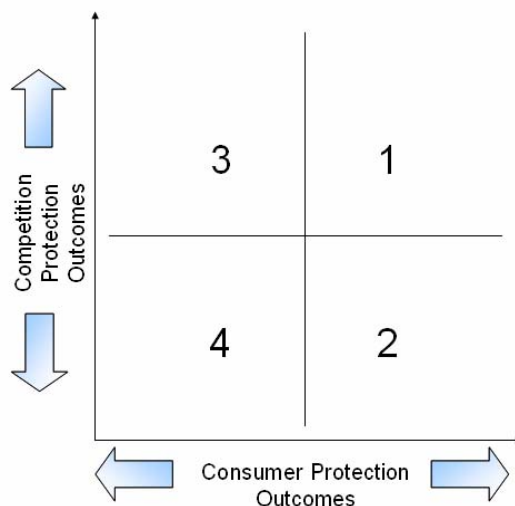


Illustration 1

Competition regulators and consumer protection regulators (and policy agencies) need to put themselves into this framework irrespective of the orientation that they are initially coming from. The reason is simply that supply and demand are two sides of one coin – it is not the case that either competition or consumer protection interventions should be taken without consideration of the effects on both sides of the market. Further, this framework acknowledges that little change can actually be undertaken without the likely effect being on both sides of the markets.

So operationally, how would such a framework actually work? If this notion is extended in graph form, with consumer protection/empowerment outcomes on one axis and competition outcomes on the other axis, the resulting framework that a joined up agency would be using is as follows:

## The task of a joined up competition & consumer protection regime



Graph 1



To someone operating solely from a competition perspective, increasing competition in a market is the goal, and moving that market from quadrants 2 or 4 to quadrants 1 or 3 is the task. By definition, if one can increase competition outcomes and transform an uncompetitive market into a competitive one, that seems like a good outcome.

To someone operating solely from a consumer protection perspective, increasing consumer protection in a market is the goal, and moving that market from either quadrant 3 or 4 to 1 or 2 is the task. By definition, if one can increase consumer protection, that seems like a good outcome.

These are both laudable outcomes from one view. But they are not necessarily sensible outcomes from an overall markets perspective. This type of reasoning is based on a narrow view of markets – looking at only one side of a two-sided coin. As the saying goes, if the only tool you have available is a hammer, then all the problems start to look like nails.

No one would want a market to be in quadrant 4 or to take action in a market that would push its intersection into that quadrant. Quadrant 4 is a situation of low consumer protection outcomes and low competition outcomes. Some of the markets that resulted from the liberalisation of utilities in a number of developing countries, which sold the entity into a private monopoly, would now fall into this quadrant. This quadrant would also characterise a market with high barriers to entry or severe lock-in contracts, probably with limited competitors and significant consumer empowerment problems or abuse problems (essentially a truly dysfunctional market on almost all indicators). Examples might also include industries where market collusions are significant in conjunction with (or to maintain position in) low-quality product or service offerings.

However, examining more carefully quadrants 3 and 2 – would these be desirable outcomes by preference? Quadrant 3 is a situation where one has apparently good competitive conditions, but the consumer protection/empowerment indicators are not comfortable. Examples here include the energy, financial services, telecommunications and other recently deregulated markets. Further examples are markets with low barriers to entry and a large numbers of competitors, but with significant consumer abuse problems – roof repairers, second-hand cars, second-hand appliances, pay-day lenders.

Quadrant 2 on the other hand, describes a situation where consumer protection is good but to the detriment of competition. Examples here might include professionals markets (doctors, dentist, lawyers, pharmacy) where potentially over-stringent supply protections have been used to achieve consumer protection outcomes.

It is an important result for joined-up regulators or policy makers, to ensure that movement in a market – on both competition and consumer protection parameters – is upward or to the right, and preferably both simultaneously. This is especially important in a reform process.

Obviously, none of the quadrants are precise science, but serve rather as a useful framework tool for how to think about a market problem and how to analyse possible interventions to ensure better market outcomes without trade-offs.

*Some examples of working with the framework - briefly examined*

Quadrant 1 is the best of all possible worlds. Competition (and all its resultant benefits) is good and consumers are protected effectively either due to the nature of the market (experiential goods for example) or because the regulators have intervened to ensure consumer protections are strong while promoting/not undermining competition. In either case the movement of the intersecting point has been upward and to the right. The establishment of effective redress mechanisms such as statutory warranties or alternative dispute resolution schemes would help push a market towards this quadrant: consumer protection is enhanced through remediation of poor practice towards consumers, and competition is enhanced since poor quality performers are penalised thus improving overall industry performance (and also likely competitive innovation especially if industry participants are paying attention to the goldmine which is their complaints database). The rules governing comparative disclosures would also fall into this category – moving competitors from quadrant 3 towards quadrant 1 by empowering consumer choice. Equally important are competition reforms, moving lawyers from regimes prohibiting advertising, for example, to markets where consumers can choose on speciality and price, and where the intersection would move from quadrant 2 towards quadrant 1.

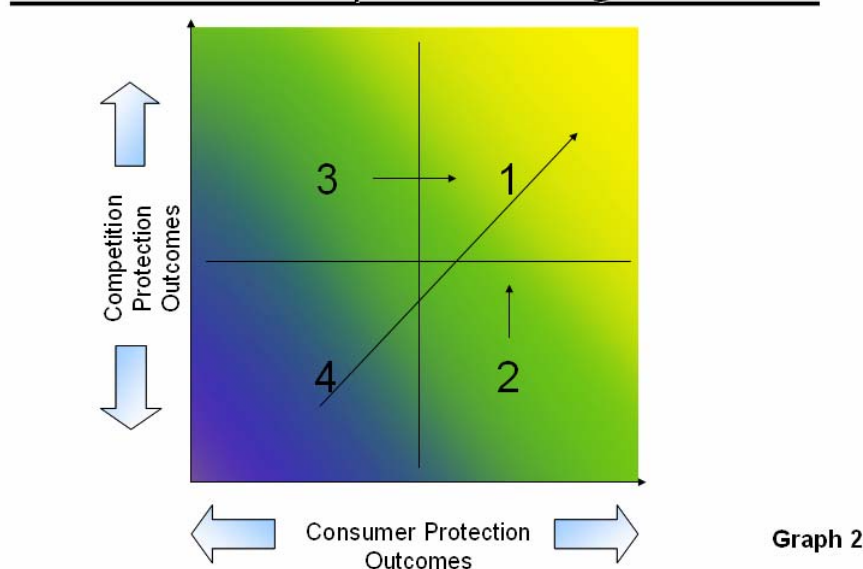
So, for example, if one finds that a market fits solidly into quadrant 2 (high consumer protection but little competition, innovation or productivity improvements), the tool is one of improving competition but seeking to at least maintain the level of consumer protection – even though this may manifest in a different but equivalent form. To use a specific possible market situation, rules might exist in a market which prohibit the ownership of pharmacies other than by qualified pharmacists. This protection ensures that consumers have at-point-of-sale advice on over-the-counter and prescription pharmaceuticals – a critical consumer and social protection to ensure that dangerous products are consumed safely and appropriately. While a consumer protection regulator might be content with this situation, a competition regulator will not be. Intervening, with sensitivity towards the consumer protection problem, would lead one to disentangle the ownership and expert availability rules: therefore, an appropriate solution may be to require that qualified pharmacists be available at all times in chemists/drug stores, but that the ownership of the stores be totally liberalised/deregulated. Such a solution maintains the consumer protections (from quadrant 2) but moves the competition parameter to intersect in quadrant 1. A supposed ‘competitive solution’ on the other hand which simply deregulates pharmacies might result in unqualified sales people dispensing advice on dangerous products without any qualifications or knowledge; the costs to the society could far outweigh the competitive gain in comparison.

An alternative example might be a situation where a market falls into quadrant 3 (high marks on competition but bad consumer empowerment/protection outcomes). To look at the realistic market example, car yards (or any situation where consumers cannot determine the quality or reliability of the product or service to be purchased for example non-experiential and credence goods) might be selling a range of used cars some of which are not sound. While a competition regulator might be content with

this situation (lots of car yards competing on price), a consumer protection regulator will not be since consumers do not have the conditions for exercising informed choice. Intervening, with sensitivity towards the competition issues, might lead one to require some form of after-sales guarantee for a specified period, to ensure that consumers are protected from firms selling sub-standard or defective used cars, and that honest competitors are not undermined through quality-reducing competition.

This framework of *making markets work* doesn't demand perfection in either consumer protection or competition outcomes, but does require progress in the right directions depending on the market situation. **IMPORTANTLY**, significant trade-offs to accomplish a competition outcome at the expense of a consumer outcome are very visible from the analytical task required to best estimate the intersection point, and allow for far improved upfront prognosis - trying to progress towards more efficient markets (or at least maintenance of the position) while achieving better consumer outcomes (or at least maintenance of the position) is the preferred position. From the graph, in other words, it should require a significant and persuasive argument and analysis to permit a movement from 2 to 3, or from 3 to 2, if in fact one could find the means (and should be required to try to find the means) of moving towards 1. Obviously, moving a market towards quadrant 4 is a quite unacceptable outcome.

### The task of a joined up competition & consumer protection regime



The purpose of the framework is to enable a “placement” of the market situation, and thus the selection of the appropriate intervention or combination of interventions (or for that matter non-intervention if a cost-effective outcome can't be delivered). An agency with a focus on making markets work would have a keen appreciation of what the conditions are in a market and what is leading to the problem - lack of competition, inability of consumers to drive competition, inherently difficult markets, and so on. The solutions and the ability to drive the outcome towards quadrant 1 depend on solid up-front analysis. In addition, given that this subject is not a natural

science, it is also necessary to evaluate and re-position interventions that have not succeeded as intended.

### A 'reality check' case

One of the advantages of a framework such as that proposed is that one can take real-life examples of either competition or consumer protection actions and assess them on the parameters of 'movement in the right direction'. A recent example is instructive.

#### *Deregulation/Privatisation of Electricity Markets*

The liberalisation (and in some cases privatisation) of energy markets in most jurisdictions in the world has led to more competition, better prices for a range of consumers (not always all consumers), serious questions about responsibility for system failures, and in some jurisdictions serious welfare problems as low-income consumers have been increasingly disconnected or disadvantaged in terms of access. A competition regulator would argue that consumers in the short-term may be disadvantaged but that all will be well in the long term and consumers will just have to tough it out (either that or that they just don't understand about their long-term benefit). A consumer protection regulator might argue that relinquishing government ownership or control has undermined consumer protection, especially for low income and disadvantaged consumers, led to market churning problems, excess returns, and that choice complexity without assistance for consumers has meant that markets are ineffectually competitive.

Evidence from the UK market deregulation and privatisation of electricity markets showed that by July 2000, only 18% of consumers were being supplied by a provider other than their incumbent despite very high awareness (92%) of the option of switching.<sup>14</sup> Consumers in the market were largely unable to pick the best price option due to the complexity of the calculation (it requires a spreadsheet and detailed usage pattern). A major demand-side intervention, Energy Watch, was established to act as the energy consumer champion – providing comparative information, acting as the complaints centre for the energy market, setting the agenda for consumer protection as well as assisting in competition analyses and helping to drive competition reform along with the energy regulator, Ofgem. By July 2004, 5 years after full retail deregulation, 51% of domestic consumers had switched; these are figures that compare with switching for car insurance for example. The Australian market deregulation has had much the same features, but with a later start. The only jurisdiction with truly good data is the Victorian market where in its latest report, the Essential Services Commission indicated about 10% of consumers had switched (although 17% are now on contracts including with their incumbent). In comparison with the UK and NZ at their equivalent point of electricity market development, switching was about 20%.

In terms of where this market would land in the graph, it is probably in transition from quadrant 2, and given the levels of disconnections, may well be in 3 at this point. Despite certain re-aggregations in the markets, which are starting to happen in many jurisdictions globally and may begin to have an impact, there remain many retail electricity providers with strong intent to grow. The policy choices are:

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<sup>14</sup> Waterson.

- 1) Do nothing. This is a real option given that the competition prognosis is quite positive, however, the highly public disconnection problem may be damaging the notion of the benefits of a competitive market.
- 2) Move away from retail contestability for domestic consumers. A sympathetic consumer protection regulator with little connection to the benefits of competition might say on the basis of the disconnections data: “Disastrous – re-regulate this market and ban involuntary disconnections.” This is likely to move the market back into quadrant 2 with little competition and higher costs but also higher consumer protections. Consumer choice and competitive innovative would likely suffer.
- 3) Try for quadrant 1 by enhancing competition in the market and fix the consumer protection problem. A joined-up competition and consumer protection regime might say: “There appear to be a range of competitors and the market is assessed to be fairly competitive on supply offers. Therefore, an intervention may be necessary on the demand side to empower residential consumers who appear to be unable to drive competition sufficiently. Highly public provision of comparative price assessments (or possibly prohibiting certain anti-competitive bundling arrangements) should help drive competition; stronger rules, applying equally to all providers, to carefully protect vulnerable consumers from inappropriately hasty disconnection giving welfare agencies more time to react should help fix the main equity problems.” This is likely to move the result closer to quadrant 1 from quadrant 3 (though it could also drop slightly towards quadrant 2 in relation to the vulnerable consumer dimension of this market).

In any event, any solutions would need to be evaluated beforehand – including which interventions, if any, are likely to get the results desired without excessive costs - and after implementation to determine if the interventions were actually successful. Such evaluations are central to developing an informed body of practice in this field. The important point, though, is a look at the market constantly on the basis that it has two intersecting sides, not just one.

### International Work

There is considerable interest in international work in the area of “joined up” thinking and practice in competition and consumer protection, as well as in the issue of the best structure of agencies charged with these tasks.

Recently the heads of the key markets regulators and policy agencies from the US, Canada, NZ, UK, Australia and the EU met in an Academic Roundtable to discuss the issue of competition and consumer policy and law integration. This preceded the OECD joint meeting of its Competition and Consumer Policy Committees – only the second joint meeting that has been held. The Academic Roundtable agreed to meet again and to work on one particular issue – the economics of consumer protection. The timing is important because the head of the Office of Fair Trading, in the UK, and the Chief General Counsel of the FTC in the US, both return to academia within a year which is where a fair bit of this work needs to be done. Further, the OECD Consumer Policy Committee has begun two projects on joined-up policy, both of which look to better integrated outcomes in markets.

It may interest you, by the way, that the regulators who are already both consumer and competition agencies – that is the US, UK, Australia, NZ, and partly Canada - were asked at the Academic Roundtable how the fact that they have joint responsibilities had been used in their enforcement work. Only NZ has actually brought a case, a consumer protection case, which specifically argued the competition detriment as well.

In terms of structure for a ‘joined up’ manner of thinking about markets, there does not seem to be a compelling reason why it would be necessary to have a joint set of agencies on the competition and consumer in order to create the conditions for effectively operating in this way. There is no doubt in my mind, however, that having both responsibilities would make it much easier to do.

## CONCLUSION

So, to conclude, a lot is happening in the thinking about the interface of competition protection and consumer protection. I think that there is much to be said for ensuring that our theory and practice is closely aligned with real outcomes in the market.

One of the reasons that I believe this type of thinking and far more underpinning economic work are crucial is the situation that now exists in terms of understanding the connections with its potential for making poor decisions. At the OECD Consumer Policy and Competition Committees joint meeting, a lot of the competition people were saying that they just couldn’t figure out why they were so attacked for doing the right thing economically. One very senior regulator said – well, we Competition people have all the economic discipline behind us but no constituency supporting us while the Consumer people have a huge constituency but no economic credibility. We probably need to fix that.

Thank you.

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